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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No.: 2010-CP-10-9158

APPELLATE CASE No.: 2015-000111

RECEIVED

SEP 10 2015

SC Court of Appeals

Johnson Koola,.....Appellant,

v.

Cambridge Two, LLC, Albert V. Estee, Individually, Cambridge Lakes, LP, Stephen R. Heape, Individually and as General Partner of Cambridge Lakes LP, Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP, a/k/a Cambridge Lakes Apartment Homes, LP, Classic Properties of Charleston, Inc., Cambridge Contracting, LP, Trademark Properties, Inc., Carolina One Charleston Home Team Properties, LLC, Charleston Home Team, LLC, Carolina One, and William E. Jenkinson, IV, individually,

Of Whom Trademark Properties, Inc., and Carolina One Real Estate are the  
.....Respondents

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-9158

FILED

Johnson Koola

Cambridge Two, LLC, et al

2014 OCT 28 AM 11:36

PLAINTIFF(S)

JULIE J. ARMSTRONG

DEFENDANT(S)

CLERK OF COURT

Submitted by:

BY 1

Attorney for: ☐ Plaintiff ☐ Defendant

or

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant Trademark Properties LLC's motion for Summary Judgment, filed on 12/6/13, is GRANTED; Formal order to follow.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

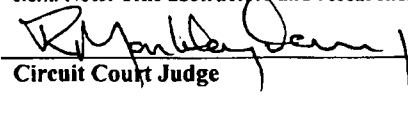
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| N/A                                          |                                          | \$                                                       |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

  
Circuit Court Judge

2060  
Judge Code

10/22/2014  
Date

) IN THE COURT OF COMMON PLEAS  
) THE NINTH JUDICIAL CIRCUIT  
) CASE NO.: 2010-CP-10-9158

) CASE NO.: 2010-CP-10-9158

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**ORDER GRANTING SUMMARY  
JUDGMENT TO DEFENDANT  
TRADEMARK PROPERTIES, INC.**

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[illegible]

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2014 NOV -3 PM 5:51  
JULIE J ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

RNDJ/1

## FACTS

Plaintiff's claims arise out of the sale of a converted condominium unit at a complex known as Cambridge Lakes in Mount Pleasant, South Carolina. Cambridge Lakes was originally an apartment complex that was converted and sold as individual condominium units beginning in 2002. Pl.'s Compl. ¶¶ 1 – 4. In August 2002, Defendant Trademark Properties, Inc. was hired as the marketing and listing agent for Cambridge Lakes by Albert V. Estee of Cambridge Two, LLC. Aff. of Richard Davis, ¶ 5. Defendant Trademark never leased, owned, or co-owned any unit in the Cambridge Lakes apartment. Id. at ¶ 7.

Defendant Trademark acted as the listing and marketing agent for Cambridge Lake condominiums until May 2003. Id. at ¶ 6. Between August 2002 and May 2003, Defendant Trademark completed approximately thirty (30) pre-sales of the Cambridge Lakes converted condominiums. Id. at ¶ 8. None of these thirty (30) presales were made to Plaintiff Koola or involved the sale of Plaintiff Koola's condominium. Id.

Plaintiff Koola purchased the subject condominium unit in February 2004, more than 8 months after Defendant Trademark's services as a listing agent at Cambridge Lakes ended. See Pl.'s Compl. ¶ 11; Aff. of Richard Davis, ¶ 5. According to the allegations contained within his own Complaint, Plaintiff Koola bought the subject condominium from listing agent William E. Jenkinson, IV, from Carolina One. Pl.'s Compl. ¶ 11. It is undisputed that Trademark Properties had no interaction or communication with Plaintiff Koola about the Cambridge Lakes condominiums or the sale of the subject condominium to Plaintiff Koola.

The Plaintiff filed this lawsuit on November 4, 2010, against Defendant Trademark and eight (8) other Defendants, alleging fraud, deceit and misrepresentation; negligence; breach of

RM05/2

contract/warranty; violation of the Unfair Trade Practices Act; and violations of the South Carolina Horizontal Property Regime Act.

Defendant Trademark filed the Motion for Summary Judgment now before the Court, based on the undisputed fact that it was not involved in the sale of the subject condominium to Plaintiff Koola, the transaction out of which Plaintiff's claims arise.

### **SUMMARY JUDGMENT STANDARD**

Rule 56(c), SCRCP, provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material facts and that the moving party is entitled to a judgment as a matter of law." "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009).

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. Gauld v. O'Shaughnessy Realty Co., 380 S.C. 548, 558, 671 S.E.2d 79, 85 (Ct. App. 2008). Once the party moving for summary judgment meets the initial burden of showing the absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Id. at 558-59, 671 S.E.2d at 85. Rather, the nonmoving party must present at least a scintilla of probative evidence showing a genuine issue for trial that does not rest on mere speculation. Bass v. Gopal, Inc., 384 S.C. 238, 680 S.E.2d 917 (Ct. App. 2009).

RNDJ/3

## DISCUSSION

In his Complaint, Plaintiff Koola alleges that he relied on the representations made to him relative to the subject condominium in his decision to purchase the condominium and that he purchased the condominium because he believed that the unit was marketable. Pl.'s Compl. ¶¶ 30, 31, 43, 47. Plaintiff alleges he suffered damage when he placed his condominium unit up for sale but learned the condominium was "virtually worthless." Pl.'s Compl. ¶ 18. Plaintiff alleges that contrary to representations made to him that the condominium unit he bought was marketable, the condominium was not and is not marketable. Pl.'s Compl. ¶¶ 30, 32, 43, 44.

According to his own pleadings, the damages suffered by Plaintiff Koola arise from the transaction wherein he purchased his condominium based on the information, or misinformation, that he received relative to that purchase. Any viable cause of action thereby springs from the transaction itself and the actions of the parties involved therein. Plaintiff Koola has produced no evidence of any interaction or communication between himself and Trademark Properties relating to the subject condominium or relating to the transaction involving Plaintiff Koola's purchase of the subject condominium. Even viewing the Plaintiff's evidence and all reasonable inferences therefrom in the light most favorable to the Plaintiff, it is undisputed that Defendant Trademark was not involved in the transaction out of which Plaintiff Koola's claims arose. Therefore, Defendant Trademark is entitled to judgment as a matter of law.

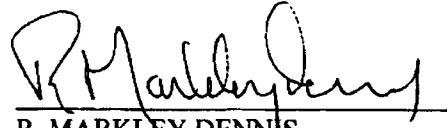
## CONCLUSION

Because no evidence has been produced to dispute the fact that Trademark Properties was not involved in the sale of this condominium to Plaintiff Koola, Defendant Trademark is entitled to summary judgment, and Plaintiff Koola's claims against Defendant Trademark are hereby dismissed with prejudice.

PNB/4

IT IS SO ORDERED.

This 31<sup>st</sup> day of October, 2014.

  
R. MARKLEY DENNIS  
CHIEF ADMINISTRATIVE JUDGE  
NINTH JUDICIAL CIRCUIT

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) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) CASE NO: 2010-CP-10-9158

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JULIE J. PARSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_



of Defendant Trademark Properties, Inc., were fully briefed and oral arguments were held on October 22, 2014. After considering the briefs and exhibits that were submitted, by all parties, the arguments, relevant statutory and case law, and the facts of this case, this Court hereby grants Defendant O'Shaughnessy Real Estate, Inc. f/k/a Prudential Carolina Real Estate n/k/a Carolina One Real Estate's Motion for Summary Judgment.

### FACTS

The Plaintiff's claims arise out of his purchase of a converted condominium unit, identified as 1587 Cambridge Lakes Drive, located in a complex known as Cambridge Lakes in Mount Pleasant, South Carolina. The Plaintiff closed on his purchase on February 20, 2004. Cambridge Lakes was originally an apartment complex that was converted and sold as individual condominium units beginning in 2002. Defendant Prudential was not involved in the conversion of Cambridge Lakes and never leased, owned, or co-owned any unit in the Cambridge Lakes apartments, but was later hired to list some of the converted units for the owner.

The Plaintiff filed this lawsuit on November 4, 2010 against Defendant Prudential, among other Defendants, alleging violations of The South Carolina Horizontal Property Regime Act, S.C. Code Ann. 27-31-10 *et. seq.* and related causes of action for violation of the Unfair Trade Practices Act, Breach of Contract/Warranty, Negligence, Fraud, Deceit and Negligent Misrepresentation, all arising out of an alleged violation of The South Carolina Horizontal Property Regime Act.

The seller of the property in question had previously been dismissed from this action based on the Plaintiff's failure to file this action prior to the expiration of the statute of limitations. Defendant Prudential filed its Motion for Summary Judgment

based on the undisputed fact that it was not the seller, lessee, sole owner, or co-owner of the property purchased by the Plaintiff and had no duties under The South Carolina Horizontal Property Regime Act.

### SUMMARY JUDGMENT STANDARD

Rule 56(c), SCRPC, provides that a trial court may grant a motion for summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material facts and that the moving party is entitled to a judgment as a matter of law.” “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.” Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009).

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. Gauld v. O’Shaughnessy Realty Co., 380 S.C. 548, 558, 671 S.E.2d 79, 85 (Ct. App. 2008). Once the party moving for summary judgment meets the initial burden of showing the absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Id. at 558-59, 671 S.E.2d at 85. Rather, the nonmoving party must present at least a scintilla of probative evidence showing a genuine issue for trial that does not rest on mere speculation. Bass v. Gopal, Inc., 384 S.C. 238, 680 S.E.2d 917 (Ct. App. 2009).

MDJ/3

## DISCUSSION

In his Complaint, the Plaintiff alleges that Defendant Prudential breached The South Carolina Horizontal Property Regime Act by not providing notice “either through recordation in the Master Deed filed on February 24, 2003 or by providing notice directly to prospective purchasers.” See complaint. However, the burden of such a requirement, as set forth in the statute, is clearly on the owner of a property and cannot be imputed to a real estate agent.

Under South Carolina Code section 27-31-430, upon undertaking the conversion of rental units to condominiums, the “**lessee, sole owner, or co-owner** of a building” is required to deliver, in writing, certain disclosures to all prospective purchasers “as to the physical condition of the building. The disclosure shall contain a written report prepared by an independent registered architect or engineer licensed to practice his profession in this State, describing the present condition of all general common elements. The report shall contain a good faith estimate of the remaining useful life to be expected for each item reported on, together with a list of any notices of uncured violations of building codes or other county or municipal regulations, together with the estimated cost of curing those violations.” *Id.*, emphasis added.

The duties of a “lessee, sole owner, or co-owner of a building” in a conversion of rental to condominium units is clear and created by the statutory language. The South Carolina Supreme Court has held that a developer who undertakes a condominium conversion has a duty to “turn over common areas that are not substandard and that are in good repair.” Concerned Dunes West Residents, Inc. vs. Georgia Pacific Corp., 349 S.C. 251, 257, 562 S.E.2<sup>nd</sup> 633, 637 (2002). Therefore, it was the lessee/owner of the

Cambridge Lakes who owed a duty to make the legally required disclosures to the Plaintiff as required under The Horizontal Property Regime Act. As a result, if the Plaintiff suffered damages based on any alleged violation of the Act, the proper party in any subsequent action would have been the lessee/owner of Cambridge Lakes, and not Defendant Prudential, the listing agent.

Nothing in the Horizontal Property Act places a duty upon the listing agent of a converted condominium to deliver these written disclosures to prospective purchasers and such a duty cannot, by inference, be expanded beyond its stated scope. Additionally, no Court has ever found a listing agent liable under this Act. Therefore, the Plaintiff has failed to establish, or even assert, any duty, related to The South Carolina Horizontal Property Regime Act or other statute, which exists or was violated by Defendant Prudential, the listing agent. Given the fact that all of the causes of action, as set forth in the complaint, are based on alleged conduct associated with The South Carolina Horizontal Property Regime Act, the Court's findings on this issue are dispositive to the remaining causes of action asserted by the Plaintiff.

The Plaintiff does make reference in his brief and at oral argument to the duties of a listing agent under The Residential Property Condition Disclosure Act, S.C. Code Ann 27-50-10, *et. seq.* While there are certain duties of a listing agent as set forth in The Residential Property Condition Disclosure Act, the undisputed fact is that Defendant Prudential complied with any requirement and that such disclosure, as made an exhibit to this hearing, was provided to and signed by the Plaintiff at the time of his purchase. As such, any reference to The Residential Property Condition Disclosure Act is immaterial and not related to the claims under The South Carolina Horizontal Property Regime Act.

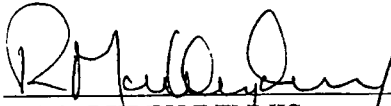
not/s

## CONCLUSION

Because there is no evidence that Defendant Prudential was the "lessee, sole owner, or co-owner of a building" in the Cambridge Lakes conversion and had no duty under The South Carolina Horizontal Property Regime Act, Defendant Prudential is entitled to summary judgment as to all causes of action asserted in the Plaintiff's complaint and Plaintiff Koola's claims against Defendant O'Shaughnessy Real Estate, Inc. f/k/a Prudential Carolina Real Estate n/k/a Carolina One Real Estate (hereinafter "Defendant Prudential") are hereby dismissed with prejudice.

**IT IS SO ORDERED.**

This 10<sup>th</sup> day of November, 2014.

  
\_\_\_\_\_  
R. MARKLEY DENNIS  
CHIEF ADMINISTRATIVE JUDGE  
NINTH JUDICIAL CIRCUIT

MDJ/6

IN THE COURT OF COMMON PLEAS  
Case No. 2010-CP-10-9158

PLAINTIFF,

**Cambridge Two, LLC, et al.**

**DEFENDANT.**

## ORDER

This matter comes before me upon Motion for Amendment and Reconsideration, filed November 12, 2014 by Pro Se Plaintiff, **Johnson Koola**. After fully considering said Motion, this Court finds no need for oral argument in this matter and, therefore, the Motion is DENIED. The Order Granting Defendant Trademark Properties, Inc.'s Motion for Summary Judgment, filed on November 3, 2014, stands.

AND IT IS SO ORDERED!

  
R. MARKLEY DENNIS, JR.  
Presiding Judge

## Charleston, South Carolina

November 24, 2014

IN THE COURT OF COMMON PLEAS  
Case No. 2010-CP-10-9158

PLAINTIFF,

## DEFENDANTS

## ORDER

FILED  
2014 DEC 18 AM 11:52  
JULIE L. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

**AND IT IS SO ORDERED!**

  
R. MARKLEY DENNIS, JR.  
Presiding Judge

**December 15, 2014**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CAMBRIDGE LAKES CONDOMINIUM  
HOMEOWNERS ASSOCIATION, INC.,  
MARGEL S. HENNING, STEVE  
FISCHER, MARK AND BRENDA  
SCHILLACI, GARY CONLEY,  
GERALD DARNELL, JOHN MASCIOLI  
AND GLORIA HARDIN, CLINT  
GASKINS, MITCHELL GASKILL,  
THOMAS MURPHY, EDWARD BOGGS,  
BRUCE ADKINS, CHARLESTON HOME  
TEAM PROPERTY, LLC, LOUELLA  
ENK, JEREMIAH AND GLORIA  
MORRISON, ERIN BLEVINS, CHARLES  
TAYLOR, JR., MARION RIZZARDINI,  
KAREN ABRAMS, E. MIKELL  
CARROLL, VERNELL ROBERTS, KIM  
JACKSON, META KING, JAMES AND  
MARGARET AYERS, MARY B. BURKE,  
SEVENTH WING, LLC, RUTH AND  
CHARLES CATE, ROBERT AND MARY  
ORTIZ-ABREU, JR., LAURA LaTORRE,  
MARVIN AND PAULA SWINDLE,  
DONNA WIGGINS, EMILIE COLE  
SANDERS, PHILIP AND CYNTHIA  
JONES, ANDREW MOHR, ALISON  
SMITH, BOBBIE FAULKNER, MARCUS  
AND GRACE THOMAS, DORIS  
SKUHRA, ROBERT AND RAGAN  
ALBERT, WILLIAM SILER,  
MARVA CARD, SAMUEL RUBINO,  
MATT TATHAM, SCOTT HERMAN,  
JAY AND JENNIFER MERRIMAN,  
MARY ELLEN OAKS, ELIZABETH  
MOSELEY, ALI AND MICHELLE  
ERFANI, EMILY CHAPMAN, JOHN T.  
AND LAURA L. MARTIN, ROSEANN  
TECHMAN, ROBERT PRICE, HENRY  
EDWARD TIENCKEN, JEAN B.  
WALLACE, MICHAEL B. HARTNETT,  
CAROLYN CARRICO, JENNIFER  
SNOWDEN, JOSHUA LONG, J.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2008-CP-10-3506

ORDER DENYING  
TRADEMARK PROPERTIES,  
INC.'S MOTION FOR  
SUMMARY JUDGMENT  
AS TO THE PLAINTIFFS  
CLAIMS

BY \_\_\_\_\_

JULIE J. ARMSTRONG  
CLERK OF COURT

2011 MAR 30 AM 11:53

FILED

KLH  
3/28/11



MICHAEL AND GLORIA McDONNELL,  
SANDRA GIRT, JANE THOMPSON,  
JOHN HILL, III, GLENNA McKENZIE,  
JEFF GARDNER, FREEMAN THARP,  
PETE DUNHAM and JEANNE-  
MARIE BUSUTIL as Individual  
Homeowners,

Plaintiffs,

v.

BOSTIC BROTHERS CONSTRUCTION,  
INC., CAMBRIDGE TWO, LLC,  
CAMBRIDGE LAKES LP A/K/A  
CAMBRIDGE LAKES APARTMENTS  
HOMES, LP, CAMBRIDGE LAKES  
APARTMENTS, LP A/K/A CAMBRIDGE  
LAKES APARTMENTS HOMES, LP,  
CLASSIC PROPERTIES, INC. OF  
CHARLESTON, CAMBRIDGE  
CONTRACTING LP, SELECTIVE  
INSURANCE COMPANY OF  
AMERICA, SELECTIVE  
INSURANCE COMPANY OF SOUTH  
CAROLINA, JOSE NINO, B & B  
CONSTRUCTION CO.,  
INTERCOASTAL CONSTRUCTION,  
INC. D/B/A AND A/K/A  
INTRACOASTAL CONSTRUCTION,  
CAROLINA APARTMENT INTERIORS,  
LLC, ARMANDO MEDINA CORTEZ  
A/K/A ARMANDO MEDINA A/K/A  
ARMANDO CORTES D/B/A MJG  
CONSTRUCTION, VINCENT MORALES  
D/B/A V. MORALES MASONRY, MJG  
CONSTRUCTION AND  
HOMEBUILDERS, INC., B & B  
CONSTRUCTION OF CHARLESTON,  
INC., GEORGIA-PACIFIC  
CORPORATION, GEORGIA-PACIFIC  
CONSUMER PRODUCTS, LLC,  
GEORGIA-PACIFIC BUILDING  
PRODUCTS, LLC, GEORGIA-PACIFIC  
WOOD PRODUCTS, LLC, SUPERSEAL  
MANUFACTURING, INC., MAJESTIC

KLH  
3/28/11

WINDOW MANUFACTURING, LTD.  
F/K/A SOURCE WINDOWS, LTD., VWD  
(2008) NC, INC F/K/A VINYL WINDOW  
DESIGNS-USA, INC. N/K/A VINYL  
WINDOWS DESIGN, LTD. PEGRAM-  
WEST INC., CHASE HOMES, INC.,  
CHASE-ROBERTSON BUILDERS,  
INC., SGM ARCHITECTS, INC.  
F/K/A SMITH, GERBER, MCCLURE &  
ASSOCIATES, INC. F/K/A SMITH  
GERBER & ASSOCIATES, INC.,  
TRADEMARK PROPERTIES, INC.,  
STEPHEN R. HEAPE, INDIVIDUALLY  
AND INDEPENDENTLY AS GENERAL  
PARTNER OF CAMBRIDGE LAKES, LP,  
ALBERT V. ESTEE, INDIVIDUALLY,

Defendants,

and

BOSTIC BROTHERS CONSTRUCTION,  
INC.,

Third-Party Plaintiff,

v.

JOSE NINO, INTERCOASTAL  
CONSTRUCTION, INC., CAROLINA  
APARTMENT INTERIORS, LLC, MJG  
CONSTRUCTION AND  
HOMEBUILDERS, INC., B & B  
CONSTRUCTION OF CHARLESTON,  
INC., AND V. MORALES MASONRY,

Third-Party Defendants.

The above matter came before this Court pursuant to the Defendant, Trademark  
Properties, Inc.'s Motion for Summary Judgment as to the Plaintiffs' claims. The hearing was  
held in this matter on January 6, 2011 at the Charleston County Courthouse. Participating in the

*Handwritten:* JH 3/28/11

hearing was Frank M. Cisa, attorney for the Defendant, Trademark Properties, Inc. and John C. Hayes, IV, attorney for the Plaintiffs.

This case arises from the alleged construction defects relative to a residential condominium complex known as Cambridge Lakes Condominiums located in Mt. Pleasant, SC, hereinafter referred to as ("Cambridge Lakes"). Trademark maintains its only duty was to advertise and sell the units, and is thus not liable for any construction defects. For the reasons set forth herein, Trademark Properties, Inc.'s Motion for Summary Judgment as to Plaintiffs' Claims is denied.

"Summary Judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). "In determining whether any triable issue of facts exists, the evidence and all inferences which can reasonably drawn therefrom must be viewed used in the light most favorable to the non moving party." Sumner v. Carpenter, 328, S.C. 36, 42, 492 S.E.2d 55, 58 (1997).

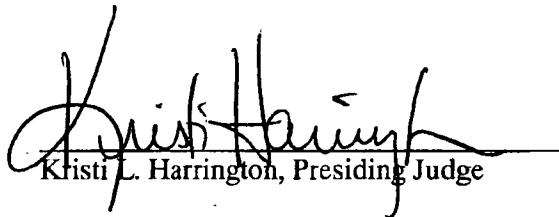
Cambridge Lakes consist of five buildings with 104 units. In addition, there is a community clubhouse adjacent to a pool and four (4) garages. Cambridge Lakes was constructed in 1999. The buildings were originally built to serve as an apartment complex, however, Albert Estee, a limited partner of Cambridge Lakes, L.P., sought to convert the property into individual condominiums for sale. In furtherance of the condominium conversion, Mr. Estee's formed the Limited Liability Company, Cambridge Two, LLC, hereinafter referred to as ("Cambridge Two") in order to purchase the Cambridge Lakes apartments and convert them pursuant to South Carolina Code of Laws Section 27-31-10, et seq. the Horizontal Property Act.

On August 9, 2002, Cambridge Two, entered into an Exclusive Right to Sell Listing Agreement with the Trademark Properties, Inc., where Trademark was granted the exclusive right to sell the condominium units. Pursuant to the exclusive right to sell Listing Agreement Trademark undertook a duty to make a diligent and continual effort to sell the units and further agreed to advertise the units for sale. Further, the affidavit and deposition testimony of Cambridge Two's representative, Albert Estee, stated that Trademark represented itself as being an expert in the field of condominium conversions, and that Cambridge Two hired Trademark to convert the apartments into condominiums and convey all required information to prospective purchasers. Similarly, a letter dated May 28, 2003 and written by Trademark states: "Trademark was hired for the sole purpose of converting your existing Apartment community into condominiums" and "You hired us for our expertise to convert you apartment community."

Accordingly, genuine issues of material fact exist as to the extent of Trademark's involvement, and Summary Judgment not appropriate. Trademark's motion for Summary Judgment is DENIED.

**IT SO ORDERED.**

March 28, 2011  
Charleston, SC

  
Kristi L. Harrington, Presiding Judge

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
CAMBRIDGE LAKES CONDOMINIUM )  
HOMEOWNERS ASSOCIATION, INC. )  
MARGEL S. HENNING AND )  
STEVE FISCHER, AS INDIVIDUAL )  
HOMEOWNERS )

Plaintiff(s), )

vs. )

BOSTIC BROTHERS CONSTRUCTION, )  
INC., CAMBRIDGE TWO, LLC )  
CAMBRIDGE LAKES LP, CLASSIC )  
PROPERTIES, INC. OF CHARLESTON, )  
CAMBRIDGE CONTRACTING LP, )  
CAMBRIDGE LAKES )  
APARTMENTS, LP )

Defendant(s) )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 2008-CP-10-3506

**COMPLAINT**

(Re: Defective Construction)  
(Jury Trial Demand)

FILED  
2008 JUN 19 PM 2:35  
JULIE J. ARMSTRONG  
CLERK OF COURT

The Plaintiffs, Cambridge Lakes Condominium Homeowners Association, Inc., Margel S. Henning and Steve Fischer, as Individual Homeowners, (hereinafter collectively "Cambridge") complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

1. Cambridge Lakes Condominiums ("Cambridge Lakes") is a group of residential structures and buildings located in Mount Pleasant, County of Charleston, South Carolina.
2. The Cambridge Lakes units are located in five buildings.
3. The Cambridge Lakes Condominium Homeowners Association, Inc., "The HOA," is the Homeowners Association for the above-referenced units and their owners.
4. Margel S. Henning and Steve Fischer are owners of residential units in Cambridge.

5. The HOA and individual Homeowners own the elements of Cambridge.
6. Defendants, Cambridge Two, LLC, Cambridge Lakes LP, Classic Properties, Inc., of Charleston, Cambridge Contracting LP, and Cambridge Lakes Apartments, LP, are South Carolina corporations, limited liability companies, or limited partnerships organized and existing under the laws of the State of South Carolina.
7. Defendant, Bostic Brothers Construction, Inc. (Bostic) is a corporation organized and existing under the laws of a state other than South Carolina and performed work during the construction and repair of Cambridge Lakes.
8. Cambridge Lakes is located in Charleston County and venue is proper in Charleston County.
9. At all relevant times herein, Defendants engaged in the business of development, sales, marketing, building construction and/or repair in Charleston County, South Carolina.
10. Defendants developed, constructed, sold, marketed and/or repaired Cambridge Lakes.
11. The development, construction, sales, marketing and repairs were performed by Defendants at the Cambridge property between 1998 to present.
12. At the time the development, construction, sales, marketing and repairs were completed by Defendants, the Cambridge Lakes Buildings and units contained many latent building defects.
13. The latent building defects have since resulted in repeated and severe water intrusion into the buildings and other damage and continue to do so through the date of this filing.
14. Defendants implicitly and/or explicitly represented the materials used were suitable for use on the Cambridge units.

15. Defendants knew or should have known that the materials used at the Cambridge Lakes units were not suitable for use on the units and said materials and improper installation of same have resulted in damage to Cambridge Lakes.
16. Defendants unsuitable construction and/or repair work and the unsuitable materials used at the Cambridge property have resulted in severe water intrusion into the units and other damage.
17. The repeated and severe water intrusion has resulted in deterioration of the buildings and consequential damages and continues to do so through the date of this filing.
18. The repeated and severe water intrusion has resulted in extensive damages to the original structures, the interior of the Cambridge units, and to the Homeowners and continues to do so through the date of this filing.
19. A preliminary inspection of the Cambridge units evidences an unsuitable sealant used around windows, unsuitable windows, improperly installed windows, improper weather-lapping, improperly installed flashing, improperly installed roofing materials, improperly installed gutter and down spouts, improper installed brick veneer, improper framing and various other building defects.
20. Defendants had a duty to construct and repair the Cambridge units in a workmanlike manner with suitable materials.
21. The aforementioned deficiencies and other evidence that Defendants breached their duty to Plaintiffs.
22. Said wrongful acts by Defendants above-described have resulted in the above-referenced building deficiencies and other consequential damages, partial loss of use, and severe mental and emotional stress.

23. Remedying the above-wrongs will result in additional damages, including loss of use. Further, the above has caused diminutions in value, both pre-and post-repairs.
24. As a direct and proximate result of the Defendants' violations of its legal duties, Plaintiffs have been damaged in an amount to be determined by the jury.

**FOR A FIRST CAUSE OF ACTION**  
**Negligence**

25. Plaintiffs' repeat and reallege the above allegations as if stated verbatim herein.
26. The Defendants were negligent, careless, reckless, willful and wanton in the following particulars:
- a. in failing to properly construct the structures;
  - b. in failing to properly make repairs to the structures;
  - c. in failing to properly install windows;
  - d. in failing to properly install adequate flashing.
  - e. in failing to install adequate water barriers;
  - f. in failing to install weather proof building envelopes (exteriors);
  - g. in failing to install adequate roofing;
  - h. in failing to construct and repair the structures in accordance with due care and in accordance with standard building practices;
  - i. in failing to properly supervise the work and construction of the buildings;
  - j. in failing to hire competent subcontractors and specialty contractors;
  - k. in failing to properly coordinate the subcontractors;
  - l. in covering up deficiencies;
  - m. in misrepresenting the condition of the structures to the Plaintiffs;
  - n. in representing to Plaintiffs that Defendants had expert skills and ability;
  - o. missing and/or inadequately installed weep holes in brick veneer;
  - p. missing and/or inadequately installed sealant joints at dissimilar materials;
  - q. missing and/or inadequately installed building wrap, including failure to properly lap building wrap with other building components;
  - r. inadequately installed siding and trim along the exterior porches, bay windows and other areas;
  - s. inadequately sealed penetrations;
  - t. inadequately installed gutters;
  - u. failing to disclose condition of property during marketing and sales of same;
  - v. in failing to act as reasonable persons would in the circumstances then and there prevailing; and
  - w. in such other failures that will be shown during discovery and at trial.



27. Said failures above-described have proximately damaged the Plaintiffs in an amount to be determined by the jury.
28. As said failures were committed with gross negligence and reckless disregard for the rights of others, Plaintiffs are entitled to an award of punitive damages.

**FOR A SECOND CAUSE OF ACTION  
Breach of Warranties**

29. Plaintiffs repeat and reallege the above allegations as if stated verbatim herein.
30. The construction and repair work came with express and implied warranties that the work would be performed in a careful, diligent, competent, and workmanlike manner.
31. The construction and repair work came with implied warranties of fitness, merchantability, workmanship and habitability.
32. Defendants have breached their warranties by constructing and repairing the structures in a defective manner as set forth above.
33. Said breaches have damages Plaintiffs in an amount to be determined by the trial of fact.

**FOR A THIRD CAUSE OF ACTION  
Unfair Trade Practice**

34. Plaintiffs repeat and reallege the above allegations as if stated verbatim herein.
35. At the time of construction and sale, Defendants were in the business of construction, repair, developing, selling and marketing Cambridge Lakes structures.
36. Defendants were engaged in commerce as defined by the South Carolina Unfair Trade Practices Act.
37. Defendants above described activities, including violating construction standards in the construction of the structure, violating building codes, mishandling the repair of the Plaintiffs property, concealing construction defects and consequential damages once discovered, and failing to honor warranty obligations constitute unfair and deceptive

practices in the conduct of the Defendants' trade; that such acts are capable of repetition and are injurious to the public, as the Defendants are capable of continuing such acts.

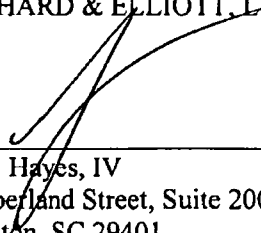
38. Defendants knew or should have known its conduct was in violation of South Carolina Code Section 39-5-20.

39. That Defendants' wrongs entitled the Plaintiffs to an award of treble damages, attorneys' fees and costs.

**WHEREFORE**, Plaintiff prays that:

- a. Plaintiffs recover actual damages, consequential damages, statutory damages, and punitive damages in an amount in excess of EIGHT MILLION DOLLARS (\$8,000,000.00);
- b. Plaintiffs recover the costs and expenses of this suit;
- c. Plaintiffs recover prejudgment interest; and
- d. The Plaintiffs be awarded any other remedy it is entitled to at law or at equity.

PRITCHARD & ELLIOTT, LLC

  
\_\_\_\_\_  
John C. Hayes, IV  
8 Cumberland Street, Suite 200  
Charleston, SC 29401  
(843) 722-3300 FAX (843) 722-3379  
ATTORNEYS FOR PLAINTIFFS

Dated this 19 day of June, 2008  
Charleston, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

CAMBRIDGE LAKES CONDOMINIUM  
HOMEOWNERS ASSOCIATION, INC.,  
MARGEL S. HENNING, STEVE  
FISCHER, MARK AND BRENDA  
SCHILLACI, GARY CONLEY,  
GERALD DARNELL, JOHN MASCIOLI  
AND GLORIA HARDIN, CLINT  
GASKINS, MITCHELL GASKILL,  
THOMAS MURPHY, EDWARD BOGGS,  
BRUCE ADKINS, CHARLESTON HOME  
TEAM PROPERTY, LLC, LOUELLA  
ENK, JEREMIAH AND GLORIA  
MORRISON, ERIN BLEVINS, CHARLES  
TAYLOR, JR., MARION RIZZARDINI,  
KAREN ABRAMS, E. MIKELL  
CARROLL, VERNELL ROBERTS, KIM  
JACKSON, META KING, JAMES AND  
MARGARET AYERS, MARY B. BURKE,  
SEVENTH WING, LLC, RUTH AND  
CHARLES CATE, ROBERT AND MARY  
ORTIZ-ABREU, JR., LAURA LaTORRE,  
MARVIN AND PAULA SWINDLE,  
DONNA WIGGINS, EMILIE COLE  
SANDERS, PHILIP AND CYNTHIA  
JONES, ANDREW MOHR, ALISON  
SMITH, BOBBIE FAULKNER, MARCUS  
AND GRACE THOMAS, DORIS  
SKUHRA, ROBERT AND RAGAN  
ALBERT, WILLIAM SILER,  
MARVA CARD, SAMUEL RUBINO,  
MATT TATHAM, SCOTT HERMAN,  
JAY AND JENNIFER MERRIMAN,  
MARY ELLEN OAKS, ELIZABETH  
MOSELEY, ALI AND MICHELLE  
ERFANI, EMILY CHAPMAN, JOHN T.  
AND LAURA L. MARTIN, ROSEANN  
TECHMAN, ROBERT PRICE, HENRY  
EDWARD TIENCKEN, JEAN B.  
WALLACE, MICHAEL B. HARTNETT,  
CAROLYN CARRICO, JENNIFER  
SNOWDEN, JOSHUA LONG, J.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
Case No.: 2008-CP-10-3506

TRADEMARK PROPERTIES, INC.'S  
MEMORANDUM IN SUPPORT OF ITS  
MOTION FOR SUMMARY JUDGMENT

2011 JAN -6 PM 1:15  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

FILED

WINDOW MANUFACTURING, LTD.  
F/K/A SOURCE WINDOWS, LTD., VWD  
(2008) NC, INC F/K/A VINYL WINDOW  
DESIGNS-USA, INC. N/K/A VINYL  
WINDOWS DESIGN, LTD. PEGRAM-  
WEST INC., CHASE HOMES, INC.,  
CHASE-ROBERTSON BUILDERS,  
INC., SGM ARCHITECTS, INC.  
F/K/A SMITH, GERBER, MCCLURE &  
ASSOCIATES, INC. F/K/A SMITH  
GERBER & ASSOCIATES, INC.,  
TRADEMARK PROPERTIES, INC.,  
STEPHEN R. HEAPE, INDIVIDUALLY  
AND INDEPENDENTLY AS GENERAL  
PARTNER OF CAMBRIDGE LAKES, LP,  
ALBERT V. ESTEE, INDIVIDUALLY,

Defendants,

and

BOSTIC BROTHERS CONSTRUCTION,  
INC.,

Third-Party Plaintiff,

v.

JOSE NINO, INTERCOASTAL  
CONSTRUCTION, INC., CAROLINA  
APARTMENT INTERIORS, LLC, MJG  
CONSTRUCTION AND  
HOMEBUILDERS, INC., B & B  
CONSTRUCTION OF CHARLESTON,  
INC., AND V. MORALES MASONRY,

Third-Party Defendants.

### **BACKGROUND**

This is a construction defect case relative to a condominium complex known as Cambridge Lakes in Mt. Pleasant, S.C. The project was built as apartments in 1999. In 2003, the rental apartments were converted to condominiums by the Defendant Cambridge Two, LLC

Cambridge Lakes consist of six (6) buildings with 104 units. In addition, there is a community clubhouse adjacent to a pool and four (4) garages. The primary Plaintiff is the Cambridge Lakes Homeowners Association which owns the common elements of the condominium project including roofs, exterior of the buildings and the clubhouse. The other Plaintiffs are approximately 82 unit owners.

The Defendants include, Bostic Brothers Construction, who originally constructed the units; Cambridge Two, LLC, which owned and sold the condominium units; the architect who prepared plans for the construction of the complex; numerous subcontractors and material suppliers; Cambridge Lakes, L.P., who originally owned the complex before it was converted to condominiums; and Trademark Properties, Inc., ("Trademark") who marketed and sold approximately thirty (30) of the condominium units when they were first converted from apartments to condominiums.

On August 9, 2002 Cambridge Two, LLC entered into an Exclusive Right to Sell Listing Agreement with Trademark., a copy of which is attached as Exhibit "A". Trademark's duties are clearly set out in the Exclusive Right to See Listing Agreement under paragraph "O". Trademark contracted with Cambridge Two, LLC to make continuous efforts to bring about a sale of the condominium units. Trademark did not undertake any other duties.

#### **ARGUMENT AS TO THE PLAINTIFFS' CLAIMS**

The Plaintiffs have asserted three (3) causes of action against Trademark. The Plaintiffs assert a first cause of action for negligence; a second cause of action for breach of express and implied warranties; and a third cause of action for a violation of the Unfair Trade Practices Act.

#### **NEGLIGENCE AS TO TRADEMARK PROPERTIES**

Trademark contends that Summary Judgment should be granted relative to the Plaintiffs' negligence cause of action. The Plaintiffs do not allege duties owed by Trademark to the Plaintiffs. The only allegation found in paragraph 56 of the Plaintiffs' Third Amended Complaint that arguably could apply to Trademark is an allegation that Trademark failed to comply with the Horizontal Property Act.

Pursuant to the Horizontal Property Act and more particularly Section 27-31-430, Provides:

"Whenever the lessee, sole owner, or co-owner of a building declares the undertaking of a conversion of rental units to condominium ownership through the recordation of a master deed or master lease, written disclosure shall be made within thirty days of the date of the recordation to all prospective purchases, including tenants in possession as to the physical condition of the building. The disclosure shall contain a written report prepared by an independent registered architect or engineer licensed to practice his profession in this State, describing the present condition of all general common elements." (copy attached)

There are no requirements in the Act that real estate agents or brokers obtain the report on the physical condition of the building. The obligation to make the disclosure as to the physical condition is an obligation of the owner, Cambridge Two, LLC.

Trademark's Exclusive Right to Sell Listing Agreement with the owner does not provide that Trademark will undertake any duty or obligation to have a physical condition report prepared. In fact, the owner Cambridge Two, LLC's by a letter signed by Al Estee advised the residents that the owner is required to provide a written report of an independent registered architect or engineer describing the physical condition of the apartment buildings that have been converted. A copy of Cambridge Lakes Two, LLC's letter is attached as Exhibit "B".

In addition, the Plaintiff, Cambridge Lakes Condominium Homeowners Association, Inc. is not a prospective purchaser under the Code Section 27-31-430 The Plaintiff, Cambridge Lakes Condominium Homeowners Association, Inc. was incorporated on April 25, 2003.

Trademark Properties was only involved in the sale of approximately thirty (30) condominium units at Cambridge Lakes and was terminated as the listing real estate company in May of 2003.

Trademark Properties was not involved in the development or construction of the Cambridge Lakes project. Trademark Properties did not owe or breach any duties as described by the Plaintiffs in their negligence cause of action.

#### **BREACH OF WARRANTY AS TO TRADEMARK PROPERTIES**

The Plaintiffs have alleged that Trademark Properties expressly and impliedly warranted that the construction and repair of the Cambridge Lakes project would be performed in a workmanlike manner. Trademark Properties, however, was not involved with the development or construction of the Cambridge Lakes project.

#### **UNFAIR TRADE PRACTICES ACT AS TO TRADEMARK PROPERTIES**

The Plaintiffs allege that Trademark as well as the other Defendants violated construction standards, building codes and failed to comply with the South Carolina Horizontal Property Act. Again, Trademark Properties was not involved in the construction or repair of the Cambridge Lakes project. Trademark Properties is not the owner of the Cambridge Lakes and had no duty nor any obligation to have a report as to the physical condition of the buildings prepared by an architect or engineer.

#### **SUMMARY JUDGMENT AS TO CROSS CLAIM OF CAMBRIDGE TWO, LLC**

#### **AND ALBERT V. ESTEE**

The Defendants, Cambridge Two, LLC and Albert V. Estee, asserted a Cross Claim against Trademark Properties, Inc. for negligence, breach of warranty and indemnification. Cambridge Two, LLC was the owner of the Cambridge Lakes project at the time that it was

converted to condominium units. Albert V. Estee was the managing member of Cambridge Two, LLC.

**CAMBRIDGE TWO, LLC AND ALBERT V. ESTEE'S CLAIM FOR  
NEGLIGENCE**

Cambridge Two, LLC and Estee's allege that Trademark was negligent as it breached a duty to obtain or provide a report as to the physical condition of the buildings. The only duties owed by Trademark to Cambridge Two, LLC and Estee's are contained in the Exclusive Right and Sell Listing Agreement entered into between Cambridge Two, LLC and Trademark on August 9, 2002. The only duties assumed by Trademark pursuant to the agreement are found in paragraph O of the Exclusive Right to Sell Listing Agreement which were to market and sell the condominium units. Trademark did not assume any duties relative to obtaining a report as to the physical condition of the buildings. The only duty that Trademark had as to Cambridge Two, LLC and Estee was the contractual duty contained within the Exclusive Right to Sell Listing Agreement. Trademark had no legal duty to obtain a report as to the physical condition of the building on behalf of Cambridge Two, LLC or Estee. Furthermore, Estee on behalf of Cambridge Two, LLC advised all of the residents of Cambridge Lakes that the owner was required to provide a written report of the physical conditions of the buildings, as shown by Exhibit "B".

**BREACH OF WARRANTY**

Cambridge Two, LLC and Estee allege that Trademark expressly and impliedly warranted to Cambridge Two, LLC that the conversion and sale of the condominiums were done in accordance with required laws and procedures. The contract entered into between Cambridge Two, LLC, however, sets forth the specific duties of Trademark Properties relative to the



Cambridge Lakes project. The duty that Trademark Properties owed was to market and sell the condominium units not to obtain a physical condition report.

#### **INDEMNIFICATION**

Cambridge Two, LLC and Estee allege that they are entitled to indemnification from Trademark for any money they are adjudged to owe the Plaintiffs together with attorney's fees and costs. There is, however, no indemnification provision in the Exclusive Right to Sell Listing Agreement entered into between Trademark and Cambridge Two, LLC. In addition, Cambridge Two, LLC and Estee are being sued by the Plaintiffs for their own individual acts of negligence, breach of warranty, unfair trade practices, and aiding and abetting. Equitable indemnity applies when a person is compelled to pay damages because of negligence imputed to him as a result of a tort committed by another, however, this rule is subject to the requirement that no personal negligence or fault of his own has joined in causing the injury. In this case, Cambridge Two, LLC and Estee had been sued by their own alleged misconduct. Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp. 518 S.E.2d 301, 336 S.C. 53 (S.C. App. 1999)

CISA & DODDS, LLP



Frank M. Cisa  
858 Lowcountry Blvd., Suite 101  
Mt. Pleasant, SC 29464  
(843)881-6530

This 5<sup>th</sup> day of January, 2011

# Trademark Properties

## EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT FOR RESIDENTIAL MULTIPLE LISTING

THE STATE OF SOUTH CAROLINA

In consideration of the mutual covenants herein contained, ~~the~~ CAMBRIDGE TWO, LLC.

Sole Property Owner(s) (hereinafter called "OWNER") and Trademark Properties

Real Estate Company (hereinafter called "BROKER"), agree as follows:

A. EMPLOYMENT: For the period of time beginning on August 9th and ending at midnight on August 31 2004, OWNER hereby grants to BROKER the sole and exclusive right to sell the

real property known as:

Lot varies Block varies Section varies Subdivision Cambridge Lakes

Address Cambridge Lakes Drive

TadMap # varies City Mt. Pleasant Zip 29464

County of Charleston State of South Carolina.

The real estate described herein includes all fixtures, equipment and improvements of any kind which are now attached to or planted on the premises such as: shrubbery, trees, fences, shutters, blinds, lamp posts, mail boxes, TV antennas, clothesline poles, curtain/drapery rods, ceiling fans, attached mirrors and light bulbs, as well as all built-in equipment, appliances, cabinets, furniture and shelves unless otherwise agreed herein.

B. SALE PRICE: Said property is hereby listed to sell for the gross sale price of varies See attached price list B-E varies Dollars (\$varies). The OWNER shall pay from the sales price, the real estate commission, a fee for preparing the deed, the deed stamps required on the deed, recording of satisfaction, prorated taxes, and other fees as of the day of closing.

C. TERMS: Said property may be sold subject to the following terms (Check appropriate blocks):

(☒) Any type new financing and/or cash. Buyer to pay as of closing costs.

( ) Equity Sale. Buyer to pay \$                     and assume existing first mortgage having an unpaid principal balance of approximately \$                     (\$500 variance in mortgage balance allowed).

( ) Other                     

D. PERSONAL PROPERTY: Personal property to be transferred to the Buyer at no extra cost is as follows:  
as

E. LATENT DEFECTS: OWNER agrees to disclose to the BROKER any known defects which are not readily ascertainable upon view of the herein described property and to hold said BROKER harmless for any liabilities or damages arising from such defects. Known defects are as follows:  
none

  
OWNER'S Initials

F. POSSESSION: OWNER agrees to vacate the premises and give possession to the Buyer at closing  
SUBJECT TO FINANCING OF PROJECT.

G. COMMISSION:

1. OWNER agrees that said BROKER has earned a commission of 5.4 if a Buyer is secured who is ready, willing, and able to purchase the herein described property at the price and on the terms aforesaid or at any price and terms acceptable to the OWNER. Commission to be paid at closing of sale, or default of OWNER.

2. Said commission to be paid to BROKER whether said Buyer is found by BROKER, by another Broker, by the undersigned OWNER or by any other person.

3. If within 180 after the termination of this listing agreement, an agreement to sell, transfer or exchange, the herein described property is made or effected by the undersigned OWNER, directly or through any other person with a prospective buyer to whom any agent of the listing BROKER or of a cooperating Broker, or the OWNER has shown or offered said property during this exclusive listing period, the OWNER shall pay the aforementioned commission to the listing BROKER, at the consummation of the sale, provided that the name of the prospective buyer is furnished to the OWNER by the listing BROKER in writing within ten (10) days after termination of this exclusive listing period. No commission shall be payable under the terms of this agreement if a sale is made after the termination of this agreement by or through a licensed broker who has a then current listing agreement with the OWNER.

4. For purposes of this Agreement, a sale shall be defined as any transfer of a legal, equitable or beneficial interest in the subject property, whether for money or in exchange of other property, and shall include, but not be limited to, any transfer of an ownership interest in any corporation, limited partnership, or other entity.

5. In the event an option is signed on said property, a fee of \$0 shall be paid or 0% of the commission. This fee or commission shall be paid to BROKER when option money is dispensed to OWNER. Balance of agreed upon commission shall be due at closing.



Acknowledgement of Page 1

Broker's Initials RP

Seller's Initials RP

MLS Form #201 / Rev. 3/96 and approved by Charleston Trident Multiple Listing Service, Inc.

All previous editions of this form are obsolete.

Page 1 of 3

Copyright Pending

Ready One So

TX 79105 (888) 383-8315



6. As the exclusive agent for the undersigned OWNER, the BROKER is authorized to receive and hold in BROKER'S Trust Account until the closing all sums paid as a deposit on the purchase of said property. If the agreement shall terminate due to default by the prospective buyer, BROKER shall retain half the balance of the earnest money deposit as commission for finding a buyer of said property (not to exceed the amount of commission due for the sale) and divide same equally with cooperating firm. The remainder of said deposit shall be paid to the OWNER. If termination is because of default by the OWNER, the OWNER may be required to pay the Actual Cost Incurred, as may be provided in the sales contract. If either prospective buyer or OWNER refuses to execute release of contract, BROKER will hold earnest money in trust until said releases are executed or until the court dictates legal disposition, or the statute of limitations terminate the parties cause for action.
- H. **TERMITE REPORT:** If the property to be sold has been previously occupied, the OWNER shall obtain a current Wood Infestation Report (CL-100) from a licensed pest control operator. Should said report reveal presence of, or damage by termites, other wood destroying organisms, plumbing leaks or excessive moisture, OWNER shall remedy said deficiencies and shall furnish a copy of said report certifying that property is free from infestation or damage herein mentioned or that infestation or damage has been treated or repaired in a workmanlike manner, on or before day of closing, or possession, whichever occurs first. If the home to be sold has been previously unoccupied, OWNER shall certify that the dwelling has been or will be treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the buyer, at closing, a five (5) year written guarantee from a licensed pest control operator.
- I. **WARRANTY CONDITION:** If home to be sold has been previously occupied, OWNER agrees to maintain the property, including lawn, shrubbery, and grounds in as good condition as on the date herein until the day of closing or possession, whichever occurs first. OWNER also warrants that all heating, air conditioning, electrical, and plumbing systems as well as built-in or appurtenant equipment or appliances shall be in operative condition on the day of closing or possession, whichever occurs first. Unless otherwise agreed herein, OWNER shall deliver the premises to the buyer with no broken window panes; no torn or missing door screens or window screens; and with no missing or broken hardware, lighting or plumbing fixtures. In the case of a new home, OWNER shall deliver to the buyer at the consummation of this sale, any warranty required by FHA or VA (if the property is financed by an FHA or VA loan) or an equivalent warranty if the property is financed by a conventional loan.
- J. **AGREEMENT TO SELL:** When a Buyer is found for said property, the OWNER shall enter into an "AGREEMENT TO BUY AND SELL", which will contain the terms and conditions of sale, the customary provisions as to the examination of the title, the curing of any defects in title, the proration of taxes, rents and applicable property expenses.
- K. **MARKETABLE TITLE:** OWNER shall convey marketable title to the buyer in fee simple free from all liens except those stipulated herein, subject to existing zoning and government restrictions, applicable owner's association assessments, and restrictive conditions and covenants of record which do not materially affect the present use of the property.
- L. **SIGNS:** OWNER grants to listing BROKER the exclusive right to display "For Sale", "Under Contract", "Sale Pending", "Sold", (or other similar) signs on the property and to remove other such signs.
- M. **CHANGES IN TERMS OR CONDITIONS:** OWNER understands, agrees, and acknowledges that changes in any of the terms and conditions of this Agreement shall be made only with the mutual consent of both the OWNER and BROKER. Any such change shall be effective if in writing and signed by both OWNER and BROKER.
- N. **TAXES:** OWNER covenants and agrees to comply with the provisions of the South Carolina Code of Laws Section 12-6-310 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.
- O. **BROKER'S DUTIES:** BROKER agrees to make a diligent and continual effort by BROKER and BROKER'S agents and staff to secure a contract of sale for the described property upon terms as stated herein. BROKER'S efforts shall include directing the efforts of BROKER'S organization to bring about the sale, advertising the described property as BROKER deems advisable in those advertising media of merit customarily used by BROKER in the area, delivering the listing to the MLS for publication in accordance with the Rules and Regulations of the Service (unless OWNER request in writing that the listing not be delivered to MLS), furnishing such additional information as is necessary to cooperating real estate brokers and assisting such brokers in effecting a sale of property and keeping OWNER informed as to the progress of BROKER'S efforts in finding a buyer for the described property. OWNER understands the BROKER makes no representation or guarantee as to the sale of the property.
- P. **OWNER'S DUTIES:** OWNER agrees as follows:
1. To furnish BROKER with complete and reliable information concerning ownership and the operation of the property, and any encumbrances or liens affecting the property;
  2. To inform BROKER of any inquiries (including inquiries from other brokers) or negotiations concerning the sale of the property;
  3. To permit inspection and showing of the property by BROKER, BROKER'S agents, subagents, buyer's agents, to such agents and subagents and prospective purchasers as deemed reasonably necessary by BROKER, and to cooperate in the scheduling and carrying out of such showings and inspections as is necessary. OWNER shall commit no act which might tend to obstruct the BROKER'S performance;
  4. To permit the offering for sale of the property to prospective buyers without regard to age, sex, race, creed, color, religion, national origin, handicap or familial status;
  5. To allow closing attorney to pay BROKER'S compensation in an amount equal to the compensation provided above from OWNER'S proceeds at time of closing.
  6. OWNER further specifically grants to BROKER the authority and approval to list and publish all sales data pertaining to the sale and closing of the hereinabove described property. OWNER understands and acknowledges that sales data are published for the use and information of the members of the Charleston Trident Association of REALTORS, Inc. and the Charleston Trident Multiple Listing Service, Inc. (MLS) for their use of same in marketing and selling of properties.
  7. OWNER shall not deal directly with prospective buyers of this property during the period of this agency and shall refer any inquiries received to the BROKER.

MLS Form #201 / Rev. 8/96 and approved by Charleston Trident Multiple Listing Service, Inc.

Acbr Agreement of Page 2  
Pag 2

Broker's Initials

*KEP*

Seller's Initials

*AK*

Copyright Pending

8. The undersigned OWNER agrees not to lease said property during the term of this exclusive listing agreement without the BROKER'S prior knowledge and consent.

9. To permit BROKER to incur, or pay on behalf of OWNER reasonable expenses for repairs, inspection, utilities, maintenance, or similar expenses not to exceed \$200 for each separate expense, and to reimburse BROKER, as necessary, upon receipt of the statement of expenses.

Q. LOCKBOX OPTION: I/we (X) DO                      (X) DO NOT                      agree to have an MLS lockbox placed on the property. (An MLS Lockbox Addendum must be signed by all parties and attached to this Listing Agreement if OWNER agrees to place an MLS lockbox on the property.)  
Owner's Initials                      Owner's Initials                     

R. The property (X) shall be ( ) shall not be entered into the listing service of the Charleston Trident Multiple Listing Service, Inc., which will constitute an offer of cooperating brokerage to all participants in the listing service. OWNER agrees that BROKER may compensate an agent representing the purchaser from the fee described above. Owner (X) gives                      ( ) does not give                       
Owner's Initials                      Owner's Initials                       
the BROKER permission to list the property on the Internet through the REALTORS Information Network.

S. OTHER OFFERS: OWNER (X) agrees ( ) does not agree that the BROKER'S responsibility to present offers to purchase to the OWNER for OWNER'S consideration terminates with the OWNER'S acceptance of an offer.

MARKETING THE PROPERTY: The BROKER shall not continue marketing the property after an offer has been accepted, unless requested in writing by the OWNER to do so.

T. LEAD-BASED PAINT DISCLOSURE: For dwellings built before 1978, and as required by applicable law, a Disclosure of information on Lead-Based Paint and Lead-Based Paint Hazards (the "Disclosure") must be signed by Seller and attached to this agreement. Owner represents that either (1) the improvements on the property were all constructed after December 31, 1977, or (2) the Disclosure has been fully completed and is attached to this agreement. Owner agrees to provide Broker with any such additional information or reports as may come to Owner's possession during the term of this agreement. Owner acknowledges that Broker has informed Owner of the Owner's obligations to provide a purchaser of the property with the pamphlet "Protect Your Family From Lead in Your Home," to provide information to a purchaser of the property with copies of available records and reports with respect to the property and lead-based paint and lead-based paint hazards, all pursuant to 42 USC 4562 (d), as amended.

U. SPECIAL STIPULATIONS: The following stipulations shall, if conflicting with printed matter, control:  
Seller agrees to pay for all advertising and marketing of Cambridge Lakes as proposed by Hesterman Design.  
Seller agrees to pay for all Post and Courier, Real Estate Book and any other marketing materials as agreed.

V. NO CONTROL OF COMMISSION RATES OR FEES: Under the long established policy of the Charleston Trident Association of REALTORS, Inc. (Association) and the Charleston Trident Multiple Listing Service, Inc. (MLS), the BROKER'S compensation for services rendered in respect to any listing, is solely a matter of negotiation between the BROKER and the OWNER and is not fixed, controlled, suggested, recommended, or maintained by the Association, the MLS, or by any persons not a party to the listing agreement. The compensation paid by the listing BROKER to a cooperating broker in respect to any listing is established by the listing BROKER in the offer of cooperation, and is not fixed, controlled, suggested, recommended or maintained by the Association, the MLS or by any persons other than the listing BROKER and his or her cooperating broker.

THIS IS A LEGALLY BINDING CONTRACT. ALL BLANKS MUST BE FILLED IN; IF INFORMATION DOES NOT APPLY, INSERT N/A. ANY ALTERED TERMS OR CONDITIONS MUST BE INITIALED BY BOTH OWNER AND BROKER/AGENT.

OWNER & BROKER have read paragraphs A. through V. of this contract and  
OWNER acknowledges receipt of a copy of this contract.

(The undersigned hereby warrant that they own the property  
and/or have the authority to execute this agreement.)

BROKER: Trademark Properties  
BY: Richard C. Smith  
BROKER'S ADDRESS: 371 Folly Road  
Charleston, SC 29412

OWNER:                       
OWNER:                       
OWNER'S PRESENT ADDRESS:                     

BROKER'S PHONE: 803-762-0110  
DATE: 8/9/02

OWNER'S PHONE:                       
DATE:                     

PLEASE SIGN ALL COPIES

This printed matter in this form approved by the Charleston Trident Multiple Listing Service, Inc.

# Cambridge Lakes

MOUNT PLEASANT

Cambridge Two, LLC  
1930 Cambridge Lakes Drive  
Mount Pleasant, SC 29406

*Re: Notice of Condominium Conversion and Offer to Purchase*

Dear Resident:

Please be advised that Cambridge Two, LLC ("Owner") is looking into the conversion of Cambridge Lakes, located at 1930 Cambridge Lakes Drive, Mount Pleasant, South Carolina, into a condominium regime. If the Owner proceeds with this conversion, the building in which the apartment you currently lease from the Owner is located, will be subdivided into separate condominium units pursuant to S.C. Code § 27-31-10 et seq. (the "Condominium Act") and the Master Deed of Cambridge Lakes Horizontal Property Regime.

Please be advised that pursuant to the Condominium Act you have the following rights:

(a) Owner may not require you to vacate your apartment until expiration of your lease or for one hundred twenty days (if you are age sixty or older) or ninety days (if you are under the age of sixty) following delivery of this letter, whichever is longer, and the terms of your tenancy may not be altered during that period. Your rights and obligations during any tenancy extended by the Condominium Act will remain the same as before the extension. Notwithstanding the foregoing, any notice which under the terms of your tenancy is required to be given to prevent the automatic renewal or extension of the term of your tenancy may be given by Owner during the foregoing period. In addition, the Condominium Act does not prevent termination of a lease according to law for violation of its terms. This letter serves as notice that the Owner will be terminating your lease, unless other arrangements have been made and put in writing by you and the property manager, effective on the earliest possible date permitted by your lease and the law and in accordance with the terms thereof.

(b) Owner is required to offer you the right to purchase the apartment you occupy at a specified price and upon specified terms. If you accept such offer, which is provided by Trademark Properties, please be advised that the Owner's obligation to sell the apartment to you will be conditioned on its decision, in its sole discretion, to proceed with the conversion. The price and terms offered to you are required to be at least as favorable as the price and terms offered to prospective purchasers who are not tenants in possession of apartments in the complex. You must be allowed sixty days



in which to accept such offer and, in the event you shall not have accepted the offer within the sixty days, Owner shall be prohibited for an additional fifty days (if you are age sixty or older) or fifteen days (if you are under the age of sixty) from making an offer to convey the apartment to any other person at a price or upon terms more favorable than those offered to you, unless such more favorable offer first shall have been extended to you for your exclusive consideration for a period of ten days. Acceptance of an offer by you must be in writing.

(c) In connection with the offer to purchase required to be extended to you by Owner, Owner is required to provide you with the written report of an independent registered architect or engineer describing the physical condition of the apartment building that has been converted, the general condition of all common elements, a good faith estimate of the remaining useful life of the items reported on, and a list of any notices of uncured violations of building codes or other county or municipal regulations, together with the estimated cost of curing those violations. Such a report will be forwarded to you in due course. Notwithstanding the time periods set forth in paragraph (b) above, you will not be required to accept the offer in paragraph (b) sooner than ten (10) days after this report is sent to you.

In accordance with your rights under the Condominium Act, Owner hereby offers to sell the apartment occupied by you at the price and upon the terms and conditions of the Purchase and Sale agreement provided by Trademark Properties. Therefore, if you are interested in executing a purchase and sale agreement, please contact Trademark Properties within sixty (60) days.

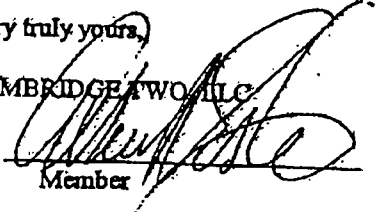
Our goal is to provide all of our residents with an affordable home ownership opportunity while undertaking improvements that will make you proud to call Cambridge Lakes your home.

Our Resident Manager, Roxanne Robbins can be reached at 881-1330 for lease related questions. The Trademark Properties Real Estate Team is can be reached by telephone at (843) 762-0110

Thank you for making Cambridge Lakes your home. We look forward to serving you in the future.

Very truly yours,

CAMBRIDGE TWO, LLC

By: 

Member

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) CIVIL ACTION NO.: 2008-CP-10-3506

CAMBRIDGE LAKES CONDOMINIUM HOMEOWNERS  
ASSOCIATION, INC., MARGEL S. HENNING, STEVE  
FISCHER, MARK and BRENDA SCHILLACI, GARY and  
BILLIE CONLEY, GERALD DARNELL, JOHN MASCIOLI and  
GLORIA HARDIN, CLINT GASKINS, MITCHELL GASKILL,  
THOMAS MURPHY, EDWARD BOGGS, BRUCE ADKINS,  
CHARLESTON HOME TEAM PROPERTY, LLC., PAM  
SNYDER, LOUELLA ENK, JEREMIAH and GLORIA  
MORRISON, ERIN BLEVINS, CHARLES TAYLOR, JR.,  
MARION RIZZARDINI, KAREN ABRAMS, E. MIKELL  
CARROLL, VERNILL ROBERTS, KIM JACKSON, META  
KING, JAMES and MARGARET AYERS, MARY B. BURKE,  
SEVENTH WING, LLC, RUTH CATE and CHARLES WHITE,  
ROBERT and MARY ORTIZ-ABREU, JR., LAURA LaTORRE,  
MARVIN and PAULA SWINDLE, DONNA and DAVID  
WIGGINS, EMILIE COLE SANDERS, PHILIP and CYNTHIA  
JONES, ANDREW MOHR, ALISON SMITH, BOBBIE  
FAULKNER, MARCUS and GRACE THOMAS, DORIS  
SKUHRA, ROBERT and RAGAN ALBERT, WILLIAM SILER,  
MARVA CARD, SAMUEL RUBINO, MATT TATHAM,  
SCOTT HERMAN, JAY and JENNIFER MERRIMAN, MARY  
ELLEN OAKS, ELIZABETH MOSELEY, ALI and MICHELLE  
ERFANI, EMILY CHAPMAN, JOHN T. and LAURA L.  
MARTIN, ROSEANN TECHMAN, ROBERT PRICE, HENRY  
EDWARD TIENCKEN, JEAN B. WALLACE, MICHAEL B.  
HARTNETT, CAROLYN CARRICO, JENNIFER SNOWDEN,  
JOSHUA LONG, J. MICHAEL and GLORIA McDONNELL,  
SANDRA GIRT, JANE THOMPSON, JOHN HILL, III.,  
GLENNa McKENZIE, JEFF GARDNER, FREEMAN THARP,  
PETE DUNHAM, JEANNE-MARIE BUSUTTIL, GLADYS J.  
JOHNSON, ROBERT W. SIMPSON, HEIDI J. RICHTER,  
MARK COMMANDER, KATHLEEN WAITE, and KOO  
HWANG as Individual Homeowners,

Plaintiffs,

vs.

BOSTIC BROTHERS CONSTRUCTION, INC., CAMBRIDGE  
TWO, LLC, CAMBRIDGE LAKES LP a/k/a CAMBRIDGE  
LAKES APARTMENTS HOMES, LP, CAMBRIDGE LAKES  
APARTMENTS, LP a/k/a CAMBRIDGE LAKES  
APARTMENTS HOMES, LP, CLASSIC PROPERTIES, INC.  
OF CHARLESTON, CAMBRIDGE CONTRACTING LP,  
SELECTIVE INSURANCE COMPANY OF AMERICA,  
SELECTIVE INSURANCE COMPANY OF SOUTH  
CAROLINA, JOSE NINO, B & B CONSTRUCTION CO.,  
INTERCOASTAL CONSTRUCTION, INC. d/b/a and a/k/a  
INTRACOASTAL CONSTRUCTION, CAROLINA

AFFIDAVIT OF ALBERT V. ESTEE

2011 JAN -4 PM 4: 18  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

FILED

APARTMENT INTERIORS, LLC, ARMANDO MEDINA  
CORTEZ a/k/a ARMANDO MEDINA a/k/a ARMANDO  
CORTES d/b/a MJG CONSTRUCTION, VINCENT  
MORALES d/b/a V. MORALES MASONRY, MJG  
CONSTRUCTION AND HOMEBUILDERS, INC., B & B  
CONSTRUCTION OF CHARLESTON, INC., SUPERSEAL  
MANUFACTURING, INC., MAJESTIC WINDOW  
MANUFACTURING, LTD. f/k/a SOURCE WINDOWS,  
LTD., VWD (2008) NC, INC f/k/a VINYL WINDOW  
DESIGNS-USA, INC. a/k/a VINYL WINDOWS DESIGN,  
LTD. PEGRAM-WEST INC., CHASE HOMES, INC., CHASE-  
ROBERTSON BUILDERS, INC., SGM ARCHITECTS, INC.  
f/k/a SMITH, GERBER, MCCLURE & ASSOCIATES, INC.  
f/k/a SMITH GERBER & ASSOCIATES, INC., TRADEMARK  
PROPERTIES, INC., STEPHEN R. HEAPE, Individually and  
Independently As General Partner of CAMBRIDGE  
LAKES, LP, ALBERT V. ESTEE, Individually,

Defendants,

AND

BOSTIC BROTHERS CONSTRUCTION, INC.,

Third-Party Plaintiff,

vs.

JOSE NINO, INTERCOASTAL CONSTRUCTION, INC.,  
CAROLINA APARTMENT INTERIORS, LLC, MJG  
CONSTRUCTION AND HOMEBUILDERS, INC., B & B  
CONSTRUCTION OF CHARLESTON, INC., AND V.  
MORALES MASONRY,

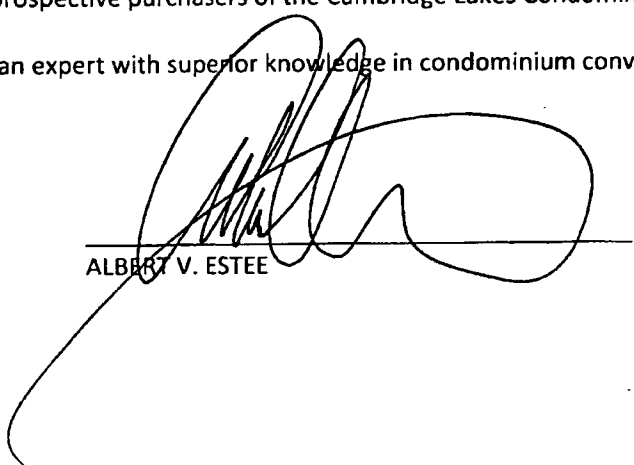
Third-Party Defendants.

PERSONALLY APPEARED before me, ALBERT V. ESTEE, being duly sworn and says:

1. My name is Albert V. Estee, I am over 18 years of age and fully competent to testify as to the matters stated in this Affidavit.
2. This affidavit is made upon my personal knowledge, information and belief.
3. When Cambridge Two, LLC, sought to begin the process of converting Cambridge Lakes Apartments into condominiums for individual sale, we sought out an expert in the field to assist us with the conversion.
4. Trademark held itself out to be one such expert in the field of condominium conversions.



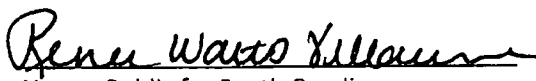
5. Trademark represented that it was a specialist in condominium conversions.
6. We decided to hire Trademark to assist in the conversion, because Trademark was involved with several other condominium conversions.
7. We consulted with Trademark and were convinced that they would do a good job in the conversion of the Cambridge Lakes project.
8. At the time we hired Trademark to convert Cambridge Lakes, Trademark was just finishing up the conversion of another project, the Montclair Condominium Conversion.
9. Based on Trademark's representations, we hired Trademark to market, sale and convert the Cambridge Lakes project.
10. We relied on trademark to assist Cambridge Two in the conversion of the Cambridge Lakes property to individual sales.
11. Cambridge Two, relied upon Trademark to handle all required communication with the prospective purchasers, and relied further upon Trademark to convey information that was required to be conveyed to prospective purchasers of the Cambridge Lakes Condominiums.
12. Trademark held itself out as an expert with superior knowledge in condominium conversion.



ALBERT V. ESTEE

SWORN to BEFORE ME

This 4 day of January, 2011

  
Notary Public for South Carolina  
My Commission Expires: 2/27/18

# Deposition of ALBERT ESTEE taken JULY 24, 2009

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
2 COUNTY OF CHARLESTON CASE NO.: 2008-CP-10-3506  
3  
4 CAMBRIDGE LAKES CONDOMINIUM  
5 HOMEOWNERS ASSOCIATION, INC.,  
6 et al.,  
7 Plaintiffs,  
8 vs.  
9 BOSTIC BROTHERS CONSTRUCTION, INC.,  
10 CAMBRIDGE TWO, LLC; CAMBRIDGE LAKES,  
11 LP; CLASSIC PROPERTIES INC. OF  
12 CHARLESTON; CAMBRIDGE CONTRACTING, LP  
13 and CAMBRIDGE LAKES APARTMENTS, LP  
14 Defendants.  
15 and  
16 BOSTIC CONSTRUCTION, INC.,  
17 Third-Party Plaintiff,  
18 vs.  
19 JOSE NIMO: INTERCOASTAL CONSTRUCTION,  
20 INC.; CAROLINA APARTMENT INTERIORS,  
21 LLC; HUG CONSTRUCTION AND HOMEBUILDERS,  
22 INC.; S & B CONSTRUCTION OF CHARLESTON,  
23 INC.; V. MORALES MASONRY;  
24 Third-Party Defendants.  
25

The deposition of ALBERT V. ESTEE, taken before  
Heather H. Curlin, Professional Court Reporter and Notary  
Public, at the Hayes Law Firm, 180 Meeting Street, Suite  
305, Charleston, South Carolina, on Friday, July 24, 2009,  
commencing at 10:00 a.m.

VIDEO DEPOSITION OF:  
ALBERT V. ESTEE

## APPEARANCES

(Moraes Masorny)  
TURNER PADGET GRAHAM & LANEY, PA  
By: Julian K. Allen  
Attorney at Law  
Gateway Center, Suite 200  
40 Calhoun Street  
Charleston, SC 29401  
[jallen@turnerpadget.com](mailto:jallen@turnerpadget.com)  
(Jose Nimo)  
ANDERSON & REYNOLDS, LLC  
By: Jonathan J. Anderson  
Attorney at Law  
37 1/2 Broad Street  
Charleston, SC 29401  
[janderson@rlaw.com](mailto:janderson@rlaw.com)  
Also Present: Kevin O'Quinn, CLVS

## APPEARANCES

For the Plaintiff:  
HAYES LAW FIRM, LLC  
By: John C. Hayes, IV  
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[jhayes@hrlaw.org](mailto:jhayes@hrlaw.org)  
For the Defendants:  
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By: Alan Ross Belcher, Jr.  
Attorney at Law  
234 Seven Farms Drive, Suite 115  
Charleston, SC 29492  
[alan@albelaw.com](mailto:alan@albelaw.com)  
(Cambridge Lakes Apts.,  
LP & Cambridge Lakes, LP)  
THOMPSON & HENRY, P.A.  
By: Linda Weeks Gangi  
Attorney at Law  
1300 2nd Avenue, Third Floor  
Conway, SC 29524  
[lvgangi@thompsonlaw.com](mailto:lvgangi@thompsonlaw.com)  
(Classic Properties &  
Cambridge Lakes)  
ALTHAM & CONER, LLC  
By: Charles Altman  
Attorney at Law  
575 King Street, Suite A  
Charleston, SC 29403  
[caltman@altmanconer.com](mailto:caltman@altmanconer.com)  
(Cambridge Two)  
DEXSEN PRUET  
By: David J. Parrish  
Attorney at Law  
205 King Street, Suite 400  
Charleston, SC 29401  
[djparish@dexsenpruet.com](mailto:djparish@dexsenpruet.com)

## INDEX TO EXAMINATION

Witness:  
ALBERT V. ESTEE (sworn)  
Examination by Mr. Hayes  
Examination by Mr. Belcher  
Examination by Mr. Allen  
Examination by Ms. Gangi  
Further Examination by Mr. Hayes  
Certificate of Reporter  
Deponent Correction Sheet

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Limited Partnership  
2. Secretary of State Website Report  
on Albert Estee as Registered Agent  
3. 08/09/02 Cambridge Two & Trademark  
Properties Listing Agreement  
4. 01/07/03 AHCS Letter to Cambridge Lakes  
Residents  
5. Cambridge Two Notice of Conversion and  
Offer to Purchase

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Deposition of ALBERT ESTEE taken JULY 24, 2009

41

1 investors.

2 Q. Okay. So you would have made the  
3 decisions on behalf of Cambridge Two, LLC?

4 A. Correct.

5 Q. All right. And what -- can you just give  
6 me the names of any of the investors that were  
7 involved in Cambridge Two, LLC?

8 A. Well, initially there was only one person.

9 Q. Would that be Albert Estes (sic)?

10 A. No. That was -- one other individual was  
11 involved with me initially, and that was -- it will  
12 come to me --

13 MR. PARRISH: Warren.

14 A. Jim Warren. James Warren. And so as we  
15 proceeded and started trying to figure out financing  
16 and so forth and so on, Jim came up with an idea to  
17 say, well, why don't we just -- why don't we just --  
18 let me not be involved with that, but let me just buy  
19 units. So that -- that took off where there were  
20 several people buying units, which is a matter of  
21 record.

22 BY MR. HAYES:

23 Q. Okay. And what -- when you say "several  
24 people buying units," you mean more than one unit?

25 Instead of people becoming investors in Cambridge

42

1 Two --

2 A. Exactly.

3 Q. -- LLC, they said, well, here, I'll just  
4 buy a number of these units from you?

5 A. Right. Correct.

6 Q. And when you say that -- I guess I'm  
7 saying they committed to buying these once they were  
8 available for sale?

9 A. Correct.

10 Q. Okay. In regards to marketing these units  
11 once Cambridge Two, LLC acquired the Cambridge Lakes  
12 Apartment buildings, did you hire a company to market  
13 those --

14 A. Uh-huh.

15 Q. -- apartments?

16 A. Yes, I did.

17 Q. Who did you hire?

18 A. Trademark Properties.

19 Q. Okay. Why did you decide to hire  
20 Trademark Properties?

1 A. Several of his salespeople I had -- worked  
22 for me years gone by. They also were involved with  
23 several conversions. And so I consulted with them  
24 and felt that they would -- would do a good job for  
25 me.

Southeastern Transcript

(843)762-2442

43

1 Q. Okay. Did you rely on Trademark  
2 Properties to assist you in converting these  
3 properties to individual sales?

4 A. Yes.

5 Q. And was that one of the reasons that you  
6 hired Trademark Properties --

7 A. Yes.

8 Q. -- because they had done this in the past?

9 A. Yes.

10 Q. Who did you deal with directly at  
11 Trademark Properties?

12 A. Initially, Richard Davis.

13 Q. And who is Richard -- what -- Richard  
14 Davis with Trademark Properties?

15 A. Yes.

16 Q. Is he -- is he the owner --

17 A. Yes.

18 Q. -- of Trademark Properties?

19 A. His name is out in neon, so I assume so.

20 Q. Is it -- is it fair to say that you  
21 contacted Mr. Davis and said, I'm getting -- I want  
22 to convert these buildings into individual units I  
23 can then sell to the public?

24 A. Correct.

25 Q. And I need your help in doing so?

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1 A. Correct.

2 Q. Are you still a member of Cambridge Lakes  
3 Limited Partnership?

4 A. No. Well, let me -- let me take that  
5 back. I -- I don't know whether it's been officially  
6 dissolved or what have you. But when I purchased the  
7 units from them, we ceased; as far as my activity, I  
8 ceased to exist in terms of any involvement with  
9 them.

10 Q. All right.

11 MR. HAYES: Exhibit 3? Is that where  
12 we are?

13 (Exhibit No. 3 was marked.)

14 Q. All right. Mr. Estes (sic), can you take  
15 a second to look at what's been marked as Exhibit 3  
16 to your deposition we handed to you, and take a  
17 minute to look at that and tell me if you can  
18 identify that document.

19 A. Do you represent Mr. Davis in any way?

20 Q. No, I do not represent Mr. Davis.

21 A. It looks -- it looks familiar.

22 Q. Okay. Would you -- just for everyone in  
23 here, would you identify what that document is?

24 A. A listing agreement between Cambridge Two,  
25 LLC and Trademark Properties.

11 of 45 sheets

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1 understand the reasoning behind why that's required?  
2 I mean, why that should be given to prospective  
3 purchasers of these units?

4 MR. PARRISH: Objection to the form.

5 It calls for a legal conclusion. Please answer  
6 it.

7 A. I know that there needs to be a  
8 disclosure, which I've lived with and know about,  
9 disclosure of any known latent defects. And we  
10 responded to that. So I'm aware of that.

11 BY MR. HAYES:

12 Q. Okay. When you say you have to make --  
13 who do you have to make aware -- somebody aware of  
14 the defects? Explain to me your answer.

15 MR. PARRISH: Object to the question.

16 Go ahead and answer.

17 A. It is my understanding and my experience  
18 that we disclose to the marketing companies, to the  
19 real estate agents selling properties, any known  
20 problem, latent defect. So that's -- that's known to  
21 me. So when you asked the question as it relates to  
22 this, yes, I'm familiar with that.

23 BY MR. HAYES:

24 Q. Okay. But you agree that your letter  
25 doesn't reference anything about any known latent

66

1 defects. It says we've got to provide you with a  
2 written report of an independent registered architect  
3 or engineer describing the condition, physical  
4 condition of the apartment buildings that have been  
5 converted, the general conditions of all elements,  
6 the good faith estimate of the remaining useful life  
7 of the items reported on, and a list of any notices  
8 of uncured violations of building codes or other  
9 county or municipal regulations together with  
10 estimated costs of curing those violations.

11 A. I understand.

12 Q. Okay. So you understand that when you  
13 converted these, when Cambridge Two, LLC that you  
14 were a member of, only member of, converted these  
15 units to individual sale that you were supposed to  
16 give the prospective purchasers a report stating the  
17 condition of these units, if there were any problems  
18 with these units, and what it would cost to remedy  
19 these problems. Correct?

20 A. If that -- if any of those things existed,  
21 I feel -- I'm -- I'm sure we would have addressed it.

22 Q. Okay. Well, how would you find -- what  
23 did you do to see if any of those things existed?

24 Tell me what Cambridge Two, LLC --

25 A. Number one --

Southeastern Transcript

(843)762-2442

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1 Q. -- did to see if there was --

2 A. I -- I think if that was required, that --  
3 that I still believe we should have or must have  
4 complied.

5 Secondly, and a general answer, we've had  
6 these -- this -- these units for two years. They  
7 were just -- multiple, multiple inspections. So most  
8 of these people lived there, knew it. In the process  
9 of converting, we established a homeowners  
10 association. As such, we have to establish a cost of  
11 any repairs and future capital costs. That was done.  
12 So that's my general explanation, if you will, of my  
13 awareness, that I did what -- Cambridge Two, LLC, I  
14 did what, in fairness, what had to be done.

15 Q. Well, what if someone bought one of these  
16 units that didn't live there beforehand?

17 MR. PARRISH: Object to the form.

18 A. Again, awareness, confidence of what we've  
19 got, I got no problem.

20 BY MR. HAYES:

21 Q. So you're saying your -- you had -- when  
22 you say confidence in what you had, you felt  
23 confident that there weren't any problems with that  
24 building? Is that what you're telling us?

25 A. Cambridge Two, based on its information,

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1 based on all of this knowledge, it went forth,  
2 honestly, with confidence that there were no  
3 problems.

4 Q. But my question isn't whether you were  
5 confident or not. My -- my question is purely you  
6 don't have any evidence or knowledge that Cambridge  
7 Two, LLC ever had a report generated such as in  
8 Paragraph C, or if it did, it did not give it to the  
9 prospective owners. Is that fair to say?

10 MR. PARRISH: Object to the form.

11 A. Again, I cannot recall all the documents  
12 or individual situations that -- that -- that  
13 occurred during the conversion of this -- this  
14 project. I know there was -- there was a lot of  
15 details, and I cannot recall specifically what  
16 documents were given out during the marketing of  
17 these things.

18 BY MR. HAYES:

19 Q. Well, in regards to giving out documents  
20 during the marketing of these things, who would have  
21 given out documents in regards to marketing these  
22 things?

23 A. Trademark Properties was hired to market  
24 and -- and convey whatever information had to be  
25 conveyed.

17 of 45 sheets

JUN-16-2003 MON 12:56 PM

FAX NO.

P. 02

002/003

06/13/2003 FRI 9:59 FAX



May 28, 2003

Cambridge Two, LLC  
Albert V. Estee, President  
887 Johnnie Dodds Blvd., Suite 200  
Mt. Pleasant, SC 29464

Reference: Listing agreement on Cambridge Lakes apartment to condominium conversion project

Dear Mr. Estee:

On May 19, 2003 you attempted to terminate our listing agreement in order to keep from paying future commissions owed to Trademark Properties. Your reasoning was that my staff was made up of a "bunch of young gal's" and you felt you wanted to go in another direction. The reason I abruptly ended our meeting was simple, I will have no part in your personal preference to not have "young gal's" which by any definition is age and sex discrimination. It was clearly taught in the basic Real Estate classes that if someone enters into conversation that is discriminatory, you loudly object to participation in the conversation, much like Anti-trust. If my actions were deemed inappropriate to you then obviously you agree that I would not enter into dialogue over this subject matter.

Trademark Properties was hired for the sole purpose of converting your existing Apartment community, which by all accounts was underachieving as a rental community, into a viable condominium sales project. We did everything we said we would do and successfully got you to the closing table. We had a conference call with Eric Davidson, Dawn Mazyck and myself in Eric's conference room with you on the phone. I outlined what our original obligation was, which was to "pre-sell" 25 units with reservation agreements to prove to your bank this was a viable alternative for this project. You immediately started culling out any reservations that my agents presented to you, which didn't have an immediate closing date with no contingencies. We were then informed that we had to convert all reservations to hard contracts and close them all on the same day because the bank wasn't going to lend you as much money as you had led us to believe. All this time, you scrutinized all offers, micromanaged my sales agents and quite frankly asked questions about the buyers that were inappropriate. As long as the buyer could afford to buy the unit, you had an obligation to sign these contracts but if your questions weren't answered to fit your stereotype buyer, you wouldn't commit to selling the unit.

EXHIBIT

D

06/13/2003 FRI 9:59 FAX

You have made comments to my staff over the course of this conversion process to the effect that you knew you were being difficult because you were under a lot of pressure, but they were doing a great job and you promised you would get out of their way once we got the initial closing done and it would be worth all the aggravation because it would be smooth selling until we finished out the project. You even promised to take our whole team out for dinner and drinks on you because we had just pulled off a miracle in getting this deal done by closing out all the pre-sales in a 2 day period. You scheduled a meeting with Amber and Sarah and scrutinized every dollar you owed us and after they satisfied you with a total, you actual told them to INCREASE the future budget. They gave you a current invoice in that meeting; you said it would be paid immediately. Two more attempts to collect our money led to you scheduling a meeting with me to discuss a marketing plan through the end of the year.

Al, obviously you had a different agenda but the facts remain the same. You hired us for our expertise to convert your apartment community. I asked you up front why you came to me when your son is with Prudential and uses their site sales team. You assured Eric Davidson and me that you were going to stay with Trademark Properties until we sold out the complex, thus a listing agreement through August 2004.

The facts are simple, we did our job. We made this a no-brainer for your son's on site team and you switched horses in the middle of the race. It is my contention that you are discriminating against Trademark Properties because of an all youthful female sales staff on your project and you felt, and I quote "Richard, we both know men understand business better than women". It is my contention that our service contract can only be judged on production not your personal choice of gender and age.

I demand to be paid in full for all apartments, which we successfully converted into Condominiums, which can be identified by the issuance of a new tax map number. We have more than outperformed the pace needed to sell out the entire complex by August 2004 which was why you hired us, as outlined in our listing agreement which will stay active until we are paid in full, plus your outstanding marketing obligation, which we still have not received.

If Trademark Properties is not paid in full by July 15<sup>th</sup> 2003, we will file a lawsuit and request a jury trial and let our peers decide how much you owe Trademark Properties. I look forward to seeing you in court.

Sincerely,

  
Richard C Davis

## STATE OF SOUTH CAROLINA

## IN THE COURT OF COMMON PLEAS

## COUNTY OF CHARLESTON

CAMBRIDGE LAKES CONDOMINIUM  
HOMEOWNERS' ASSOCIATION, INC.;  
MARGEL S. HENNING; STEVE  
FISCHER; MARK and BRENDA  
SCHILLACI; GARY and BILLIE  
CONLEY; GERALD DARNELL; JOHN  
MASCIONI and GLORIA HARDIN;  
CLINT GASKINS; MITCHELL GASKILL;  
THOMAS MURPHY; EDWARD BOGGS;  
BRUCE ADKINS; CHARLESTON HOME  
TEAM PROPERTY, LLC; PAM SNYDER;  
LOUELLA ENK; JEREMIAH and  
GLORIA MORRISON; ERIN BLEVINS;  
CHARLES TAYLOR, JR.; MARION  
RIZZARDINI; KAREN ABRAMS; E.  
MIKELL CARROLL; VERNILL ROBERTS;  
KIM JACKSON; META KING; JAMES and  
MARGARET AYERS; MARY B. BURKE;  
SEVENTH WING, LLC; RUTH CATE and  
CHARLES WHITE; ROBERT and MARY  
ORTIZ-ABREU, JR.; LAURA LATORRE;  
MARVIN and PAULA SWINOLE; DONNA  
and DAVID WIGGINS; EMILIE COLE  
SANDERS; PHILIP and CYNTHIA JONES;  
ANDREW MOHR; ALISON SMITH; BOBBIE  
FAULKNER; MARCUS and GRACE THOMAS;  
DORIS SKUHRA; ROBERT and RAGAN  
ALBERT; WILLIAM SILER; MARVA CARD;  
SAMUEL RUBINO; MATT TATHAM; SCOTT  
HERMAN; JAY and JENNIFER MERRIMAN;  
MARY ELLEN OAKS; ELIZABETH MOSELEY;  
ALI and MICHELLE ERFANI; EMILY  
CHAPMAN; JOHN T. and LAURA L.  
MARTIN; ROSEANN TECHMAN; ROBERT  
PRICE; HENRY EDWARD TIENCKEN; JEAN  
B. WALLACE; MICHAEL E. HARTNETT;  
CAROLYN CARRICO; JENNIFER SNOWDEN;  
JOSHUA LONG; J. MICHAEL and GLORIA  
McDONNELL; SANDRA GIRT; JANE  
THOMPSON; JOHN HILL, III; GLENNA  
McKENZIE; JEFF GARDNER; FREFMAN  
THARP; PETE DUNHAM; JEANNE-MARIE  
BUSUTTIL; GLADYS J. JOHNSON; ROBERT

CASE NO.:  
08-CP-10-3506

DEPOSITION OF:  
RICHARD DAVIS

AND

BOSTIC BROTHERS CONSTRUCTION, INC.,

Third-Party Plaintiff,

-versus-

JOSE NINO, INTERCOASTAL  
CONSTRUCTION, INC.; CAROLINA  
APARTMENT INTERIORS, LLC; MJG  
CONSTRUCTION AND HOMEBUILDERS,  
INC.; B&B CONSTRUCTION OF  
CHARLESTON, INC.; and V. MORALES  
MASONRY,

Third-Party Defendants.

THE DEPOSITION OF RICHARD DAVIS was taken  
as a witness on behalf of the Plaintiff, pursuant to  
South Carolina Rules of Civil Procedure, at 10:00  
a.m. on Thursday, the 9th day of September 2010, at  
the offices of Nexsen Pruet, LLC, 205 King Street,  
Suite 400, in the City of Charleston, State of South  
Carolina, before Janice O. Darby, Registered  
Professional Reporter and Notary Public in and for  
the State of South Carolina.

1

3

W. SIMPSON; HEIDI J. RICHTER; MARK  
COMMANDER; KATHLEEN WAITE; and KO  
HWANG, as Individual-Homeowners,

Plaintiffs,

-versus-

BOSTIC BROTHERS CONSTRUCTION, INC.;  
CAMBRIDGE TWO, LLC; CAMBRIDGE  
LAKES, LP, a/k/a CAMBRIDGE LAKES  
APARTMENTS HOMES, LP; CAMBRIDGE  
LAKES APARTMENTS, LP, a/k/a  
CAMBRIDGE LAKES APARTMENTS HOMES,  
LP; CLASSIC PROPERTIES, INC., OF  
CHARLESTON; CAMBRIDGE CONTRACTING,  
LP; SELECTIVE INSURANCE COMPANY OF  
AMERICA; SELECTIVE INSURANCE  
COMPANY OF SOUTH CAROLINA; JOSE  
NINO; B&B CONSTRUCTION CO.;  
INTERCOASTAL CONSTRUCTION, INC.,  
d/b/a and a/k/a INTRACOASTAL  
CONSTRUCTION; CAROLINA APARTMENT  
INTERIORS, LLC; ARMANDO MEDINA  
CORTEZ a/k/a ARMANDO MEDINA a/k/a  
ARMANDO CORTES d/b/a MJG  
CONSTRUCTION; VINCENT MORALES d/b/a  
V. MORALES MASONRY; MJG  
CONSTRUCTION AND HOMEBUILDERS,  
INC.; B&B CONSTRUCTION OF  
CHARLESTON, INC.; SUPERSEAL  
MANUFACTURING, INC.; MAJESTIC  
WINDOW MANUFACTURING, LTD., f/k/a  
VINYL WINDOW DESIGNS-USA, INC.,  
a/k/a VINYL WINDOWS DESIGN, LTD.;  
PEGRAM-WEST, INC.; CHASE HOMES,  
INC.; CHASE-ROBERTSON BUILDERS,  
INC.; SGM ARCHITECTS, INC., f/k/a  
SMITH, GERBER, McCLURE &  
ASSOCIATES, INC., f/k/a SMITH  
GERBER & ASSOCIATES, INC.;  
TRADEMARK PROPERTIES, INC.; STEPHEN  
R. HEAPE, Individually and  
Independently as General Partner of  
CAMBRIDGE LAKES, LP; ALBERT V.  
ESTEE, Individually,

Defendants.

2

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BY: MR. WALTON J. "TAD" McLEOD

4

SOUTHEASTERN TRANSCRIPT

Trademark 0229

1 and Cambridge Two.

2 MR. MCLEOD: Tad McLeod, Jose Nino.

3 MR. LOFTIS: Todd Loftis here for  
4 Bostic Construction.

5 MR. HAYES: And who is on the phone?

6 MS. GIFFORD: This is Emily Gifford  
7 also for Pegram-West.

8 MS. COKER: And Meredith Coker for  
9 Classic Properties.

10 EXAMINATION

11 BY MR. HAYES:

12 Q Mr. Davis, my name is John Hayes. We've  
13 met. I'm here to take your deposition in the  
14 Cambridge Lakes matter. Have you ever had your  
15 deposition taken before?

16 A Yes, sir.

17 Q Well, I'm going to tell you some ground  
18 rules. Now that it's started, refer any questions  
19 you have to me and not to your attorney.

20 If you need to take a break for any  
21 reason, let me know. We'll take a break. It's not  
22 a marathon.

23 If you don't understand the question I'm  
24 asking you, let me know so I can make sure that you  
25 understand it or at least rephrase it in such a way

9

1 that you will understand it.

2 You are under oath just as if you were in  
3 a courtroom. Is there any reason that you cannot  
4 answer my questions truthfully and honestly and to  
5 the best of your capabilities today?

6 A No. I'm good.

7 Q Mr. Davis, you are the owner of a company  
8 Trademark Properties. Correct?

9 A Yes, sir.

10 Q How long have you owned Trademark  
11 Properties?

12 A I believe 19 years.

13 Q And are you the sole owner of it?

14 A Yes, sir.

15 Q Have you always been the sole owner of  
16 it?

17 A Yes, sir.

18 Q And how long have you been in the real  
19 estate business?

20 A I think I've had my license 21 or 22  
21 years, something like that.

22 Q Trademark Properties, what kind of  
23 business is that?

24 A It's a real estate brokerage.

25 Q And if you'll just tell us in your own

10

1 words what's your real estate brokerage.

2 A If you have a house to sell, you call me  
3 up. We'll come price it. We'll tell you, you know,  
4 cut your yard, paint the fence, put your dog away,  
5 give you advice on how to best present that  
6 property. And then we list it and sell it.

7 Q You-all also represent buyers, too.

8 Correct?

9 A Yeah, we represent buyers as well.

10 Correct.

11 Q Is it fair to say that Trademark  
12 Properties in some form or fashion has the capacity  
13 or has in the past represented buyers and sellers?

14 A Yeah, that would be fair.

15 Q Is that something they do quite often?

16 A Every day, yeah.

17 Q In regards to Trademark Properties, is it  
18 still a going concern?

19 A Yes.

20 Q How many employees does it have?

21 A I don't know that answer.

22 Q More than you can count?

23 A Well, no, not necessarily. If I walk in  
24 a sales meeting yesterday, this is about how many  
25 people we had in the room.

11

1 Q Is it fair to say 10 to 12 employees,  
2 thereabout?

3 A Again, they are agents. So independent  
4 contractors versus employees, I would say probably  
5 half and a half.

6 Q In regards to Trademark Properties, you  
7 also had a television show as I recall. Correct?

8 A I created a television show.

9 Q You did. It wasn't Trademark Properties  
10 that had the show?

11 A Well, I mean, I created it. I wrote it.  
12 It was my left hand that wrote the show. I don't  
13 know what that's got to do with Trademark  
14 Properties.

15 Q I was just curious. You were involved in  
16 a TV show?

17 A Yeah. Richard C. Davis created that  
18 show.

19 Q What was the name of the show?

20 A It was called Worst to First.

21 Q Worst to First?

22 A Worst to First. And when I went on TV,  
23 they changed the name to Flip This House.

24 Q What was the premise of the show?

25 A The premise of that show was basically

12

SOUTHEASTERN TRANSCRIPT

mark 0231



1 following me and a select few of my people buying  
 2 properties, fixing them up and selling them.  
 3 Q The select few of your people, were they  
 4 also affiliated in any way with Trademark  
 5 Properties?  
 6 A Yes.  
 7 Q Was Trademark Properties' logo ever shown  
 8 on the show?  
 9 A Yeah. As a matter of fact,  
 10 contractually, yeah.  
 11 Q Trademark Properties --  
 12 A I'm sorry. You said if I had a question  
 13 to direct it to you?  
 14 Q Sure..  
 15 A It seems to me I got stuck for a bill on  
 16 this in 2002. Right?  
 17 Q Oh, you're talking about in this case?  
 18 A I'm talking about when Al Estee didn't  
 19 pay me and kicked me off the job. That's 2002. My  
 20 TV show didn't go on air until 2005. So I really  
 21 don't understand what's that got to do with --  
 22 Q Part of the thing is we're asking  
 23 questions about -- asking you questions, trying to  
 24 get information that you know about this.  
 25 A Okay.

13

1 Q Well, Mr. Davis, Trademark Properties has  
 2 been involved in the conversion of condominiums  
 3 before. Correct?  
 4 A Yes, we have.  
 5 Q How many condominiums has Trademark  
 6 Properties been involved in, at least as far as the  
 7 conversion from a rental unit to an individual unit  
 8 for sale?  
 9 A I'd venture to say anybody in the state  
 10 of South Carolina owning an apartment building that  
 11 thought of converting called us. I would say we  
 12 turned down 90 percent of them.  
 13 Q Why did you turn down 90 percent of them?  
 14 A Well, because it's, you know -- The only  
 15 thing we would look at is marketability, is there a  
 16 buyer out there that would want that unit in this  
 17 market today. And so not everything for sale can be  
 18 sold. And so the ones that we felt lent  
 19 themselves -- a floor plan that a buyer was looking  
 20 for, you know, we give it the thumbs up. If not, we  
 21 wouldn't do it.  
 22 Q So if you thought it was a good  
 23 conversion, then it's a project that Trademark might  
 24 take on?  
 25 A If we thought it was a marketable

14

1 product. We are in the business of selling real  
 2 estate. If it's a toaster and you can fit a mouse  
 3 in it and you want to call it a piece of real  
 4 estate, I won't put a roof over its head. If it's  
 5 viable and fits, I'll sell a doghouse.  
 6 Q Well, in regards to condominium  
 7 conversions, not doghouses, how many has Trademark  
 8 been involved in? Not turned down. How many have  
 9 they been involved in?  
 10 A I could pull MLS numbers and show you.  
 11 But I couldn't tell you off the top of my head.  
 12 Q Do you think it's over ten?  
 13 A Over ten units?  
 14 Q Over ten projects.  
 15 A It might be single digits. It might have  
 16 tipped into double digits. That's not a crazy  
 17 number. That's probably close to whatever it ended  
 18 up being.  
 19 Q Is that information -- You said pull MLS.  
 20 So you could probably provide that to your attorney?  
 21 A Yeah, very easy.  
 22 Q In that regards, do you remember off the  
 23 top of your head any conversion products that you've  
 24 been involved in, the names of them?  
 25 A Yeah. Off the top of my head, I could

15

1 probably --  
 2 Q If you don't mind just telling us those.  
 3 A An apartment name I can't remember, but  
 4 The Peninsula on James Island, Mira Vista, Riverway  
 5 up in North Charleston, Montclair in Mt. Pleasant.  
 6 There's more. That's not what I do all day, every  
 7 day.  
 8 Q But those are the ones that you recall  
 9 off the top of your head?  
 10 A Yeah. And there's more. I just can't  
 11 remember the names of them. It's easy enough. I  
 12 can pull the MLS and tell you exactly what we sold.  
 13 Just so you know, because I hate being  
 14 labeled, when I first started listing new  
 15 construction for Horres Rook (phonetic), I got  
 16 listed -- an article in the paper that I represent  
 17 new construction. So my clients who are resale  
 18 clients, you know, called me up and said, wow, we  
 19 love using you, but now that you're new  
 20 construction, we're going to use so-and-so down the  
 21 street.  
 22 Same thing with condo conversions. We  
 23 did 2,600 closings the year that we were doing condo  
 24 conversions. I would say -- and I don't know that I  
 25 can bring you the stats -- most of them were single

16

## SOUTHEASTERN TRANSCRIPT

Trademark 0232

1 family residential resales. Book of business,  
2 clients that we've had since I started the company  
3 and we built the business up.

4 So that is a speck of our business. It's  
5 not our specialty. It's not a niche -- My point is  
6 it's not all we do. So we are not condo converters.  
7 If you would have called me up and said, hey, Nexsen  
8 Pruet wants you to price this building, I would have  
9 been over here in seven seconds to tell you what  
10 it's worth to sell. It's what we do.

11 Whatever is hot in the market tends to  
12 get the most requests to list them. So whatever is  
13 going on, yeah. Believe me, I'm waiting for the  
14 next wave right now. When I get that phone call,  
15 we'll put a price on it.

16 Q In that regards, but at some point you  
17 did get involved in the condo -- as we have  
18 discussed, the conversion of rental units?

19 A Absolutely. I think if you look under  
20 the umbrella of National Association of Realtors,  
21 find me a company in this town that didn't get paid  
22 to sell a condo. Find me one. I think it's pretty  
23 representative of what was popular in the market.  
24 You had all the young Mt. Pleasant people that  
25 didn't want to buy a house. They wanted to buy a

17

1 condo. And that's what was selling.

2 Q Well, you-all also did marketing.  
3 Correct? Trademark did marketing. Right?

4 A That's mostly what we do. Mostly what we  
5 did was the marketing of it, getting the word out  
6 there, making sure that people knew that we had  
7 something that was -- Whether it was affordable or  
8 whether it was new countertops, whatever, that  
9 particular project, our job was to blast it out  
10 there and make sure everyone knew about it.

11 Q Let's talk about that. It was common for  
12 someone to call up and -- call you up at Trademark  
13 Properties and say, hey, I've got this building that  
14 has a bunch of rental apartments in it, and I would  
15 like to convert this into condos. Can you help me  
16 with this project? Is that a fair statement?

17 A Well, the statement usually is, "What do  
18 you think?" It always comes down to money. What do  
19 you think? I talked to your competition and  
20 Prudential said they can get 200 a unit. What do  
21 you think you can get?

22 So whenever I got the first phone call  
23 always as a real estate company, how much can you  
24 get and how cheap will you let me beat your  
25 commission down. It's that simple. It always comes

18

1 down to a mathematical equation.

2 Q Let's say you are engaged -- Trademark  
3 Properties is engaged in the conversion of  
4 apartments to condominiums. You-all do more than  
5 just put it up on a web site. Correct?

6 A Yeah. We have a marketing plan that we  
7 present to the developer. We are not builders. We  
8 are not developers. Your project, we go to you and  
9 we say we think for this to be effective we've got  
10 to spend X amount of dollars to make sure any  
11 possible buyer out there looks at it. And then if  
12 it comes back and it's not a viable project, then  
13 you spent money to find out it's not viable and, you  
14 know, we basically work for nothing and we move on.

15 Q It's true that you also -- not only do  
16 you help them with the marketing, but you also help  
17 them with the conversion process. Correct?

18 A I mean, I'll price it out. I don't  
19 physically build anything, if that's what you're  
20 getting at.

21 Q I'm talking about as far as  
22 communications with the homeowners.

23 A Oh, yeah, absolutely.

24 Q And making sure that the process goes --  
25 I mean, it's not just a -- When you take a building

19

1 from rental units to individual units for sale, it's  
2 not just a, hey, throw it up on the MLS web site and  
3 let it sell. There's some things that you have to  
4 do in order to sell those places to individual  
5 units?

6 A Not things I have to do. I'm not the  
7 builder. I'm not the developer. What I have to do  
8 is find out -- If I put it out there and advertise  
9 it and I put a price on it and I get no calls, it's  
10 not viable. My job is to figure out what the  
11 pricing model is, what's popular in the market as  
12 far as location. I mean, you can have the best unit  
13 in the wrong location. I can't help you.

14 Q What about the legalities as far as  
15 converting rental units into units for sale? Do you  
16 get involved in that?

17 A I'm not a lawyer.

18 Q I know you're not a lawyer --

19 A If you want to sue me for bad taste, bad  
20 carpet and bad paint colors, go right ahead. I'm  
21 not a contractor. I don't build it. We deal with  
22 people who already own those buildings. That's what  
23 they do for a living. That's what they did for 40  
24 years before I met them. My job is to come in and  
25 say, you asked me to price this thing. Okay, here's

20

## SOUTHEASTERN TRANSCRIPT

mark 0233

1 a project down the way called Montclair.

2 Q Was it a conversion project?

3 A Right.

4 Q Montclair was a conversion?

5 A It was a conversion. It was a big, rich  
6 Chicago developer telling me how much money I'm  
7 going to make off of him. He did all of his legal,  
8 conversion, did every bit of that stuff.

9 Well, Al Estee and his wife walk in.

10 Acted like they are trying to buy a unit, do this  
11 secret shopping thing. Right? I guess they were  
12 impressed with my sales team, because then I got a  
13 phone call saying will you come look -- he owns a  
14 building right down the way. We thought he was a  
15 buyer. Will you come take a look and see -- he's  
16 got a building and wants to know if we can sell  
17 units for more or less than we're selling Montclair  
18 for.

19 All right. So I go there. I want to say  
20 Dawn called me to go meet with the guy or walk  
21 through with him and his wife. And basically he  
22 told me he's done this for 40 years. All he needs  
23 to know from me -- and I thought it was real  
24 peculiar, because I said, well, you know, Danny  
25 Castle is a good friend of mine. He lives next to

25

1 your son. He told me your son has a real estate  
2 company. Why are you calling me?

3 And he said point-blank that my bank  
4 won't finance this unless I get 30 resales, and you  
5 are the go-to guys on selling condos in Charleston.  
6 Whether it's new construction -- We sold new  
7 construction. I mean, "condo" was a hot word. We  
8 had the hot hand selling them. And we were doing  
9 the best that we can. We were trying to sell as  
10 many as we could.

11 Q But the fact is that Trademark Properties  
12 did assist Mr. Estee in the conversion of --

13 A I walked through the property -- Hold on.  
14 I walked through the property. He told me he's been  
15 doing this 40 years. He's a developer. And that  
16 basically he wanted me to price it.

17 And what I said -- this is what I was  
18 trying to get to. When I gave an opinion on that  
19 carpet on the first floor, it was unwarranted. They  
20 didn't want to hear about. She told me she is an  
21 interior decorator. They liked it just the way it  
22 was and started cracking on the project they just  
23 came from, Montclair, and why theirs was better.

24 And I said, okay, it sounds like you  
25 don't need me, but I would take this carpet up.

26

1 Q So it's your testimony today that the  
2 only thing that Trademark Properties did --

3 A No, no. I'm saying me personally. I'm  
4 telling you exactly what happened the one time I  
5 walked -- I've been to that property twice in my  
6 life. That day, and then another day when he asked  
7 me to come speak to the existing owners, who he  
8 caused a big old ruckus because we ran an ad. He  
9 was supposed to tell -- He was supposed to tell the  
10 owners, because it's his project, he was supposed to  
11 let them know before we ran the ad that they had the  
12 option to buy it.

13 Well, he told us. We did it. We ran the  
14 ad. What happens? Beehive. Totally bullshitted  
15 me. Did not tell the owners. I had to go and  
16 diffuse that and say you have the right -- we're  
17 happy to sell it to you. Here's your unit.

18 So it was just an awkward situation from  
19 the get-go.

20 Q So you got called in to meet with the  
21 homeowners, explain to them their rights they had as  
22 far as --

23 A Not their rights. If they could buy  
24 their unit.

25 Q That's what I'm saying. Their rights as

27

1 far as their ability to buy the unit, et cetera.

2 A Hey, I'm selling pancakes. If you're  
3 sitting at IHOP, I'm going to sell them to you. The  
4 fact that you live there obviously makes it easier  
5 on everybody.

6 Q My understanding of your testimony was  
7 you got caught in a beehive and that you explained  
8 to the homeowners that they had the right to buy  
9 these units?

10 A The exact question was -- the lady said  
11 somebody came knocking on my door, saw your ad, and  
12 walked into my unit and said I want to buy this  
13 unit. When can you get out? Well, there's nothing  
14 in the ad that said that. The add simply said  
15 here's the price. We are testing the market.  
16 Here's condos. Here's the location. Here's the  
17 price. Let's wait for that phone to ring. If we're  
18 any good at what we do, the phone rings. If it  
19 doesn't ring, I've got to go back and say it's not  
20 going to work. We overpriced it. We underpriced  
21 it. Unit is too big. Unit is too small.

22 But at the end of the day, my  
23 recollection of that is that it was a viable -- at  
24 whatever number we ran the ad at, the phone rang.

25 Q So you're saying that you only physically

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SOUTHEASTERN TRANSCRIPT

Trademark 0235

1 MR. CISA: Richard, take your time  
2 and read through it like he asked you, and then he's  
3 going to ask you questions about it.

4 THE WITNESS: I just think it's a  
5 bunch of horse shit.

6 A Okay.

7 BY MR. HAYES:

8 Q Is there anything in there you disagree  
9 with?

10 A That's a pretty open statement.

11 Q We can walk through it.

12 A That's his opinion. I can't get in his  
13 head. I'm sure my opinion is different from him.  
14 I've got a different brain. I'm left-handed. He's  
15 right-handed. I didn't write it.

16 Q I understand that.

17 A So I have no opinion on it.

18 Q Just for the record, this is  
19 chronological events drafted by Al Estee in regards  
20 to --

21 A I think it's a very condescending stance  
22 of his view of Dawn. So I think it's a bunch of  
23 shit, is what it is.

24 Q What we're talking about is a document  
25 that was drafted by Mr. Estee basically stating, as

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1 he refers to it, chronological events in regards to  
2 his relationship and termination of Trademark  
3 Properties in regards to Cambridge Lakes. You  
4 obviously disagree with it. During your reading of  
5 it, you made some comments.

6 I just want -- I'm not saying this is  
7 your opinion. What I'm asking you to do is go  
8 through it and tell me the points that you remember  
9 differently than how he describes them.

10 A I mean, this is eight years ago. This is  
11 his version of -- his spin on it. Today, I just  
12 don't recall it that way. I remember we had success  
13 in every project we did. We got him his pre-sales.  
14 He got his bank financing. He kicked us off and  
15 gave it to his son. I felt like an idiot for  
16 believing that -- The bottom line is -- The bottom  
17 line is my recollection is the bank made him use us  
18 because of our reputation and our success. So all  
19 of this is a bunch of bullshit on why he beat us out  
20 of fees. So I don't agree with it.

21 Q Is it your belief that he used Trademark  
22 because of its reputation in these conversions to be  
23 able to pre-sell these units to satisfy the bank,  
24 and then once that was done he obtained funding and  
25 kicked you off the job to give the rest of it to his

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1 son?

2 A Look, I might be wrong. I'll go to my  
3 grave knowing it. That's what I believe.

4 Q That's what you believe?

5 A I totally believe that. I think it's  
6 real obvious. I got a smart-ass e-mail from one of  
7 his son's agents basically laughing -- I'm not  
8 saying it was premeditated, but the minute they got  
9 the listings, the guy said thanks for doing all the  
10 hard work, now we'll collect the commissions.

11 Q Do you still have that e-mail?

12 A Yeah, I do.

13 Q Will you provide that to your attorney?

14 A Yeah, I would be happy to. And I think  
15 if you look back, I think -- Look, this is way back  
16 before I had to deal with any lawyers. I don't know  
17 why I was such a dumbass. I didn't believe in suing  
18 anybody. So I didn't. I took it -- I remember I  
19 got Robert Dodds to go to Lisa Herbert and surely,  
20 you know -- Hell, I went to Clemson with Robert and  
21 Lisa. We can sit down logically. I want to get  
22 paid. It just doesn't work that way. Because if  
23 someone doesn't want to pay you, they're not going  
24 to pay you.

25 And I think, you know, Frank even

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1 suggested at that time we sue them. And I was just  
2 like, no, I don't believe in doing that.

3 Q But you have sued people?

4 A At that point I hadn't.

5 Q But you have since then?

6 A Yeah, absolutely. Absolutely. I  
7 think -- Well, I don't know how many. Only one  
8 comes to mind.

9 Q Before Mr. Estee contacted Trademark and  
10 basically kicked it off the job, had he registered  
11 any complaints in regards to Trademark's handling of  
12 the project?

13 A You know, the one thing I will -- he says  
14 it right there that I didn't attend the meetings.  
15 That's not what I did. When he went to Montclair  
16 and shopped it, he didn't see Richard Davis sitting  
17 out there. He shopped it numerous times, and he  
18 decided to hire us based on who was on that site.

19 I think, if I'm not mistaken, if you look  
20 on the sales sheet on Montclair who worked that  
21 project, and I might be wrong, but I think it was  
22 the same people. I think we kind of wrapped up  
23 Montclair and rolled those same people that he was  
24 so enamored with. And it wasn't Richard Davis. I  
25 wasn't sitting out there.

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## SOUTHEASTERN TRANSCRIPT

Trademark 0238

1 Q The Montclair project, did that involve a  
2 guy named Patrick Barber?

3 A I don't think so.

4 Q Have you ever done any business with  
5 somebody named Patrick Barber?

6 A Yes.

7 Q What business did you do with Patrick  
8 Barber?

9 A Well, we bought the Amar building back in  
10 '94. I moved him here from Houston.

11 Q What building? I'm not familiar with --

12 A Amar building on King Street, 409. We  
13 bought it in 1994.

14 Q Have you ever done any business with him  
15 since then?

16 A Yeah, I think we've done a couple things.

17 Q Have you ever done any conversions with  
18 him?

19 A We did one up in North Charleston.

20 Q What was that conversion?

21 A It was called the Riverway. Now, let me  
22 go ahead and tell you the difference. I was a  
23 partner in that deal. Me, Pat Barber, Kaz  
24 Danielowski (phonetic) and Kevin Maloney. Kevin  
25 Maloney was brought in to do the construction. He

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1 was the construction partner. I was sales and  
2 marketing. Pat and Kaz were the rich partners.  
3 Perfect partnership. And everybody did their job  
4 and we sold out of that one. We hit our numbers on  
5 that one as far as I remember.

6 Q Were those buildings similar to Cambridge  
7 Lakes?

8 A No. These are much older. I would say a  
9 Class D apartment. It was kind of beat down.

10 When I saw Cambridge Lakes, you know, I  
11 think it had been operating as apartments for a  
12 couple of years, but it was still relatively new.  
13 Had elevators. I think they are on the whole  
14 opposite side of the spectrum.

15 Q You do understand and Trademark  
16 understands that when you -- under South Carolina  
17 law when you convert a rental unit to an individual  
18 unit for sale that you're required by law to have a  
19 professional architect or engineer licensed in South  
20 Carolina to do a report about the condition of the  
21 property that is then given to the prospective  
22 purchasers. You are aware of that. Correct?

23 A I'm not a developer. I would venture to  
24 say that I assumed that everyone we worked for did  
25 that. I would assume. I don't know that.

42

1 Q But you know that's required?

2 A Surely, I know that now.

3 Q When you say "know it now," when did you  
4 become aware of that?

5 A Well, I mean, I'm sales and marketing.

6 So I wasn't sure. Pat and Kaz would have handled  
7 that on the one that we did.

8 I felt confident if you go pull the file,  
9 whatever report you're addressing, I would feel  
10 confident we had it done.

11 But that wasn't my job. That was the  
12 rich partners. That was the guys that owned the  
13 building partners. My job was sales and marketing.  
14 Kevin's job was to pick out, you know, the  
15 contractors and get stuff done on that.

16 Q That was not done in Cambridge Lakes?

17 A I couldn't tell you whether it was or  
18 wasn't. It wasn't what I did.

19 Q But you knew it was required to be done  
20 in Cambridge Lakes. Correct?

21 A You know what? It's eight years ago. At  
22 the end of the day when a developer comes to me and  
23 asks me to sell his project, he's a developer, he's  
24 a builder, he built it himself, you know, I have no  
25 idea whether he did or didn't.

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1 What are we here for? Just out of  
2 curiosity? I mean seriously.

3 MR. CISA: Do you want me to answer?

4 MR. HAYES: No.

5 A I know you're deposing me, but --  
6 BY MR. HAYES:

7 Q Trademark has been sued in a lawsuit --

8 A Well, I understand that, but everyone I  
9 heard sitting around here are contractors. I'm not  
10 a contractor. I didn't build anything.

11 Q There's been allegations in regards to  
12 the actions of Trademark, and your attorney can  
13 discuss that with you. But we're here to take your  
14 deposition and find out what information you know in  
15 that regard. So if you can just answer my  
16 questions.

17 A Okay. For the record, I didn't build it.  
18 I didn't put the elevators in. I didn't make the  
19 grass green. We said here's what we can sell it  
20 for, here's what we do. And I think we did our job,  
21 and I think we got beat out of money.

22 Q I'm going to hand you what's been marked  
23 as Exhibit 5 to Al Estee's deposition. And it was a  
24 letter that was sent out to residents of Cambridge  
25 Lakes in regards to the conversion and offer to

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SOUTHEASTERN TRANSCRIPT

emark 0239

1 (Recess taken.)  
 2 THE VIDEOGRAPHER: This is the  
 3 beginning of videotape No. 2 of Richard Davis. On  
 4 the record at 11:36.  
 5 BY MR. HAYES:  
 6 Q Mr. Davis, we've taken a quick break.  
 7 But if you would look back at Exhibit 34, this  
 8 letter that we've discussed quite a bit.  
 9 A Right.  
 10 Q Would you just let me know -- Is it your  
 11 testimony that -- My question was did Trademark  
 12 Properties draft that letter, and all I want is  
 13 either a yes, no, or I don't know.  
 14 A I don't know. I don't know.  
 15 While we had the break, you asked me on  
 16 Exhibit 36, Charleston Row, and it didn't strike a  
 17 memory of a project that we did. Okay. And this  
 18 one you're asking me about the expenses. This  
 19 was -- I remember this is a project that's in  
 20 Charlotte, North Carolina. You mentioned my TV show  
 21 earlier. Well, the TV show was about buying  
 22 properties from banks. Everything you ever saw on  
 23 that show was a foreclosure. This was when a  
 24 bank -- Wachovia asked us to come up to Charlotte.  
 25 Charleston Row was the proposed name of a project

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1 that they had just taken back an apartment complex  
 2 in Charlotte. And they asked us to come up there  
 3 and do the sales and marketing.

4 So this was, you know -- My point is  
 5 Wachovia was in charge of legal. Wachovia was in  
 6 charge of HOA. It wasn't Parades. It was some guy  
 7 out of Charlotte.

8 Q Is it true that people's obligations can  
 9 change from job to job?

10 MR. CISA: Object to the form of the  
 11 question.

12 A Well, sales and marketing is sales and  
 13 marketing. I mean, you can dress it up like a duck,  
 14 walks like a duck -- I'm not a lawyer. So the legal  
 15 part -- At the end of the day, you hand me a legal  
 16 document, and I can take it from her and give it to  
 17 you, it doesn't make me a lawyer, doesn't give me an  
 18 opinion of it.

19 BY MR. HAYES:

20 Q Have you ever done a TV show about  
 21 converting rentals to individual units for sale?

22 A We did. We did. That was on -- not  
 23 Discovery. TLC.

24 Q Have you-all ever been kicked off a job  
 25 by the building inspector?

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1 A No. You watch too much TV. That was  
 2 totally set up for a TV show. I'm not the builder.  
 3 Go back and look at the permits. What's that guy  
 4 that went to The Citadel that was the builder on  
 5 that? He don't want to take the hit on the show, so  
 6 I just stood in. I'm not a builder. I went in  
 7 and -- What's the guy's name, the builder from The  
 8 Citadel?

9 Anyway, Kevin Maloney was the general  
 10 contractor, and he subbed out the construction to  
 11 some guy.

12 Q Do you remember the name of that project?

13 A East West. It was a house. East West  
 14 was a house. And I took the hit on that one. But  
 15 again, that's 2005. This is 2002.

16 (Exhibit No. 39 marked for  
 17 identification.)

18 BY MR. HAYES:

19 Q Do you recognize what's been marked as  
 20 Exhibit 39?

21 A Yeah. It looks like a web site that Open  
 22 Vision designed for us.

23 Q For Trademark Properties. Correct?

24 A Yes, correct.

25 Q And on that first page it says Trademark

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1 Properties, Charleston, South Carolina Real Estate  
 2 Services is a full-service Charleston, South  
 3 Carolina real estate firm specializing in a number  
 4 of things. One of the things it says it specializes  
 5 in is condominium conversions and sales.

6 So at least on your web site you're  
 7 stating that Trademark is a specialist in  
 8 condominium conversions. Correct?

9 A Selling them, yeah.

10 Q Well, it says condominium conversion and  
 11 sales. It doesn't say condominium conversion sales,  
 12 does it?

13 A It's right there. Real estate services.  
 14 We are a broker. I don't build condos. I don't  
 15 build businesses. We sell them.

16 Q Isn't it true that most condominium  
 17 conversions are already built? Isn't that the fact  
 18 of the matter; that they are rental properties being  
 19 converted into individual unit sales?

20 A For the most part. For the most part.  
 21 Some of them we caught like pre-construction. And  
 22 one we did for Ray Wrenn on James Island, it was  
 23 supposed to be all rental and we caught it early on  
 24 and got him to convert.

25 Q But you would agree with me that

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## SOUTHEASTERN TRANSCRIPT

Trademark 0246

1 Trademark Properties at least in its advertising  
2 represents that it's a specialist in condominium  
3 conversions?  
4 A Well, like I said earlier, there's one,  
5 two, three, four, five, six, seven, eight, nine, ten  
6 things. Ten different things. And I was saying  
7 earlier about a niche. Is that one of the ten  
8 things that we do? Sell conversions? Absolutely.  
9 Q That's what I'm saying. I'm not saying  
10 you don't do anything else. One of the things  
11 you-all do is sell condominium conversions.  
12 Correct? That's one thing Trademark Properties  
13 does?  
14 A Used to. I don't see that as -- Now, if  
15 the market changes and it was viable, absolutely.  
16 We would be right back into selling condos. It's  
17 just not a viable thing in this market.  
18 Q If you'll turn to the one, two, three,  
19 four, five, six, seven, eight, nine -- the tenth  
20 page, do you see that?  
21 A Which one?  
22 Q This one (indicating).  
23 A Yes.  
24 Q And if you look on that, it says, "Real  
25 Estate Investment Properties." Correct?

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1 A Correct.  
2 Q And it says, "Our project work division  
3 specializes in Charleston area real estate such  
4 as" -- it says a number of things, and one of them  
5 is apartment conversions. Correct?  
6 A Correct.  
7 Q And under that it shows some conversions  
8 or projects that Trademark has been in. Correct?  
9 A S-o-l-d. That's what we do.  
10 Q S-o-l-d.  
11 A Sold.  
12 Q And on that it says Cambridge Lakes?  
13 A Not b-u-i-l-d. It's s-o-l-d. Big  
14 difference.  
15 Q You have Cambridge Lakes on there.  
16 Right?  
17 A We did.  
18 Q Well, you do. This was printed out  
19 yesterday.  
20 A Well, I guess we do.  
21 Q So at least on this page you're  
22 advertising that Trademark Properties specializes in  
23 apartment conversions, and then right below that has  
24 Cambridge Lakes as an example of one. Correct?  
25 A I think it's pretty evident that

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1 "s-o-l-d" over it means these are units that we have  
2 sold.  
3 Q So yes is your answer?  
4 A What was the question?  
5 Q Okay; that on this page, this  
6 advertisement -- And you do agree this is a  
7 Trademark Properties advertisement?  
8 A Absolutely. I think we're saying that we  
9 sold units at Cambridge Lakes. I'm also saying that  
10 we never got paid, but that's a different story.  
11 Q If you turn to the page that says "Team  
12 Trademark Investment."  
13 A Is it further back?  
14 Q It's further back.  
15 A Okay.  
16 Q It says, "Team Trademark Investment." It  
17 shows a picture of you standing next to a  
18 helicopter. Correct?  
19 A I believe so, yes.  
20 Q And it says Richard C. Davis, president  
21 and CEO and director of acquisitions. Is that your  
22 title with the company?  
23 A No. This is a web site guy getting all  
24 fancy. I might have said president, but I wouldn't  
25 put the other ones on there.

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1 Q But you're the president?  
2 A Yeah.  
3 Q Always have been?  
4 A Yeah. I mean, I'm just saying I wouldn't  
5 have characterized it that way. I will say he  
6 probably went and pulled some comments from  
7 different articles that I did. One time someone  
8 asked me -- I want to say New York Times asked me  
9 what I did. I said I'm basically the director of  
10 acquisitions. I look through all the foreclosures.  
11 I look through 3,000 a month to find maybe five or  
12 ten to buy across the state.  
13 So that's the only time I remember using  
14 that quote, so I'm sure that's where he picked that  
15 up from.  
16 Q If you'll turn a few pages further.  
17 You've got it advertised that you-all have a  
18 property management division. Correct?  
19 A That's right.  
20 Q So Trademark also manages properties.  
21 Correct?  
22 A We don't manage regimes. We manage  
23 like -- Like if you're my client and you buy a  
24 property and you move out of town, we will manage  
25 that for you. We don't manage regimes. We manage

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SC' THEASTERN TRANSCRIPT

0247

1 Q I may not quote this exactly, but a  
2 minute ago you said words to the effect that we  
3 didn't make any money on this project?

4 A I think if you netted out -- I think of  
5 our net commissions minus the advertising bill I got  
6 stuck with, I think it's a negative \$2,000 is the  
7 way I recall it.

8 Q I was going to say, how much money did  
9 Trademark Properties make in commissions related to  
10 Cambridge Two?

11 A I asked Dawn to pull those numbers up for  
12 me, and I've seen them. Like I said, I think it  
13 ended up being a negative \$2,000. But on a gross  
14 basis, I wouldn't know. I can get that for you if  
15 you want me to.

16 Q Somebody is pulling that information for  
17 you?

18 A If you need it, I'd be happy to.

19 Q You said you asked her to pull that  
20 information. Is she in the process of pulling that?

21 A No. A while back, because I was -- I  
22 went to Frank and I was going to sue Al to get my  
23 money, and it just wasn't worth it.

24 But my listing agreement, if you read  
25 that, I should have got paid on every single unit in

85

1 there. And we sent a letter to Lisa Herbert -- I  
2 believe that's her last name -- that represented  
3 him, and we tried to sit down and say, look, you  
4 know what? You want to boot me off, that's fine --

5 Q My question is, I'm asking about the  
6 commissions on this property. You or somebody in  
7 your office can go in the computer and print out  
8 every single commission you made on this --

9 A Yes, sir.

10 Q And you can also net your expenses and  
11 anything else you want to?

12 A Absolutely. Yes, we can do that.

13 Q When Mr. Hayes was asking you questions,  
14 you referenced a meeting with Mr. Al Estee.

15 A Yes, sir.

16 Q He came to your office at some point in  
17 time and expressed some dissatisfaction, rightly or  
18 wrongly, with Trademark's performance on the  
19 project?

20 A I remember the exact quote. And he got  
21 it right on what I said to him --

22 Q Hang on. He came and met with you in  
23 person. Right?

24 A He came and met with me in person, which  
25 was not normal and customary.

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1 Q I take it from your tone and demeanor and  
2 comments during this deposition that that meeting  
3 did not go very well?

4 A Yes, sir. That's true.

5 Q Did you behave towards him as you've  
6 behaved in your deposition here today?

7 A Yeah. I think my attitude today is a  
8 direct follow-up from the last time I saw him. It  
9 brings up memories of getting beat out of that  
10 money. Absolutely.

11 Q Were you angrier at that meeting than  
12 you've exhibited here so far in this deposition  
13 today?

14 MR. CISA: Object to the form of the  
15 question.

16 A I think it's pretty similar.

17 BY MR. PARRISH:

18 Q Okay. Just wanted to get a feel for what  
19 happened.

20 A I think it's pretty similar, you know.

21 Q Did you call him an asshole during that  
22 meeting?

23 A That wouldn't be out of -- I don't recall  
24 that, but that could very well have happened.

25 Q I do want to be careful, because you've

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1 made the distinction a couple of times. The words  
2 "you" and "Trademark" get used interchangeably here.  
3 I'm really talking more about Trademark, not you  
4 personally. But if it makes a difference in your  
5 answer, let me know, and we'll figure out how to  
6 deal with that.

7 A Thank you.

8 Q Trademark was in the middle of the  
9 Montclair condominium conversion/sale project that  
10 was going on?

11 A Yes, sir.

12 Q Montclair is not too far down the street  
13 from where Cambridge Two is. Right?

14 A Yes, sir, right down the way.

15 Q At what stage of the project was

16 Trademark Two (sic) in at Montclair when Al Estee  
17 approached Trademark about doing the same thing for  
18 Cambridge Two?

19 A My recollection is that we were pretty  
20 much at the end of the sales, because I think the  
21 same sales team rolled over. Like I think, you  
22 know, we had proven success. We had the record of  
23 the sales. And my recollection is it was Molly,  
24 Shelly and I want to say Michelle, the same people  
25 that worked on Montclair just rolled on over to the

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SOUTHEASTERN TRANSCRIPT

Trademark 0250



1 A I don't.  
 2 Q You're sitting here today, you're aware  
 3 that there's certain information you have to give to  
 4 tenants and potential buyers when apartments are  
 5 converted to condominiums. You know that now  
 6 sitting here at least in general?  
 7 A Oh, absolutely.  
 8 Q And that same requirement was in place  
 9 during the Montclair and the Riverway conversions.  
 10 Who communicated the information to the  
 11 tenants and buyers at Montclair? Who or how was  
 12 that communicated to them?  
 13 A I don't know. I know Bruce, the owner,  
 14 would have hired the architect, the engineer,  
 15 whatever, had the reports, and his job was to make  
 16 it readily available. I don't know the language. I  
 17 don't know the legal. But I know that was his job.  
 18 So on the Riverway that was, you know --  
 19 Again, technically on Riverway I'm an owner on that  
 20 one, so obviously, but I know Pat and Kaz handled  
 21 that stuff. I handled sales and marketing. Kevin  
 22 handled the construction.  
 23 And on this one Al Estee --  
 24 Q Hold on. I was asking about Montclair  
 25 and Riverway. Don't get ahead of me. Let's break

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1 it down. Montclair?  
 2 A Montclair. That would have been Bruce.  
 3 Q Bruce who?  
 4 A The owner.  
 5 Q What's Bruce's last name?  
 6 A Bruce Kenny. I don't know how you spell  
 7 it.  
 8 Q I'm talking about physically. I'm not  
 9 talking about who prepared the document. I want to  
 10 know how the document got put in the buyer's hand.  
 11 A I don't know that.  
 12 Q Because the buyer walks in and Trademark  
 13 is on site. Trademark is dealing with the buyers?  
 14 A Right.  
 15 Q Trademark is involved in the closing  
 16 because it's getting its commission.  
 17 A Right.  
 18 Q So how at Montclair from the time a buyer  
 19 walked in the door to look at the property from the  
 20 time they went to the real estate closing did that  
 21 information get put in their hand?  
 22 A You know, I don't know that. I don't  
 23 know that. I don't know that.  
 24 Q Fair enough. Let's ask about Riverwalk  
 25 (sic). Since you were an owner on that one, same

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1 question: Buyers walked into that project, I'm  
 2 assuming Trademark was the listing agent on  
 3 Riverwalk?  
 4 A Yes.  
 5 Q So buyers would walk in and meet with  
 6 Trademark, we love the property, we want a contract.  
 7 How would the information get physically put in  
 8 their hand prior to closing?  
 9 A I don't know that answer.  
 10 Q Is it safe to say you don't know the  
 11 answer on Cambridge Lakes how that information got  
 12 put in their hands, too?  
 13 A I don't know that answer.  
 14 Q Does Trademark have any policies -- have  
 15 or had any policies -- or has it received any  
 16 training -- Let me rephrase that better than I just  
 17 did.  
 18 Does Trademark have policies for its  
 19 agents, or does it conduct training for its agents  
 20 as to what information has to be provided to buyers  
 21 before closing on condo conversion projects?  
 22 A Yeah. I mean, yes. We've got a policy  
 23 manual that's stated -- it's a regular policy  
 24 manual. Not specific for condo conversions. Any  
 25 piece of real estate you sell, whether it's a

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1 \$10 million house or it's \$20,000, it's the same  
 2 thing.  
 3 Q Tell me what's in this policy manual,  
 4 please.  
 5 A I'll be happy to get a copy of it.  
 6 Q Just kind of give me a three-sentence  
 7 overview of what's in it.  
 8 A I'll get you a copy. It's probably 32  
 9 pages.  
 10 Q And does that policy manual discuss  
 11 requirements or things that have to be done in  
 12 connection with condo conversion?  
 13 A I don't know that it -- Real estate, the  
 14 two-word umbrella, I don't know that it breaks it  
 15 out into that.  
 16 Q If once we see the policy manual there's  
 17 nothing in there about condo conversion  
 18 requirements, would there be any other  
 19 documentation, materials or training that Trademark  
 20 gives agents, its people, in connection with what  
 21 they have to do at condo conversions?  
 22 A Again, it's sales and marketing. We're  
 23 pretty regimented on how we -- I want to say in that  
 24 agreement that he signed it says we do guerrilla  
 25 marketing, and all the different ways we're going to

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## SOUTHEASTERN TRANSCRIPT

1 do sales and marketing. So it lays out what we're  
2 going to do, who is going to pay for what. So  
3 everyone is trained on exactly what their role is.

4 Q Thank you for the answer, but I'm not  
5 sure I was clear, so I'll repeat it.

6 Are there any places other than possibly  
7 in this policy manual where Trademark has policies,  
8 procedures, guidelines or training specific to condo  
9 conversion projects?

10 A I don't know. I will defer to Dawn on  
11 that. I don't know that answer off the top of my  
12 head.

13 Q It seems kind of ironic sitting here in  
14 2010, but is it fair to say back when Cambridge  
15 Lakes came on line that people were very interested  
16 in buying real estate?

17 A Well, specifically condos, yes.

18 Q Real estate sold back in 2003. Right?

19 A Yeah. Yeah. I've got an opinion on that  
20 since you asked.

21 Q Sure.

22 A '86 tax laws killed -- made "condos" a  
23 dirty word. So on normal buyer and seller  
24 equilibrium, you had a ton of pent-up people that  
25 their lifestyle fit condos that didn't buy for years

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1 and years and years because they weren't built  
2 because it was no longer a tax haven.

3 So what happened was once people started  
4 putting them on the market, it's not like someone  
5 all of the sudden changed their lifestyle. Now they  
6 had a product that fit their lifestyle better. And  
7 so it was really where you had way more demand for  
8 condos than you really had the actual supply out  
9 there, because it wasn't economically -- didn't make  
10 sense to build them because of that tax law change.  
11 So it was unique because of that '86 tax law, so you  
12 had a ton of it.

13 So it wasn't a normal time. And you knew  
14 it was a short-gap window specifically for condos.  
15 New construction, conversion, whatever. And  
16 conversions became popular because you couldn't  
17 build them fast enough. It wasn't that somebody  
18 preferred a conversion to new construction. There  
19 wasn't enough product out there. You can go look at  
20 MLS. There wasn't enough out there for the number  
21 of people -- number of buyers who wanted it.

22 Q And Cambridge Lakes, possibly with the  
23 exception of the astroturf, was a brand-new building  
24 and it was a nice building?

25 A Yeah. My recollection is it was -- I

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1 don't know if it was a year old, two years old, but,  
2 yeah, it was in good shape. Had elevators. It had  
3 a lot of things that I thought they had foresight in  
4 building that you normally would not do in  
5 apartments. You know, I couldn't believe they had  
6 elevators built in, because when I went over there I  
7 was like, God, man, it's a shame we didn't talk to  
8 these guys ahead of time. It would be nice if they  
9 had elevators. And Dawn told me in the car on the  
10 way over it does have elevators. And that was huge  
11 for us, because we just came out of a project that  
12 didn't have them and it's tough. People on that  
13 third floor, you know, it's tough to sell something  
14 without an elevator.

15 Q Did anybody ever mention to you that  
16 these units had been built in contemplation of being  
17 condominiums?

18 A I don't know that anyone ever said that  
19 to me.

20 MR. PARRISH: Let's take a quick  
21 off-the-record a second.

22 THE VIDEOGRAPHER: Off the record at  
23 12:41.

24 (Recess taken.)

25 THE VIDEOGRAPHER: Back on the

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1 record at 12:46.

2 BY MR. PARRISH:

3 Q Mr. Davis, thank you for your patience.  
4 I'm going to try to wrap this up.

5 If I recall correctly, you said that you  
6 believed the bank, Cambridge Two, LLC's, lender  
7 required Cambridge Two to use Trademark in this  
8 project. Do you recall something along those lines?

9 A My interpretation was that he -- you  
10 know, his son -- his son had a real estate company.  
11 That bothered me. Because I was like why are you  
12 trying to hire my team? You know, your son has a  
13 real estate company. And my recollection of that  
14 conversation, he was saying that his bank was  
15 requiring somebody that had experience with the  
16 sales and marketing.

17 Q Well, you beat me to my question. I  
18 wanted to know what was the basis for your belief  
19 that the bank required Cambridge Two to use  
20 Trademark.

21 A I think Al told me that.

22 Q Because I'm trying to piece the timeline  
23 together. And at the time that you and Mr. Estee  
24 met, he didn't even have the contract -- property  
25 under contract yet. Could that have been a later

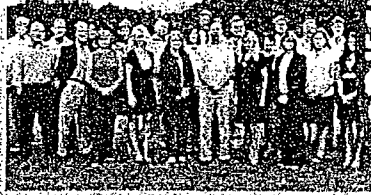
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SOUTHEASTERN TRANSCRIPT

Trademark 0260

**DEPOSITION  
EXHIBIT**  
Davis 38

*Teamwork*





- Elite Team of Professionals
- Provides Marketing Plans
- Produces Advertising Campaigns
- State-wide Referral Network
- Prompt, Efficient Paper Flow
- Accurate Progress Reports
- Maintained Prospect Database

*is our Trademark*

Trademark Properties Charleston SC Real Estate Services is a full-service Charleston, SC Real Estate firm. Specializing in Residential Listings and Sales, Commercial Listing and Sales, Business Brokerage, Condominium Conversion and Sales, New Construction Sales, Property Management, Corporate Apartments, Relocation, and Investments.

*The Main philosophy* of Trademark Properties is unique in that we treat every Real Estate transaction as an investment. Whether it is a personal residence, vacation home, apartment building, shopping center, office building, or hotel-- it is still a major purchase and should be treated as such.

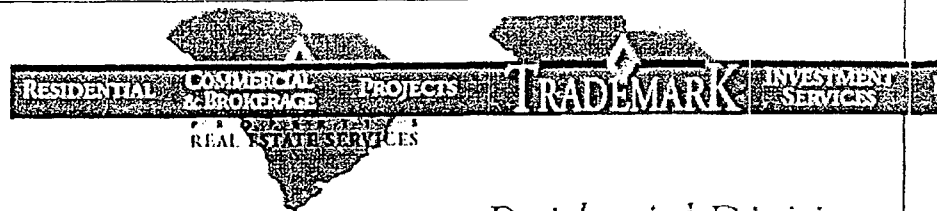
*The Trademark Advantage* is found in our unique strategy of channeling each investment through multiple divisions that contain fully educated Charleston, SC Real Estate specialists.

**Enter Trademark Properties**  
**Charleston SC Real Estate**

  
**SITE  
DESIGN**

**DEPOSITION  
EXHIBIT**

Davis 39

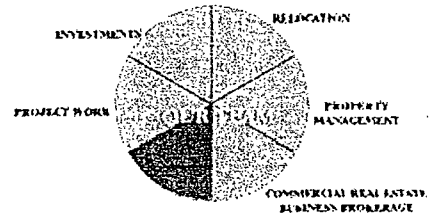


## Residential Division

[Click here to view Lowcountry listings](#)

### Charleston, SC Residential Real Estate- Trademark Properties

**E**xperience, integrity and teamwork are the foundation for the Charleston residential real estate services at Trademark Properties. *The Charleston Residential Real Estate Division of Trademark Properties averages the highest percentage of listings sold in-house of any real estate company in Charleston's Lowcountry ... 55.5%! It's no wonder that our client retention rate is second to none.*



*The Charleston Residential Real Estate Division of Trademark Properties specializes in:*

- Residential Buyer/Seller Representation
- Consultation/Problem Resolution
- Relocation Assistance
- Residential Market Analysis for Sale or Lease
- Concentrated Knowledge of Each Market Segment
- Pre-qualification and mortgage assistance

#### *The Trademark Properties Charleston Residential Real Estate Advantage*

1. Trademark's residential agents are full-time real estate specialists, each with a strong network of well-established local contacts.
2. Trademark residential agents take the time to educate and inform the client of the many details involved in their real estate transaction. This "education" ensures that the client's expectations will be met to everyone's satisfaction.
3. Trademark residential agents are educated in finance, appraisal and the legal aspects of the real estate industry. They strive to keep up-to-date on industry trends, as well as the legal and tax issues affecting the sale or purchase of a property. Our agents' knowledge is broad-based and constantly being updated through Continuing Education courses.
4. Our agents are knowledgeable in residential real estate marketing as well as evaluating and understanding the selling process.
5. Our residential team has knowledge of each company listing. They have seen every listing; therefore, can discuss all properties with confidence to any

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

CAMBRIDGE LAKES CONDOMINIUM  
HOMEOWNERS ASSOCIATION, INC.,  
MARGEL S. HENNING, STEVE  
FISCHER, MARK AND BRENDA  
SCHILLACI, GARY CONLEY,  
GERALD DARNELL, JOHN MASCIOLI  
AND GLORIA HARDIN, CLINT  
GASKINS, MITCHELL GASKILL,  
THOMAS MURPHY, EDWARD BOGGS,  
BRUCE ADKINS, CHARLESTON HOME  
TEAM PROPERTY, LLC, LOUELLA  
ENK, JEREMIAH AND GLORIA  
MORRISON, ERIN BLEVINS, CHARLES  
TAYLOR, JR., MARION RIZZARDINI,  
KAREN ABRAMS, E. MIKELL  
CARROLL, VERNELL ROBERTS, KIM  
JACKSON, META KING, JAMES AND  
MARGARET AYERS, MARY B. BURKE,  
SEVENTH WING, LLC, RUTH AND  
CHARLES CATE, ROBERT AND MARY  
ORTIZ-ABREU, JR., LAURA LaTORRE,  
MARVIN AND PAULA SWINDLE,  
DONNA WIGGINS, EMILIE COLE  
SANDERS, PHILIP AND CYNTHIA  
JONES, ANDREW MOHR, ALISON  
SMITH, BOBBIE FAULKNER, MARCUS  
AND GRACE THOMAS, DORIS  
SKUHRA, ROBERT AND RAGAN .  
ALBERT, WILLIAM SILER,  
MARVA CARD, SAMUEL RUBINO,  
MATT TATHAM, SCOTT HERMAN,  
JAY AND JENNIFER MERRIMAN,  
MARY ELLEN OAKS, ELIZABETH  
MOSELEY, ALI AND MICHELLE  
ERFANI, EMILY CHAPMAN, JOHN T.  
AND LAURA L. MARTIN, ROSEANN  
TECHMAN, ROBERT PRICE, HENRY  
EDWARD TIENCKEN, JEAN B.  
WALLACE, MICHAEL B. HARTNETT,  
CAROLYN CARRICO, JENNIFER  
SNOWDEN, JOSHUA LONG, J.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
Case No.: 2008-CP-10-3506

AFFIDAVIT OF RICHARD C.  
DAVIS

2010 NOV -2 PM 1:32  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

MICHAEL AND GLORIA McDONNELL,  
SANDRA GIRT, JANE THOMPSON,  
JOHN HILL, III, GLENNA McKENZIE,  
JEFF GARDNER, FREEMAN THARP,  
PETE DUNHAM and JEANNE-  
MARIE BUSUTTIL as Individual  
Homeowners,

Plaintiffs,

v.

BOSTIC BROTHERS CONSTRUCTION,  
INC., CAMBRIDGE TWO, LLC,  
CAMBRIDGE LAKES LP A/K/A  
CAMBRIDGE LAKES APARTMENTS  
HOMES, LP, CAMBRIDGE LAKES  
APARTMENTS, LP A/K/A CAMBRIDGE  
LAKES APARTMENTS HOMES, LP,  
CLASSIC PROPERTIES, INC. OF  
CHARLESTON, CAMBRIDGE  
CONTRACTING LP, SELECTIVE  
INSURANCE COMPANY OF  
AMERICA, SELECTIVE  
INSURANCE COMPANY OF SOUTH  
CAROLINA, JOSE NINO, B & B  
CONSTRUCTION CO.,  
INTERCOASTAL CONSTRUCTION,  
INC. D/B/A AND A/K/A  
INTRACOASTAL CONSTRUCTION,  
CAROLINA APARTMENT INTERIORS,  
LLC, ARMANDO MEDINA CORTEZ  
A/K/A ARMANDO MEDINA A/K/A  
ARMANDO CORTES D/B/A MJG  
CONSTRUCTION, VINCENT MORALES  
D/B/A V. MORALES MASONRY, MJG  
CONSTRUCTION AND  
HOMEBUILDERS, INC., B & B  
CONSTRUCTION OF CHARLESTON,  
INC., GEORGIA-PACIFIC  
CORPORATION, GEORGIA-PACIFIC  
CONSUMER PRODUCTS, LLC,  
GEORGIA-PACIFIC BUILDING  
PRODUCTS, LLC, GEORGIA-PACIFIC  
WOOD PRODUCTS, LLC, SUPERSEAL  
MANUFACTURING, INC., MAJESTIC

WINDOW MANUFACTURING, LTD.  
F/K/A SOURCE WINDOWS, LTD., VWD  
(2008) NC, INC F/K/A VINYL WINDOW  
DESIGNS-USA, INC. N/K/A VINYL  
WINDOWS DESIGN, LTD. PEGRAM-  
WEST INC., CHASE HOMES, INC.,  
CHASE-ROBERTSON BUILDERS,  
INC., SGM ARCHITECTS, INC.  
F/K/A SMITH, GERBER, MCCLURE &  
ASSOCIATES, INC. F/K/A SMITH  
GERBER & ASSOCIATES, INC.,  
TRADEMARK PROPERTIES, INC.,  
STEPHEN R. HEAPE, INDIVIDUALLY  
AND INDEPENDENTLY AS GENERAL  
PARTNER OF CAMBRIDGE LAKES, LP,  
ALBERT V. ESTEE, INDIVIDUALLY,

Defendants,

and

BOSTIC BROTHERS CONSTRUCTION,  
INC.,

Third-Party Plaintiff,

v.

JOSE NINO, INTERCOASTAL  
CONSTRUCTION, INC., CAROLINA  
APARTMENT INTERIORS, LLC, MJG  
CONSTRUCTION AND  
HOMEBUILDERS, INC., B & B  
CONSTRUCTION OF CHARLESTON,  
INC., AND V. MORALES MASONRY,

Third-Party Defendants.

PERSONALLY, appeared before me, Richard C. Davis, being duly sworn deposes and  
says as follows:

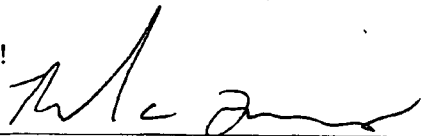
1. That I am the President of the Defendant, Trademark Properties, Inc.



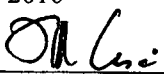
2. Trademark Properties, Inc. is a real estate sales company engaged in the business of listing and selling both residential and commercial real estate.
3. That on or about August 2, 2002, Trademark Properties, Inc. entered into an Exclusive Right to Sell Listing Agreement with Cambridge Two, LLC which was the owner of Cambridge Lakes Condominiums. A copy of said Exclusive Right to Sell Listing Agreement is attached hereto as Exhibit "A" and incorporated herein by express reference.
4. The Exclusive Right to Sell Listing Agreement attached as Exhibit "A" is the only agreement entered into by and between Trademark Properties, Inc. and Cambridge Two, LLC. Trademark Properties, Inc.'s duties as set forth in paragraph O of the Exclusive Right to Sell Listing Agreement attached as Exhibit "A". Trademark Properties, Inc. of agreed to use diligent and continual efforts to secure contracts of sale for Cambridge Lakes Condominiums.
5. Trademark Properties, inc. did not undertake any other duties relative to Cambridge Lakes Condominiums except what is set forth in the Exclusive Right to Sell Listing Agreement attached as Exhibit "A".
6. Trademark Properties, Inc. was not involved with the development, construction or repair of Cambridge Lakes Condominiums. The condominium units were constructed and being occupied as apartments at the time that Trademark Properties, Inc. entered into the Exclusive Right to Sell Listing Agreement.
7. Trademark Properties, Inc. did not give any legal advice to Cambridge Two, LLC, Albert D. Estee or the Plaintiffs concerning the South Carolina Horizontal Property Act.

8. Trademark Properties, Inc. was involved in the sale of approximately 30 condominium units at Cambridge Lakes and then was terminated by Cambridge Two, LLC.
9. Attached as Exhibit "B" is a Notice of Condominium Conversion and Offer to Purchase that was signed by Albert V. Estée on behalf of Cambridge Two, LLC which letter was sent to all of the residence of Cambridge Lakes.
10. Trademark Properties, Inc. did not undertake any duty or obligation to obtain a report from an independent registered architect or engineer describing the physical condition of the Cambridge Lakes apartments that were being converted.
11. That Trademark Properties, Inc. was terminated as the listing real estate company of Cambridge Lakes Condominiums in May of 2003.
12. The Plaintiff, Cambridge Lakes Condominiums Homeowners Association, Inc. was not incorporated until April 25, 2003, as shown by a print out from the Secretary of State's office which is attached as Exhibit "C".

FURTHER DEPONENT SAYETH NOT!

  
Richard C. Davis

SWORN before me this 28<sup>th</sup> day  
Of October, 2010

  
NOTARY PUBLIC SOUTH CAROLINA

My Commission expires: 9/18/2016

"BUILDING E"

3<sup>rd</sup> Floor

|           |           |           |           |
|-----------|-----------|-----------|-----------|
| 1609      | 1607      | 1605      | 1603      |
| VACANT    |           |           |           |
| \$132,500 | \$123,500 | \$123,500 | \$132,500 |
| 1595      | 1597      | 1599      | 1601      |
|           |           |           |           |
| \$129,500 | \$119,500 | \$119,500 | \$129,500 |

2<sup>nd</sup> Floor

|           |           |           |           |
|-----------|-----------|-----------|-----------|
| 1593      | 1591      | 1589      | 1587      |
|           |           |           |           |
| \$126,900 | \$118,900 | \$118,900 | \$126,900 |
| 1579      | 1581      | 1583      | 1585      |
|           |           |           |           |
| \$125,400 | \$115,900 | \$115,900 | \$125,400 |

1<sup>st</sup> Floor

|           |           |           |           |
|-----------|-----------|-----------|-----------|
| 1577      | 1575      | 1573      | 1571      |
|           |           |           |           |
| \$128,500 | \$119,500 | \$119,500 | \$128,500 |
| 1563      | 1565      | 1567-H    | 1569      |
|           |           |           |           |
| \$126,500 | \$114,900 | \$114,900 | \$126,500 |

Trademark 0119

APR-17-2003 09:27AM FROM-

T-687 P.001/001 F-803

**Cambridge Two, LLC**  
**887 Johnnie Dodds Blvd., Suite 200**  
**Mt. Pleasant, SC 29464**  
**Office: (843) 416-2114**  
**Sales Office: (843) 881-1330**  
**Fax: (843) 416-2101**

Trademark Properties  
Attn: Dawn Mazyck  
571 Folly Road  
Mt. Pleasant, SC 29412

Reference: Price increase for Cambridge Lakes

April 17, 2003

Dear Dawn:

Per our conversation I would like to make a price change effective immediately on all new units to reflect an average price of \$125,000.00 for all two (2) bedrooms.

The average price of \$134,500.00 should be applied to all three (3)-bedroom units. Should you have any questions please contact me.

Thank you for your cooperation in this matter.

Regards,

  
Albert Este  
Cambridge Two, LLC

AVE/ci

Trademark 0120

# BUYER REPRESENTATION AGREEMENT

(In compliance with South Carolina Law 40.57.139)

1. **APPOINTMENT OF BROKER:** This agreement is between Johnson D. Koolg hereinafter referred to as Buyer and Prudential Carolina Real Estate, hereinafter referred to as PCRE or Broker, for PCRE to represent Buyer in the acquisition of real property as an Exclusive Buyer's Agent, subject to the terms and conditions of this agreement. Acquisition includes, but is not limited to purchase, option, exchange, or lease/purchase.
2. **TERM OF AGREEMENT:** PCRE's authority to act as Buyer's exclusive agent under this Contract shall begin on January 24, 2004 and end at midnight on March 1, 2004.
3. **PURPOSE OF AGREEMENT:** Buyer is authorizing PCRE to locate the following type of property which Buyer wishes to acquire: ☒ Residential ☐ Commercial ☐ Vacant Land ☐ Other  
Approximate Price Range \$ 151,500  
General Description: Condominium
4. **BROKER'S DUTIES:** PCRE will  
(A) Provide to Buyer a meaningful explanation of agency and an Agency Disclosure Form as prescribed by South Carolina law.  
(B) Diligently and professionally locate property which is available and suitable to Buyer as generally described in paragraph 3.  
(C) Diligently and professionally represent and advise Buyer with respect to the search for property, the negotiation of any offer, and the closing of any sale.  
(D) Potentially represent other buyers who may be interested in the same property as the Buyer.
5. **AGENCY:** Buyer has read, understands and has signed an Agency Disclosure, which is made a part of this agreement. This agreement is invalid without prior completion and signing of the Agency Disclosure. Buyer understands that PCRE is also a listing company, meaning that Sellers of real estate select PCRE to serve as a Seller's agent in listing property for sale. In the event Buyer shall at any time desire to see or negotiate on a "company listing," PCRE would in any such situation serve as a disclosed dual agent, with the consent of all parties, meaning that PCRE would do nothing to disadvantage either party. Buyer ☒ does ☐ does not consent to potential disclosed dual agency.
6. **BUYER'S DUTIES:** Buyer will  
(A) Represent to PCRE that Buyer is not currently under a Buyer Representation Agreement PCRE (Buyer's Initials)  
(B) Provide to PCRE information as to Buyer's needs, information (financial and otherwise) PCRE deems necessary for the performance of this agreement.  
(C) View property only with PCRE and no other broker, salesperson, representative or owner and if in contact with any such person, will immediately identify that Buyer is under agreement with PCRE. When visiting any open house (new or resale), immediately tell all agents that Buyer has entered into a Buyer Representation Agreement with PCRE.
7. **COMPENSATION OF PCRE:** Broker's fees will be deemed earned when Buyer is under contract to purchase any property negotiated by Buyer. This fee will be due and payable only at closing or upon Buyer's default. In consideration of the services provided to Buyer by PCRE, PCRE will be compensated 3 % of the purchase price of any property purchased by Buyer including "For Sale By Owner" properties.  
(A) PCRE shall first seek compensation from the Listing Broker (through the offer of compensation in MLS), or otherwise from the Seller.  
(B) If there is no compensation offered by Listing Broker or Seller, Buyer agrees to pay PCRE 3 % of the purchase price of any property purchased by Buyer.  
(C) If compensation offered by Listing Broker or Seller is less than stated above in (B) on selling side, Buyer agrees to pay PCRE the difference.  
(D) If within 120 days after the expiration or release of this agreement, Buyer purchases or leases any property presented or negotiated by PCRE during the term of this agreement, Buyer will compensate PCRE as stated above.
8. **FAIR HOUSING:** Properties shall be shown and made available to Buyer without regard to race, creed, color, religion, sex, familial status, disability, national origin, marital status, age, or other classes protected by law.
9. **PROFESSIONAL COUNSEL:** Buyer understands and agrees that Buyer will seek legal, tax, financing, property inspection, environmental engineering, sex offender registry, and other professional advice or information, relating to any proposed transaction. Buyer agrees that he will not rely on PCRE for any such professional advice or information.
10. **OTHER:**

This is a legally binding agreement. Buyer shall seek further assistance if the contents are not understood. Buyer and PCRE acknowledge receipt of a copy of this agreement. All terms and conditions of this agreement do not survive closing unless otherwise specified.

J.D. Koolg 1-24-04  
Buyer Date  
\_\_\_\_\_  
Buyer Date

PRUDENTIAL CAROLINA REAL ESTATE  
Alex Hays 1-24-04  
By PCRE Associate Signature Date

**BUYER REPRESENTATION AGREEMENT**

(In compliance with South Carolina Law 40.57.139)

1. **APPOINTMENT OF BROKER:** This agreement is between Johnson D. Kool hereinafter referred to as Buyer and Prudential Carolina Real Estate, hereinafter referred to as PCRE or Broker, for PCRE to represent Buyer in the acquisition of real property as an Exclusive Buyer's Agent, subject to the terms and conditions of this agreement. Acquisition includes, but is not limited to purchase, option, exchange, or lease/purchase.
2. **TERM OF AGREEMENT:** PCRE's authority to act as Buyer's exclusive agent under this Contract shall begin on January 24, 2004 and end at midnight on March 1, 2004.
3. **PURPOSE OF AGREEMENT:** Buyer is authorizing PCRE to locate the following type of property which Buyer wishes to acquire: ☒ Residential ☐ Commercial ☐ Vacant Land ☐ Other  
Approximate Price Range \$ 151,500  
General Description: Condominium
4. **BROKER'S DUTIES:** PCRE will  
(A) Provide to Buyer a meaningful explanation of agency and an Agency Disclosure Form as prescribed by South Carolina law.  
(B) Diligently and professionally locate property which is available and suitable to Buyer as generally described in paragraph 3.  
(C) Diligently and professionally represent and advise Buyer with respect to the search for property, the negotiation of any offer, and the closing of any sale.  
(D) Potentially represent other buyers who may be interested in the same property as the Buyer.
5. **AGENCY:** Buyer has read, understands and has signed an Agency Disclosure, which is made a part of this agreement. This agreement is invalid without prior completion and signing of the Agency Disclosure. Buyer understands that PCRE is also a listing company, meaning that Sellers of real estate select PCRE to serve as a Seller's agent in listing property for sale. In the event Buyer shall at any time desire to see or negotiate on a "company listing," PCRE would in any such situation serve as a disclosed dual agent, with the consent of all parties, meaning that PCRE would do nothing to disadvantage either party. Buyer ☒ does ☐ does not consent to potential disclosed dual agency.
6. **BUYER'S DUTIES:** Buyer will  
(A) Represent to PCRE that Buyer is not currently under a Buyer Representation Agreement. JK (Buyer's initials)  
(B) Provide to PCRE information as to Buyer's needs, information (financial and otherwise) PCRE deems necessary for the performance of this agreement.  
(C) View property only with PCRE and no other broker, salesperson, representative or owner and if in contact with any such person, will immediately identify that Buyer is under agreement with PCRE. When visiting any open house (new or resale), immediately tell all agents that Buyer has entered into a Buyer Representation Agreement with PCRE.
7. **COMPENSATION OF PCRE:** Broker's fees will be deemed earned when Buyer is under contract to purchase any property negotiated by Buyer. This fee will be due and payable only at closing or upon Buyer's default. In consideration of the services provided to Buyer by PCRE, PCRE will be compensated 3 % of the purchase price of any property purchased by Buyer including "For Sale By Owner" properties.  
(A) PCRE shall first seek compensation from the Listing Broker (through the offer of compensation in MLS), or otherwise from the Seller.  
(B) If there is no compensation offered by Listing Broker or Seller, Buyer agrees to pay PCRE 3 % of the purchase price of any property purchased by Buyer.  
(C) If compensation offered by Listing Broker or Seller is less than stated above in (B) on selling side, Buyer agrees to pay PCRE the difference.  
(D) If within 120 days after the expiration or release of this agreement, Buyer purchases or leases any property presented or negotiated by PCRE during the term of this agreement, Buyer will compensate PCRE as stated above.
8. **FAIR HOUSING:** Properties shall be shown and made available to Buyer without regard to race, creed, color, religion, sex, familial status, disability, national origin, marital status, age, or other classes protected by law.
9. **PROFESSIONAL COUNSEL:** Buyer understands and agrees that Buyer will seek legal, tax, financing, property inspection, environmental engineering, sex offender registry, and other professional advice or information, relating to any proposed transaction. Buyer agrees that he will not rely on PCRE for any such professional advice or information.
10. **OTHER:**

This is a legally binding agreement. Buyer shall seek further assistance if the contents are not understood. Buyer and PCRE acknowledge receipt of a copy of this agreement. All terms and conditions of this agreement do not survive closing unless otherwise specified.

J. D. Kool 1-24-04  
Buyer Date

\_\_\_\_\_  
Buyer Date

PRUDENTIAL CAROLINA REAL ESTATE

[Signature] 1-24-04  
By PCRE Associate Signature Date



AGREEMENT TO BUY AND SELL REAL ESTATE  
RESIDENTIAL

PARTIES: This legally binding Agreement entered into on January 24, 2004  
between, Buyer(s), Johnson D. Koolig, (hereinafter called "BUYER"), and  
Seller(s), Cambridge Two LLC, (hereinafter called "SELLER"). The  
property shall be deeded in the name(s) of Buyer

2. PROPERTY TO BE SOLD: Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the  
following described property with improvements and fixtures thereon:

Unit # 1587 Block B.D.G. Section E Subdivision Cambridge Lakes  
Address 1587 Cambridge Lakes Drive  
Tax Map # \_\_\_\_\_ City Mt. Pleasant, SC Zip 29464  
County of Charleston, State of South Carolina.

Seller represents that the property is connected to [ ☒ ] public sewer system or to [ ☐ ] septic tank or to [ ☒ ] public water or  
to [ ☐ ] well system or to [ ☐ ] other \_\_\_\_\_

No personal property will convey as a part of this sale, except as described: Refrigerator  
stove, dishwasher, microwave, any attached  
lighting fixtures.

3. CONVEYANCE SHALL BE MADE: Conveyance shall be made subject to all easements as well as covenants of record  
(provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller  
agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except  
as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place  
of closing, and transaction closed on or before February 20, 2004, not later than 9:00 p.m. Time is of the  
essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and  
Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. POSSESSION: Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property  
free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained  
in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear  
excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a  
separate agreement to be executed prior to closing or occupancy.

5. PURCHASE PRICE shall be One hundred & fifty thousand and no/100ths of dollars, \$ 151,325.00

6. METHOD OF PAYMENT: Purchase price shall be paid as follows: [ ☐ ] Cash; or [ ☒ ] Subject to Financing. Financing to  
be obtained by [ ☒ ] Conventional [ ☐ ] Seller [ ☐ ] VA [ ☐ ] FHA [ ☐ ] Other terms: \_\_\_\_\_

7. EARNEST MONEY: This offer is accompanied by an earnest money deposit of \$ 1000.00  
Buyer and Seller authorize Prudential Carolina Real Estate as Escrow Agent, to hold and  
disburse earnest money according to the terms of this agreement. Earnest money paid by [ ☐ ] Cash, [ ☐ ] Check, or [ ☐ ] Other.  
Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be  
deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the  
consummation of this sale, the earnest money deposit shall be credited to the Buyer.

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT  
HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES  
HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT  
JURISDICTION HAS DIRECTED A DISBURSEMENT.

☒ BUYER ☐ BUYER ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

**PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining a loan. Buyer shall apply for a 95 % loan (loan-to-value ratio) within 7 days from the execution of this agreement and shall provide Seller with satisfactory loan approval within 15 days. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above conditions, Buyer shall be in default of this agreement subject to the terms of paragraph 16.

FHA Mortgage Insurance [ ] will [ ☒ ] will not be added to the mortgage. VA funding fee [ ] will [ ☒ ] will not be added to the mortgage.

**9. CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.

(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: Seller to pay \$2000.00 of

(Two-thousand dollars + no cents) Buyer is closing costs when buyer uses seller's approved lender and attorney.  
**10. HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan [ ] will [ ] will not be issued at closing. If applicable, the warranty premium will be paid at closing by the [ ] Buyer or [ ☒ ] Seller not to exceed \$ 295.00 AHS Warranty.

**11. EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 5 o'clock P M. on January 27, 2004 unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

**12. EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 5 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

**13. ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax proration pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

**14. NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

**15. RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

**16. DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

[Signature] BUYER [ ] BUYER [Signature] SELLER [ ] SELLER HAVE READ THIS PAGE



**ADDITIONAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

**18. SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender, at Buyer's option shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

**19. CONDITION OF PROPERTY:**

**(A) Seller's Property Condition Disclosure Statement:** (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understand and agree that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

**(B) Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances prior to the day of closing or possession. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified within 7 consecutive days after both parties have signed this Agreement. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

**(C) Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

**(D) Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☐ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before 04/05/20. Time is of the essence. If Buyer fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.

If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

 ☒ BUYER ☐ BUYER  ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

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repairs: The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and make the roof free of leaks, and the dwelling structurally sound and wood infestation treatment, if any, required by section above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

**(F) Residential Dwellings Built before 1978:** (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on \_\_\_\_\_, 20\_\_\_\_. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within \_\_\_\_\_ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have \_\_\_\_\_ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☒ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

**(G) Megan's Law:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information. The Buyer understands that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

**(H) Disclaimer:** The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller. Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

**20. APPRAISED VALUE:** (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

 BUYER ☐ BUYER  SELLER ☐ SELLER HAVE READ THIS PAGE

**DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

**22. COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☐ Seller's expense.

**23. MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

**24. SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

**25. ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on the reverse, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

**26. FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

**27. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION:** According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker may place deposited earnest monies into an interest bearing trust account and that Broker will retain all interest incurred in said account in which case all interest earned on Broker's interest bearing trust account shall be donated on a regular basis to a charity of Broker's choice.

**28. CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See Addendum A.

 ☐ BUYER  ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

# ADDENDUM -A



In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER,

☐ OTHER \_\_\_\_\_ covering the ☐ real property,

☐ business, ☐ premises — commonly known as:

Unit # 1587 Block E Subdivision \_\_\_\_\_

Address 1587 Cambridge Lakes Drive

Tax Map # \_\_\_\_\_ City Mt Pleasant Zip 29464

County of Charleston, State of South Carolina.

The undersigned Parties hereby agree as follows: Buyer receives a \$1825.00 decorating allowance at closing. Buyer may opt to use \$1825.00 decorating allowance to be applied towards closing costs and for buy-in fees.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: [Signature] Date 1-24-04 Time 1:17 PM

WITNESS: [Signature] Date 1-24-04 Time 1:17 PM

BUYER: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

WITNESS: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

SELLER: [Signature] Date 1/26/04 Time 2:30 PM

WITNESS: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

SELLER: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

WITNESS: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

## Consent to Dual Agency

(To be completed only upon occurrence of dual agency and after both parties have been identified and informed)

PCRE

(Brokerage Company)

Steve Hayes

(Licensee)

(Seller/Client)

Johnson D. Koola

(Buyer/Client)

(Property Location)

The undersigned Seller/Client and/or Buyer/Client voluntarily agrees to modify his or her agency agreement with Brokerage Company/Licensee and receive limited representation. Consent is hereby granted to Brokerage Company/Licensee to act as a dual agent only in the transaction in which the above-named Seller/Client and Buyer/Client are both parties thereto and which involves property at the stated location.

[Signature]

(Seller/Client)

1-24-04

(Date)

[Signature]

(Buyer/Client)

(Date)

(Buyer/Client)

(Date)

(SC Real Estate Commission Approved)

## Acknowledgment of Relationship Disclosure

### NOT A CONTRACT

Johnson D Koola

(Seller or Buyer)

Steve Hayes

(Licensee)

PCRE

(Brokerage Company)

As a potential Seller or Buyer of real estate, I understand and agree that when working with Brokerage Company/Licensee I will be:

- ☐ Customer - Self Represented
- ☐ Seller/Client - Brokerage Company/Licensee is agent for my property located at:

☒ Buyer/Client - Brokerage Company/Licensee is my agent

Seller/Client or Buyer/Client acknowledges that after entering into our written agency agreement, agent might request a modification in order to act as a dual agent in a specific transaction. If asked:

- ☐ Permission to act as a dual agent will not be considered.
- ☒ Permission to act as a dual agent may be considered at the time I am provided with information about the other party to a transaction. If I agree, I will execute a separate written consent agreement.

This completed Acknowledgment of Relationship Disclosure is provided to Seller or Buyer for his or her record. A copy signed by Seller or Buyer indicating above stated relationship has been retained by Brokerage Company/Licensee.

Steve Hayes

(Licensee)

1-24-04

(Date)

(Seller or Buyer Copy)

## Agency Disclosure

SC Real Estate License Law requires that:

- (A) A licensee shall provide in a timely manner to all buyers and sellers with whom the licensee works: a meaningful explanation of agency relationships in real estate transactions; and a completed agency disclosure form prescribed by the Commission indicating whom the licensee shall represent in a real estate transaction.
- (B) A licensee who begins working with a potential buyer shall provide to the potential buyer a completed agency disclosure form at the first substantive contact and must establish at that time of contact whether buyer will be customer or client.

South Carolina Real Estate Commission  
Post Office Box 11847  
Columbia, South Carolina 29211-1847  
Telephone: (803) 896-4400  
Fax: (803) 896-4404  
Internet: <http://www.lc.state.sc.us/rec.htm>

# CONSUMER INFORMATION

## Agency Relationships in Real Estate



When Buying or Selling Real Estate, Are You a Customer or Client?



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## Are you a customer or client?

When you choose to work with a real estate licensee, he or she may or may not be "your" agent. An agent owes certain duties to a client but has a different obligation to a customer. You must know whether you are a customer or a client of a licensee in a real estate transaction and that relationship must be established and disclosed prior to beginning to work together.

**You should discuss the following information with the real estate licensee with whom you may work in order to make informed decisions.**

## Who is a customer?

A customer is a person who seeks to buy or sell real estate, but who does not establish an agency relationship with a licensee and, therefore, is not represented by a licensee as his or her agent.

As a customer you cannot expect the licensee to act as your agent or to negotiate on your behalf. A real estate licensee can, however, provide valuable market information and services to assist you as a customer. A licensee is also obligated by law to treat customers honestly, to disclose known material facts about the property and to promptly present all offers and counteroffers.

When selling or buying real estate, you may decide you don't need your own agent. The licensee may be able to provide you as a customer with all the information and assistance you require to successfully complete a transaction. However, if you are a customer, the licensee's primary loyalty is not to you. It is to his or her client. The agent must convey all known information to his or her client, such as a seller's urgency to move if he or she represents a buyer/client or a buyer's willingness to increase an offer if he or she represents a seller/client.

## Who is a client?

A client is a person who establishes an agency relationship with and agrees to be represented by an agent in a real estate transaction.

A seller becomes a client of a real estate company by signing a formal listing agreement with a licensee associated with a company. Prior to any transaction this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the seller and the licensee/company who becomes the agent for the seller.

A buyer becomes a client of a real estate company by signing a formal buyer agency agreement with a licensee associated with a company. Prior to any transaction this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the buyer and the licensee/company who becomes the agent for the buyer.

## Who is an agent?

An agent is the licensee who by mutual agreement will act on your direction and represent your interest above all others in a real estate transaction. In South Carolina once an agency relationship is created, the broker-in-charge of the company is considered to be the agent of the client, and all licensees with the company become sub-agents of the broker-in-charge representing that same client.

Acting on your behalf, your agent will negotiate for you the best price and terms in a real estate transaction. Your agent owes utmost loyalty to you, the client, and must pass on to you any information he or she knows which might influence your decision to buy or sell. You can rely on your agent to preserve confidential information provided by you. You can expect to receive timely accounting of money or property related to and received during your relationship with your agent.

## What is a dual agent?

In certain situations, a licensee acts as an agent for and may represent the buyer and seller in the same transaction provided each has consented in writing prior to the transaction. This is called dual agency since one agent represents both parties and both remain clients of the company. The possibility and consequences of such an occurrence must be explained to you by the licensee.

Working with a dual agent is not the same as having your own exclusive agent! For instance, when representing both a buyer and a seller, the dual agent must not disclose to one party confidential information obtained from the other party. Also, a dual agent may not be the advocate for either party and cannot negotiate for nor advise either as to price or terms.

It is important that you discuss dual agency with the licensee in order to understand the limits of representation which a dual agent can provide. If requested by licensee, you must determine whether or not you would be willing to modify your established agency relationship and give your consent, thereby agreeing to limited representation by your agent.

## Do you want to be a customer or a client?

Do you want only to receive information and assistance (customer) or to be represented (client)? To understand your options, discuss this with the real estate licensee with whom you are working. It is important to you and the licensee that your working relationship with the licensee be established and acknowledged and that you are aware of the services you will be provided. At your discretion, it may be advisable for you to obtain legal or other professional advice which you feel necessary to protect your own interest.

The signing of the acknowledgment of relationship disclosure does not alone create agency obligations (See *Who is a Client?*).

## Acknowledgment of Relationship Disclosure NOT A CONTRACT

Johnson D. Kool  
(Seller or Buyer)  
Steve Hayes  
(Licensee)  
PCRE  
(Brokerage Company)

As a potential Seller or Buyer of real estate, I understand and agree that when working with Brokerage Company/Licensee I will be:

- ☐ Customer - Self Represented
- ☐ Seller/Client - Brokerage Company/Licensee is agent for my property located at \_\_\_\_\_
- ☒ Buyer/Client - Brokerage Company/Licensee is my agent

Seller/Client or Buyer/Client acknowledges that after entering into our written agency agreement, agent might request a modification in order to act as a dual agent in a specific transaction. If asked:

- ☐ Permission to act as a dual agent will not be considered.
- ☒ Permission to act as a dual agent may be considered at the time I am provided with information about the other party to a transaction. If I agree, I will execute a separate written consent agreement.

Brokerage Company/Licensee has provided me a meaningful explanation of agency and I have been given a completed copy of this Acknowledgment of Relationship Disclosure.

Johnson D. Kool  
(Seller or Buyer)

1/24/04  
(Date)

(Seller or Buyer)

(Date)

(Brokerage Company/Licensee Copy)

# 1587 CAMBRIDGE LAKES DR MOUNT PLEASANT, SC 29464 LP: \$151,325

**MLS#:** 2328409p - RES - SFA **Status:** Sold  
**Area:** (42) CHS-Mt.Pleasant South of IOP Connector

Click photo for additional media and enlargement

**TaxDstrct:** CHS - 21 - Mt. Pleasant

CloudCMA

CloudCMA

Market Monitor

**Bedrooms:** 3 **Apex SqFt:** 1,347  
**Bths Ful/Hlf:** 2/0 **Tax Map#:** 559-14-00-157  
**Stories:** 1 **YrBlt:** 1999

**Address:** 1587 CAMBRIDGE LAKES DR  
MOUNT PLEASANT **Zip:** 29464

**Lot Size:** 0 **Acres:** 0.00

**Subdiv:** CAMBRIDGE LAKES **Subsec:**

**Grade Sch:** MAMIE WHITESIDES **Middle Sch:** LAING

**High Sch:** WANDO

**Possessn:** At Closing **New/Owned:** Pre-owned

**Legal Desc:** BUILDING E, UNIT 1587

**Style:** SFA- Condominium **Fireplace:** Slab **Special:** W/w Carpet, Ceramic Tile, Vinyl  
**Roof:** Asphalt Shng **Foundation:** Heat Pump **Floors:** SCEandG  
**Cooling:** Central **Heat:** Heat Pump **Utilities:**  
**Parking:** Detached, Other

**SqFt Source:** \$/Sqft: \$112.34  
**Reserve Amt:**

**Auction:** **Auction Type:**

**Lot Desc:** Brick - veneer

**Exterior:**

**Master BR:**

**Other Rms:**

**Misc. Int:**

**Misc. Extt:**

**Wat/Sew:**

**Amenities:**

**Appliances:**

**Green**

**Features:**

Public Water, Public Sewer

Elevators, Sec. Grd/sys, Cable Available, Trash Pickup, Neighborhood Pool, Club House, Exercise Area

Elec Range, Refrigerator, Dishwasher

**Directions:** HWY 17 LEFT AT WANDO CROSSING SHOPPING CENTER TAKE IMMEDIATE RIGHT(STUART ENGALS BLVD) CAMBRIDGE LAKES IS ON THE LEFT.

**Showing:**

**Remarks:**

NOW TAKING CONTRACTS ON 2 AND 3 BEDROOM CONDOS AT CAMBRIDGE LAKES. THREE DIFFERENT FLOOR PLANS AVAILABLE. EXCELLENT PRICE FOR QUALITY PRODUCT!!! SELLER TO CONTRIBUTE \$2000 TOWARDS BUYERS CLOSING COSTS AND IS PROVIDING AN AHS-WARRANTY WITH THE USE OF APPROVED SELLER LENDERS AND ATTORNEYS. COME AND VISIT OUR SALES OFFICE AT CLUBHOUSE. AGENT ON DUTY DAILY M-F 11-4, SAT 12-4, SUN 1-4. BUYER TO VERIFY SCHOOL DISTRICT. \*\*\*\$1,825 DECORATIVE ALLOWANCE\*\*\*  
If square footage is important - MEASURE!!

**Agnt Notes:** Act/Contingent on financing Click here to report incomplete or inaccurate information

**Lease/Pur:** **Prospect Ex:** **Financing:** Conventional **Assumable:** No  
**Taxes:** **HOA Fee:** Y \$190 **Assmt Ratio:** **SpAssmt:**  
**Owner:** **Regime Fee:** **List Date:** 12/8/2003 **Exp Date:** N/A  
**C/P:** **Contingency:** **Potential Short Sale:**

**List Agent:** (7101) WILL E. JENKINSON, GRN **Type/Comp/SubAccept:** Exclusive Right to Sell/3 /  
**List Office:** (7606) Carolina One Real Estate **Variable:** Y

**Co-Off:** () **Limited Svc:**  
**Contacts:** Office Ph **Co-Agt:** ()  
(843) 266-5000 **Agent Voice Mail:**

**Sold Price:** \$151,325 **DOM/CDOM/DUC:** 53/0 / 27 **NewMortType:** CONVENTIONAL  
**Close Date:** 02/20/2004 **CntrctDate:** 01/24/2004 **Price Date:**  
**Sell Off:** (7606) Carolina One Real Estate **Sell Agent:** (11577) Steve Hayes  
Phone: (843) 266-5000 **Phone:**

**Sell Co-Off:** () **Seller Concessions:** **Sell Co-Agent:** ()  
**Amount Paid:** **Seller Concession Notes:**

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Prepared by RICHARD DAVIS of Trademark Properties, Inc on 4/7/2014 10:53:09 AM

Trademark 0003

Property Characteristics: Building

| Building #                          | Type     | Condition        | Sq Feet | Year Built | Effective Year               | BRs | Baths                 | Rooms | Stories | Units |
|-------------------------------------|----------|------------------|---------|------------|------------------------------|-----|-----------------------|-------|---------|-------|
| 1                                   | Dwelling | Average          | 1336    | 2000       | 2000                         | 3   | 2                     | 5     | 1       |       |
| Building Square Feet (Living Space) |          |                  |         |            | Building Square Feet (Other) |     |                       |       |         |       |
| Construction                        |          |                  |         |            |                              |     |                       |       |         |       |
| Quality                             |          | Normal For Class |         |            | Roof Framing                 |     | Std For Class<br>None |       |         |       |
| Shape                               |          |                  |         |            | Roof Cover Deck              |     |                       |       |         |       |
| Partitions                          |          |                  |         |            | Cabinet Millwork             |     |                       |       |         |       |
| Common Wall                         |          |                  |         |            | Floor Finish                 |     |                       |       |         |       |
| Foundation                          |          |                  |         |            | Interior Finish              |     |                       |       |         |       |
| Floor System                        |          |                  |         |            | Air Conditioning             |     | Heat Pump             |       |         |       |
| Exterior Wall                       |          | Wood Siding      |         |            | Heat Type                    |     | Heat Pump             |       |         |       |
| Structural Framing                  |          |                  |         |            | Bathroom Tile                |     |                       |       |         |       |
| Fireplace                           |          |                  |         |            | Plumbing Fixtures            |     |                       |       |         |       |
| Other                               |          |                  |         |            |                              |     |                       |       |         |       |
| Occupancy                           |          |                  |         |            | Building Data Source         |     |                       |       |         |       |

Property Characteristics: Extra Features

No extra features were found for this parcel.

Property Characteristics: Lot

|                    |                        |                 |
|--------------------|------------------------|-----------------|
| Land Use           | Resid-Condo Unit       | Lot Dimensions  |
| Block/Lot          |                        | Lot Square Feet |
| Latitude/Longitude | 32.811732°/-79.846754° | Acreage         |

Property Characteristics: Utilities/Area

|                 |                           |
|-----------------|---------------------------|
| Gas Source      | Road Type                 |
| Electric Source | Topography                |
| Water Source    | District Trend            |
| Sewer Source    | Special School District 1 |
| Zoning Code     | Special School District 2 |
| Owner Type      |                           |

Legal Description

|               |                     |                |           |
|---------------|---------------------|----------------|-----------|
| Subdivision   | Cambridge Lakes Hpr | Plat Book/Page |           |
| Block/Lot     |                     | Description    | Unit 208E |
| District/Ward | 2-1                 |                |           |

Flood Zone Information

| Zone Code | Flood Risk | Description                                                                                | FIRM Panel ID | Firm Panel Eff. Date |
|-----------|------------|--------------------------------------------------------------------------------------------|---------------|----------------------|
| X         | Minimal    | Area of minimal flood hazard, usually depicted on FIRMs as above the 500-year flood level. | 45019C0536J   | 11/17/2004           |
| X         | Minimal    | Area of minimal flood hazard, usually depicted on FIRMs as above the 500-year flood level. | 45019C0528J   | 11/17/2004           |

Zone Source: FEMA Q3 Data

Monday, April 07, 2014

1587 Cambridge Lakes Dr, Mount Pleasant, SC 29464-7300  
Charleston County, SC parcel# 559-14-00-157

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Contact Us at (800) 374-7488 ext 3 for Help.

Trademark 0004




**Countrywide**
**HOME LOANS**
**BUILDER'S CERTIFICATION**
**1. PROJECT INFORMATION**

|                                           |                                                 |
|-------------------------------------------|-------------------------------------------------|
| Project Name:                             | Cambridge Lakes                                 |
| Project Address & Zip:                    | 1401 Cambridge Lakes Dr. Mt. Pleasant, SC 29464 |
| County:                                   | Charleston                                      |
| Total Number of Units & Phases/Buildings: | 104 units                                       |

**2. SALES DATA (please complete for whole project)**

| Building | #Units | #Sold or under contract | /Owner Occupancy Intent/           |                       |           | Complete YES/NO |
|----------|--------|-------------------------|------------------------------------|-----------------------|-----------|-----------------|
|          |        |                         | #Owner Occupied                    | #2 <sup>nd</sup> Home | #Investor |                 |
| A        | 8      | /                       | HOA does not have this information |                       |           |                 |
| B        | 24     |                         | HOA does not have this information |                       |           |                 |
| C        | 24     |                         | HOA does not have this information |                       |           |                 |
| D        | 24     |                         | HOA does not have this information |                       |           |                 |
| E        | 24     |                         | HOA does not have this information |                       |           |                 |
|          |        |                         |                                    |                       |           |                 |
|          |        |                         |                                    |                       |           |                 |
|          | 104    | 82                      |                                    |                       |           |                 |

 Does any single investor own more than 10% of the total units in the project? ☐ Yes, ☒ No owner/Developer

**3. PROJECT CERTIFICATIONS**
**INITIAL at left of each item.**

|                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Call Davidson Benne H + Wigger | The Condominium Declaration (aka Master Deed) was recorded on _____, document # _____.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| gmw                            | The Amendment/Supplement to the Condominium for the subject unit, Phase/Bldg _____, was recorded on _____, document # _____.                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| gmw                            | A portion of the HOA dues are designated for Replacement Reserves                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| gmw                            | Description of Recreational Amenities: pool, hot tub, workout room,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| gmw                            | Estimated % complete: 100 %                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| gmw                            | <input type="checkbox"/> There are no known hazardous environmental conditions affecting the subject property                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| gmw                            | Indicate if any of the following statements are applicable by placing an "x" in the box:<br><input type="checkbox"/> The HOA is involved in Litigation<br><input type="checkbox"/> The project is a Condotel or has a Rental Pool or allows Weekly Rentals<br><input type="checkbox"/> Some or all of the units are considered Live-Work Units (commercial/residential use).<br><input type="checkbox"/> The Association Property is on Leased Land<br><input type="checkbox"/> The improvements are Manufactured Housing<br><input type="checkbox"/> There are Resale Restrictions |
| gmw                            | <input checked="" type="checkbox"/> For Condo Conversions: The structural, health & safety repairs and remodeling have been completed or <input type="checkbox"/> N/A this project is not a conversion                                                                                                                                                                                                                                                                                                                                                                              |

**4. DEVELOPER'S CERTIFICATION**

I hereby certify the above information is true and correct.

|                                   |                       |
|-----------------------------------|-----------------------|
| Signature: Gavin M. Bluffin       | Date: 2/17/04         |
| Title: HOA accountant             | Ph: 881-1390          |
| Company: Cambridge Lakes          | Fx or email: 881-1341 |
| Address: 1401 Cambridge Lakes Dr. |                       |

Please complete and return to FAX #888-458-3978. Thank you for your assistance.

 Countrywide Home Loans, BUILDER DIVISION  
 1401 Willow Pass Rd. Suite 840, Concord, CA 94520 Ph. 800-458-1936, Fx. 888-458-3978

revised 9/9/03

BK T437PG047

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

**MASTER DEED FOR**  
**CAMBRIDGE LAKE HORIZONTAL PROPERTY REGIME**

THIS Master Deed made this 24<sup>th</sup> day of February, 2003, by Cambridge Two, LLC, a South Carolina Limited Liability Company (hereinafter referred to as the "Developer"), which does hereby declare as follows:

Developer submits the Property in Charleston County, State of South Carolina, described herein and on Exhibit A attached hereto and made a part hereof, including the improvements now or hereafter thereon, to the provision of the Horizontal Property Act, Section 27-31-10, et seq., South Carolina Codes of Laws, 1976, (the "Act"), the provisions of which, unless expressly provided otherwise herein, are incorporated herein by reference and form a part of this Master Deed, for the specific purpose of creating and establishing the Cambridge Lake Horizontal Property Regime (the "Condominium"). Reference is also made to other provisions of this Master Deed and the land survey and plot plans for a description of the private elements dimensions, floor area and location of each Apartment, the location and approximate dimensions of the Common Elements, and other information required by the Horizontal Property Act, such land survey and plot plans being attached hereto as Exhibit "B" and made a part hereof (herein collectively referred to as the "Plans").

NOW THEREFORE, the Developer hereby makes the following Declarations, and specifies that the provisions hereof shall constitute covenants running with the land and shall be binding upon the Developer, its successors and assigns and all subsequent purchasers of all or any part of the Property together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

**(1) PURPOSE**

The purpose of the Master Deed is to submit the Property to the condominium form of ownership and use in the manner provided by the Act and the Property as that term is defined in Paragraph 5(n) hereof, is hereby submitted to the condominium form of ownership as provided for in the Act.

**(2) NAME**

The name by which this Condominium is to be identified is Cambridge Lake Horizontal Property Regime (the "Condominium").

STATE OF SOUTH CAROLINA  
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article 1 requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.
2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.
  - a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.
  - b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.
  - c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.
  - d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.
4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials  Seller  Buyer

Page 1 of 4 Form 230

Foundation, slab, fireplaces/chimneys, floors, windows  
(including storm windows and screens), doors, ceilings,  
interior and exterior walls, attached garage, patio, deck  
or other structural components including any modifications?  
a. Siding: masonry \_\_\_ wood \_\_\_ composition/hardwood \_\_\_  
vinyl \_\_\_ synthetic stucco \_\_\_  
b. Approximate age of structure \_\_\_\_\_

2. Roof (leakage or other problem)?

a. Approximate age of roof covering \_\_\_\_\_

3. Water seepage, leakage, dampness or standing water  
or water intrusion from any source in any area of the  
structure?

4. Electrical system (outlets, wiring, panel, switches,  
fixtures, etc)?

5. Plumbing system (pipes, fixtures, water heater, etc.)?

6. Heating and/or air conditioning?

a. Heat source: furnace \_\_\_ heat pump \_\_\_ baseboard \_\_\_

b. Cooling source: central \_\_\_ wall/window unit(s) \_\_\_

c. Fuel source: electricity \_\_\_ natural gas \_\_\_ propane \_\_\_ oil \_\_\_

d. Approximate age of heating unit \_\_\_/cooling unit \_\_\_

7. Water supply (including water quality, quantity and water pressure?)

a. water supply is: city/county \_\_\_ community system \_\_\_ private well \_\_\_

b. water pipes are: copper \_\_\_ galvanized \_\_\_ PVC/CPVC \_\_\_ polybutelene \_\_\_

8. Septic system?

a. Type system: septic tank \_\_\_ community system \_\_\_

connected to city/county system \_\_\_ city/county system available \_\_\_

b. Does the system require a pump? Yes \_\_\_ No \_\_\_

c. Has the septic system been serviced/pumped during your ownership?

9. Appliances (range/oven, attached microwave, hood/fan, dishwasher,  
disposal, etc.)?

10. Present infestation, or damage **WHICH HAS NOT BEEN  
REPAIRED** from past infestation of wood destroying insects or  
organisms?

a. Is there a transferable termite bond? Yes \_\_\_ No \_\_\_

11. Drainage, grading or stability of soil or retaining structure?

12. Other built-in systems and fixtures?

central vacuum \_\_\_ pool \_\_\_ hot tub \_\_\_ spa \_\_\_ attic fan \_\_\_

exhaust fan \_\_\_ ceiling fan \_\_\_ sump pump \_\_\_ irrigation system \_\_\_

cable tv wiring or satellite dish \_\_\_ security system \_\_\_ or other systems \_\_\_

Initials:                      Seller                      Buyer

Page 2 of 4 Form 230

Produced by                      C.O. S.                     , P.O. Box 2489, Amarillo, TX 79105, (806) 342-0217

CRIS                      WY 05/22/2003

ID: cambridge lat

- |                                                                                                                                                                                                                                                                                                                    |                                     |                                     |                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|--------------------------|
| Room additions or other structural changes?                                                                                                                                                                                                                                                                        | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination? | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 15. Nuisances (noise, odor, smoke, etc.) affecting the property?                                                                                                                                                                                                                                                   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 16. Previous damage caused by fire?                                                                                                                                                                                                                                                                                | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 17. Violations or variances of building codes or zoning ordinances?                                                                                                                                                                                                                                                | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 18. Restrictions to property use? (covenants or deed)                                                                                                                                                                                                                                                              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?                                                                                                                                                                                                       | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 20. Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property?                                                                                                                             | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 21. Owners' association fees or "common area" expenses or assessments?                                                                                                                                                                                                                                             | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| 22. Flood hazards or that the property is in a federally-designated flood plain?                                                                                                                                                                                                                                   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?                                                                                                                                                                                           | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| 24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?                                                                                                                                                                                   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

**\* IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.**

18 C/R for Cambridge Lakes

21 170 / month Reg. Fee

23 Condo Conversion - still rentals on property

Initials: SP Seller SP Buyer

Page 3 of 4 Form 230



STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

JOHNSON KOOLA  
Plaintiff )

CASE NO.:

Vs. )

CAMBRIDGE TWO, LLC, ALBERT V. ESTES,  
Individually, CAMBRIDGE LAKES, LP,  
STEPHEN R. HEAPE, Individually and as General  
Partner of CAMBRIDGE LAKES, LP, CAMBRIDGE  
LAKES APARTMENTS, LP a/k/a CAMBRIDGE LAKES )  
APRATMENT HOMES, a/k/a CAMBRIDGE LAKES )  
APARTMENTS, LP a/k/a CAMBRIDGE LAKES )  
APARTMENTS HOMES, LP, )  
CLASSIC PROPERTIES OF CHARLESTON )  
INC., CAMBRIDGE CONTRACTING, LP, )  
TRADEMARK PROPERTIES, INC., CAROLINA ONE )  
CHARLESTON HOME TEAM PROPERTIES, LLC, )  
CHARLESTON HOME TEAM, LLC, CAROLINA ONE, )  
And WILLIAM E. JENKINSON, IV, Individually, )  
Defendants, )

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2010 NOV -4 AM 11:16

FILED

COMPLAINT  
VIOLATION OF THE HORIZONTAL PROPERTY ACT,  
BREACH OF CONTRACT/WARRANTY, FRAUD,  
NEGLIGENCE, UNFAIR TRADE PRACTICES

COMES NOW the Plaintiff, JOHNSON KOOLA, by and through his undersigned attorney and states as follows:

1. In early 2004 Plaintiff, an individual, was a legal resident and resident of Charleston County, State of South Carolina, purchased a condominium in the Cambridge Lakes Condominiums (Cambridge Lakes) located in Mount Pleasant, South Carolina, County of Charleston.
2. Cambridge Lakes are a group of five residential structures and buildings that include individually owned units and a clubhouse.
3. Upon information and belief Cambridge Lakes was originally an apartment complex.
4. Upon information and belief this apartment complex was operated under Cambridge Lakes LP a/k/a Cambridge Lakes Apartment Homes, LP a/k/a Cambridge Lakes Apartments LP, Cambridge Lakes Apartments Homes, LP.

5. Upon information and belief, Stephen R. Heape is an individual, is and was a citizen and resident of Charleston County, State of South Carolina, was the General Partner of Cambridge Lakes, LP and was engaged, individually and as the General Partner, in the business of developing, building, renting, marketing, converting, and selling the Cambridge Lakes buildings to the public in the State of South Carolina.
6. Upon information and belief, upon information and belief, from 2002 through 2004, Mr. Heape collaborated with Albert V. Estee and Trademark Properties to convert, develop, market and sale Cambridge Lakes Apartments into individually owned condominium units to the general public.
7. Upon information and belief, Albert V. Estee, an individual, and a citizen and resident of Charleston County, State of South Carolina, was engaged, individually and as the General Partner, in the business of developing, building, renting, marketing, converting, and selling the Cambridge Lakes buildings into individual units for sale to the public as described and defined in the Horizontal Property Act, South Carolina Code §§27-31-10 *et. seq.* and pursuant to the provisions thereof, was engaged in the conversion and sales of condominiums in the State of South Carolina.
8. Upon information and belief, that Mr. Estee, individually, organized Cambridge Two, LLC to shield himself from personal liability for matters and things complained of hereafter and from responsibility for his actions in the conversion and sales of the Cambridge Lakes condominiums and that at all time hereafter mentioned, Albert V. Estee, solely, personally, and individually, was the alter-ego of, controlled and dominated the shell or sham corporation known as Cambridge Two, LLC; and this court should pierce the corporate veil in order that Albert V. Estee, individually, may be held personally liable for damaged caused by the said sham corporation and/or all Defendants.
9. Upon information and belief, that Mr. Estee was at all times individually and as Limited Partner of Cambridge Lakes, LP, engaged, in the business of developing, building, renting, marketing, converting, and selling the Cambridge Lakes buildings to the public in the State of South Carolina.
10. Upon information and belief, the Defendant Trademark Properties Inc., is a corporation organized under the laws of the State of South Carolina and does business within the County of Charleston, State of South Carolina, was engaged in the conversion, development, marketing, and sales of Cambridge Lakes in the State of South Carolina for sale to the public as described and defined in the Horizontal Property Act, South Carolina Code §§27-31-10 *et. seq.* and pursuant to the provisions thereof, was engaged in the conversion and sales of condominiums in the State of South Carolina.
11. When the Plaintiff purchased his condominium unit in early 2004 the listing agent was William E. Jenkinson, IV, from Carolina One.
12. Upon information and belief, that the Defendant Carolina One is a corporation organized under the laws of the State of South Carolina and does business within the County of Charleston, State of South Carolina, was engaged in the conversion, development, marketing,



and sales of Cambridge Lakes in the State of South Carolina for sale to the public as described and defined in the Horizontal Property Act, South Carolina Code §§27-31-10 *et. seq.* and pursuant to the provisions thereof, was engaged in the conversion and sales of condominiums in the State of South Carolina.

13. Upon information and belief, that Defendant William E. Jenkinson, IV, an individual, was a citizen and resident of Charleston County, State of South Carolina, who was engaged, individually and as an agent and owner for Carolina One, in the marketing and sales of Cambridge Lakes in the State of South Carolina for sale to the public as described and defined in the Horizontal Property Act, South Carolina Code §§27-31-10 *et. seq.* and pursuant to the provisions thereof, was engaged in the sales of condominiums in the State of South Carolina.
14. In 2008 the Plaintiff learned that the Cambridge Lakes' Homeowners Association and several individual owners filed a lawsuit against the defendants' named in this matter (excluding William E. Jenkinson, IV, and Carolina One) and various contractors and subcontractors for various construction defects. This Plaintiff is not a party in that matter.
15. The Plaintiff also learned that the Defendants named herein did not file with the master deed or provide copies of a report required by the South Carolina Horizontal Property Act, S.C. Code §§27-31-10 *et. seq.*
16. Upon learning of the lawsuit the Plaintiff reviewed the Builders Certificate he was giving when he purchased his condominium unit and found that it indicated that all necessary work and documentation for the Condo Conversion was complete.
17. Had the Plaintiff known that neither the work nor paperwork to complete the condominium conversion was done he would not have purchased his condominium unit.
18. The Plaintiff placed his condominium unit up for sale but learned that the condominium was virtually worthless because of the violations of the Horizontal Property Act, §§27-31-10 *et. seq.*
19. This Court has jurisdiction over all matters contained, herein and pursuant to S.C. Code §15-7-30, Charleston County, South Carolina is the proper venue for this action.

VIOLATION OF THE HORIZONTAL PROPERTY ACT  
S.C. CODE §§27-31-10 *et. seq.*  
All Defendants

20. Paragraphs 1 through 19 are incorporated herein by reference.
21. The Horizontal Property Act, South Carolina Code §§27-31-10 *et. seq.* requires that:
  - a. whenever the lessee, sole owner, or co-owner of a building declares the undertaking of a conversion of rental units to condominium ownership through the recordation of a master deed or master lease, written disclosure shall be made within thirty days of the date of the recordation to all prospective purchasers, including tenants in possession, as to the physical condition of the building.

- b. the disclosure shall contain a written report prepared by an independent registered architect or engineer licensed to practice his profession in this State, describing the present condition of all general common elements.
  - c. the report shall contain a good faith estimate of the remaining useful life to be expected for each item reported on, together with a list of any notices of uncured violations of building codes or other county or municipal regulations, together with the estimated cost of curing those violations.
22. Defendants did not provide the notice required by The Horizontal Property Act, South Carolina Code §27-31-10 *et. seq.* either through recordation in the Master Deed filed on February 24, 2003 or by providing notice directly to prospective purchasers.
23. The failure to make the disclosure required by The Horizontal Property Act, South Carolina Code §27-31-10 *et. seq.* is a violation of the South Carolina Unfair Trade Practices Act.

VIOLATION OF THE UNFAIR TRADE PRACTICES ACT  
All Defendants

24. Paragraphs 1 through 23 are incorporated herein by reference.
25. The Defendants did violate the South Carolina Unfair Trade Practices Act, South Carolina Code Ann. Sections 39-5-40 *et. seq.* (hereinafter "the Unfair Trade Act").
26. The Defendants' acts and omissions as described previously constitute unfair or deceptive practices under the Unfair Trade Act.
27. These acts or omissions impact the interest and safety of the public, and have the potential for repetition with each residential unit the Defendants offer for sale to the general public.
28. The damages suffered by the Plaintiff were the direct and proximate result of the acts and omissions of the Defendants.

BREACH OF CONTRACT/WARRANTY  
All Defendants

29. Paragraphs 1 through 28 are incorporated herein by reference.
30. At the time the Plaintiff purchased his condominium the actions and representations the Defendants, their employees, and agents lead the Plaintiff to believe that the condominium he was purchasing was fit, habitable and was marketable.
31. That the Plaintiff purchased the Condominium because he believed that the unit was marketable.
32. The Defendants breached this warranty, and the contract, by selling a condominium unit that was not and is not marketable.

33. The Defendants sold the unit either knowingly or without the proper investigation and inspection to determine the unit's actual condition prior to the sale to the Plaintiff.
34. The damages caused to the Plaintiff were the direct and proximate cause of the acts and omissions of the Defendants.

#### NEGLIGENCE

Cambridge Two, LLC, Albert V. Estes, Individually, Cambridge Lakes, LP, Cambridge Lakes Apartments, LP a/k/a Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP a/k/a Cambridge Lakes Apartments Homes, LP, Stephen R. Heape, Individually and as General Partner Of Cambridge Lakes, LP, Classic Properties Of Charleston Inc., Cambridge Contracting, LP, and Trademark

35. Paragraphs 1 through 34 are incorporated herein by reference.
36. The Defendants, Cambridge Two, LLC, Classic Properties Of Charleston, Inc., Cambridge Contracting, LP, and Albert V. Estes, were negligent, reckless, willful and wanton in the following particulars:
  - a. In failing to obtain a written report prepared by an independent registered architect or engineer describing the present condition of all general common elements required by the Horizontal Property Act, South Carolina Code §27-31-10 *et. seq.*
  - b. In failing to record the written report required by the Horizontal Property Act, South Carolina Code §27-31-10 *et. seq.* with the Master Deed.
  - c. In failing to provide a copy of the written report required by the Horizontal Property Act, South Carolina Code §27-31-10 *et. seq.* to prospective purchasers.
  - d. In issuing certificates that certified that the work required by the Horizontal Property Act, South Carolina Code §27-31-10 *et. seq.* was complete.
37. As a direct and proximate cause result of the Defendant's acts and omissions, the Plaintiff suffered the damages herein alleged.

#### NEGLIGENCE

Charleston Home Team Properties, LLC, Charleston Home Team, LLC  
Carolina One, William E. Jenkinson, IV

38. Paragraphs 1 through 37 are incorporated herein by reference.
39. The Defendants were negligent, reckless, willful and wanton in the following particulars:
  - a. In failing to ascertain whether or not the condominium conversion certification was done and/or was done properly.
  - b. In failing to obtain a proper condominium conversion certificate.
  - c. In failing to advise the Plaintiff that the condominium conversion certification was not done and/or was done properly.
40. As a direct and proximate cause result of the Defendant's acts and omissions, the Plaintiff suffered the damages herein alleged.

FRAUD, DECEIT AND NEGLIGENT MISREPRESENTATION  
All Defendants

41. Paragraphs 1 through 40 are incorporated herein by reference.
42. That the Defendants despite actual and constructive knowledge to the contrary the Defendants issued the Plaintiff a certificate that certified that the work required by the Horizontal Property Act, South Carolina Code §27-31-10 *et. seq.* was complete.
43. The Defendants, despite actual and constructive knowledge to the contrary, represented to the Plaintiff that the condominium unit he bought was marketable.
44. That the condominium was not and is not marketable.
45. Such representations were made to Plaintiff either with reckless disregard as to their accuracy, or with the knowledge that the representations were incorrect and Defendants owed Plaintiff a duty of care to provide correct and truthful information to the Plaintiff, and Defendant breached that duty by failing to exercise due care.
46. The Plaintiff had no knowledge of the falsity of the statements when made, and was entitled to rely on the representations made by Defendants.
47. Plaintiff relied on the representations in his decision to purchase the condominium unit.
48. The damages suffered by the Plaintiff were directly and proximately caused by the representations and actions of the Defendants.

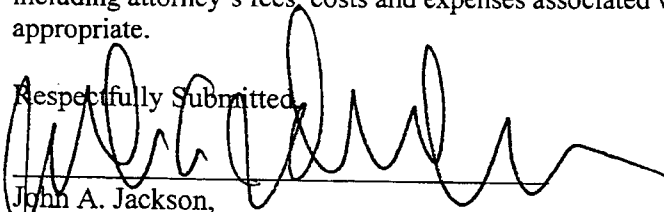
DAMAGES  
All Defendants

49. Paragraphs 1 through 48 are incorporated herein by reference.
50. As a direct and proximate result of the acts and omissions of the Defendants as set forth in this complaint, the Plaintiff suffered damages, including but not limited to:
  - a. The price of the condominium unit.
  - b. The cost of replacing the condominium.
  - c. Other damages as will be set forth in the trial of this matter.

SIGNATURE BLOCK NEXT PAGE

WHEREFORE, having fully set forth his Complaint herein, the Plaintiff prays that the Court enter judgment against the Defendants for an amount of actual and punitive damages to be determined by the trier of fact, and, in addition, all special damages available under the Unfair Trade Acts, and including attorney's fees, costs and expenses associated with this action, and any other relief deemed appropriate.

Respectfully Submitted,



John A. Jackson,  
Attorney at Law  
SC Bar #:76387  
Phone: 843-571-2226  
Fax: 1-888-281-0207  
Email:jaj@lawofficeofjaj.com  
535 Stinson Drive  
Charleston, SC 29407

This the 2nd day of Nov., 2010.

|                                   |   |                                      |
|-----------------------------------|---|--------------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS         |
|                                   | ) | THE NINTH JUDICIAL CIRCUIT           |
| COUNTY OF CHARLESTON              | ) | CASE NO.: 2010-CP-10-9158            |
|                                   | ) |                                      |
| JOHNSON KOOLA,                    | ) |                                      |
|                                   | ) |                                      |
| Plaintiff,                        | ) |                                      |
|                                   | ) |                                      |
| vs.                               | ) |                                      |
|                                   | ) |                                      |
| CAMBRIDGE TWO, LLC, ALBERT V.     | ) | <b>DEFENDANT TRADEMARK</b>           |
| ESTES, INDIVIDUALLY, CAMBRIDGE    | ) | <b>PROPERTIES, INC.'S MOTION FOR</b> |
| LAKES, LP, STEPHEN R. HEAPE,      | ) | <b>SUMMARY JUDGMENT</b>              |
| INDIVIDUALLY AND AS GENERAL       | ) |                                      |
| PARTNER OF CAMBRIDGE LAKES, LP,   | ) |                                      |
| CAMBRIDGE LAKES APARTMENT         | ) |                                      |
| HOMES, A/K/A CAMBRIDGE LAKES      | ) |                                      |
| APARTMENTS, LP A/K/A CAMBRIDGE    | ) |                                      |
| LAKES APARTMENTS HOMES, LP,       | ) |                                      |
| CLASSIC PROPERTIES OF CHARLESTON, | ) |                                      |
| INC., CAMBRIDGE CONTRACTING, LP,  | ) |                                      |
| TRADEMARK PROPERTIES, INC.,       | ) |                                      |
| CAROLINE ONE CHARLESTON HOME      | ) |                                      |
| TEAM PROPERTIES, LLC, CHARLESTON  | ) |                                      |
| HOME TEAM, LLC, CAROLINA ONE AND  | ) |                                      |
| WILLIAM E. JENKINSON, IV,         | ) |                                      |
| INDIVIDUALLY,                     | ) |                                      |
|                                   | ) |                                      |
| Defendants.                       | ) |                                      |
|                                   | ) |                                      |

TO: WILLIAM B. JUNG, ESQ., ATTORNEY FOR PLAINTIFF:

COMES NOW Defendant Trademark Properties, Inc. (hereinafter "Defendant Trademark"), by and through its undersigned attorneys, and hereby requests Summary Judgment as to all causes of action pursuant to Rule 56(c), SCRCF, based on one or more of the following grounds and/or any other grounds which may be raised in supporting memoranda: (1) Defendant Trademark was only ever a listing agent of Cambridge Lake Apartments and is, therefore, not liable under the South Carolina Horizontal Property Act; and (2) Defendant Trademark was not involved, as a listing agent or otherwise, in the sale of the subject property to Plaintiff Johnson

Koola and, therefore, is not liable for violation of the South Carolina Unfair Trade Practices Act or liable under theories of breach of contract/warranty, negligence, or fraud.

Viewing all evidence in the light most favorable to Plaintiff, there is no genuine issue of material fact on Plaintiff's claims. Therefore, Defendant Trademark respectfully requests this Court grants its Motion for Summary Judgment. This motion is supported by the pleadings and discovery in this case, applicable statutory and case law, and any supporting memoranda and affidavits which may be filed with the Court prior to the hearing on this Motion.

Respectfully submitted,

CARLOCK COPELAND & STAIR, LLP

By:   
TDR R. MICHAEL ETHRIDGE  
SC Bar No. 016892

SUZANNE E. HOGG  
SC Bar No. 101234

Attorneys for Defendant Trademark Properties, Inc.

40 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
843-727-0307

) IN THE COURT OF COMMON PLEAS  
) THE NINTH JUDICIAL CIRCUIT  
) CASE NO.: 2010-CP-10-9158

) THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2010-CP-10-9158

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COMES NOW Defendant Trademark Properties, Inc. (hereinafter “Defendant” or “Defendant Trademark”), by and through its undersigned attorneys, and hereby requests Summary Judgment as to all causes of action pursuant to Rule 56(c), SCRPC, because it is undisputed that Defendant was only ever a listing agent of Cambridge Lake Apartments and that Plaintiff Koola bought the subject condominium in early 2004, after Defendant Trademark ceased to be the Cambridge Lakes listing agent. Therefore, as a matter of law, Defendant is not liable under the South Carolina Horizontal Property Act because it was only ever a listing agent



and not the “lessee, sole owner, or co-owner” of the subject property, which is required by the Act to impute liability. Further, as a matter of law, Defendant is not liable for violation of the South Carolina Unfair Trade Practices Act or liable under theories of breach of contract/warranty, negligence, or fraud, as Defendant was not involved, as a listing agent or otherwise, in the sale of the subject property to Plaintiff Johnson Koola.

This motion is supported by the pleadings in this case, applicable statutory and case law, and any supporting memoranda which may be filed with the Court prior to the hearing on this Motion.

### **FACTUAL BACKGROUND**

This case arises out of the sale of a condominium unit at a complex known as Cambridge Lakes to Plaintiff Koola. The Cambridge Lakes complex was originally an apartment complex that was converted to a condominium complex and sold as individual condominium units beginning in 2002. Pl.’s Compl. ¶¶ 4, 6. In August 2002, Defendant Trademark Properties, Inc. was hired as listing agent for Cambridge Lakes by Albert V. Estee of Cambridge Two, LLC, who was engaged in the business of selling the converted condominiums at Cambridge Lakes. Ex. A, Aff. of Richard Davis, ¶ 5. Defendant Trademark never leased, owned, or co-owned any unit in the Cambridge Lakes apartment. Id. at ¶ 7. Instead, Defendant Trademark acted only as the listing and marketing agent for Cambridge Lake condominiums until May 2003. Id. at ¶ 6. Defendant Trademark completed thirty (30) pre-sales of the converted condominiums before its agreement to list and market the units in Cambridge Lakes was terminated in May 2003. Id. at ¶ 8. None of these thirty (30) presales were made to Plaintiff Koola or involved Plaintiff Koola’s condominium, which is the subject of this action. Id.

Plaintiff Koola purchased his condominium unit in February 2004, eight (8) months after Defendant Trademark left its position as listing agent for Cambridge Lakes. When Plaintiff Koola purchased his condominium in early 2004, the listing agent was William E. Jenkinson, IV, from Carolina One. Pl.'s Compl. ¶ 11. Plaintiff Koola did not have any interaction or communication with Defendant Trademark about the Cambridge Lakes condominiums or the sale of the subject condominium to Plaintiff Koola. Ex. A, Aff. of Richard Davis, ¶ 9.

On November 4, 2010, Plaintiff filed a Complaint against Defendant Trademark and eight (8) other Defendants. In his Complaint, Plaintiff Koola alleged that, when he bought his condominium, neither the work nor the paperwork necessary to complete the conversion of his condominium had been completed. *Id.* ¶¶ 15, 17. Further, he alleged that due to this incomplete work and paperwork, he placed his condominium unit up for sale and then learned it was “virtually worthless because of the violations of the Horizontal Property Act.” *Id.* ¶ 18. Plaintiff Koola alleges that his condominium unit is not marketable due to the acts and omissions of all named defendants and demands the price he paid for the condominium unit, and the cost of replacing the condominium unit, in addition to “other damages,” which he claims will be set forth in the trial of this matter. *Id.* ¶¶ 44, 50.

Against Defendant Trademark, Plaintiff alleges violation of the South Carolina Horizontal Property Act and the South Carolina Unfair Trade Practices Act (“SCUTPA”), Breach of Contract/Warranty, Negligence, and Fraud. *See id.* Defendant Trademark hereby files this Motion for Summary Judgment requesting that the Complaint be dismissed in its entirety because Defendant Trademark was only ever a listing agent of Cambridge Lakes and because Defendant Trademark was not the listing agent at the time that Plaintiff Koola bought his condominium unit at Cambridge Lakes. Therefore, Defendant Trademark is not liable under the

South Carolina Horizontal Property Act, under the SCUPTA, or under theories of breach of contract/warranty, negligence, or fraud, since Defendant was not involved in the sale of the subject condominium to Plaintiff Koola in any way.

### **STANDARD OF REVIEW**

The South Carolina Rules of Civil Procedure “shall be construed to secure the just, speedy, and inexpensive determination of every action.” S.C. R. Civ. P. 1. According to Rule 56, “[t]he judgment sought should be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” S.C. R. Civ. P. 56(c). In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. Epstein v. Brown, 363 S.C. 372, 375, 610 S.E.2d 816, 817 (2005) (citing Dawkins v. Fields, 354 S.C. 58, 115, 580 S.E.2d 433, 545 (2003)). According to South Carolina case law, “[t]he purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. Standard Fire Ins. Co. v. Marine Contracting & Tooling Co., 301 S.C. 418, 422, 392 S.E.2d 460, 462 (1990). However, the moving party's initial responsibility may be discharged by showing that “there is an absence of evidence to support the nonmoving party's case.” Baughman v. Am. Tel. and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986)). Therefore, “when plain, palpable, and indisputable facts exist on which reasonable

minds cannot differ, summary judgment should be granted.” Hackworth v. Greenville County, 371 S.C. 99, 102, 637 S.E.2d 320, 322 (Ct. App. 2006) (citing Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 355, 559 S.E.2d 327, 336 (Ct. App. 2001)). “Summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” Guinan v. Tenet Healthsystems of Hilton Head, 383 S.C. 48, 53, 677 S.E.2d 32, 35 (Ct. App. 2009) (quoting Davis v. McLeon Reg'l Med. Center, 367 S.C. 242, 250, 626 S.E.2d 1, 5) (2006)). Specifically, “[a] complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial.” Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008), cert. denied (Oct. 21, 2009), reh'g denied (Jan. 27, 2009).

In Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E.2d 801 (2009), the South Carolina Supreme Court addressed the evidence necessary to withstand a summary judgment challenge. 381 S.C. at 330–31, 673 S.E.2d at 802–03. According to the Hancock court, “in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Id. at 331, 673 S.E.2d at 803. More recently, in Bass v. Gopal, Inc., 384 S.C. 238, 680 S.E.2d 917 (Ct. App. 2009), the South Carolina Court of Appeals had an opportunity to analyze the Hancock opinion. Id. at 247, 680 S.E.2d at 921. Further addressing the legal standard for granting summary judgment, the Bass court reasoned as follows:

In any event, we must assume any evidence, even a scintilla, that is useful to withstand a summary judgment motion must meet the prerequisite of being probative. See McDowell v. Stille Plywood Co., 210 S.C. 173, 179, 41 S.E.2d 872, 874–75 (1947) (holding that although there was a scintilla of testimony that could be used to support the claimants' position, when the entire testimony of the witnesses was viewed as a whole, it was obvious the testimony in support of claimants' position rested on speculation and thus had no probative value).

Id. Therefore, in order to survive a motion to summary judgment, the nonmoving party must present at least a scintilla of probative evidence that does not rest on mere speculation.

### **AUTHORITY AND ARGUMENT**

**A. As a listing agent, Defendant Trademark is not liable under the South Carolina Horizontal Property Act.**

Under South Carolina Code section 27-31-420, upon undertaking the conversion of rental units to condominiums, the “**lessee, sole owner, or co-owner of a building**” is required to deliver, in writing, certain disclosures to all prospective purchasers. The written disclosure must include the following:

- (1) A written report, prepared by an independent registered architect or engineer, describing the present condition of all general common elements;
- (2) A good faith estimate of the remaining useful life to be expected for each item reported on;
- (3) A list of any notices of uncured violations of building codes or other county or municipal regulations; and
- (4) The estimated cost of curing those violations listed above.

S.C. Code Ann. § 27-31-430. Nothing in the Horizontal Property Act places a duty upon the *listing agent* of converted condominiums to deliver these written disclosures to potential purchasers.

The *lessee's or owner's* duty to investigate and to disclose this information, however, is mandatory because the statutory language is mandatory. If the *lessee/owner* misrepresents the condition of the common elements to the buyers, the buyers have a statutory cause of action *against the lessee/owner* for a violation of the South Carolina Unfair Trade Practices Act. S.C. Code Ann. § 27-31-430 (“A failure to make the disclosure required by this section shall constitute a violation of the South Carolina Unfair Trade Practices Act.”). The South Carolina Supreme Court has held that a developer who undertakes condominium conversion has a duty to

“turn over common areas that are not substandard and that are in good repair.” Concerned Dune West Residents, Inc. v. Georgia Pacific Corp., 349 S.C. 251, 257, 562 S.E.2d 633, 637 (2002).

Thus, it was the lessee/owner of the Cambridge Lakes complex who owed a duty to make the written disclosures to Plaintiff Koola that are required under the Horizontal Property Act. When the owners of Cambridge Lakes undertook the conversion project from apartments to condominiums, it was their duty to investigate and to disclose the condition of the buildings as well as *any* uncured violations of building codes to potential buyers like Plaintiff Koola. Therefore, pursuant to South Carolina statutory and case law, to the extent that Plaintiff Koola has suffered damages as a result of violations of the Horizontal Property Act, it is the lessee/owner of Cambridge Lakes that undertook the conversion of the apartments to condominiums that should be held responsible for those damages.

Plaintiff Koola asks this Court to hold Defendant Trademark liable for violations of the Horizontal Property Act. **However, no Court has ever found a listing agent liable under this Act.** Because no statutory or case law supports Plaintiff Koola’s claim that listing agents like Defendant Trademark should be held liable under the Horizontal Property Act, Defendant asks this court to dismiss this claim against it.

**B. Plaintiff’s claim that Defendant Trademark violated South Carolina’s Unfair Trade Practices Act fails because Plaintiff has failed to present even a scintilla of evidence that Defendant’s actions have adversely affected public interest or are capable of repetition.**

Section 39-5-20(a) of the SCUTPA states that unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. A plaintiff bringing a private cause of action under the SCUTPA must allege and prove the defendant’s actions adversely affected the public interest. Daisy Outdoor Adver. Co. v. Abbott, 322 S.C. 489, 493, 473 S.E.2d 47, 49 (1996). Whether an act or practice is unfair or deceptive within the

meaning of the UTPA depends on the surrounding facts and the impact of the transaction on the marketplace. deBondt, 342 S.C. at 269, 536 S.E.2d at 407.

The SCUTPA is unavailable to redress private wrongs if the public interest is unaffected. “An impact on the public interest may be shown if the acts or practices have the potential for repetition.” Singleton v. Stokes Motors, Inc., 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004) (citing Crary v. Djebelli, 329 S.C. 385, 387, 496 S.E.2d 21, 23 (1998)). The potential for repetition may be demonstrated in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts. Singleton, 358 S.C. at 379, 595 S.E.2d at 466.

Plaintiff Koola has presented no evidence to suggest that Defendant Trademark's actions have adversely affected the public interest or are capable of repetition. In his Complaint, Plaintiff Koola merely alleges that all Defendants' “acts or omissions impact the interest and safety of the public, and have the potential for repetition with each residential unit the Defendants offer for sale to the general public.” See Pl.'s Compl. ¶ 27. Plaintiff Koola includes no facts whatsoever to support this contention. Bare legal conclusions without any facts to support those allegations are simply not enough to survive summary judgment. Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, (2009) (“[A] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”) (internal citations omitted). Plaintiff Koola has failed to present even a scintilla of probative evidence that does not rest on mere speculation to

support this claim. Therefore, as a matter of law, Plaintiff's SCUFTPA claim against Defendant Trademark fails, and summary judgment is proper.

**C. Plaintiff's Breach of Contract/Warranty claims against Defendant Trademark fail because Defendant did not contract with or extend any warranties to Plaintiff.**

The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach. Branche Builders, Inc. v. Coggins, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). Here, there was no contract between Plaintiff Koola and Defendant Trademark. Defendant Trademark left its position as listing agent for Cambridge Lakes eight (8) months before Plaintiff Koola bought his condominium. See Ex. A, Aff. of Richard Davis ¶¶ 10-11. Plaintiff fails to plead any facts which show there was ever a contract that existed between himself and Defendant Trademark. Because bare legal conclusions without any facts to support those allegations are simply not enough to survive summary judgment, Plaintiff's claim of breach of contract should be dismissed. Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, (2009).

Further, Under South Carolina law, the implied warranty of fitness and habitability "springs from the sale itself." Lane v. Trenholm Bldg. Co., 267 S.C. 497, 500, 229 S.E.2d 728, 729 (1976). However, Defendant Trademark was not involved in the sale of the subject condominium to Plaintiff Koola. Plaintiff Koola alleges in his complaint that all named Defendants led him to believe that "the condominium he was purchasing was fit, habitable and was marketable." Pl.'s Compl. ¶ 30. However, Plaintiff has failed to offer any evidence that Defendant Trademark made such representations to him. Instead, Plaintiff Koola alleges that the listing agent when he bought his condominium in early 2004 was William E. Jenkinson, IV. Id. at ¶ 11. Plaintiff Koola fails to provide even a scintilla of evidence that Defendant Trademark made any warranties to him about the subject condominium.



Defendant Trademark was not involved in the sale of Plaintiff Koola's condominium. Ex. A, Aff. of Richard Davis ¶ 11. Defendant Trademark neither contracted with nor made any warranties to Plaintiff Koola. Id. at ¶ 9. As such, Plaintiff Koola's claims of breach of contract and breach of warranty claims fail, and summary judgment as to those claims is proper.

**D. Defendant Trademark is not liable to Plaintiff Koola for Negligence because Defendant was not involved in the sale of the subject condominium to Plaintiff.**

To establish liability in a negligence action, the claimant must show: (1) a duty of care owed by the defendant to the plaintiff; (2) breach of that duty; and (3) damages resulting from the breach. Bishop v. S.C. Dep't of Mental Health, 331 S.C. 79, 88, 502 S.E.2d 78, 82 (1998). "A breach of duty exists when it is foreseeable that one's conduct may likely injure the person to whom the duty is owed." Vinson v. Hartley, 324 S.C. 389, 400, 477 S.E.2d 715, 720 (Ct. App. 1996).

Here, Defendant Trademark was not involved in the sale of the subject converted condominium to Plaintiff Koola. It is undisputed and, in fact, admitted by Plaintiff Koola in his Complaint, that Plaintiff Koola bought the subject condominium in early 2004 when the listing agent for Cambridge Lakes was William E. Jenkinson, IV. Pl.'s Compl. ¶ 11. Because Defendant Trademark was no longer the listing agent at the time Plaintiff Koola bought his condominium, Defendant Trademark had no relationship or interaction with Plaintiff Koola through which a duty to Plaintiff Koola could arise.

Further, Plaintiff Koola has alleged neither a contractual nor a special relationship between himself and Defendant Trademark that is required to support his tort claim. Defendant Trademark owed no duties to Plaintiff Koola, who purchased his condominium after Defendant Trademark was no longer involved in the sale of Cambridge Lakes condominiums. Without a

duty to Plaintiff Koola, there can be no breach. For these reasons, Plaintiff Koola's allegations of negligence against Defendant Trademark fail and should be dismissed.

**E. Defendant Trademark is not liable to Plaintiff Koola for Fraud because Defendant was not involved in the sale of the subject condominium to Plaintiff Koola.**

In South Carolina, there are nine elements of fraud, all of which must be alleged and proven by "clear, cogent, and convincing evidence" for a Plaintiff to claim damages. First State Sav. & Loan v. Phelps, 299 S.C. 441, 446-47, 385 S.E.2d 821, 824 (1989); Regions Bank v. Schmauch, 354 S.C. 648, 672, 582 S.E.2d 432, 445 (2003).

The nine elements necessary to prove fraud in South Carolina are: (1) **a representation**; (2) its falsity; (3) its materiality; (4) knowledge of the falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance upon the truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. Schmauch, 354 S.C. at 672, 582 S.E.2d at 445 (2003).

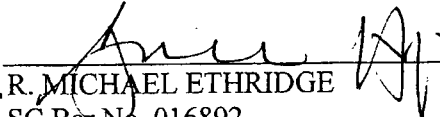
Here, Defendant Trademark was not involved in the sale of the converted condominium to Plaintiff Koola. It is undisputed and, in fact, admitted by Plaintiff Koola in his Complaint, that Plaintiff Koola bought the subject condominium in early 2004 when the listing agent for Cambridge Lakes was William E. Jenkinson, IV. Pl.'s Compl. ¶ 11. To the extent that any representations were made to Plaintiff Koola by a listing agent, no representations were made about the condominium by Defendant Trademark, who ceased to be Cambridge Lakes' listing agent eight (8) months before Plaintiff Koola bought his condominium. Again, Plaintiff Koola fails to present even a scintilla of evidence to support his claim for fraud against Defendant Trademark. For these reasons, Plaintiff Koola's allegations of fraud against Defendant Trademark fail and should be dismissed.

### CONCLUSION

For the foregoing reasons, Defendant Trademark requests that the Complaint be dismissed in its entirety because Defendant Trademark is not liable as a listing agent for violations of the South Carolina Horizontal Property Act and is not liable under theories of negligence or fraud, due to his lack of involvement in the sale of the subject condominium to Plaintiff Koola.

Respectfully submitted,

CARLOCK COPELAND & STAIR, LLP

By:   
#12 R. MICHAEL ETHRIDGE  
SC Bar No. 016892

SUZANNE E. HOGG  
SC Bar No. 101234

Attorney for Defendant Trademark Properties, Inc.

40 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
843-727-0307

) IN THE COURT OF COMMON PLEAS  
) THE NINTH JUDICIAL CIRCUIT  
) CASE NO.: 2010-CP-10-9158

CASE NO.: 2010-CP-10-9158

**AFFIDAVIT OF RICHARD DAVIS**

**VS.**

Defendants.

1. I am over the age of 18 years and competent to give this affidavit.
2. I have personal knowledge of the facts contained in this affidavit.
3. I am the President, CEO, and Director of Acquisitions of Trademark Properties, Inc.
4. As the President, CEO, and Director of Acquisitions, I have knowledge of Trademark Properties, Inc.'s involvement in the Cambridge Lakes project, which is the subject of this action. My knowledge of Trademark Properties, Inc.'s involvement in the Cambridge Lakes



project is based on, among other things, my own involvement in this project as well as my review of Trademark Properties' various corporate documents, including but not limited to business records, contracts, and sales records.

5. Trademark Properties, Inc. was hired as the listing and marketing agent for Cambridge Lakes by Albert V. Estee of Cambridge Two, LLC, in August of 2002.

6. From August 2002 until May 2003, Trademark Properties was the listing and marketing agent for Cambridge Lakes. Trademark Properties did not work in any other capacity for Cambridge Lakes.

7. Trademark Properties did not own or lease any condominium units in Cambridge Lakes at any point in time.

8. Between August 2002 and May 2003, Trademark Properties completed thirty (30) pre-sales of condominium units to individual purchasers. None of these sales involved Plaintiff Koola or the condominium bought by Plaintiff Koola in February 2004.

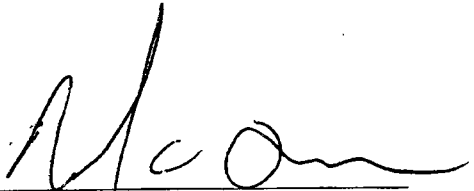
9. Trademark Properties did not engage in any interactions or communications with Plaintiff Koola during its time as the listing agent for Trademark Properties.

10. Trademark Properties ceased to be the listing agent for Cambridge Lakes in May 2003.

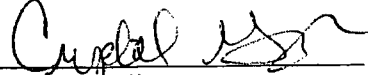
11. Trademark Properties was not involved, as the listing agent or otherwise, in the sale of the Cambridge Lakes condominium to Plaintiff Koola in February 2004.

FURTHER AFFIANT SAYETH NOT.

**[SIGNATURE PAGE TO FOLLOW]**

  
Richard Davis

Sworn to and subscribed before  
me, this 3<sup>rd</sup> day of December,  
2013.

  
Notary Public  
My Commission Expires:

10-23-2017  
(AFFIX NOTARIAL SEAL)



**I. Trademark Properties had no involvement in the transaction which is the subject matter of Plaintiff's Complaint. Therefore, Defendant is entitled to judgment as a matter of law as to all claims asserted by Plaintiff.**

In August 2002, Defendant Trademark Properties, Inc. was hired as listing agent for Cambridge Lakes to list and market the converted condominiums at Cambridge Lakes. (See Pl.'s Reply Mem. in Opp'n to Def. Trademark's Mot. for Summ. J. Ex. 7(A); Aff. of Richard Davis, ¶ 5.) Defendant Trademark never leased, owned, or co-owned any unit in the Cambridge Lakes apartment. (Id. at ¶ 7.) Instead, Defendant Trademark acted **only** as the listing and marketing agent for Cambridge Lake condominiums until May 2003. (Id. at ¶ 6.)

Defendant Trademark completed thirty (30) pre-sales of the converted condominiums before its agreement to list and market the units in Cambridge Lakes was terminated in May 2003, due to personal differences between Richard Davis (President of Trademark Properties) and Albert Estee (owner of Cambridge Lakes project, operating under the business entity "Cambridge Two"). (Id. at ¶ 8.) None of these thirty (30) presales were made to Plaintiff Koola or involved Plaintiff Koola's condominium, which is the subject of this action. (Id.)

According to the allegations in his own Complaint, Plaintiff Koola bought the subject condominium in February 2004 from listing agent William Jenkinson of Carolina One. (Pl.'s Compl. ¶ 11.) Stated differently, Plaintiff Koola purchased the subject condominium from a listing agent other than Trademark Properties, more than 8 months after Trademark Properties' services as a listing agent at Cambridge Lakes ended.

Plaintiff Koola has produced no evidence of any interaction or communication between himself and Trademark Properties relating to the subject condominium. Because no evidence has been produced to dispute the fact that Trademark Properties was not involved in the sale of this condominium to Plaintiff Koola, summary judgment is proper.



**II. Trademark Properties, as a listing agent, is not liable under the Horizontal Properties Act, South Carolina Code section 27-31-420 (hereinafter “the Act”).**

Because Trademark Properties was not involved in the sale of the subject condominium to Plaintiff Koola, Trademark Properties contends that the Court does not have to reach this issue and asks that summary judgment be granted on the undisputed facts of the case, as discussed above. Further, as this issue was briefed extensively in Trademark Properties’ first memorandum of law, this Memorandum will address only those issues newly raised in Plaintiff’s reply brief.

Under the Act, the “**lessee, sole owner, or co-owner of a building**” is required to deliver, in writing, certain disclosures to all prospective purchasers. Because it is undisputed that Trademark Properties was none of these things and was only ever a listing agent, Plaintiff Koola now relies on a principal-agency theory to impute liability to Trademark under the Act.

Plaintiff’s reliance on the Court’s decision in the 2008 lawsuit between the Cambridge Lakes HOA and Trademark Properties (CA No. 2008-CP-10-3506) is misguided. In the 2008 lawsuit, the HOA’s liability claims against Trademark Properties arose out of Trademark’s alleged misrepresentations and failures to disclose information to potential purchasers (who later became members of the HOA), while Trademark Properties was acting as the listing agent for Cambridge Lakes. The allegations regarding Trademark Properties’ involvement in the “conversion” of the Cambridge Lakes apartments related to Trademark’s actions in the marketing and sale of the condominiums. No allegations were made that Trademark Properties was involved in the actual “conversion” of the condominiums, as it is defined under the Act.<sup>1</sup>

---

<sup>1</sup> “[C]onversion of rental units to condominium ownership” means the establishment of a horizontal property regime encompassing a preexisting building which, at anytime prior to the recording of the master deed or master lease, was wholly or partially occupied by persons as their residence on a permanent or at least a continuing basis other than persons who, at the time of such recording, had contractual rights to acquire condominium ownership within the building.” S.C. Code Ann. § 27-31-410 (emphasis added).

Because Trademark Properties acted as the listing agent for some of the Plaintiffs in the 2008 lawsuit, the Court found that questions relating to Trademark's duties of disclosure to those Plaintiffs under the Act defeated summary judgment.

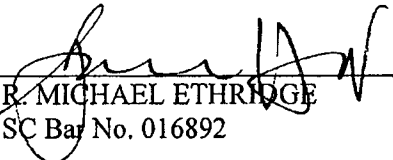
Here, however, Trademark Properties had no involvement in the sale of the subject condominium to Plaintiff Koola. Thus, to the extent that Trademark Properties may have had any liability under the Act for misrepresenting facts or failing to disclose facts to potential purchasers while acting as the listing agent of Cambridge Lakes properties, Plaintiff Koola has no standing to assert those claims, since Trademark Properties did not act as the listing agent who sold the subject property to Plaintiff Koola.

Viewing all evidence in the light most favorable to Plaintiff, there is no genuine issue of material fact on Plaintiff's claims. Therefore, Defendant Trademark respectfully requests this Court grants its Motion for Summary Judgment.

Respectfully submitted,

CARLOCK COPELAND & STAIR, LLP

By:

  
R. MICHAEL ETHRIDGE  
SC Bar No. 016892

SUZANNE E. HOGG  
SC Bar No. 101234

40 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
843-727-0307

Attorneys for Defendant Trademark Properties, Inc.

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

JOHNSON KOOLA, )  
Plaintiff, )

CAMBRIDGE TWO, LLC, ALBERT V. )  
ESTES, individually, CAMBRIDGE )  
LAKES, LP, STEPHEN R. HEAPE, )  
Individually and as General Partner of )  
CAMBRIDGE LAKES, LP, CAMBRIDGE )  
LAKES APARTMENTS, LP a/k/a )  
CAMBRIDGE LAKES APARTMENT )  
HOMES, a/k/a CAMBRIDGE LAKES )  
APARTMENTS, L.P, a/k/a CAMBRIDGE )  
LAKES APARTMENT HOMES, L.P, )  
CLASSIC PROPERTIES OF )  
CHARLESTON, INC, CAMBRIDGE )  
CONTRACTING, LP, TRADEMARK )  
PROPERTIES, INC., CAROLINA ONE )  
CHARLESTON HOME TEAM )  
PROPERTIES, LLC, CHARLESTON )  
HOME TEAM, LLC, CAROLINA ONE and )  
WILLIAM E.JENKINSON, IV, individually, )

Defendants. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE # 2010-CP-10-9158

**NOTICE OF MOTION AND  
MOTION FOR AMENDMENT AND  
RECONSIDERATION OF THE ORDER  
GRANTING SUMMARY JUDGMENT  
TO DEFENDANT TRADEMARK  
PROPERTIES, INC.**

FILED  
2014 NOV 12 PM 5:03  
JULIE J. ARMSTRONG  
CLERK OF COURT

TO: R. MICHAEL ETHRIDGE, ESQUIRE, ATTORNEY FOR DEFENDANT TRADEMARK PROPERTIES, INC.

**PLEASE TAKE NOTICE** that plaintiff pro se Johnson Koola ("Koola"), pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, and upon the attached "Affidavit of Koola", sworn to November 12, 2014 and Memorandum of Law and Points of Authorities in Support of Motion for Amendment and Reconsideration of the Order granting Summary Judgment to Trademark Properties, Inc. (Trademark"), will move this Court at such time and place as is convenient for the Court for an Order amending and granting reconsideration of the November 3, 2014 Order of the Hon. R. Markley Dennis which granted Summary Judgment to Trademark.

The grounds for this Motion are that the following material facts are in dispute, and there are disputes as to the conclusions and inferences drawn from those material facts.

- (i) Trademark is a joint tortfeasor with other defendants.
- (ii) Trademark actively helped the developer/seller to convert the apartment to Condominiums.
- (iii) Due to lack of Privity requirements Trademark and Carolina One are joint tortfeasors and jointly and severally liable to Koola.
- (iv) The Principal conferred his Express, Implied and Apparent authority on his Agents to convey the statutorily required disclosure reports on the Agents.
- (v) As an *Agent*, as a real estate licensee and salesman, and as a joint tortfeasor, Trademark is liable to Koola under the S.C. Horizontal Property Act § 27-31-430.
- (vi) The Doctrines of the Law of the Case and Collateral Estoppel apply to Trademark.
- (vii) Trademark's failure to make the disclosure as mandated by S.C. Code Ann. § 27-31-430 specifically and HPA generally constituted a violation of S.C. Unfair Trade Practices Act.
- (vii) Trademark's failure to make the disclosure as mandated by S.C. Code Ann. § 27-31-430 specifically and HPA generally constituted a violation of S.C. Unfair Trade Practices Act.
- (viii) Trademark is liable to Koola for Breach of Warranty, Negligence, Negligent Misrepresentation and Fraud.
- (ix) Did Trademark, who helped the developer/seller to convert the apartments to Condominiums, advise the developer/seller to provide the Builder's Certification to buyers?

These grounds preclude the grant of Summary Judgment to Trademark under Rule 56 of the South Carolina Rules of Civil Procedure.

Dated: Mount Pleasant, S.C.  
November 12, 2014

Respectfully submitted,



Johnson Koola  
1587 Cambridge lakes Dr  
Mt. Pleasant, SC 29464  
(843) 849-9241  
Plaintiff *Pro se*

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
JOHNSON KOOLA, )  
Plaintiff, )  
CAMBRIDGE TWO, LLC, ALBERT V. )  
ESTES, individually, CAMBRIDGE )  
LAKES, LP, STEPHEN R. HEAPE, )  
Individually and as General Partner of )  
CAMBRIDGE LAKES, LP, CAMBRIDGE )  
LAKES APARTMENTS, LP a/k/a )  
CAMBRIDGE LAKES APARTMENT )  
HOMES, a/k/a CAMBRIDGE LAKES )  
APARTMENTS, L.P, a/k/a CAMBRIDGE )  
LAKES APARTMENT HOMES, L.P, )  
CLASSIC PROPERTIES OF )  
CHARLESTON, INC, CAMBRIDGE )  
CONTRACTING, LP, TRADEMARK )  
PROPERTIES, INC., CAROLINA ONE )  
CHARLESTON HOME TEAM )  
PROPERTIES, LLC, CHARLESTON )  
HOME TEAM, LLC, CAROLINA ONE and )  
WILLIAM E.JENKINSON, IV, individually.)  
Defendants. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE # 2010-CP-10-9158

**MEMORANDUM OF LAW AND POINTS  
OF AUTHORITIES IN SUPPORT OF  
MOTION FOR AMENDMENT AND  
RECONSIDERATION OF THE ORDER  
GRANTING SUMMARY JUDGMENT  
TO DEFENDANT TRADEMARK  
PROPERTIES, INC.**

FILED  
2014 NOV 12 PM 5:04  
JULIE J. ARMSTRONG  
CLERK OF COURT

Plaintiff Johnson Koola (“Koola”) respectfully submits this Memorandum of Law and Points and Authorities in support of Koola’s Motion for Amendment and Reconsideration of this Court’s November 3, 2014 Order which granted Summary Judgment to Defendant Trademark Properties, Inc. (“Trademark”) and dismissed Koola’s claims against Trademark.

**FACTUAL BACKGROUND**

Koola’s claims against Trademark are for violation of South Carolina Horizontal Property Act, § 27-31-10 et seq. (“HPA”), specifically S.C. Code Ann. § 27-31-430 and various other South Carolina statutes by the named defendants in their conversion of apartments into condominiums,

which were later sold to Koola by defendants Cambridge Two, LLC. and Albert Estee (“collectively, developer/seller”).

#### **I. Establishment of Cambridge Lakes Condominiums**

Cambridge Lakes condominiums (“Condominiums”) were converted from Cambridge Lakes Apartments. Cambridge Lakes, LP, [a named defendant in the case at bar] built the Cambridge Lakes Apartments around the time period 1999-2000 and operated as rental apartments. Defendant Stephen Heape was the general partner and Defendant Albert Estee was one of the limited partners of Cambridge Lakes, LP. The developer/seller offered to buy out the Cambridge Lakes Apartments from Cambridge Lakes, LP, in 2002 with the aim of converting them to condominiums.

On August 9, 2002, the developer/seller hired Trademark (Ex. 1, p 1,3) for help in the conversion process and subsequent sale of the converted condominiums. The hiring took place well before the establishment of the Cambridge Lake Horizontal Property Regime on February 24, 2003 (Ex. 2, p 1). In June 2003, the developer/seller terminated Trademark’s services as the exclusive real estate agent stating, among others, that Trademark failed to deliver statutorily required disclosure statements [“Disclosure of the Physical Condition of the Buildings” as mandated by S.C. Code Ann. § 27-31-430] to the Condominium buyers (Ex. 3, p 3) and *immediately hired* Defendant O’Shaughnessy Real Estate, Inc. f/k/a Prudential Carolina Real Estate c/k/a Carolina One Real Estate (“Carolina One”) as the exclusive real estate selling agent to complete the sale of the Condominiums.

The sale of the Cambridge Lakes Apartments by Cambridge Lakes, LP, to developer/seller, hiring of Trademark for help in the conversion of apartments to Condominiums, establishment of the Cambridge Lakes Horizontal Property Regime through recordation of the Master Deed, and sale of the condominiums by Trademark in the initial stages and by Carolina One in the final stages constituted one single and indivisible action.

## II. Kola's Purchase of a Cambridge Lakes Condominium

In January 2004, Koola contracted to purchase a Cambridge Lakes condominium from developer/seller through Carolina One acting as a dual agent. Neither Carolina One nor the agreement/contract to buy the condominium (Ex. 4) did inform Koola that the condominium in question was a converted condominium. After the contract was signed and shortly before closing of the sale, Carolina One provided Koola with a copy of the Master Deed (Ex.2, p 1), which stated that the Cambridge Lake[s] Horizontal Property Regime (the "Condominium") was established according to the provisions of South Carolina Horizontal Property Act, § 27-31-10 et seq. (1976) ("HPA"). Carolina One also provided a copy of the State of South Carolina Residential Property Condition Disclosure Statement under S.C. Code Ann. § 27-50-1 (Ex. 5, p 3), which contained a brief statement: "**Condo Conversion** – Still Rentals on Property".

Koola and his Mortgagee received the "Builder's Certification" (Ex. 6) from Defendant Developer/Seller which stated: "For Condo Conversions: The structural, health and safety repairs and remodeling have been completed" which was intended to affirm that the developer/seller is in compliance with S.C. Code Ann. § 27-31-430 [which the developer/seller did not comply].

Koola purchased the condominium in Feb. 2004, after paying 10% down payment. Because of the representations made in the Master deed, the "Builder's certification", no cautionary or adverse information from real estate licensee, and the appraisal report, Koola was made to believe that he bought a "perfect condominium".

In June/July 2008, Koola was attempting to sell his condominium to enable him to pay off his mortgage related debts. In June 2008, the Cambridge Lakes Homeowners Association, Inc. ("HOA") initiated a lawsuit ("HOA's lawsuit") against the defendants named in this case at bar and a host of other defendants stating massive construction defects (Ex.7, p 3, Ex. 10) and violation of HPA (Ex. 8, Ex.9, p 19, and Ex. 10, p 24). The HOA claimed \$8 million as the cost to repair the

construction defects (Ex. 8, p 6) in the common elements of Cambridge Lakes Condominiums. This translates into defects worth \$92,307 in the 3-bedroom condominium Koola purchased.

Because of the alleged massive construction defects and the stated potential liability of \$92,307, Koola could not sell his unit in 2008. During 2008-2011, real estate transactions in Cambridge Lakes were practically frozen except for short sales and foreclosures; nearly 30% of the Cambridge Lakes homeowners lost their homes. In 2009 Koola became insolvent and filed for Chapter 7 Bankruptcy. After discharge from Bankruptcy in July 2009, Koola made a second and a third attempt to sell his condominium in the second half of 2009, but could not.

By November 2009, Koola had no resources to continue to pay mortgage-related payments and defaulted on those payments. In April/May 2010, Koola made a fourth attempt to sell his condominium through a short sale to clear all his mortgage related debts. In late 2010 the HOA and the Mortgagees initiated civil action for collection of unpaid monthly assessments as well as multiple foreclosure actions against Koola. Because of these multiple adversarial actions, Koola cancelled the short sale in September 2010. *The filing of the foreclosure actions and HOA's civil action in 2010* marked the termination of Koola's ownership of his condominium, which resulted in huge damage to Koola.

### **III. Facts relevant to Trademark in the conversion and sales of Condominiums**

The following facts would show to the Court that Trademark was hired to market all the condominiums including Koola's condominium:

(i) On August 9, 2002, the developer/seller hired Trademark (Ex. 1, p 3) for help in the conversion process, sale of the converted condominiums, to handle all required communications with prospective purchasers, and to convey statutorily required information to prospective purchasers of the Condominiums (Ex. 3). The hiring took place well before the recordation of the Regime and Master Deed in February 2003 (Ex. 2);



(ii) Trademark was hired as an exclusive sales agent for Cambridge Lakes condominiums for the period from August 9, 2002 to August 31, 2004 (Ex. 1, p 1). It is significant to note that Koola purchased the condominium in February 2004 within the original window of the contract;

(iii) The developer/seller hired Trademark to convert all the apartments and market all the converted condominiums including the condominium Koola purchased, not just few of the converted condominiums (Ex. 2);

(iv) At the request of the developer/seller, Trademark negotiated listing agreements and priced the condominium units including the unit Koola bought. Initially, Trademark priced Koola's unit at \$126,900 (Ex. 11).

(v) On April 17, 2003, the developer/seller asked Trademark to make a price change effective immediately on all unsold units which included Koola's unit and to price all three-bedroom units at the average price of \$134,500 (Ex. 12).

(vi) Richard Davis, Managing Director of Trademark, wrote a letter dated May 28, 2003 (Ex. 13) to the developer/seller that states: "On May 19, 2003 you attempted to terminate our listing agreement in order to keep from paying future commissions owed to Trademark properties....Trademark Properties was hired for the sole purpose of converting your existing *Apartment community.... into a viable condominium sales project....*I demand ***to be paid in full for all apartments***, which we successfully converted into Condominiums, which can be identified by the issuance of a new tax map number...."

(vii) The developer/seller sent a letter entitled "Notice of Condominium Conversion and Offer to Purchase" (Ex. 16) to the tenants in possession of the Cambridge Lakes Apartments which stated that: (a) They have the first right to buy the condominiums when they are ready for sale; and (b) They will be provided with a copy of the "Disclosure of the Physical Condition of the Buildings" report as mandated by S.C. Code Ann. §§ 27-31-420,430 before they buy the units. The

tenants in possession were also advised to contact Defendant Trademark for assistance in making the offer and to buy the condominiums. *This confirms that Defendant Trademark had actual and constructive knowledge about the mandate of S.C. Code Ann. § 27-31-430 and had the duty to convey the Disclosure report to prospective buyers.*

(viii) None of the prospective buyers of the Condominiums received the “Disclosure of the Physical Condition of the Buildings” report as mandated by S.C. Code Ann. § 27-31-430.

(ix) Trademark’s failure to convey “Disclosure of the Physical Condition of the Buildings” report as mandated by S.C. Code Ann. § 27-31-430 to prospective buyers established a new precedent in that the Carolina One, who followed Trademark, also failed to convey the said report to subsequent prospective buyers. These failures caused damages not only to Koola but also to all the prospective buyers and the subsequent buyers.

The following facts would show to the Court that developer/seller [Principal] conferred Express, Implied and Apparent Authority on Trademark [Agent] to convert all the apartments to condominiums under HPA, market them, and to convey all the statutorily required disclosure reports, including the “Disclosure of the Physical Condition of the Building” report mandated by S.C. Code Ann. § 27-31-430, to the propsective buyers:

(i) The developer/seller hired Trademark for its expertise and proven experience in the conversion and sale of converted condominiums. Both parties referred to the “successful conversion of Montclair Apartments” in Mt. Pleasant, SC, to “Montclair Condominiums” and sale to the public by Trademark, which happened in 2002-2003 and just before the conversion of Cambridge Lakes Apartments to Condominiums. Developer/seller was very satisfied with the conversion process done by Trademark Montclair Condominiums and presumed that Trademark provided the statutorily required disclosure reports to Montclair Condominiums buyers (Affidavit of Albert Estee, Ex. 3, Deposition of Albert Estee, Ex. 14. Deposition of Richard Davis (Ex. 15);

(ii) The Listing Agreement stipulated that Owner [developer/seller] **shall not deal directly with prospective buyers of this property** during the period of this agency and shall refer any inquiries received by the buyer to the broker [Trademark] (Ex 1, Clause P(7)). This is another indication that it was the duty of Trademark to provide the “Disclosure of the Physical Condition of the Buildings” report as mandated by S.C. Code Ann. § 27-31-430 to prospective purchasers because the buyers have/had no access to the developer/seller.

(iii) In June 2003 the developer/Seller terminated the Listing Agreement with Trademark stating that Trademark did not provide the statutorily required Disclosure Statements [“Disclosure of the Physical condition of the Buildings” as mandated by S.C. Code Ann. 27-31-430,420] to the prospective purchasers (Ex. 3).

#### **MOTION HEARING ON OCTOBER 22, 2014**

During Motion hearing on October 22, 2014, Trademark represented to the Trial Court that Trademark did not sell the condominium to Koola and therefore is not liable for any damages to Koola. Koola represented to the Trial Court that Trademark is a joint Tortfeasor with the co-defendant Carolina One and is therefore liable to Koola. The Trial Judge did not accept Koola’s representation, did not hear any further from Koola, and granted Summary Judgment to Trademark.

#### **SUMMARY JUDGMENT STANDARD**

Party moving for summary judgment must show that no genuine issue of material fact exists and that moving party is entitled to judgment as matter of law. Rule 56 (c), SCRPC.

Summary Judgment is proper where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. ***Summary judgment should not be granted even when there is no dispute as to the evidentiary facts if there is dispute as to the conclusions to be drawn from those facts.*** In determining whether any triable issues exist, the evidence and all inferences, which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Summary judgment should be invoked cautiously to avoid improperly denying a party a trial on the disputed factual issues. (Emphasis added; Internal citations omitted).  
*Angus v. Burroughs & Chapin Co.*, 358 S.C. 498, 596 S.E.2d 67, 69 (Ct.App. 2004).

Summary Judgment is not appropriate where further inquiry into facts of the case is desirable to clarify the application of law....All ambiguities, conclusions and inferences arising from the evidence must be construed most sternly against the moving party.

*Redwend Ltd. Partnership v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (Ct.App. 2004).

[W]e hold that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand summary Judgment.

*Hancock v. Mid-South Management Co.*, 381 S.C. 326, 673 S.E.2d 801, 803 (2009).

South Carolina has defined the evidence, which meets the scintilla standard as any material evidence that, if true, would tend to establish the issue in the mind of a reasonable juror.

*Young v. Hyman Motors, Inc.* 199 S.C. 233, 242-243, 19. S.C.2d 109, 113 (1942).

## ARGUMENTS

### **I. THERE ARE MATERIAL FACTS IN DISPUTE AND DISPUTES AS TO THE CONCLUSIONS OR INFERENCES DRAWN FROM THESE MATERIAL FACTS.**

The following material facts are in dispute, and there are disputes as to the conclusions and inferences drawn from those material facts.

- (i) Trademark is a joint tortfeasor with other defendants.
- (ii) Trademark actively helped the developer/seller to convert the apartment to Condominiums.
- (iii) Due to lack of Privity requirements Trademark and Carolina One are joint tortfeasors and jointly and severally liable to Koola .
- (iv) The Principal conferred his Express, Implied and Apparent authority on his Agents to convey the statutorily required disclosure reports on the Agents.
- (v) As an *Agent*, as a real estate licensee and salesman, and as a joint tortfeasor, Trademark is liable to Koola under the S.C. Horizontal Property Act § 27-31-430.
- (vi) The Doctrines of the Law of the Case and Collateral Estoppel apply to Trademark.
- (vii) Trademark's failure to make the disclosure as mandated by S.C. Code Ann. § 27-31-430 specifically and HPA generally constituted a violation of S.C. Unfair Trade Practices Act.
- (viii) Trademark is liable to Koola for Breach of Warranty, Negligence, Negligent Misrepresentation and Fraud.
- (ix) Did Trademark, who helped the developer/seller to convert the apartments to Condominiums, advise the developer/seller to provide the Builder's Certification to buyers?

## II. THE TRIAL JUDGE'S REFUSAL TO HEAR ALL OF KOOLA'S REPRESENTATIONS DURING MOTION HEARING WAS VERY PREJUDICIAL TO KOOLA AND VIOLATIVE OF CONSTITUTIONAL PROVISIONS.

During the Motion for Summary Judgment hearing on October 22, 2014, Trademark presented to the Court that it did not sell a condominium to Koola and is, therefore, not liable to Koola for any damages that Koola may have incurred. Koola represented to the Court that Trademark is a joint tortfeasor with other co-defendants for violation of HPA and is therefore liable to Koola. Immediately, the Trial Judge told Koola that the Trial Judge does not accept Koola's argument that Trademark is a joint tortfeasor. Koola attempted to provide a basis for the finding that Trademark is a joint tortfeasor based on authorities from previous Supreme Court decisions that there are no privity requirements in South Carolina. However, the Trial Judge refused to hear Koola's position. Koola cites to the following Supreme Court decisions:

A tortfeasor [agent] may be subjected to tort liability for injury to a third party arising out of the tortfeasor's contractual relationship with another [principal], despite the absence of Privity between the tortfeasor [agent] and the third party [plaintiff]; such liability exists independently of contract, and rests upon the tortfeasor's duty to exercise due care.

....

It is essential to liability for negligence that the parties have some relationship recognized by law to support the duty owed by the tortfeasor. This duty may be derived from the tortfeasor's contractual relationship with another [contract between the Principal and Agent].

*Barker v. Bill Sauls*, Supreme Court of South Carolina, Opinion No. 22564, Decided 1986, 345 S.E.2d 244 (1986).

*In South Carolina, however, the supplier of a defective product is accountable to an injured party on ordinary negligence principles despite a lack of Privity between the seller [Trademark] and the injured party [Koola]. Parties that have no legal relation to one another [Trademark and Carolina One, both licensees/brokers or Agents] and who owe the same duty of care to the injured party [Koola] share a common liability and are joint tortfeasors without a right of indemnity between them.*

*Scott v. Fruehauf Corp.*, 302 S.C. 364, 396 S.E. 2d 354 (1990).

*Stare Decisis* is the doctrine of precedent, under which a court must follow earlier judicial decisions when the same points arise again in litigation, as ruled in the following case laws:

Stare decisis exists to insure a quality of justice, which results from certainty and stability.

*State v. One Coin-Operated Video Game Mach.*, 321 S.C. 176, 467 S.E.2d 443 (1996).

The doctrine of *stare decisis* enjoys particular efficacy in the context of challenges concerning construction of statutes and determination of legislative intent.

*Wehle v. South Carolina Retirement System*, 363 S.C. 394, 611 S.E.2d 240 (S.C. 2005).

The Supreme Court may want to grant certiorari in the instant case and modify or overrule its previous decision, but this court has no authority to change it.

*American Fast Print Ltd., v. Design Prints pf Hickory*, 288 S.C. 46, 1986, 339 S.E.2d 516 (Ct.App 1986). (All internal citations omitted).

In *The State v. Duncan, Jr.*, Opinion No. 21172, Supreme Court of South Carolina, 264 S.E.2d 421 (1980), the Supreme Court held that a circuit court may not promulgate its own “....rules governing practice and procedure....”, and the promulgation of rules by the respective circuits is inconsistent with the constitutional mandate, Article V, section 4 of the South Carolina Constitution, and is unconstitutional and void.

The Trial Judge did not hear all of Koola’s representations during motion hearing and denied Koola Due Process of Law of the U.S. Constitution.

Code of Judicial Conduct, Rule 501, SCACR, provides as follows:

A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity, and impartiality of the judiciary. Canon 2. (A), CJC, Rule 510, SCACR.

A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law....Canon 3 B.(7), Rule 510, SCACR.

Koola represents to the Trial Judge that the Trial Judge’ refusal to allow Koola to present the arguments is very prejudicial to Koola. The Trial Judge advised Koola that Koola can appeal the Court’s decision; however, Koola submits to the Court that an appeal is very time consuming and prohibitively expensive for a pro se appellant, and prays to the Trial Judge to reconsider the Trial Judge’s Ruling from the Bench and November 3, 2014 Order.

**III. TRADEMARK IS A JOINT TORTFEASOR BECAUSE THE UNDERLYING TORT IN THE CASE AT BAR IS A JOINT TORT, AND THERE IS NO PRIVITY REQUIREMENTS AS A DEFENSE IN A CAUSE OF ACTION IN SOUTH CAROLINA.**

Defendant Stephen Heape, general partner of Defendant Cambridge Lakes, LP, facilitated the sale of Cambridge Lakes Apartments to Defendant Cambridge Two, LLC and Defendant Albert Estee (collectively, developer/seller), who later converted all the apartments to condominiums with the assistance of Trademark and employed Defendant Trademark in the very initial stage and Carolina One in the later stage as exclusive agents to sell all the converted condominiums to general public. Sale of the Apartments, Conversion of the Apartments into Condominiums and the subsequent sale of the converted condominiums to the general public in violation of various statutes caused harm to Koola, which cannot practically be divided and is a joint tort. All the joint tortfeasors should be held jointly and severally liable. *Scott v. Fruehauf Corp., supra*.

Currently there are no privity requirements in South Carolina Jurisdiction for a plaintiff's cause of action against a joint tortfeasor.

"The erosion of the concept of Privity has been a legal phenomenon for more than a decade, and this Court has not been reluctant to contribute to its demise.... [L]ack of Privity as a defense to a cause of action has been of questionable vitality in South Carolina. Today, we seek to still all whispers of its continued existence." Hence a purchaser may sue a builder on his implied warranty of service, despite the purchaser's lack of contractual privity. Any contrary implication by the Court of Appeals in *Carolina Winds* is rejected." (Internal citations omitted.)

*Kennedy vs. Columbia Lumber and Manufacturing Co., Inc.*, 299 S.C. 335, 384 S.E.2d 730 (1989).

A tortfeasor [agent] may be subjected to tort liability for injury to a third party arising out of the tortfeasor's contractual relationship with another [principal], despite the absence of Privity between the tortfeasor [agent] and the third party [plaintiff]; such liability exists independently of contract, and rests upon the tortfeasor's duty to exercise due care.

....

It is essential to liability for negligence that the parties have some relationship recognized by law to support the duty owed by the tortfeasor. This duty may be derived from the tortfeasor's contractual relationship with another [contract between Trademark and developer/seller.

*Barker v. Bill Sauls, supra*.

*In South Carolina, however, the supplier of a defective product is accountable to an injured party on ordinary negligence principles despite a lack of Privity between the seller [Trademark] and the injured party [Koola]. Parties that have no legal relation to one another [Trademark and Carolina One, both real estate licenses<sup>1</sup> and who owe the same duty of care to the injured party [Koola] share a common liability and are joint tortfeasors without a right of indemnity between them.*

*Scott v. Fruehauf Corp., supra.*

Koola has demonstratively established that Trademark is a joint tortfeasor and is liable to Koola for the damages to Koola. Accordingly, summary judgment is not appropriate.

**IV. TRADEMARK IS LIABLE TO KOOLA UNDER S.C. HORIZONTAL PROPERTY ACT, BECAUSE OF THE AUTHORITY CONFERED ON TRADEMARK BY THE PRINCIPAL, BECAUSE OF DUTIES AS A S.C. REAL ESTATE LICENSEE, AND BECAUSE OF THE MANDATE IN S.C. CODE ANN. § 27-31-430.**

**A Principal and Agent**

An Agent is endowed with Express, Implied and Apparent Authority from the Principal to perform certain acts on behalf of the Principal to the third parties and acts as a de facto Principal in performing the duties to the third party. The developer/seller (Principal), through his authority, conferred upon Trademark (Agent) the duty to convey the “Disclosure of the Physical Condition of the Building” report mandated by S.C. Code Ann. § 27-31-430 to prospective buyers.

The authorized acts of an Agent are the acts of the Principal. An Agent’s allegedly negligent actions could be imputed to the Principal, when the agent had authority to act on behalf of Principal.

*Roberson v. Southern Finance of South Carolina, Inc.*, 365 S.C. 6, 615 S.E.2d 112 (2005); *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006).

The doctrine that an agent is not liable for contracts made on behalf of a disclosed principal does not apply when the agent must answer, not in contract, but in tort.

*Thomas v. Delta Enterprises, Inc.*, 302 S.C. 351, 396 S.E.2d 122 (S.C.App. 1990).

An agent’s liability for his own tortuous acts is unaffected by fact that he acted in his representative capacity. An agent is liable to third person for damages from violation of a duty, which agent owes to third person, and it is immaterial whether that violation is one of malfeasance, misfeasance or nonfeasance.

*Lawlor v. Scheper*, 232 S.C. 94, 101 S.E.2d 269 (1957).



Under South Carolina Limited Liability Company Act, S.C. Code Ann. § 33-44-303, the developer/seller *assigned or delegated* the responsibility of providing the S.C. Code Ann § 27-31-430-mandated “Disclosure Report” to condominium buyers to Trademark.

In *State of South Carolina v. C&L Corp. Inc.*, 280 S.C. 519, 313 S.E.2d 334, the Appellate Court affirmed the lower court’s decision that the developer [Principal] and its agent {Agent} are liable for misrepresentations made by salesman during negotiation for sale of lots, regardless of their knowledge as to those representations and confirmed civil penalty under Unfair Trade Practices Act. Accordingly, because no adjudication has been made with respect to the liability of defendants Cambridge Two, LLC and Albert Estee (developer/seller), it is not proper to dismiss Trademark’s liability to Koola at this time.

**B. Duties of Real Estate Licensees and Real Estate Sellers/Brokers.**

S.C. Code Ann. § 27-50-50(C) mandates that a real estate licensee acting as a listing agent or a selling agent is subject to the regulations governing his license and performance of his responsibilities as licensee, as provided by the [real estate] commission....Under the terms of regulations set forth by the real estate commission, a real estate licensee acting as a listing agent or a selling agent is responsible *to deliver all the disclosure reports to the purchaser.*

S.C. Code Ann. §§ 27-50-40, 50(a) mandate that the owner of the real property shall furnish to a purchaser a written disclosure statement and that the owner of real property shall deliver to the purchaser the disclosure form required by S.C. Code Ann. § 27-50-40 before a real estate contract is signed by the purchaser and owner, or as otherwise agreed in the real estate contract.

S.C. Code Ann. § 27-50-70 mandates that a listing agent or any real estate licensee operating for any party in a residential real estate transaction must inform in writing each owner covered by the listing agreement of the owner’s obligations prescribed in this article. If the listing agent

performs this duty, he is not liable for the owner's refusal or failure to provide a prospective purchaser with disclosure statement.

In *Winters v. Fiddie*, 394 S.C. 269, 716 S.E.2d 316 (Ct.App. 2011) the Appellate Court, citing S.C. Code Ann. 27-50-65 (2007), ruled that failure to provide a buyer with an accurate disclosure statement may subject the owner and his or her real estate agent to civil penalty, and affirmed the Lower Court's ruling that the complaint alleged a cause of action under statute governing actions for knowing disclosures of false, incomplete, or misleading material information regarding the condition of residential property. the Appellate Court also affirmed the Lower Court's Ruling that the consent order imposing sanctions by LLR [South Carolina Department of Labor, Licensing and Regulation] against real estate agent for the violations under review was admissible as evidence in the said case. Accordingly, summary judgment is not appropriate.

**C. As an Agent, as a real estate licensee and salesman, and as a joint tortfeasor, Trademark is liable to Koola under the S.C. Horizontal Property Act § 27-31-430.**

The developer/seller of converted condominiums, converted from apartments under South Carolina Horizontal Property Act § 27-31-10 et seq., is mandated to provide "the Disclosure of the Physical Condition of the Building" [latent defects] *report* prepared under the guidelines of S.C. Code Ann. § 27-31-430 to each prospective buyers.

The mandate of S.C. Code Ann. § 27-31-430 has *two elements*: (i) ***Preparation of the Disclosure of the Physical Condition of the Buildings Report*** prepared under the guidelines of S.C. Code Ann. § 27-31-430; and (ii) ***Timely conveyance/delivery of the said Disclosure Report to prospective purchases***. When the developer/seller himself sells the converted condominiums to the buyers, then he assumes both these responsibilities. When the Developer/seller authorizes a real estate broker/licensee to sell the converted condominiums, then he *transfers* or *delegates* his responsibilities to the real estate broker/licensee, the Agent.

S.C. Code Ann. § 40-57-137(F), however, has provided that a seller's agent is not obligated to discover latent defects in property. Therefore, *preparation* of the "Disclosure of the Physical Condition of the Buildings" Report *mandated by S.C. Code Ann. § 27-31-430* is the sole responsibility of the developer/seller, the Principal. If the Principal fails to prepare the mandated Report, it becomes the duty of the Agent under S.C. Code Ann. § 27-50-70 to inform in writing to the Principal that he has to prepare the "Disclosure of the Physical Condition of the Building" Report *under the guidelines of S.C. Code Ann. § 27-31-430* and then deliver the Disclosure Report to prospective purchasers. If the developer/seller refuses to prepare the said disclosure report in spite of the licensee's notice in writing, the real estate agent, because of the statutorily created duty of care to the buyer, has to disclose to the buyer that his/her right to receive the disclosure report has been violated. Thus, the *timely delivery of the said Disclosure Report* to prospective purchasers falls on the Agent [Trademark].

Since Trademark is a joint tortfeasor with other co-defendants, Trademark's statutory liability to provide the "Disclosure of the Physical Condition of the Buildings" Report prepared under the guidelines of S.C. Code Ann. § 27-31-430 to the Condominium buyers whom Trademark sold directly is extended to Trademark's liability to convey the said Report to Koola.

The Listing agreement (Ex. 1) stipulated that Owner [developer/seller] shall not deal directly with prospective buyers of this property during the period of this agency (Ex 1, Clause P(7)). The question before this Court is that how can a prospective condominium buyer receive the statutorily mandated disclosure report directly from the developer/seller when the developer/seller is contractually prohibited to deal with the developer/seller directly. This stipulation confirms further that Trademark, the Agent, shall provide the "the Disclosure of the Physical Condition of the Building" report to the prospective buyers.

The **mandate in** HPA set forth in *S.C. Code Ann. § 27-31-430* is an absolute Legislative mandate<sup>1</sup> with Strict Liability, the violation of this mandate is automatically liable under South Carolina Unfair Trade Practices Act as mandated by the Legislature. This is the only violation in real estate transactions that is defined as Unfair Trade Practices by the Legislature.

The Trail Court's ruling in the case at bar that Trademark, a joint tortfeasor, is not liable to Koola defied the Legislative mandate, Legislative intent and the Authority of South Carolina Supreme Court. Even the Supreme Court cannot overrule a legislative intent or mandate, which are supreme in S.C. Jurisprudence, unless there is a violation of State or U.S. Constitution.

#### **V. THE DOCTRINES OF "THE LAW OF THE CASE" AND COLLATERAL ESTOPPEL**

During the progression of the HOA's lawsuit, Trademark filed a Motion for Summary Judgment against the Plaintiff HOA (Ex.17) stating, among others: (i) Trademark has no duty to provide the "Disclosure of the Physical Condition of the Buildings" report to Condominium buyers as mandated by S.C. Code Ann. § 27-31-430; (ii) Trademark is not liable for violation of Unfair Trade Practices; and (iii) Plaintiff HOA is not a prospective purchaser of the condominiums under the code section 27-31-430. These are the same arguments that Trademark has raised against Koola.

The Plaintiff HOA filed a Memorandum in Opposition to Trademark's Motion for Summary Judgment (Ex. 18) and argued, among others: (i) Under South Carolina Limited Liability Company Act, S.C. Code Ann. 33-44-303, the developer/seller, being an LLC, *assigned or delegated* the responsibility of providing the S.C. Code Ann § 27-31-430-mandated "Disclosure Report" to Condominium buyers to Trademark; and (ii) Based on Trademark's representations, the developer/seller hired Trademark to market, sale and manage the conversion of the Cambridge

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<sup>1</sup> In the case of a condominium covered under the Horizontal Property Act, each co-owner shall have exclusive ownership and possession of his apartment and shall have an undivided interest in the common elements. S.C. Code Ann. § 27-31-60 (a). For this reason a condominium buyer cannot inspect the common elements for any latent defects. This is the basis for the Legislative mandate in S.C. Code Ann. § 27-31-430.

Lakes project and *relied upon Trademark to handle and to convey all required communication or information to prospective purchasers.*

The Trial Judge denied Trademark's Motion for Summary Judgment and denied Trademark's argument that it is not liable to Cambridge Lakes condominium buyers and co-plaintiff HOA for violation of S.C. Code Ann. § 27-31-430 (Ex. 19). Significantly, Trademark did not appeal the decision of the Court. The Trial Court's decision became the Law of the Case. Under the doctrine of the law of the case, Trademark cannot argue any more in a Court of Law that it has no duty to provide the "Disclosure of the Physical Condition of the Buildings" report as mandated by S.C. Code Ann. § 27-31-430 to Condominium buyers including Koola. Moreover, South Carolina has a long-standing rule that one judge of the same court cannot overrule another.

An unappelaed ruling is the law of the case and requires affirmance....*This State has a long standing rule that one judge of the same court cannot overrule another.*", *Shirley's Iron Works, Inc. v. City of Union*, 743 S.E.2d 778 ((S.C. 2013);

Under the law of the case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." *Sloan Const. Co. v. Southco Grassing*, 395 S.C. 164, 717 S.E.2d 603 (S.C. 2011);

The law of the case doctrine applied where a party does not challenge an issue on appeal when there has been an opportunity to do so." *Bone v. U.S. Food Service*, 399 S.C. 566, 733 S.E.2d 200 (S.C. 2012);

Collateral Estoppel is a doctrine barring a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one (Black's Law Dictionary).

## **VI. TRADEMARK'S FAILURE TO MAKE THE DISCLOSURE AS MANDATED BY S.C. CODE ANN. § 27-31-430 CONSTITUTED A VIOLATION OF S.C. UNFAIR TARDE PRACTICES ACT.**

Trademark argues that it is not in violation of S.C. Unfair Trade Practices Act because: (i) Koola's action is a private cause of action; (ii) Trademark's action has not adversely affected the

public interest; and (iii) Koola failed to present even *a scintilla of probative evidence* that Trademark's action has adversely affected the public interest.

Trademark's liable to Koola for Unfair Trade Practices on two counts: (i) Violation of S.C. Code § 27-31-430 specifically and (ii) Violation of HPA in general.

Trademark fails/failed to comprehend the **Legislative Intent** of the mandate in S.C. Code § 27-31-430 that a failure to make the disclosure statement under S.C. Code § 27-31-430 *automatically constitutes a violation of the S.C. Unfair Trade Practices Act*. Koola does not have to prove that Trademark's action has adversely affected the public interest; S.C. Legislature has already determined that certain trade practices [e.g. the violation of S.C. Code § 27-31-430] shall automatically constitute a violation of the S.C. Unfair Trade Practices Ac. Even the Supreme Court cannot overrule a legislative intent or mandates, which are supreme in S.C jurisdiction, unless there is a violation of State or U.S. Constitution.

The question before this Court is not whether Trademark is in violation of S.C. Unfair Trade Practices Act, but whether Koola has shown to this Court that Trademark has violated the mandate in S.C. Code § 27-31-430, which Plaintiff Koola has done, *supra*. For this reason, Trademark is automatically liable to Koola for violation of S.C. Code § 27-31-430.

Trademark is also liable to Koola for Unfair Trade Practices due to the violation of HPA generally, because Trademark's action adversely affected the public interest of the State of South Carolina. In Cambridge Lakes alone, Trademark's violation adversely affected all the Condominium buyers which total about two hundred buyers in Cambridge Lakes.

In *State of South Carolina v. C&L Corp. Inc.*, 280 S.C. 519, 313 S.E.2d 33 (Ct.App. 1984), the Appellate Court affirmed the lower court's decision that the developer and its agent are liable for misrepresentations made by salesman during negotiation for sale of lots, regardless of their

knowledge as to those representations and confirmed civil penalty under Unfair Trade Practices Act.

The Unfair Trade Practices Act should not be construed to increase plaintiff's burden of proving liability, since its purpose is to give additional protection to victims of unfair trade practices, not to make a case harder to prove than it would be under common law principles.

S.C. Code § 39-5-10 et seq.; *Wright v. Craft*, Opinion No.: 4181, 640 S.E.2d 486 (S.C.App. 2006).

**VII. DEFENDANT TRADEMARK'S LIABILITY FOR BEACH OF CONTRACT/ WARRANTY STANDS BECAUSE LACK OF PRIVACY IS NOT A DEFENSE TO A CAUSE OF ACTION IN S.C. JURISPRUDENCE.**

Trademark argues that: (i) there is/was no contract between Koola and Trademark to sell the condominium directly to him; (ii) [Carolina One] and its listing agent, William Jenkinson, IV, made a contract with Koola and sold the condominium to Koola; and (iii) [Carolina One] and its listing agent, William Jenkinson, IV, not Trademark, are liable to Koola for Breach of Contract/[Express and Implied] Warranty.

Lack of Privacy was a valid defense for a cause of action in 20<sup>th</sup> Century U.S. Jurisprudences. The Cardazo test and Andrews test have eliminated Privacy relationship between a Plaintiff and a Defendant as a defense in a cause of action in U.S. Jurisprudences. Privacy requirement as a defense in a cause of action has no standing in S.C. Jurisprudence, and therefore Trademark is a joint tortfeasor and liable to Koola for Breach of Contract/[Express and Implied] Warranty.

We have been steadfast in holding that Privacy of contract as a defense to an implied warranty action is abolished in this State.... "The erosion of the concept of Privacy has been a legal phenomenon for more than a decade, and this Court has not been reluctant to contribute to its demise.... [L]ack of Privacy as a defense to a cause of action has been of questionable vitality in South Carolina. Today, we seek to still all whispers of its continued existence." Hence a purchaser may sue a builder on his implied warranty of service, despite the purchaser's lack of contractual privacy. Any contrary implication by the Court of Appeals in *Carolina Winds* is rejected." (Internal citations omitted.)

*Kennedy vs. Columbia Lumber and Manufacturing Co., Inc., supra.*

Decisions of Supreme Court of South Carolina, in *JKT Co. v. Hardwick*, 274 S.C. 413, 265 S.E.2d 510 (1980) and *Colleton Preparatory Academy, Inc. v. Hoover Universal, Inc.*, 379 S.C. 181, 666 S.E.2d 247 (S.C. 2008) are other authorities which denied privity requirement as defense in a cause of action.

Because of a lack of privity requirement in South Carolina and because Trademark is a joint tortfeasor, Trademark is liable to Koola as is Carolina One and its listing agent, William Jenkinson, IV, for Breach of Warranty.

#### **VIII. TRADEMARK IS LIABLE TO KOOLA FOR NEGLIGENCE.**

The Authorities in Appellate Courts decisions provide:

A tortfeasor [agent] may be subjected to tort liability for injury to a third party arising out of the tortfeasor 's contractual relationship with another [principal], despite the absence of Privity between the tortfeasor [agent] and the third party [plaintiff]; such liability exists independently of contract, and rests upon the tortfeasor's duty to exercise due care.

It is essential to liability for negligence that the parties have some relationship recognized by law to support the duty owed by the tortfeasor. This duty may be derived from the tortfeasor's contractual relationship with another [contract between the Principal and Agent].

*Barker v. Bill Sauls, supra.*

*In South Carolina, however, the supplier of a defective product is accountable to an injured party on ordinary negligence principles despite a lack of Privity between the seller [Trademark] and the injured party [Koola]. Parties that have no legal relation to one another [Trademark and Carolina One, both sellers or Agents] and who owe the same duty of care to the injured party [Koola] share a common liability and are joint tortfeasors without a right of indemnity between them.*

*Scott v. Fruehauf Corp., supra.*

These authorities clearly show that Trademark, a joint tortfeasor, is liable to Koola for negligence because Privity requirements in South Carolina has been eliminated and *parties that have no legal relation to one another [Trademark and Carolina One, both sellers or Agents] and who owe the same duty of care to the injured party [Koola] share a common liability.*



Punitive damages are recoverable in a negligence cause of action when the defendant's conduct rises to the level of a willful, wanton, or a malicious violation of plaintiff's rights, and a conscious failure to exercise due care constitute willfulness. *Scott, supra*, at 357.

#### **IX. TRADEMARK IS LIABLE TO KOOLA FOR FRAUD**

Trademark denies any liability to Koola for fraud claiming that: (i) Trademark did not sell the converted condominium to Koola directly; (ii) Koola bought the subject condominium in early 2004 through Carolina One.

Koola has shown to this Court, that: (i) Trademark is a joint tortfeasor with Carolina One and other defendants, *supra*; (ii) Privity requirement is no more a valid defense in South Carolina Jurisprudence, *supra*; and (iii) Further, "*Parties that have no legal relation to one another [Trademark and Carolina One, both Agents, but no legal relation] and who owe the same duty of care to the injured party [Koola] share a common liability and are joint tortfeasors without a right of indemnity between them.*" *Scott, supra*.

Fraud is an intentional misrepresentation of truth for the purpose of inducing another in reliance upon it to part with some valuable belonging to her or to surrender a legal right. Koola proves hereby the nine elements of fraud:

(i) A representation: The Master Deed (Ex. 2), made available by Trademark and Carolina One to Koola [and all other condominium buyers], clearly made the **representation** that the conversion of the apartments into condominiums *complied* with South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10 *et seq.* They sold the condominium to Koola [and all other condominium buyers], stating "**excellent price for quality product!**" (Ex.20, 21).

(ii) Its falsity: The *representation* that the conversion of the apartments into condominiums *complied* with South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10 *et seq.* made by the Trademark and Carolina One was absolutely **false**; for none of the condominium buyers

received a copy of the “Disclosure of the Physical Condition of the Buildings” Report (S.C. Code Ann. § 27-31-430). The quality product turned out to be a condominium complex with multimillion dollar construction defects (Ex. 8).

(iii) Its materiality: The misrepresentations made by Trademark and Carolina One are **material**;

(iv) Knowledge of the falsity or reckless disregard of its truth or falsity: Both Trademark and Carolina One had *actual and constructive knowledge* of the truth that “Disclosure of the Physical Condition of the Buildings” Report prepared under the guidelines of S.C. Code Ann. § 27-31-430 was not provided to any condominium buyers. In spite of this knowledge, both Trademark and Carolina One sold the Condominiums to all the buyers as if S.C. Code Ann. § 27-31-430 has been complied with;

(v) Intent that the representation be acted upon: Trademark and Carolina One worked diligently so that the unwary condominium buyers **would act on the representations** made to them in the Master Deed;

(vi) The hearer’s ignorance of its falsity: Koola was **absolutely ignorant of any representation** that the sale of Cambridge Lakes condominiums did not comply with the mandate of compilation with S.C. Code Ann. § 27-31-430 at the time he bought the condominium;

(vii) The hearer’s reliance upon its truth: Koola **absolutely believed and relied upon the representation** made in the Master Deed and the Builder’s Certification that the sale of Cambridge Lakes condominiums complied with S.C. Code Ann. § 27-31-430. Ex. 22 would show to this Court that Plaintiff Koola would rely and act on a written professional report;

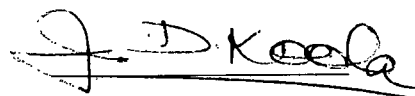
(viii) The hearer’s right to rely on: The condominium buyers can interact only with the real estate agents and not with the seller, (Ex. 1, Clause P(7)). Therefore, the hearer has **the right to rely on the representations** made by the real estate agents, Trademark and Carolina One; and

(ix) The hearer's consequent and proximate injury: Because of the massive construction defects (Ex. 7) in the common elements of Cambridge Lakes and the HOA's lawsuit, Koola could not sell his condominium when he tried to sell it *four times* during 2008-2010. Clearly, the condominium was not marketable. *The filing of the foreclosure actions and HOA's civil action in 2010 against Koola marked the termination of Koola's ownership of his condominium, which resulted in huge damage to Koola. The defendant's actions were a proximate cause of harm that Koola suffered.* Koola lost everything that he had. At 71 years of age and no resources to live on except limited Social Security benefits, defendants in the case at bar inflicted serious damages upon Koola.

**Koola prays that this Court grant the following relief:**

- I. Vacate its November 3, 2014 Order by finding that Trademark is not entitled to a Summary Judgment due to the existence of genuine issue of material fact, and because there are disputes as to the conclusions or inferences to be drawn from these evidentiary facts.**
- II. To deny the Motion for Summary Judgment granted to Trademark**
- III. Reinstate Koola's claims against Trademark.**

This the 12<sup>th</sup> day of November 2014  
Mt. Pleasant, SC 29464



Johnson Koola  
1587 Cambridge Lakes Dr  
Mt. Pleasant, SC 29464  
(843) 849-9241

Plaintiff pro se

6.04

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
JOHNSON KOOLA, )  
Plaintiff, )  
CAMBRIDGE TWO, LLC, ALBERT V. )  
ESTES, individually, CAMBRIDGE )  
LAKES, LP, STEPHEN R. HEAPE, )  
Individually and as General Partner of )  
CAMBRIDGE LAKES, LP, CAMBRIDGE )  
LAKES APARTMENTS, LP a/k/a )  
CAMBRIDGE LAKES APARTMENT )  
HOMES, a/k/a CAMBRIDGE LAKES )  
APARTMENTS, L.P, a/k/a CAMBRIDGE )  
LAKES APARTMENT HOMES, L.P, )  
CLASSIC PROPERTIES OF )  
CHARLESTON, INC, CAMBRIDGE )  
CONTRACTING, LP, TRADEMARK )  
PROPERTIES, INC., CAROLINA ONE )  
CHARLESTON HOME TEAM )  
PROPERTIES, LLC, CHARLESTON )  
HOME TEAM, LLC, CAROLINA ONE and )  
WILLIAM E.JENKINSON, IV, individually,) )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICAL CIRCUIT  
CASE No.: 2010-CP-10-9158

**NOTICE OF MOTION AND  
MOTION FOR AMENDMENT AND  
RECONSIDERATION OF THE ORDER  
GRANTING SUMMARY JUDGMENT  
TO DEFENDANT O'SHAUGHNESSY  
REAL ESTATE, INC., d/b/a PRUDENTIAL  
CAROLINA REAL ESTATE n/k/a  
CAROLINA ONE REAL ESTAE**

FILED  
2014 DEC -2 PM 4:53  
JULIE J. ARMSTRONG  
CLERK OF COURT

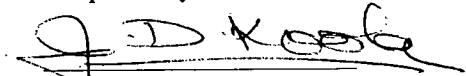
TO: MICHAEL C. SCARAFILE, ESQUIRE, ATTORNEY FOR DEFENDANT  
O'SHAUGHNESSY REAL ESTATE INC. f/k/a PRUDENTIAL CAROLINA REAL ESTAE n/k/a  
CAROLINA ONE REAL ESTATE ("CAROLINA ONE"):

**PLEASE TAKE NOTICE** that plaintiff pro se Johnson Koola ("Koola"), pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, and upon the attached "Affidavit of Koola" sworn to December 2, 2014, Memorandum of Law and Points of Authorities, and Evidentiary Exhibits, will move this Court at such time and place as is convenient for the Court for an Order amending and granting reconsideration of the November 10, 2014 Order [filed on Nov. 18, 2014] of the Hon. R. Markley Dennis which granted Summary Judgment to Carolina One.

The grounds for this Motion are that there are genuine issue of material facts and material facts in dispute, and there are disputes as to the conclusions and inferences drawn from these disputed material facts: (i) Koola signed a Buyer Representation Agreement with Carolina One as an Exclusive Buyer's Agent, establishing a Principal/Buyer Client – Agent relationship. Because of the resulting Fiduciary Duty, Duty of Care, and Legal Duty, Carolina One owed Koola to act in good faith to promote and protect the interests of Koola; (ii) Koola also signed a Dual Agency Agreement with Carolina One reestablishing Fiduciary Duty and Duty of Care to Koola; (iii) Principal/Seller Client conferred his express, implied and apparent authority on Carolina One, the Agent, to provide the "S.C. Code Ann. § 27-31-430-mandated Disclosure Report" to Koola; (iv) Carolina One had actual and constructive knowledge that the converted condominium being sold was subjected to S.C. Horizontal Property Act; (v) As an agent of the developer/seller, Carolina One had the duty to inform Koola that he has a right to receive the S.C. Code Ann. § 27-31-430-mandated Disclosure Report", and to provide the said report to Koola; (vi) At the time of motion hearing, there was a Motion to Compel pending for Carolina One's failure to provide discovery responses and noncompliance with a Court Order, and for not filing pleadings, depositions, answers to interrogatories, admissions, affidavits, and memoranda with the Court before motion gearing; and (vii) Carolina One's negligent misrepresentation constituted a violation of S.C. Unfair Trade Practices Act, Breach of Warranty, Negligence, and Fraud.

Dated: Mount Pleasant, S.C.  
December 2, 2014

Respectfully submitted,



Johnson Koola  
1587 Cambridge lakes Dr  
Mt. Pleasant, SC 29464  
(843) 849-9241  
Plaintiff *Pro se*

|                                         |   |                        |
|-----------------------------------------|---|------------------------|
| STATE OF SOUTH CAROLINA                 | ) |                        |
|                                         | ) | COURT OF COMMON PLEAS  |
| COUNTY OF CHARLESTON                    | ) |                        |
| Johnson Koola,                          | ) |                        |
|                                         | ) |                        |
| Plaintiff,                              | ) |                        |
| v.                                      | ) | Case No. 10-CP-10-9158 |
|                                         | ) |                        |
| Cambridge Two, L.L.C., <i>et. al.</i> , | ) |                        |
|                                         | ) |                        |
| Defendants.                             | ) |                        |

## TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on October 22, 2014, before The Honorable R. Markley Dennis in Courtroom 4C of the Charleston County Courthouse, 100 Meeting Street, Charleston, South Carolina; attended by counsel as follows:

### APPEARANCES:

Johnson Koola  
Appearing *Pro Se*

R. Michael Ethridge, Esq.  
CARLOCK COPELAND  
Appearing for Trademark

Michael Scarfile, Esq.  
Appearing for O'Shaunessy Real Estate

Deborah Garrison  
Circuit Court Reporter – 9<sup>th</sup> Judicial Circuit  
P O Box 901  
Johns Island, South Carolina 29457  
[dgarrison@sccourts.org](mailto:dgarrison@sccourts.org)

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1 THE COURT: All right, we're here for a  
2 summary judgment Motion, I think.

3 MR. ETHRIDGE: Yes, sir.

4 THE COURT: Thank you, Mr.  
5 Ethridge.

6 MR. ETHRIDGE: Good morning, Your  
7 Honor. Mike Ethridge here on behalf of  
8 Trademark. If it's okay if I could stand  
9 here, because I have -- and I don't know if  
10 you'll be able to hear me all right.

11 THE COURT: With all seriousness,  
12 Don was telling me -- I didn't know that you  
13 had had an injury.

14 MR. ETHRIDGE: It's all right.

15 THE COURT: You don't even have to  
16 stand.

17 MR. ETHRIDGE: I'll be fine.

18 THE COURT: That's your business,  
19 but you don't have to.

20 MR. ETHRIDGE: Thank you. I  
21 might put my leg up, if that's okay, after I  
22 sit down.

23 THE COURT: Absolutely, that's no  
24 problem.

25 MR. ETHRIDGE: And I'm going to



1           be real short, so this is quite all right.

2                   THE COURT:       Very well.

3                   MR. ETHRIDGE:       Judge, we're here  
4           on a Motion for summary judgment that I had  
5           filed on behalf of Defendant Trademark  
6           Properties, in the Koola case.

7                   There are two or three documents  
8           that, if it's okay, I would like to hand up  
9           to the Court.

10                   THE COURT:       Sure.

11                   MR. ETHRIDGE:       I know that you've  
12           read a lot of documents from a lot of folks  
13           over the last couple of days but there are  
14           three that may be real helpful as it relates  
15           to my argument, (tendering via deputy to  
16           Judge).

17                   THE COURT:       Thank you.

18                   MR. ETHRIDGE:       Ms. Hogg has  
19           copies for everybody else here.

20                   THE COURT:       Sure.

21                   MR. ETHRIDGE:       And, once again,  
22           Judge, we appreciate you working us into your  
23           schedule for this hearing.

24                   THE COURT:       I'm glad to do it.

25                   MR. ETHRIDGE:       Your Honor,

1       this is -- I am going to be very brief, this  
2       is a short Motion.

3               THE COURT:     Okay.

4               MR. ETHRIDGE:     This lawsuit, Your  
5       Honor, arises out of the sale of a  
6       condominium unit at a condominium complex  
7       known as Cambridge Lakes. If I could just  
8       take a minute and give the Court a bit of the  
9       history ---

10              THE COURT:     Certainly.

11              MR. ETHRIDGE:     --- with regard to  
12       that complex.

13              THE COURT:     Certainly.

14              MR. ETHRIDGE:     The Cambridge  
15       Lakes complex were originally condominiums.  
16       In 2002, a developer, Cambridge Two, L.L.C.  
17       converted those -- I'm sorry, they were  
18       originally apartments.

19              In 2002, Cambridge Two, L.L.C.  
20       converted those apartments to condominiums.

21              THE COURT:     Okay.

22              MR. ETHRIDGE:     In August of 2002,  
23       they hired my client, Trademark Properties,  
24       to be the listing agent and to begin the  
25       process of preselling those condominiums as

1       they were being converted to apartments -- to  
2       condominiums.

3               The role of Trademark in the process  
4       was as listing agent. They were not  
5       associated with the developer in any way,  
6       shape or form. They were the listing agent,  
7       they were preselling the units.

8               We were hired in August -- August of  
9       2002. There was a dispute between my client  
10      and the developer, and we were fired in May  
11      of 2003.

12              THE COURT:     Okay.

13              MR. ETHRIDGE:    This lawsuit  
14      arises out the purchase of one of the  
15      condominium units at that complex. That was  
16      a purchase made by the plaintiff in this  
17      case, Mr. Koola. That purchase was made in  
18      February of 2004, which was about eight or  
19      nine months after our contract had been  
20      terminated.

21              THE COURT:     Okay.

22              MR. ETHRIDGE:    We did not have  
23      any involvements, did not participate in any  
24      way, shape or form to the transaction that  
25      involved the sale of Mr. Koola's unit. That

1 is the basis of our Motion for summary  
2 judgment.

3 Just a little more history that I  
4 think is helpful for the Court: as you may  
5 know, in 2008 there was a lawsuit that was  
6 brought by the homeowners association out  
7 there at Cambridge Lakes against the  
8 defendants in this case and others related to  
9 the condo conversion. Trademark was a part  
10 of that lawsuit because it had been involved,  
11 as I said, in a few of those initial  
12 presells.

13 THE COURT: Right.

14 MR. ETHRIDGE: That lawsuit was  
15 resolved. Mr. Koola then filed his own  
16 separate action and this particular action is  
17 for the diminution in value of his unit.  
18 What he did, it appears that he named a lot  
19 of the parties that had been named in the  
20 original suit -- Trademark being one of them,  
21 but we had no involvement whatsoever in the  
22 sale of his unit. And because that is the  
23 transaction which is the basis of this  
24 lawsuit, which is the sale of the unit, uh,  
25 we believe that we are entitled to summary

1 judgment.

2 Now, what I've presented to you,  
3 Your Honor, are three affidavits. I'm not  
4 going to read them to you. They were  
5 attached for the reason that they are in the  
6 record.

7 THE COURT: Sure. There's -- all  
8 three affidavits are certainly incorporated.

9 MR. ETHRIDGE: Yes, sir. They --  
10 I'll just say for the record what they show.

11 The one that has "Exhibit A" on the  
12 bottom of it is just an affidavit from  
13 Richard Davis of Trademark that says that he  
14 was not involved in the sale, or in the  
15 contract that determined value.

16 The other two documents are an  
17 affidavit that he has submitted in the other  
18 lawsuit and a copy of the contract between  
19 Trademark and the developer that sets out the  
20 obligations of Trademark.

21 What I wanted the Court to under-  
22 stand from those two documents is that  
23 Trademark was not a part of the -- wasn't a  
24 part of converting the apartments to  
25 condominiums beyond presell of the units.

1           So, Your Honor, in a case where a  
2           plaintiff alleges, as here, that he was  
3           provided this information, somehow duped,  
4           somehow not properly informed with regard to  
5           what he was buying, and that he has suffered  
6           damage as a result of that, then it seems  
7           that any liability that's going to arise from  
8           the transaction is related to the purchase of  
9           that property. Since we were not involved in  
10          that transaction, we believe that we're  
11          entitled to summary judgment. That's the  
12          basis of our Motion.

13           THE COURT:     All right.

14           MR. ETHRIDGE:     I have also -- I  
15          have some arguments with regard to whether or  
16          not there is even a cause of action under the  
17          Horizontal Property Act against listing  
18          agents. That is fully briefed. I don't even  
19          know what that -- I don't think that the  
20          Court needs to get there, because I think the  
21          Court may resolve the summary judgment issues  
22          based on our role in this transaction. But  
23          I'm happy to answer questions if that comes  
24          up later.

25           THE COURT:     All right. Well, why

1 don't we let -- I'll be happy from Mr. Koola.

2 Mr. Koola, your response, sir?

3 MR. KOOLA: Good morning, Your  
4 Honor.

5 THE COURT: Good morning.

6 MR. KOOLA: Good morning to all  
7 here. First of all, I'd like to thank you  
8 for giving me permission to act *pro se*.

9 If I could stand at the podium, Your  
10 Honor?

11 THE COURT: Sure. Wherever you  
12 are comfortable.

13 MR. KOOLA: Thank you. If you  
14 cannot hear me, please let me know and I will  
15 try to repeat it.

16 THE COURT: That'll be fine.

17 MR. KOOLA: Just a couple of  
18 things, Your Honor. I do not want to make  
19 any excuses as to policy, I will abide by the  
20 Order of the Court. But I'm seventy-one (71)  
21 years old. Sometimes, you know, I cannot  
22 complete my thoughts. In case I cannot  
23 complete my argument, I have submitted my  
24 brief and I have a copy for the Court --  
25 (tendering via deputy to Judge).

1 THE COURT: Thank you, sir. You  
2 have filed this?

3 MR. KOOLA: Yes, Your Honor.

4 THE COURT: Okay, you've filed it  
5 then it is incorporated. So you may rely on  
6 your brief fully.

7 MR. KOOLA: Also, one more thing.  
8 Some of the evidence, I've taken from the  
9 case of the homeowners association and the  
10 new defendants. I've extracted some evidence  
11 and have made copies to cite figures, and  
12 I've made copies of all of this ---

13 THE COURT: Did you file that?

14 MR. KOOLA: I filed it yesterday.

15 THE COURT: That's fine.

16 MR. KOOLA: I can give you an  
17 extra copy.

18 THE COURT: That's okay, it's  
19 already a part of the file.

20 MR. KOOLA: Okay. In any case, if  
21 I cannot complete my argument, please read my  
22 memo.

23 THE COURT: Yes, sir, that's fine.

24 MR. KOOLA: Okay. First, I bought  
25 the condo in January of 2004, two thousand



1 and four. I made a contract to buy the  
2 condominium and I honored that contract.

3 Carolina One was the listing agent,  
4 not Trademark. I am not disputing that.  
5 Then I -- shortly after I signed the  
6 contract, I -- when you buy a condominium or  
7 any listed property through a listing agent,  
8 you do not have contact with the seller.  
9 That is fairly normal.

10 THE COURT: Yes, sir.

11 MR. KOOLA: You do not --

12 THE COURT: My point is this, Mr.  
13 Koola, you brought an action against  
14 Trademark.

15 MR. KOOLA: Yes, sir.

16 THE COURT: But at the time that  
17 you purchased it, while they had previously  
18 been involved, and I understand that they  
19 were doing what Carolina One was doing at the  
20 time.

21 MR. KOOLA: Yes, I explained that  
22 in my memo.

23 THE COURT: Okay. Well, tell me  
24 why Trademark is responsible.

25 MR. KOOLA: Okay. First of all,

1 the old, uh, -- the conversion of the  
2 condominium and the sale of the condominiums  
3 was a joint venture, and all of the  
4 defendants who are named in the case are  
5 joint tort feasers.

6 THE COURT: Yes. Well, the  
7 problem is that you don't have any evidence  
8 in any of the filings or submissions that  
9 makes Trademark a tort feasers in the  
10 condominium conversion. Sorry.

11 MR. KOOLA: Yes, uh, ---

12 THE COURT: Sorry, it's not there.

13 MR. KOOLA: Okay.

14 THE COURT: So you don't -- you  
15 really don't have a cause of action against  
16 them.

17 MR. KOOLA: Your Honor, when  
18 Trademark was hired as the listing agent they  
19 were hired to sell all of the condominiums,  
20 including ---

21 THE COURT: If you'd bought with  
22 them, had dealt with them and then moved to  
23 Carolina One, you might have some connection.  
24 But you didn't. They were removed before you  
25 got there.

1 MR. KOOLA: Yes. Your Honor, I  
2 have cited -- (reviewing papers) -- the  
3 Supreme Court decisions. I have all of that  
4 ---

5 THE COURT: Mr. Koola, I  
6 appreciate that. That is the beauty of a  
7 brief. You can argue that legal position.  
8 If they want to change it, they can do so.  
9 But based on my review of all of the  
10 submissions here that have been made, yours  
11 included, you don't have a cause of action  
12 against Trademark. It doesn't exist. So you  
13 -- if you're successful on appeal, good luck.  
14 But that is the way that ---

15 MR. KOOLA: What I was ---

16 THE COURT: I don't agree with  
17 your position. Okay?

18 MR. KOOLA: Okay.

19 THE COURT: It is my call now and  
20 I don't agree with your position. I agree  
21 with his. So, therefore, at this stage you  
22 lose. If you're successful in getting the  
23 Court of Appeals or the Supreme Court to  
24 reverse me, that's fine. You can argue that.  
25 They may agree with you. I don't. Okay?

1 MR. KOOLA: Thank you.

2 THE COURT: If you want to prepare an  
3 Order, based on what you submitted here  
4 today.

5 MR. ETHRIDGE: Yes, sir.

6 THE COURT: Thank you. I don't  
7 think that we need to muddy the water. You  
8 weren't party to the transaction.

9 MR. ETHRIDGE: Right.

10 THE COURT: Now we have another --  
11 Mr. Koola, I will hear from you now on the  
12 next one.

13 MR. SCARFILE: Thank you, Your  
14 Honor. Michael Scarfile for Defendant  
15 O'Shaunessy Real Estate.

16 THE COURT: Yes, sir.

17 MR. SCARFILE: Mr. Koola is  
18 right, he's briefed all of the issues very,  
19 very well. I appreciate that.

20 THE COURT: Excuse me -- Mr.  
21 Koola, I will hear from you after I hear from  
22 Mr. Scarfile.

23 MR. KOOLA: Yes, Your Honor.

24 MR. SCARFILE: And I will keep  
25 ours relatively very short, as well. We were

1 the listing agent on this property. Every  
2 allegation in the Complaint asserts a failure  
3 to abide by the Horizontal Property Regime  
4 Act, which puts duties on the seller to  
5 provide certain architectural documents,  
6 certain engineering documents regarding a  
7 condo conversion.

8 THE COURT: Okay.

9 MR. SCARFILED: We were not part  
10 of the original case by the homeowners.

11 THE COURT: I understand that, but  
12 you were the seller. You were the agent for  
13 the seller.

14 MR. SCARFILED: We were the agent  
15 for the seller.

16 THE COURT: Yeah, and we're in a  
17 scintilla world, too, aren't we?

18 MR. SCARFILED: Yes, sir. If Your  
19 Honor says that there is a question of fact,  
20 ---

21 THE COURT: I think that there's  
22 -- I can't kick you out on that.

23 MR. SCARFILED: Okay.

24 THE COURT: I understand that  
25 there may be some technical legal issues

1       about what does the Horizontal Property  
2       Regime Act create insofar as you're  
3       concerned.

4               MR. SCARFILE:       Which are  
5       questions of law, not fact.

6               THE COURT:       I understand. But --  
7       are you telling me that it specifically --  
8       and I'll have to read it if I missed that.  
9       Does it exclude anyone as an agent for the  
10      seller?

11              MR. SCARFILE:       It specifically  
12      says that the lessee, owner and co-owner have  
13      duties.

14              THE COURT:       Correct. But who do  
15      you stand in the shoes of when you are  
16      representing someone?

17              MR. SCARFILE:       I don't think, you  
18      know, -- for example, Your Honor, Mr. Koola  
19      has referenced the residential condition --  
20      Residential Property Disclosure Act.

21              THE COURT:       I'm asking you a  
22      simple question. You're going to come to me  
23      and you're offering me something, you're  
24      offering me something -- not from you but for  
25      the person that you represent.

1 MR. SCARFILE: Absolutely, Your  
2 Honor.

3 THE COURT: And you're standing in  
4 that person's shoes.

5 MR. SCARFILE: I would agree,  
6 Your Honor.

7 THE COURT: You have obligations  
8 to me that that person would have.

9 MR. SCARFILE: I do not believe  
10 that applies to the statutory duties, only  
11 because -- just for reference, Your Honor, in  
12 the Residential Property Disclosure Act, for  
13 example, it says that if an agent notifies  
14 the owner of their duty to do something and  
15 the owner doesn't do so, an agent is not  
16 liable.

17 THE COURT: If the agent notified  
18 the duty to do what?

19 MR. SCARFILE: In the Residential  
20 Property Disclosure Act, say a seller ---

21 THE COURT: What are we asking --  
22 you notified them that 'this person has some  
23 concerns, and you better do something.'

24 MR. SCARFILE: No, sir.

25 THE COURT: Okay.

1 MR. SCARFILE: My point -- based on  
2 your analogy, the Seller Disclosure Act  
3 requires the Seller by law to complete a  
4 certain document. The statute specifically  
5 says that if they don't do it, it's on them  
6 and not on the agent.

7 THE COURT: It may be insofar as  
8 completing a document. But my question is,  
9 what about representations that are made?

10 MR. SCARFILE: There are no  
11 assertions or representations here. Every  
12 allegation in the Complaint is that the  
13 developer, during the conversion, did not  
14 follow the Horizontal Property Regime Act in  
15 the conversion of the condominiums. There  
16 are no allegations in the Complaint, which  
17 was filed in 2010, that we did anything  
18 wrong, that we misrepresented anything, that  
19 we made any statements, that we didn't do our  
20 job, that would lead to potential liability  
21 or question of fact for the jury as to the  
22 duties or liabilities of a real estate agent.  
23 But there are no allegations of that in the  
24 Complaint. Every allegation in the Complaint  
25 is the convertor, the seller of the condos,



1 did not abide by the Horizontal Regime Act  
2 and, therefore, everyone -- if there had been  
3 allegations -- I'm simply going off of the  
4 allegations in the Complaint and the language  
5 in the statute.

6 We think our position, and then I  
7 will sit down, that those are simply  
8 questions of law, and involves no questions  
9 of fact for any fact finder.

10 THE COURT: Okay. All right,  
11 what ---

12 MR. SCARFILE: If Your Honor  
13 feels that there is, we would simply ask --  
14 this matter has been going on since 2010 and  
15 we'd simply ask that we pick a date and move  
16 forward. You know, if there are questions of  
17 fact, let's get on with it. But we don't  
18 even -- this matter was filed seven years  
19 after we closed on the transaction. We don't  
20 even have a file on this transaction. We're  
21 required to keep them five years. Let this  
22 move forward. But I'm afraid that we are  
23 going to start another four- or five-year  
24 quest.

25 THE COURT: Okay. Mr. Koola?

1 MR. KOOLA: Can I ---

2 THE COURT: Yes, sir.

3 MR. KOOLA: Can you ---

4 THE COURT: Tell me what they did.

5 MR. KOOLA: Yes, sir. They have  
6 not filed any answers to my discovery filed  
7 last year.

8 THE COURT: That's not before me  
9 today. A Motion to compel -- if you've filed  
10 a Motion to compel, we'll schedule it, but it  
11 is not scheduled for today.

12 MR. KOOLA: All right.

13 THE COURT: Yes, sir?

14 MR. SCARFILE: Before the Court  
15 -- Mr. Young and I, as with the other  
16 parties, prior to their involvement in this  
17 case had proceeded under the fact that this  
18 case was stayed, pending appeal. Once we had  
19 our status conference -- apparently that  
20 obviously wasn't the case once Mr. Koola  
21 became *pro se*. I answered those earlier this  
22 week. There were no classic documents --

23 THE COURT: I am not hearing that,  
24 so you don't need to respond.

25 MR. SCARFILE: Since they have

1       been provided, I just didn't want to come  
2       back with ---

3               THE COURT:       I'm not --

4               MR. SCARFILE:       It was filed.

5               THE COURT:       Well, I -- we're  
6       talking about a matter that was in 2008, and  
7       discovery is not going to be an issue today  
8       on that.

9               MR. SCARFILE:       Yes, sir.

10              MR. KOOLA:       Yes, Your Honor.  
11       Section 27-50-40 says that the agent that  
12       manages the property, that all the informa-  
13       tion is to be provided.

14              THE COURT:       Yes. My concern is  
15       this, you're citing general statutes dealing  
16       with agent responsibilities.

17              MR. KOOLA:       Yes.

18              THE COURT:       You need to focus this  
19       one on your cause of action based on not  
20       following the Horizontal Property Regime Act.

21              MR. KOOLA:       Yes. The ---

22              THE COURT:       Not generally.

23              MR. KOOLA:       Yes. The first one --  
24       there are two steps involved. The first step  
25       is that somebody has to prepare the

1 disclosure report and that report was  
2 prepared by an architect or an engineer that  
3 is licensed in the state of South Carolina.

4 The second part is that somebody has to  
5 make the report from the owner or from the  
6 source to the buyer.

7 Now, South Carolina Rule 24-50-70  
8 said that the real estate agent has a mandate  
9 to inform the owner in writing that there are  
10 obligations with respect to disclosure of the  
11 faults.

12 So coming to the Horizontal Property  
13 Regime Act, again there is a -- there is one  
14 statute that says that a report has to be  
15 made only by the seller or by the owner.  
16 Now, there are two steps: the preparation of  
17 the report that goes to the owner and the  
18 conveyance of the report from the owner to  
19 the buyer. That is the responsibility of the  
20 landlord, and Trademark. South Carolina  
21 statute says that it is the duty of the  
22 licensee to convey all the reports to the  
23 buyer.

24 THE COURT: Okay.

25 MR. KOOLA: And recently there was

1 a case involving Carolina One, which I have  
2 cited in my cases. It is -- was from 2011,  
3 where the owner and the real estate agent are  
4 responsible for the failure to give a  
5 disclosure report to a buyer.

6 THE COURT: Is that a case  
7 involving the Horizontal Property Regime Act?

8 MR. KOOLA: No, that is a case ---

9 THE COURT: Excuse me?

10 MR. KOOLA: No.

11 THE COURT: Then that case doesn't  
12 have any bearing.

13 MR. KOOLA: As I said, the  
14 Horizontal Property Regime Act has two steps.

15 THE COURT: You've already said  
16 that.

17 MR. KOOLA: Yeah.

18 THE COURT: All right.

19 MR. KOOLA: And there is no way  
20 that the -- the real estate agent is the only  
21 person who deals with the seller. The buyer  
22 has no connection with the -- with the owner.  
23 So who gives the report? Somebody has to  
24 give it.

25 THE COURT: All right.

1 MR. KOOLA: And that is why the  
2 South Carolina Horizontal Property Regime Act  
3 has the strict language.

4 THE COURT: All right. All right.

5 MR. SCARFILE: Your Honor, may I  
6 hand up one document?

7 THE COURT: Sure.

8 MR. SCARFILE: (Tenders),  
9 disclosure statement.

10 THE COURT: Thank you.

11 MR. SCARFILE: The issue that we  
12 have -- the confusion with the Horizontal  
13 Property Regime Act and the South Carolina  
14 Residential Disclosure Act, when Mr. Koola  
15 cited 27-50-70, putting a duty on an agent to  
16 provide, that document was provided, as Your  
17 Honor has examined it, at the time of closing  
18 and was signed by Mr. Koola. So what he is  
19 citing as a basis of a duty by an agent to  
20 provide, that document was provided at the  
21 time of sale. There is no such requirement  
22 in the Horizontal Property Disclosure Act.  
23 That's why we think the duty was met.

24 THE COURT: Okay.

25 MR. KOOLA: First of all, there is

1 a duty from a real estate agent to an owner  
2 in a condo conversion under the Horizontal  
3 Property Act, under 27-50-70.

4 THE COURT: I understand. Twenty-  
5 five?

6 MR. KOOLA: Yes, 25-50-70, the  
7 duty on the owner to provide the disclosure  
8 report.

9 THE COURT: Okay.

10 MR. SCARFILE: 20-50-70,  
11 which is what I've attached, Your Honor.

12 THE COURT: All right.

13 MR. KOOLA: Your Honor, I have  
14 copies of the statute here.

15 THE COURT: Listen, are you --  
16 that's why I want to know what you're citing.  
17 This that you've handed me talks about Title  
18 27, Chapter 50. Twenty-seven, not twenty.  
19 So are we talking about another section?

20 MR. SCARFILE: 27-50-70.

21 THE COURT: That's what I asking.  
22 He's saying twenty.

23 MR. KOOLA: No, no, I didn't say  
24 twenty.

25 THE COURT: Are you saying 27-50-

1 70?

2 MR. KOOLA: Yes, 27-50.

3 THE COURT: Okay. That's fine.

4 There is no question about that, but that  
5 doesn't have any application to this. That  
6 is a separate act.

7 MR. KOOLA: But, Your Honor, ---

8 THE COURT: Mr. Koola, again,  
9 we're going to have to agree to disagree. I  
10 have what complies with 27-50 with the  
11 disclosure required, that's been signed by  
12 you. That copy has been handed to me and  
13 it's been signed by you. That was provided  
14 to you at closing. So therefore that Act --  
15 they complied fully with that Act, with that  
16 provision and that requirement.

17 I do not think you have raised any  
18 connection, by anything, to the Horizontal  
19 Property Regime Act. So I -- I'll grant  
20 summary judgment, as well.

21 Prepare the Order.

22 MR. SCARFILE: Yes, sir.

23 THE COURT: Very well. The next  
24 step is that the Court of Appeals may agree  
25 with you.



1 MR. KOOLA: Yes, sir. Can I file  
2 a ---

3 THE COURT: Yes, sir, absolutely.  
4 You will not have to file it until after you  
5 actually receive the Order.

6 MR. KOOLA: Also, may I file a  
7 Motion for reconsideration once I receive the  
8 Order?

9 THE COURT: You can file a Motion for  
10 reconsideration if there is some reason that  
11 I don't address in my ruling, the written  
12 Order. Then I will deal with that. Then  
13 you'll have the right to appeal. Thank you,  
14 sir.

15 (HEARING CONCLUDED)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Wm Lloyd Garrison

Charleston, South Carolina  
January 17, 2015

**THE STATE OF SOUTH CAROLINA**  
**In the Court of Appeals**

---

**APPEAL FROM CHARLESTON COUNTY**  
**Court of Common Pleas**

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No.: 2010-CP-10-9158

---

APPELLATE CASE No.: 2015-000111

---

Johnson Koola,.....Appellant,

v.

Cambridge Two, LLC, Albert V. Estee, Individually, Cambridge Lakes, LP, Stephen R. Heape, Individually and as General Partner of Cambridge Lakes LP, Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP, a/k/a Cambridge Lakes Apartment Homes, LP, Classic Properties of Charleston, Inc., Cambridge Contracting, LP, Trademark Properties, Inc., Carolina One Charleston Home Team Properties, LLC, Charleston Home Team, LLC, Carolina One, and William E. Jenkinson, IV, individually,

Of Whom Trademark Properties, Inc., and O'Shaughnessy Real estate, Inc., f.k.a Prudential Carolina Real Estate n/k/a Carolina One Real Estate are  
.....Respondents.

---

**NOTICE OF APPEAL**

---

Appellant pro se/plaintiff pro se, Johnson Koola, hereby files Notice of Appeal of the Order of the Honorable R. Markley Dennis, Jr., granting respondent/defendant Trademark Properties, Inc., ("Trademark") and respondent/defendant O'Shaughnessy Real Estate Inc., f/k/a Prudential Carolina Real Estate n/k/a Carolina One Real Estate ("Carolina One") and denying appellant's Motion for Amendment and Reconsideration of the Order granting Summary Judgment to the Respondents.

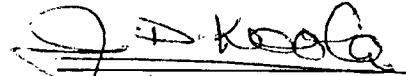
Appellant received Notice of Entry of Judgment/Order denying the Motion for Amendment and Reconsideration of the Order granting Summary Judgment to Trademark on December 5, 2014.

Appellant received Notice of Entry of Judgment/Order denying the Motion for Amendment and Reconsideration of the Order granting Summary Judgment to Carolina One on December 26, 2014.

Appellant served notice of Appeal on the Counsels of Record for the respondents on January 5, 2015. Appellant filed Notice of Appeal with the Clerk of the Court for Charleston County on January 9, 2015.

Dated: Mount Pleasant, SC  
January 9, 2015

Respectfully submitted,



Johnson Koola  
1587 Cambridge Lakes Dr  
Mt Pleasant, SC 29464  
(843) 849-9241  
Appellant pro se

Other Consuls of Record:

R. Michael Ethridge, Esq.  
Carlock Copeland & Stair, LLP  
40 Calhoun Street, Suite 400  
Charleston, SC 29401-3531  
Counsel for Trademark

Michael Scarafile, Esq.  
Carolina One Realty  
4024 Salt Pointe Parkway  
Charleston, SC 29405  
Counsel for Carolina One

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-9158

Johnson Koola

Cambridge Two, LLC, et al

2014 OCT 28 AM 11:37

PLAINTIFF(S)

JULIE J. ARMSTRONG  
CLERK OF COURT

DEFENDANT(S)

Submitted by:

BY 1

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant Carolina One Real Estate's motion for Summary Judgment, filed on 12/6/13, is GRANTED; Formal order to follow.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| N/A                                          |                                          | \$                                                       |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

  
Circuit Court Judge

2060

Judge Code

10/22/2014

Date

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

JOHNSON KOOLA, )

Plaintiff, )

CAMBRIDGE TWO, LLC, ALBERT V. )

ESTES, individually, CAMBRIDGE )

LAKES, LP, STEPHEN R. HEAPE, )

Individually and as General Partner of )

CAMBRIDGE LAKES, LP, CAMBRIDGE )

LAKES APARTMENTS, LP a/k/a )

CAMBRIDGE LAKES APARTMENT )

HOMES, a/k/a CAMBRIDGE LAKES )

APARTMENTS, L.P, a/k/a CAMBRIDGE )

LAKES APARTMENT HOMES, L.P, )

CLASSIC PROPERTIES OF )

CHARLESTON, INC, CAMBRIDGE )

CONTRACTING, LP, TRADEMARK )

PROPERTIES, INC., CAROLINA ONE )

CHARLESTON HOME TEAM )

PROPERTIES, LLC, CHARLESTON )

HOME TEAM, LLC, CAROLINA ONE and )

WILLIAM E.JENKINSON, IV, individually,) )

Defendants. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE # 2010-CP-10-9158

MEMORANDUM OF EVIDENTIARY  
EXHIBITS IN SUPPORT OF  
MOTION FOR AMENDMENT AND  
RECONSIDERATION OF THE ORDER  
GRANTING SUMMARY JUDGMENT  
TO DEFENDANT TRADEMARK  
PROPERTIES, INC.

BY

JULIE J. ANSTRONG  
CLERK OF COURT

2014 NOV 13 PM 4:39

FILED

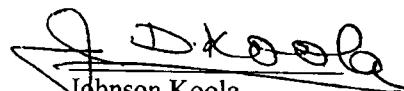
TO: R. MICHAEL ETHRIDGE, ESQUIRE, ATTORNEY FOR DEFENDANT  
TRADEMARK PROEPTIES, INC.

Plaintiff pro se Johnson Koola submits Memorandum and Evidentiary Exhibits in Support of  
Motion for Amendment and Reconsideration of the November 3, 2014 Order of the Hon. R.  
Markley Dennis which granted Summary Judgment to Defendant Trademark Properties, Inc.

Dated: Mount Pleasant, SC

November 13, 2014

Respectfully submitted

  
Johnson Koola  
1587 Cambridge Lakes Dr  
Mt. Pleasant, SC 29464  
(843) 849-9241  
Plaintiff pro se

# Trademark Properties

## EXCLUSIVE RIGHT TO SELL LISTING AGREEMENT FOR RESIDENTIAL MULTIPLE LISTING

### THE STATE OF SOUTH CAROLINA

In consideration of the mutual covenants herein contained, CAMBRIDGE TWO, LLC.  
Sole Property Owner(s) (hereinafter called "OWNER") and Trademark Properties  
Real Estate Company (hereinafter called "BROKER"), agree as follows:

- A. **EMPLOYMENT:** For the period of time beginning on August 9th, and ending at midnight on August 31 2004. OWNER hereby grants to BROKER the sole and exclusive right to sell the real property known as:  
Lot varies Block varies Section varies Subdivision Cambridge Lakes  
Address Cambridge Lakes Drive  
Tract/Map # varies City Mt. Pleasant Zip 29464  
County of Charleston State of South Carolina.

The real estate described herein includes all fixtures, equipment and improvements of any kind which are now attached to or planted on the premises such as: shrubbery, trees, fences, shutters, blinds, lamp posts, mail boxes, TV antennas, clothesline poles, curtain/drapery rods, ceiling fans, attached mirrors and light bulbs, as well as all built-in equipment, appliances, cabinets, furniture and shelves unless otherwise agreed herein.

- B. **SALE PRICE:** Said property is hereby listed to sell for the gross sale price of varies See attached price list B-E Dollars (\$varies). The OWNER shall pay from the sales price, the real estate commission, a fee for preparing the deed, the deed stamps required on the deed, recording of satisfaction, prorated taxes, and other fees as of the day of closing.

- C. **TERMS:** Said property may be sold subject to the following terms (Check appropriate blocks):  
(☐) Any type new financing and/or cash. Buyer to pay as of closing costs.  
(☐) Equity Sale. Buyer to pay \$ varies and assume existing first mortgage having an unpaid principal balance of approximately \$ varies (\$500 variance in mortgage balance allowed).  
(☐) Other varies

- D. **PERSONAL PROPERTY:** Personal property to be transferred to the Buyer at no extra cost is as follows:  
as

- E. **LATENT DEFECTS:** OWNER agrees to disclose to the BROKER any known defects which are not readily ascertainable upon view of the herein described property and to hold said BROKER harmless for any liabilities or damages arising from such defects. Known defects are as follows:  
none

  
OWNER'S Initials

- F. **POSSESSION:** OWNER agrees to vacate the premises and give possession to the Buyer at closing  
SUBJECT TO FINANCING OR PERMIT.

### G. COMMISSION:

- OWNER agrees that said BROKER has earned a commission of 5.4 % if a Buyer is secured who is ready, willing, and able to purchase the herein described property at the price and on the terms aforesaid or at any price and terms acceptable to the OWNER. Commission to be paid at closing of sale, or default of OWNER.
- Said commission to be paid to BROKER whether said Buyer is found by BROKER, by another Broker, by the undersigned OWNER or by any other person.
- If within 180 after the termination of this listing agreement, an agreement to sell, transfer or exchange, the herein described property is made or effected by the undersigned OWNER, directly or through any other person with a prospective buyer to whom any agent of the listing BROKER or of a cooperating Broker, or the OWNER has shown or offered said property during this exclusive listing period, the OWNER shall pay the aforementioned commission to the listing BROKER, at the consummation of the sale, provided that the name of the prospective buyer is furnished to the OWNER by the listing BROKER in writing within ten (10) days after termination of this exclusive listing period. No commission shall be payable under the terms of this agreement if a sale is made after the termination of this agreement by or through a licensed broker who has a then current listing agreement with the OWNER.
- For purposes of this Agreement, a sale shall be defined as any transfer of a legal, equitable or beneficial interest in the subject property, whether for money or in exchange of other property, and shall include, but not be limited to, any transfer of an ownership interest in any corporation, limited partnership, or other entity.
- In the event an option is signed on said property, a fee of \$ 0 shall be paid or 0 % of the commission. This fee or commission shall be paid to BROKER when option money is dispensed to OWNER. Balance of agreed upon commission shall be due at closing.



Acknowledgment of Page 1

Broker's Initials RLD

Seller's Initials RLD

MLS Form #201 / Rev. 8/98 and approved by Charleston Trident Multiple Listing Service, Inc.  
All previous editions of this form are void

Page 1 of 3

Realty One Software, P.O. Box 2489, Asheville, NC

Ex. 1, p 1



6. As the exclusive agent for the undersigned OWNER, the BROKER is authorized to receive and hold in BROKER'S Trust Account until the closing all sums paid as a deposit on the purchase of said property. If the agreement shall terminate due to default by the prospective buyer, BROKER shall retain half the balance of the earnest money deposit as commission for finding a buyer of said property (not to exceed the amount of commission due for the sale) and divide same equally with cooperating firm. The remainder of said deposit shall be paid to the OWNER. If termination is because of default by the OWNER, the OWNER may be required to pay the Actual Cost incurred, as may be provided in the sales contract. If either prospective buyer or OWNER refuses to execute release of contract, BROKER will hold earnest money in trust until said releases are executed or until the court dictates legal disposition, or the statute of limitations terminate the parties cause for action.
- H. **TERMITE REPORT:** If the property to be sold has been previously occupied, the OWNER shall obtain a current Wood Infestation Report (CL-100) from a licensed pest control operator. Should said report reveal presence of, or damage by termites, other wood destroying organisms, plumbing leaks or excessive moisture, OWNER shall remedy said deficiencies and shall furnish a copy of said report certifying that property is free from infestation or damage herein mentioned or that infestation or damage has been treated or repaired in a workmanlike manner, on or before day of closing, or possession, whichever occurs first. If the home to be sold has been previously unoccupied, OWNER shall certify that the dwelling has been or will be treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the buyer, at closing, a five (5) year written guarantee from a licensed pest control operator.
- I. **WARRANTY CONDITION:** If home to be sold has been previously occupied, OWNER agrees to maintain the property, including lawn, shrubbery, and grounds in as good condition as on the date herein until the day of closing or possession, whichever occurs first. OWNER also warrants that all heating, air conditioning, electrical, and plumbing systems as well as built-in or appurtenant equipment or appliances shall be in operative condition on the day of closing or possession, whichever occurs first. Unless otherwise agreed herein, OWNER shall deliver the premises to the buyer with no broken window panes; no torn or missing door screens or window screens; and with no missing or broken hardware, lighting or plumbing fixtures. In the case of a new home, OWNER shall deliver to the buyer at the consummation of this sale, any warranty required by FHA or VA (if the property is financed by an FHA or VA loan) or an equivalent warranty if the property is financed by a conventional loan.
- J. **AGREEMENT TO SELL:** When a Buyer is found for said property, the OWNER shall enter into an "AGREEMENT TO BUY AND SELL", which will contain the terms and conditions of sale, the customary provisions as to the examination of the title, the curing of any defects in title, the prorating of taxes, rents and applicable property expenses.
- K. **MARKETABLE TITLE:** OWNER shall convey marketable title to the buyer in fee simple free from all liens except those stipulated herein, subject to existing zoning and government restrictions; applicable owner's association assessments, and restrictive conditions and covenants of record which do not materially affect the present use of the property.
- L. **SIGNS:** OWNER grants to listing BROKER the exclusive right to display "For Sale", "Under Contract", "Sale Pending", "Sold", (or other similar) signs on the property and to remove other such signs.
- M. **CHANGES IN TERMS OR CONDITIONS:** OWNER understands, agrees, and acknowledges that changes in any of the terms and conditions of this Agreement shall be made only with the mutual consent of both the OWNER and BROKER. Any such change shall be effective if in writing and signed by both OWNER and BROKER.
- N. **TAXES:** OWNER covenants and agrees to comply with the provisions of the South Carolina Code of Laws Section 12-9-310 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.
- O. **BROKER'S DUTIES:** BROKER agrees to make a diligent and continual effort by BROKER and BROKER'S agents and staff to secure a contract of sale for the described property upon terms as stated herein. BROKER'S efforts shall include directing the efforts of BROKER'S organization to bring about the sale; advertising the described property as BROKER deems advisable in those advertising media of merit customarily used by BROKER in the area, delivering the listing to the MLS for publication in accordance with the Rules and Regulations of the Service (unless OWNER request in writing that the listing not be delivered to MLS), furnishing such additional information as is necessary to cooperating real estate brokers and assisting such brokers in effecting a sale of property and keeping OWNER informed as to the progress of BROKER'S efforts in finding a buyer for the described property. OWNER understands the BROKER makes no representation or guarantee as to the sale of the property.
- P. **OWNER'S DUTIES:** OWNER agrees as follows:
1. To furnish BROKER with complete and reliable information concerning ownership and the operation of the property, and any encumbrances or liens affecting the property;
  2. To inform BROKER of any inquiries (including inquiries from other brokers) or negotiations concerning the sale of the property;
  3. To permit inspection and showing of the property by BROKER, BROKER'S agents, subagents, buyer's agents, to such agents and subagents and prospective purchasers as deemed reasonably necessary by BROKER, and to cooperate in the scheduling and carrying out of such showings and inspections as is necessary. OWNER shall commit no act which might tend to obstruct the BROKER'S performance;
  4. To permit the offering for sale of the property to prospective buyers without regard to age, sex, race, creed, color, religion, national origin, handicap or familial status;
  5. To allow closing attorney to pay BROKER'S compensation in an amount equal to the compensation provided above from OWNER'S proceeds at time of closing.
  6. OWNER further specifically grants to BROKER the authority and approval to list and publish all sales data pertaining to the sale and closing of the hereinabove described property. OWNER understands and acknowledges that sales data are published for the use and information of the members of the Charleston Trident Association of REALTORS, Inc. and the Charleston Trident Multiple Listing Service, Inc. (MLS) for their use of same in marketing and selling of properties.
  7. OWNER shall not deal directly with prospective buyers of this property during the period of this agency and shall refer any inquiries received to the BROKER.

MLS Form #201 / Rev 9/96 and approved by Charleston Trident Multiple Listing Service, Inc.

Acknowledgement of Page 2  
Page 2 of 3

Broker's Initials

*KCP*

Seller's Initials

*CRK*

Copyright Pending

Ex. 1, p 2



8. The undersigned OWNER agrees not to lease said property during the term of this exclusive listing agreement without the BROKER'S prior knowledge and consent.

9. To permit BROKER to incur, or pay on behalf of OWNER reasonable expenses for repairs, inspection, utilities, maintenance, or similar expenses not to exceed \$500 for each separate expense, and to reimburse BROKER, as necessary, upon receipt of the statement of expenses.

Q. LOCKBOX OPTION: I/we (X) DO (X) DO NOT (X) agree to have an MLS lockbox  
Owner's Initials                      Owner's Initials                     

placed on the property. (An MLS Lockbox Addendum must be signed by all parties and attached to this Listing Agreement if OWNER agrees to place an MLS lockbox on the property.)

R. The property (X) shall be ( ) shall not be entered into the listing service of the Charleston Trident Multiple Listing Service, Inc., which will constitute an offer of cooperating brokerage to all participants in the listing service. OWNER agrees that BROKER may compensate an agent representing the purchaser from the fee described above. Owner (X) gives                      ( ) does not give                       
Owner's Initials                      Owner's Initials                     

the BROKER permission to list the property on the internet through the REALTORS Information Network.

S. OTHER OFFERS: OWNER (X) agrees ( ) does not agree that the BROKER'S responsibility to present offers to purchase to the OWNER for OWNER'S consideration terminates with the OWNER'S acceptance of an offer.

MARKETING THE PROPERTY: The BROKER shall not continue marketing the property after an offer has been accepted, unless requested in writing by the OWNER to do so.

T. LEAD-BASED PAINT DISCLOSURE: For dwellings built before 1978, and as required by applicable law, a Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (the "Disclosure") must be signed by Seller and attached to this agreement. Owner represents that either (1) the improvements on the property were all constructed after December 31, 1977, or (2) the Disclosure has been fully completed and is attached to this agreement. Owner agrees to provide Broker with any such additional information or reports as may come to Owner's possession during the term of this agreement. Owner acknowledges that Broker has informed Owner of the Owner's obligations to provide a purchaser of the property with the pamphlet "Protect Your Family From Lead In Your Home," to provide information to a purchaser of the property with copies of available records and reports with respect to the property and lead-based paint and lead-based paint hazards, all pursuant to 42USC4552 (d), as amended.

U. SPECIAL STIPULATIONS: The following stipulations shall, if conflicting with printed matter, control:  
Seller agrees to pay for all advertising and marketing of Cambridge Lakes as proposed by Edelman Design  
Seller agrees to pay for all Post and Courier, Real Estate Book and any other marketing materials as agreed

V. NO CONTROL OF COMMISSION RATES OR FEES: Under the long established policy of the Charleston Trident Association of REALTORS, Inc. (Association) and the Charleston Trident Multiple Listing Service, Inc. (MLS), the BROKER'S compensation for services rendered in respect to any listing is solely a matter of negotiation between the BROKER and the OWNER and is not fixed, controlled, suggested, recommended, or maintained by the Association, the MLS, or by any persons not a party to the listing agreement. The compensation paid by the listing BROKER to a cooperating broker in respect to any listing is established by the listing BROKER in the offer of cooperation, and is not fixed, controlled, suggested, recommended or maintained by the Association, the MLS or by any persons other than the listing BROKER and his or her cooperating broker.

THIS IS A LEGALLY BINDING CONTRACT. ALL BLANKS MUST BE FILLED IN; IF INFORMATION DOES NOT APPLY, INSERT N/A. ANY ALTERED TERMS OR CONDITIONS MUST BE INITIALED BY BOTH OWNER AND BROKER/AGENT.

OWNER & BROKER have read paragraphs A. through V. of this contract and  
OWNER acknowledges receipt of a copy of this contract.

(The undersigned hereby warrant that they own the property  
and/or have the authority to execute this agreement.)

BROKER: Trademark Properties  
BY:                       
BROKER'S ADDRESS: 371 Valley Road  
Charleston, SC 29412

OWNER:                       
OWNER:                       
OWNER'S PRESENT ADDRESS:                     

BROKER'S PHONE:                       
DATE:                     

OWNER'S PHONE:                       
DATE:                     

PLEASE SIGN ALL COPIES

The printed matter in this form approved by the Charleston Trident Multiple Listing Service, Inc.

OK T437PG047

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

**MASTER DEED FOR**

**CAMBRIDGE LAKE HORIZONTAL PROPERTY REGIME**

THIS Master Deed made this 24<sup>th</sup> day of February, 2003, by Cambridge Two, LLC, a South Carolina Limited Liability Company (hereinafter referred to as the "Developer"), which does hereby declare as follows:

Developer submits the Property in Charleston County, State of South Carolina, described herein and on Exhibit A attached hereto and made a part hereof, including the improvements now or hereafter thereon, to the provision of the Horizontal Property Act, Section 27-31-10, et seq., South Carolina Codes of Laws, 1976, (the "Act"), the provisions of which, unless expressly provided otherwise herein, are incorporated herein by reference and form a part of this Master Deed, for the specific purpose of creating and establishing the Cambridge Lake Horizontal Property Regime (the "Condominium"). Reference is also made to other provisions of this Master Deed and the land survey and plot plans for a description of the private elements dimensions, floor area and location of each Apartment, the location and approximate dimensions of the Common Elements, and other information required by the Horizontal Property Act, such land survey and plot plans being attached hereto as Exhibit "B" and made a part hereof (herein collectively referred to as the "Plans").

NOW THEREFORE, the Developer hereby makes the following Declarations, and specifies that the provisions hereof shall constitute covenants running with the land and shall be binding upon the Developer, its successors and assigns and all subsequent purchasers of all or any part of the Property together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

**(1) PURPOSE**

The purpose of the Master Deed is to submit the Property to the condominium form of ownership and use in the manner provided by the Act and the Property as that term is defined in Paragraph 5(n) hereof, is hereby submitted to the condominium form of ownership as provided for in the Act.

**(2) NAME**

The name by which this Condominium is to be identified is Cambridge Lake Horizontal Property Regime (the "Condominium").

Ex. 2, p 1

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) CIVIL ACTION NO.: 2008-CP-10-3506

CAMBRIDGE LAKES CONDOMINIUM HOMEOWNERS  
ASSOCIATION, INC., MARGEL S. HENNING, STEVE  
FISCHER, MARK and BRENDA SCHILLACI, GARY and  
BILLIE CONLEY, GERALD DARNELL, JOHN MASCIOLI and  
GLORIA HARDIN, CLINT GASKINS, MITCHELL GASKILL,  
THOMAS MURPHY, EDWARD BOGGS, BRUCE ADKINS,  
CHARLESTON HOME TEAM PROPERTY, LLC., PAM  
SNYDER, LOUELLA ENK, JEREMIAH and GLORIA  
MORRISON, ERIN BLEVINS, CHARLES TAYLOR, JR.,  
MARION RIZZARDINI, KAREN ABRAMS, E. MIKELL  
CARROLL, VERNILL ROBERTS, KIM JACKSON, META  
KING, JAMES and MARGARET AYERS, MARY B. BURKE,  
SEVENTH WING, LLC, RUTH CATE and CHARLES WHITE,  
ROBERT and MARY ORTIZ-ABREU, JR., LAURA LaTORRE,  
MARVIN and PAULA SWINDLE, DONNA and DAVID  
WIGGINS, EMILIE COLE SANDERS, PHILIP and CYNTHIA  
JONES, ANDREW MOHR, ALISON SMITH, BOBBIE  
FAULKNER, MARCUS and GRACE THOMAS, DORIS  
SKUHRA, ROBERT and RAGAN ALBERT, WILLIAM SILER,  
MARVA CARD, SAMUEL RUBINO, MATT TATHAM,  
SCOTT HERMAN, JAY and JENNIFER MERRIMAN, MARY  
ELLEN OAKS, ELIZABETH MOSELEY, ALI and MICHELLE  
ERFANI, EMILY CHAPMAN, JOHN T. and LAURA L.  
MARTIN, ROSEANN TECHMAN, ROBERT PRICE, HENRY  
EDWARD TIENCKEN, JEAN B. WALLACE, MICHAEL B.  
HARTNETT, CAROLYN CARRICO, JENNIFER SNOWDEN,  
JOSHUA LONG, J. MICHAEL and GLORIA McDONNELL,  
SANDRA GIRT, JANE THOMPSON, JOHN HILL, III.,  
GLENNA MCKENZIE, JEFF GARDNER, FREEMAN THARP,  
PETE DUNHAM, JEANNE-MARIE BUSUTTIL, GLADYS J.  
JOHNSON, ROBERT W. SIMPSON, HEIDI J. RICHTER,  
MARK COMMANDER, KATHLEEN WAITE, and KOO  
HWANG as Individual Homeowners,

Plaintiffs,

vs.

BOSTIC BROTHERS CONSTRUCTION, INC., CAMBRIDGE  
TWO, LLC, CAMBRIDGE LAKES LP a/k/a CAMBRIDGE  
LAKES APARTMENTS HOMES, LP, CAMBRIDGE LAKES  
APARTMENTS, LP a/k/a CAMBRIDGE LAKES  
APARTMENTS HOMES, LP, CLASSIC PROPERTIES, INC.  
OF CHARLESTON, CAMBRIDGE CONTRACTING LP,  
SELECTIVE INSURANCE COMPANY OF AMERICA,  
SELECTIVE INSURANCE COMPANY OF SOUTH  
CAROLINA, JOSE NINO, B & B CONSTRUCTION CO.,  
INTERCOASTAL CONSTRUCTION, INC. d/b/a and a/k/a  
INTRACOASTAL CONSTRUCTION CAROLINA

AFFIDAVIT OF ALBERT V. ESTEE

2011 JAN -4 PM 4: 18  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

FILED

Ex. 3, p 1

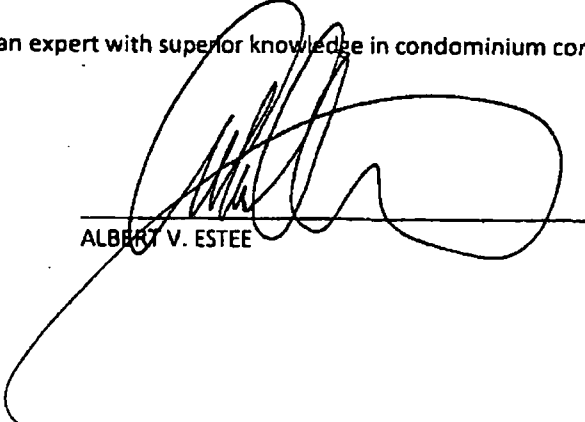
|                                                      |   |
|------------------------------------------------------|---|
| APARTMENT INTERIORS, LLC, ARMANDO MEDINA             | ) |
| CORTEZ a/k/a ARMANDO MEDINA a/k/a ARMANDO            | ) |
| CORTES d/b/a MJG CONSTRUCTION, VINCENT               | ) |
| MORALES d/b/a V. MORALES MASONRY, MJG                | ) |
| CONSTRUCTION AND HOMEBUILDERS, INC., B & B           | ) |
| CONSTRUCTION OF CHARLESTON, INC., SUPERSEAL          | ) |
| MANUFACTURING, INC., MAJESTIC WINDOW                 | ) |
| MANUFACTURING, LTD. f/k/a SOURCE WINDOWS,            | ) |
| LTD., VWD (2008) NC, INC f/k/a VINYL WINDOW          | ) |
| DESIGNS-USA, INC. a/k/a VINYL WINDOWS DESIGN,        | ) |
| LTD. PEGRAM-WEST INC., CHASE HOMES, INC., CHASE-     | ) |
| ROBERTSON BUILDERS, INC., SGM ARCHITECTS, INC.       | ) |
| f/k/a SMITH, GERBER, MCCLURE & ASSOCIATES, INC.      | ) |
| f/k/a SMITH GERBER & ASSOCIATES, INC., TRADEMARK     | ) |
| PROPERTIES, INC., STEPHEN R. HEAPE, Individually and | ) |
| Independently As General Partner of CAMBRIDGE        | ) |
| LAKES, LP, ALBERT V. ESTEE, Individually,            | ) |
|                                                      | ) |
| Defendants,                                          | ) |
| AND                                                  | ) |
| BOSTIC BROTHERS CONSTRUCTION, INC.,                  | ) |
|                                                      | ) |
| Third-Party Plaintiff,                               | ) |
| vs.                                                  | ) |
| JOSE NINO, INTERCOASTAL CONSTRUCTION, INC.,          | ) |
| CAROLINA APARTMENT INTERIORS, LLC, MJG               | ) |
| CONSTRUCTION AND HOMEBUILDERS, INC., B & B           | ) |
| CONSTRUCTION OF CHARLESTON, INC., AND V.             | ) |
| MORALES MASONRY,                                     | ) |
|                                                      | ) |
| Third-Party Defendants.                              | ) |

PERSONALLY APPEARED before me, ALBERT V. ESTEE, being duly sworn and says:

1. My name is Albert V. Estee, I am over 18 years of age and fully competent to testify as to the matters stated in this Affidavit.
2. This affidavit is made upon my personal knowledge, information and belief.
3. When Cambridge Two, LLC, sought to begin the process of converting Cambridge Lakes Apartments into condominiums for individual sale, we sought out an expert in the field to assist us with the conversion.
4. Trademark held itself out to be one such expert in the field of condominium conversions.

Ex. 3, p 2

5. Trademark represented that it was a specialist in condominium conversions.
6. We decided to hire Trademark to assist in the conversion, because Trademark was involved with several other condominium conversions.
7. We consulted with Trademark and were convinced that they would do a good job in the conversion of the Cambridge Lakes project.
8. At the time we hired Trademark to convert Cambridge Lakes, Trademark was just finishing up the conversion of another project, the Montclair Condominium Conversion.
9. Based on Trademark's representations, we hired Trademark to market, sale and convert the Cambridge Lakes project.
10. We relied on trademark to assist Cambridge Two in the conversion of the Cambridge Lakes property to individual sales.
11. Cambridge Two, relied upon Trademark to handle all required communication with the prospective purchasers, and relied further upon Trademark to convey information that was required to be conveyed to prospective purchasers of the Cambridge Lakes Condominiums.
12. Trademark held itself out as an expert with superior knowledge in condominium conversion.



ALBERT V. ESTEE

SWORN to BEFORE ME

This 4 day of January, 2011

  
Notary Public for South Carolina  
My Commission Expires: 2/27/18

Ex. 3, p 3



# AGREEMENT TO BUY AND SELL REAL ESTATE RESIDENTIAL

PARTIES: This legally binding Agreement entered into on January 24, 2004  
between, Buyer(s), Johnson D. Koolig (hereinafter called "BUYER"), and  
Seller(s), Cambridge Two LLC (hereinafter called "SELLER"). The  
property shall be deeded in the name(s) of Buyer

2. PROPERTY TO BE SOLD: Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the  
following described property with improvements and fixtures thereon:

Unit # 1587 Block Bldg. Section E Subdivision Cambridge Lakes  
Address 1587 Cambridge Lakes Drive  
Tax Map # \_\_\_\_\_ City Mt. Pleasant, SC Zip 29464  
County of Charleston, State of South Carolina.

Seller represents that the property is connected to [ ☒ ] public sewer system or to [ ☐ ] septic tank or to [ ☒ ] public water or  
to [ ☐ ] well system or to [ ☐ ] other \_\_\_\_\_

No personal property will convey as a part of this sale, except as described: Refrigerator, stove, dishwasher, microwave, any attached lighting fixtures.

3. CONVEYANCE SHALL BE MADE: Conveyance shall be made subject to all easements as well as covenants of record  
(provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller  
agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except  
as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place  
of closing, and transaction closed on or before February 20, 2004, not later than 9:00 p.m. Time is of the  
essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and  
Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. POSSESSION: Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property  
free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained  
in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear  
excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a  
separate agreement to be executed prior to closing or occupancy.

5. PURCHASE PRICE shall be One hundred fifty one thousand three hundred fifty dollars, \$151,325.00

6. METHOD OF PAYMENT: Purchase price shall be paid as follows: [ ☐ ] Cash; or [ ☒ ] Subject to Financing. Financing to  
be obtained by [ ☒ ] Conventional [ ☐ ] Seller [ ☐ ] VA [ ☐ ] FHA [ ☐ ] Other terms: \_\_\_\_\_

7. EARNEST MONEY: This offer is accompanied by an earnest money deposit of \$ 1000.00  
Buyer and Seller authorize Prudential Carolina Real Estate as Escrow Agent, to hold and  
disburse earnest money according to the terms of this agreement. Earnest money paid by [ ☐ ] Cash, [ ☐ ] Check, or [ ☐ ] Other.  
Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be  
deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the  
consummation of this sale, the earnest money deposit shall be credited to the Buyer.

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT  
HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES  
HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT  
JURISDICTION HAS DIRECTED A DISBURSEMENT.

[Signature] BUYER [Signature] BUYER [Signature] SELLER [Signature] SELLER HAVE READ THIS PAGE

**PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining a loan. Buyer shall apply for a 75 % loan (loan-to-value ratio) within 7 days from the execution of this agreement and shall provide Seller with satisfactory loan approval within 15 days. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above conditions, Buyer shall be in default of this agreement subject to the terms of paragraph 16.  
FHA Mortgage Insurance [ ] will [ ☒ ] will not be added to the mortgage. VA funding fee [ ] will [ ☒ ] will not be added to the mortgage.

**9. CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

(a) SELLER shall provide or pay for preparation of deed; any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.

(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: Seller to pay \$2000.00 of

(Two-thousand + dollars + no cents) Buyer is closing costs when buyer uses seller's approved lender and attorney.  
**10. HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan [ ] will [ ] will not be issued at closing. If applicable, the warranty premium will be paid at closing by the [ ] Buyer or [ ☒ ] Seller not to exceed \$ 295.00 AHS Warranty.

**11. EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 5 o'clock P M. on January 27, 2004 unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

**12. EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 5 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

**13. ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax proration pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

**14. NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

**15. RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

**16. DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

[Signature] BUYER [ ] BUYER [Signature] SELLER [ ] SELLER HAVE READ THIS PAGE

**JAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

**18. SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender, at Buyer's option shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

**19. CONDITION OF PROPERTY:**

**(A) Seller's Property Condition Disclosure Statement:** (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understand and agree that the Listing and Selling Broker and all affiliated agents have fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

**(B) Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances prior to the day of closing or possession. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified within 7 consecutive days after both parties have signed this Agreement. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

**(C) Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

**(D) Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☐ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before 02-05-20. Time is of the essence. If Buyer fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.

If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

 ☐ BUYER ☐ BUYER  ☐ SELLER ☐ SELLER HAVE READ THIS PAGE

FORM 310 PAGE 3 of 6

Ex: 4, p 3



repairs: The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and make the roof free of leaks, and the dwelling structurally sound and wood infestation treatment, if any, required by section (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

**(F) Residential Dwellings Built before 1978: (check one of the following)**

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on \_\_\_\_\_, 20\_\_\_\_. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within \_\_\_\_\_ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have \_\_\_\_\_ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☒ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

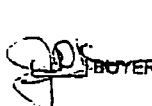
**(G) Megan's Law:** The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information. The Buyer understands that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

**(H) Disclaimer:** The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller. Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

**20. APPRAISED VALUE: (check one)**

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

 BUYER ☐ BUYER  SELLER ☐ SELLER HAVE READ THIS PAGE

**DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

**22. COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☐ Seller's expense.

**23. MEDIATION CLAUSE:** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust; mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

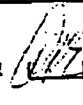
**24. SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

**25. ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on the reverse, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

**26. FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

**27. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION:** According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker may place deposited earnest monies into an interest bearing trust account and that Broker will retain all interest incurred in said account in which case all interest earned on Broker's interest bearing trust account shall be donated on a regular basis to a charity of Broker's choice.

**28. CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) See Addendum A.

 ☒ BUYER ☐ BUYER  ☒ SELLER ☐ SELLER HAVE READ THIS PAGE

FORM 310 PAGE 5 of 6

# ADDENDUM - ~~A~~



In reference to ☒ AGREEMENT TO BUY AND SELL REAL ESTATE, ☐ RESIDENTIAL RENTAL AGREEMENT, ☐ COUNTER OFFER,

☐ OTHER \_\_\_\_\_ covering the ☐ real property,

☐ business, ☐ premises — commonly known as:

Unit # 1587 Block \_\_\_\_\_ Section E Subdivision \_\_\_\_\_

Address 1587 Cambridge Lakes Drive

Tax Map # \_\_\_\_\_ City Mt Pleasant Zip 29464

County of Charleston, State of South Carolina.

The undersigned Parties hereby agree as follows: Buyer receives a \$1825.00 decorating allowance at closing. Buyer may opt to use \$1825.00 decorating allowance to be applied towards closing costs and for buy-in fees.

The herein agreement, upon its execution by both parties, is herewith made an integral part of the aforementioned Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: J.D. Koola Date 1-24-04 Time 1:17 PM

WITNESS: Glen Hugg Date 1-24-04 Time 1:17 PM

BUYER: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

WITNESS: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

SELLER: Cambridge Lakes Date 1/26/04 Time 2:30 PM

WITNESS: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

SELLER: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

WITNESS: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the use of such form or the use of the name "South Carolina Association of REALTORS®" in connection with the foregoing form may not be edited, revised, or changed.

Ex. 4, p 6

South Carolina Association of REALTORS®.

STATE OF SOUTH CAROLINA  
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article I requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.
2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.
  - a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.
  - b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.
  - c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.
  - d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.
4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials SE Seller JS Buyer

Page 1 of 4 Form 230

Produced by Realty One Software, P.O. Box 2488, Amarillo, TX 79105, (806) 342-8217

Revised by K. R. S. KAMUKUNOWY 05/22/2003 111: copyright taken

ventilation, slab, fireplaces/chimneys, floors, windows  
(including storm windows and screens), doors, ceilings,  
interior and exterior walls, attached garage, patio, deck  
or other structural components including any modifications?

- a. Siding: masonry \_\_\_ wood \_\_\_ composition/hardwood \_\_\_  
vinyl \_\_\_ synthetic stucco \_\_\_  
b. Approximate age of structure \_\_\_\_\_

2. Roof (leakage or other problem)?

- a. Approximate age of roof covering \_\_\_\_\_

3. Water seepage, leakage, dampness or standing water  
or water intrusion from any source in any area of the  
structure?

4. Electrical system (outlets, wiring, panel, switches,  
fixtures, etc)?

5. Plumbing system (pipes, fixtures, water heater, etc.)?

6. Heating and/or air conditioning?

- a. Heat source: furnace \_\_\_ heat pump \_\_\_ baseboard \_\_\_  
b. Cooling source: central \_\_\_ wall/window unit(s) \_\_\_  
c. Fuel source: electricity \_\_\_ natural gas \_\_\_ propane \_\_\_ oil \_\_\_  
d. Approximate age of heating unit \_\_\_/cooling unit \_\_\_

7. Water supply (including water quality, quantity and water pressure?

- a. water supply is: city/county \_\_\_ community system \_\_\_ private well \_\_\_  
b. water pipes are: copper \_\_\_ galvanized \_\_\_ PVC/CPVC \_\_\_ polybutylene \_\_\_

8. Septic system?

- a. Type system: septic tank \_\_\_ community system \_\_\_  
connected to city/county system \_\_\_ city/county system available \_\_\_  
b. Does the system require a pump? Yes \_\_\_ No \_\_\_  
c. Has the septic system been serviced/pumped during your ownership?

9. Appliances (range/oven, attached microwave, hood/fan, dishwasher,  
disposal, etc.)?

10. Present infestation, or damage WHICH HAS NOT BEEN  
REPAIRED from past infestation of wood destroying insects or  
organisms?

- a. Is there a transferable termite bond? Yes \_\_\_ No \_\_\_

11. Drainage, grading or stability of soil or retaining structure?

12. Other built-in systems and fixtures?

- central vacuum \_\_\_ pool \_\_\_ hot tub \_\_\_ spa \_\_\_ attic fan \_\_\_  
exhaust fan \_\_\_ ceiling fan \_\_\_ sump pump \_\_\_ irrigation system \_\_\_  
cable tv wiring or satellite dish \_\_\_ security system \_\_\_ or other systems \_\_\_

Initials:                      Seller                      Buyer

Page 2 of 4 Form 230

Produced by Realty One Software, P

Ex. 5, p 2

Provided by: KRIS KORDONOWY 05/23/2001

10: cauldridge lak

Room additions or other structural changes?

|                          |                                     |                          |
|--------------------------|-------------------------------------|--------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?

|                          |                                     |                          |
|--------------------------|-------------------------------------|--------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

15. Nuisances (noise, odor, smoke, etc.) affecting the property?

16. Previous damage caused by fire?

|                          |                                     |                          |
|--------------------------|-------------------------------------|--------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|--------------------------|-------------------------------------|--------------------------|

17. Violations or variances of building codes or zoning ordinances?

|                                     |                                     |                          |
|-------------------------------------|-------------------------------------|--------------------------|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|-------------------------------------|-------------------------------------|--------------------------|

18. Restrictions to property use? (covenants or deed)

|                          |                                     |                          |
|--------------------------|-------------------------------------|--------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|--------------------------|-------------------------------------|--------------------------|

19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?

|                          |                                     |                          |
|--------------------------|-------------------------------------|--------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|--------------------------|-------------------------------------|--------------------------|

20. Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property?

|                                     |                          |                          |
|-------------------------------------|--------------------------|--------------------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
|-------------------------------------|--------------------------|--------------------------|

21. Owners' association fees or "common area" expenses or assessments?

|                          |                                     |                          |
|--------------------------|-------------------------------------|--------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|--------------------------|-------------------------------------|--------------------------|

22. Flood hazards or that the property is in a federally-designated flood plain?

|                                     |                          |                          |
|-------------------------------------|--------------------------|--------------------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
|-------------------------------------|--------------------------|--------------------------|

23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?

|                          |                                     |                          |
|--------------------------|-------------------------------------|--------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|--------------------------|-------------------------------------|--------------------------|

24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?

\* IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.

18 C/R for Cambridge Lakes

21 190/month Reg. Fee

23 Condo Conversion - still rentals on property

Initials: Seller Buyer

Page 3 of 4 Form 230

Ex. 5, p 3

Produced by Realty One Software, P.O. Box 2100, Pittsburg, KS 64591

Provided by: KRIS KORDONOWY 05/22/2003

DE: Cambridge

**Owner(s) Acknowledgement**

Property Address: 1587 Cambridge Lakes Dr

The property is currently: owner-occupied ☐ leased ☐ in an estate ☐ in foreclosure ☐  
 vacant ☒ (If vacant, how long?) less than 6 months

Owner's Name(s): \_\_\_\_\_  
 Owner(s) acknowledge having examined this statement before signing and that all information is true and correct as of the date signed.

Owner Signature: [Signature] Date: 12/8/03

Owner Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Purchaser(s) Acknowledgement**

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

Purchaser Signature: [Signature] Date: 1-24-04

Purchaser Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(This form is approved by the South Carolina Real Estate Commission.)

Rev. 1/03

Page 4 of 4 Form 230

**Countrywide****HOME LOANS****BUILDER'S CERTIFICATION****1. PROJECT INFORMATION**

|                                           |                                                 |
|-------------------------------------------|-------------------------------------------------|
| Project Name:                             | Cambridge Lakes                                 |
| Project Address & Zip:                    | 1401 Cambridge Lakes Dr. Mt. Pleasant, SC 29464 |
| County:                                   | Charleston                                      |
| Total Number of Units & Phases/Buildings: | 104 units                                       |

**2. SALES DATA (please complete for whole project)**

| Building | #Units | #Sold or under contract | Owner Occupancy intent             |                       |           | Complete YES/NO |
|----------|--------|-------------------------|------------------------------------|-----------------------|-----------|-----------------|
|          |        |                         | #Owner Occupied                    | #2 <sup>nd</sup> Home | #Investor |                 |
| A        | 8      | /                       | HOA does not have this information |                       |           |                 |
| B        | 24     |                         | HOA does not have this information |                       |           |                 |
| C        | 24     |                         | HOA does not have this information |                       |           |                 |
| D        | 24     |                         | HOA does not have this information |                       |           |                 |
| E        | 24     |                         | HOA does not have this information |                       |           |                 |
|          | 104    | 82                      |                                    |                       |           |                 |

Does any single investor own more than 10% of the total units in the project? ☐ Yes, ☒ No owner/developer**3. PROJECT CERTIFICATIONS****INITIAL at left of each item.**

|                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Call Davidson    | The Condominium Declaration (aka Master Deed) was recorded on _____, document # _____.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Bennett + Wigger | The Amendment/Supplement to the Condominium for the subject unit, Phase/Bldg _____, was recorded on _____, document # _____.                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| gmw              | A portion of the HOA dues are designated for Replacement Reserves                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| gmw              | Description of Recreational Amenities: <u>pool, hot tub, workout room,</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|                  | Estimated % complete: <u>100 %</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| gmw              | <input type="checkbox"/> There are no known hazardous environmental conditions affecting the subject property                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| gmw              | Indicate if any of the following statements are applicable by placing an "X" in the box:<br><input type="checkbox"/> The HOA is involved in litigation<br><input type="checkbox"/> The project is a Condo or has a Rental Pool or allows Weekly Rentals<br><input type="checkbox"/> Some or all of the units are considered Live-Work Units (commercial/residential use).<br><input type="checkbox"/> The Association Property is on Leased Land<br><input type="checkbox"/> The Improvements are Manufactured Housing<br><input type="checkbox"/> There are Resale Restrictions |
| gmw              | <input checked="" type="checkbox"/> For Condo Conversions: The structural, health & safety repairs and remodeling have been completed or <input type="checkbox"/> N/A this project is not a conversion                                                                                                                                                                                                                                                                                                                                                                           |

**4. DEVELOPER'S CERTIFICATION**

I hereby certify the above information is true and correct.

|                                          |                              |
|------------------------------------------|------------------------------|
| Signature: <u>Gavin M. Blum</u>          | Date: <u>2/17/04</u>         |
| Title: <u>HOA accountant</u>             | Ph: <u>881-1390</u>          |
| Company: <u>Cambridge Lakes</u>          | Fx or email: <u>881-1341</u> |
| Address: <u>1401 Cambridge Lakes Dr.</u> |                              |

Please complete and return to FAX #888-458-3978. Thank you for your assistance.

Countrywide Home Loans, BUILDER DIVISION  
 1401 Willow Pass Rd. Suite 840, Concord, CA 94520 Ph. 800-458-1936, Fx. 888-458-3978

revised 9/9/03

Ex. 6, p 1





# Ravenel Associates

June 25, 2008

Dear Homeowner,

The Cambridge Lakes Condominium Homeowners Association, Inc., has retained John C. Hayes, IV, Esquire, with the firm of Pritchard & Elliott, LLC to represent it in connection with the construction defects at Cambridge Lakes which occurred between 1999 and 2005. Mr. Hayes and his firm have been retained on a contingency fee basis and will only be paid out of monies recovered on behalf of Cambridge Lakes. Mr. Hayes has initiated an action on behalf of the Cambridge Lakes HOA, and individual Homeowner plaintiffs against *Bostic Brothers Construction, Inc., Cambridge LLC, Cambridge Lakes LP, Classic Properties, Inc., of Charleston, Cambridge Contracting LP and Cambridge Lakes Apartments LP*.

In order to present a unified front and to avoid any potential arguments by the Defendants as to what portions of which claim belong to whom we believe it would be best for John Hayes to represent the interests of the individual homeowners as well as the Cambridge Lakes HOA. This would ensure a united claim. In order to accomplish this, the Cambridge Lakes HOA needs for you to sign the enclosed form that assigns your claims relating to the construction defects to the Cambridge Lakes HOA. If you have a personal claim, such as, loss of use or damage to personal belongings, the assignments will be with the understanding that Cambridge Lakes HOA will pass on to you its net recovery on your behalf, if any.

The enclosed form appoints the Cambridge Lakes HOA to act as your representative in all matters relating to this litigation. Among other things, doing so will prevent defendants from contacting you directly.

The enclosed form also contains a section wherein you may join the action as a plaintiff and a representative of the individual homeowners. If you are interested in the option of joining the suit as an individual homeowner, please indicate this on the form, and someone from the attorney's office will call you to discuss the process with you prior to adding you as an individual plaintiff. It is very important that we have individual homeowners in this case.

Idor  
LC

Ex. 7, p 1

ment Services  
451-2231

Telephone 843-886-8845 Fax 843-886-6950

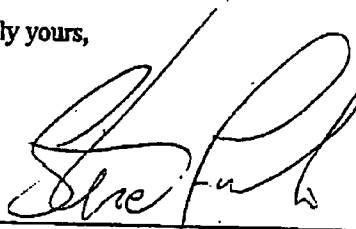
Member: Community Association Institute

Please return the enclosed form at your earliest convenience so we can proceed with the investigation of the homes. A self addressed stamped envelope is enclosed for your convenience. Mr. Hayes may be contacted at 843-722-3300 and his mailing address is as follows:

John C. Hayes IV  
Pritchard & Elliott, LLC  
Post Office Box 630  
Charleston, SC 29402

Very truly yours,

By:



Steve Fischer  
President of Cambridge Lakes  
Homeowners Association, Inc.

Ex. 7, p 2

ASSIGNMENT OF CLAIMS

I/We, owner(s) of \_\_\_\_\_, briefly referred to as the "Unit", do hereby assign to the Cambridge Lakes Condominium Homeowners Association ("HOA"), Inc. any and all claims, rights of action, or causes of action I/we have/might have against those involved in the development, design, manufacturer of products, repair, conversion and/or construction of my/our Unit and the buildings at Cambridge Lakes in the foundation, main walls, windows, roofs, trusses, framing or any other part of the structure or building envelope and for any damages, including consequential damages, associated therewith and appoint John C. Hayes with Pritchard and Elliott, LLC to represent me/us in all matters relating to this litigation. I/We agree to waive any conflict that may arise between me/us and the HOA and/or Pritchard and Elliott, LLC relating to this litigation and to any action past, present or future initiated for the collection of any special or regular assessments together with late fees through, by, or on behalf of the HOA irrespective of whether any such action is currently pending, has been concluded or is initiated in the future and I/We acknowledge that the HOA's claims/rights supersede those of the individual homeowners.

By indication of my/our initials here \_\_\_\_\_ I/we wish to be added as a Plaintiff and representative of the individual homeowners.

\_\_\_\_\_  
NAME(S)

\_\_\_\_\_  
SIGNATURE(S)

\_\_\_\_\_  
DATE

Ex. 7, p 3

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
CAMBRIDGE LAKES CONDOMINIUM )  
HOMEOWNERS ASSOCIATION, INC. )  
MARGEL S. HENNING AND )  
STEVE FISCHER, AS INDIVIDUAL )  
HOMEOWNERS )

Plaintiff(s),

vs.

BOSTIC BROTHERS CONSTRUCTION, )  
INC., CAMBRIDGE TWO, LLC )  
CAMBRIDGE LAKES LP, CLASSIC )  
PROPERTIES, INC. OF CHARLESTON, )  
CAMBRIDGE CONTRACTING LP, )  
CAMBRIDGE LAKES )  
APARTMENTS, LP )

Defendant(s)

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 2008-CP-10-3506

**COMPLAINT**

(Re: Defective Construction)  
(Jury Trial Demand)

2008 JUN 19 PM 2:35  
JULIE J. ARMSTRONG  
CLERK OF COURT

**FILED**

The Plaintiffs, Cambridge Lakes Condominium Homeowners Association, Inc., Margel S. Henning and Steve Fischer, as Individual Homeowners, (hereinafter collectively "Cambridge") complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

1. Cambridge Lakes Condominiums ("Cambridge Lakes") is a group of residential structures and buildings located in Mount Pleasant, County of Charleston, South Carolina.
2. The Cambridge Lakes units are located in five buildings.
3. The Cambridge Lakes Condominium Homeowners Association, Inc., "The HOA," is the Homeowners Association for the above-referenced units and their owners.
4. Margel S. Henning and Steve Fischer are owners of residential units in Cambridge.

Ex. 8, p 1

5. The HOA and individual Homeowners own the elements of Cambridge.
6. Defendants, Cambridge Two, LLC, Cambridge Lakes LP, Classic Properties, Inc., of Charleston, Cambridge Contracting LP, and Cambridge Lakes Apartments, LP, are South Carolina corporations, limited liability companies, or limited partnerships organized and existing under the laws of the State of South Carolina.
7. Defendant, Bostic Brothers Construction, Inc. (Bostic) is a corporation organized and existing under the laws of a state other than South Carolina and performed work during the construction and repair of Cambridge Lakes.
8. Cambridge Lakes is located in Charleston County and venue is proper in Charleston County.
9. At all relevant times herein, Defendants engaged in the business of development, sales, marketing, building construction and/or repair in Charleston County, South Carolina.
10. Defendants developed, constructed, sold, marketed and/or repaired Cambridge Lakes.
11. The development, construction, sales, marketing and repairs were performed by Defendants at the Cambridge property between 1998 to present.
12. At the time the development, construction, sales, marketing and repairs were completed by Defendants, the Cambridge Lakes Buildings and units contained many latent building defects.
13. The latent building defects have since resulted in repeated and severe water intrusion into the buildings and other damage and continue to do so through the date of this filing.
14. Defendants implicitly and/or explicitly represented the materials used were suitable for use on the Cambridge units.

Ex. 8, p 2

15. Defendants knew or should have known that the materials used at the Cambridge Lakes units were not suitable for use on the units and said materials and improper installation of same have resulted in damage to Cambridge Lakes.
16. Defendants unsuitable construction and/or repair work and the unsuitable materials used at the Cambridge property have resulted in severe water intrusion into the units and other damage.
17. The repeated and severe water intrusion has resulted in deterioration of the buildings and consequential damages and continues to do so through the date of this filing.
18. The repeated and severe water intrusion has resulted in extensive damages to the original structures, the interior of the Cambridge units, and to the Homeowners and continues to do so through the date of this filing.
19. A preliminary inspection of the Cambridge units evidences an unsuitable sealant used around windows, unsuitable windows, improperly installed windows, improper weather-lapping, improperly installed flashing, improperly installed roofing materials, improperly installed gutter and down spouts, improper installed brick veneer, improper framing and various other building defects.
20. Defendants had a duty to construct and repair the Cambridge units in a workmanlike manner with suitable materials.
21. The aforementioned deficiencies and other evidence that Defendants breached their duty to Plaintiffs.
22. Said wrongful acts by Defendants above-described have resulted in the above-referenced building deficiencies and other consequential damages, partial loss of use, and severe mental and emotional stress.

Ex. 8, p 3

23. Remedying the above-wrongs will result in additional damages, including loss of use. Further, the above has caused diminutions in value, both pre-and post-repairs.
24. As a direct and proximate result of the Defendants' violations of its legal duties, Plaintiffs have been damaged in an amount to be determined by the jury.

**FOR A FIRST CAUSE OF ACTION**  
**Negligence**

25. Plaintiffs' repeat and reallege the above allegations as if stated verbatim herein.
26. The Defendants were negligent, careless, reckless, willful and wanton in the following particulars:
- a. in failing to properly construct the structures;
  - b. in failing to properly make repairs to the structures;
  - c. in failing to properly install windows;
  - d. in failing to properly install adequate flashing.
  - e. in failing to install adequate water barriers;
  - f. in failing to install weather proof building envelopes (exteriors);
  - g. in failing to install adequate roofing;
  - h. in failing to construct and repair the structures in accordance with due care and in accordance with standard building practices;
  - i. in failing to properly supervise the work and construction of the buildings;
  - j. in failing to hire competent subcontractors and specialty contractors;
  - k. in failing to properly coordinate the subcontractors;
  - l. in covering up deficiencies;
  - m. in misrepresenting the condition of the structures to the Plaintiffs;
  - n. in representing to Plaintiffs that Defendants had expert skills and ability;
  - o. missing and/or inadequately installed weep holes in brick veneer;
  - p. missing and/or inadequately installed sealant joints at dissimilar materials;
  - q. missing and/or inadequately installed building wrap, including failure to properly lap building wrap with other building components;
  - r. inadequately installed siding and trim along the exterior porches, bay windows and other areas;
  - s. inadequately sealed penetrations;
  - t. inadequately installed gutters;
  - u. failing to disclose condition of property during marketing and sales of same;
  - v. in failing to act as reasonable persons would in the circumstances then and there prevailing; and
  - w. in such other failures that will be shown during discovery and at trial.

Ex. 8, p 4

27. Said failures above-described have proximately damaged the Plaintiffs in an amount to be determined by the jury.
28. As said failures were committed with gross negligence and reckless disregard for the rights of others, Plaintiffs are entitled to an award of punitive damages.

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**FOR A SECOND CAUSE OF ACTION**  
**Breach of Warranties**

29. Plaintiffs repeat and reallege the above allegations as if stated verbatim herein.
30. The construction and repair work came with express and implied warranties that the work would be performed in a careful, diligent, competent, and workmanlike manner.
31. The construction and repair work came with implied warranties of fitness, merchantability, workmanship and habitability.
32. Defendants have breached their warranties by constructing and repairing the structures in a defective manner as set forth above.
33. Said breaches have damages Plaintiffs in an amount to be determined by the trial of fact.

**FOR A THIRD CAUSE OF ACTION**  
**Unfair Trade Practice**

34. Plaintiffs repeat and reallege the above allegations as if stated verbatim herein.
35. At the time of construction and sale, Defendants were in the business of construction, repair, developing, selling and marketing Cambridge Lakes structures.
36. Defendants were engaged in commerce as defined by the South Carolina Unfair Trade Practices Act.
37. Defendants above described activities, including violating construction standards in the construction of the structure, violating building codes, mishandling the repair of the Plaintiffs property, concealing construction defects and consequential damages once discovered, and failing to honor warranty obligations constitute unfair and deceptive



practices in the conduct of the Defendants' trade; that such acts are capable of repetition and are injurious to the public, as the Defendants are capable of continuing such acts.

38. Defendants knew or should have known its conduct was in violation of South Carolina Code Section 39-5-20.

39. That Defendants' wrongs entitled the Plaintiffs to an award of treble damages, attorneys' fees and costs.

**WHEREFORE**, Plaintiff prays that:

- a. Plaintiffs recover actual damages, consequential damages, statutory damages, and punitive damages in an amount in excess of EIGHT MILLION DOLLARS (\$8,000,000.00);
- b. Plaintiffs recover the costs and expenses of this suit;
- c. Plaintiffs recover prejudgment interest; and
- d. The Plaintiffs be awarded any other remedy it is entitled to at law or at equity.

PRITCHARD & ELLIOTT, LLC

\_\_\_\_\_  
John C. Hayes, IV  
8 Cumberland Street, Suite 200  
Charleston, SC 29401  
(843) 722-3300 FAX (843) 722-3379  
ATTORNEYS FOR PLAINTIFFS

Dated this 17 day of June, 2008  
Charleston, South Carolina

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2008-CP-10-3506

**CIVIL ACTION NO.: 2008-CP-10-3506**

FILED  
2010 JUN 23 PM 12:50  
JULIE J. APHSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

**VS.**

Page 1 of 28

201

seq.; concealing construction defects and consequential damages once discovered; and failing to honor warranty obligations; and these acts constitute unfair and deceptive practices in the conduct of the Defendants' trade; and such acts are capable of repetition and are injurious to the public, because the Defendants are capable of continuing such acts.

80. Defendants knew or should have known that their above described conduct violated South Carolina Code Ann. §§ 39-5-20, the Horizontal Property Act, § 27-31-30, and other applicable statutes.

81. Defendants' above described conduct entitles the Plaintiffs to an award of treble damages, attorneys' fees and costs.

**FOR A SIXTH CAUSE OF ACTION  
Strict Liability/Products Liability  
(As to Superseal, MWM, VWD, and PWI)**

82. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if stated verbatim herein:

83. Upon information and belief, Superseal, MWM, VWD, and PWI (collectively referred to as Window Defendants) are in the business of designing, manufacturing, marketing, distributing, selling and/or installing windows. Defendants Superseal, MWM, VWD, and PWI marketed the windows as products that would provide a safe and durable barrier from the elements. Defendants Superseal, MWM, VWD, and PWI further untruly marketed and misrepresented to the public in general; and to the Plaintiffs in particular, that their windows require little or no maintenance.

84. The Window Defendants' windows were installed in Plaintiffs' properties, and they were defectively designed and manufactured in that they allow water to intrude into the

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

CAMBRIDGE LAKES CONDOMINIUM  
HOMEOWNERS ASSOCIATION, INC., MARGEL  
S. HENNING, STEVE FISCHER, MARK and  
BRENDA SCHILLACI, GARY and BILLIE  
CONLEY, GERALD DARNELL, JOHN MASCIOLI  
and GLORIA HARDIN, CLINT GASKINS,  
MITCHELL GASKILL, THOMAS MURPHY,  
EDWARD BOGGS, BRUCE ADKINS,  
CHARLESTON HOME TEAM PROPERTY, LLC.,  
PAM SNYDER, LOUELLA ENK, JEREMIAH and  
GLORIA MORRISON, ERIN BLEVINS, CHARLES  
TAYLOR, JR., MARION RIZZARDINI, KAREN  
ABRAMS, E. MIKELL CARROLL, VERNILL  
ROBERTS, KIM JACKSON, META KING, JAMES  
and MARGARET AYERS, MARY B. BURKE,  
SEVENTH WING, LLC, RUTH CATE and  
CHARLES WHITE, ROBERT and MARY ORTIZ-  
ABREU, JR., LAURA LaTORRE, MARVIN and  
PAULA SWINDLE, DONNA and DAVID WIGGINS,  
EMILIE COLE SANDERS, PHILIP and CYNTHIA  
JONES, ANDREW MOHR, ALISON SMITH,  
BOBBIE FAULKNER, MARCUS and GRACE  
THOMAS, DORIS SKUHRA, ROBERT and  
RAGAN ALBERT, WILLIAM SILER, MARVA  
CARD, SAMUEL RUBINO, MATT TATHAM,  
SCOTT HERMAN, JAY and JENNIFER  
MERRIMAN, MARY ELLEN OAKS, ELIZABETH  
MOSELEY, ALI and MICHELLE ERFANI, EMILY  
CHAPMAN, JOHN T. and LAURA L. MARTIN,  
ROSEANN TECHMAN, ROBERT PRICE, HENRY  
EDWARD TIENCKEN, JEAN B. WALLACE,  
MICHAEL B. HARTNETT, CAROLYN CARRICO,  
JENNIFER SNOWDEN, JOSHUA LONG, J.  
MICHAEL and GLORIA McDONNELL, SANDRA  
GIRT, JANE THOMPSON, JOHN HILL, III.,  
GLENNA MCKENZIE, JEFF GARDNER,  
FREEMAN THARP, PETE DUNHAM, JEANNE-  
MARIE BUSUTTL, GLADYS J. JOHNSON,  
ROBERT W. SIMPSON, HEIDI J. RICHTER,  
MARK COMMANDER, KATHLEEN WAITE, and  
KOO HWANG as Individual Homeowners,

Plaintiffs,

vs.

BOSTIC BROTHERS CONSTRUCTION, INC.,  
CAMBRIDGE TWO, LLC, CAMBRIDGE LAKES  
LP a/k/a CAMBRIDGE LAKES APARTMENTS  
HOMES, LP, CAMBRIDGE LAKES  
APARTMENTS, LP a/k/a CAMBRIDGE LAKES  
APARTMENTS HOMES, LP, CLASSIC

Page 1 of 33

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2008-CP-10-3506

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2010 JUL 14 PM 4:55

FILED

THIRD  
AMENDED COMPLAINT  
(JURY TRIAL DEMANDED)

Ex. 10, p 1

PROPERTIES, INC. OF CHARLESTON,  
 CAMBRIDGE CONTRACTING LP, SELECTIVE  
 INSURANCE COMPANY OF AMERICA,  
 SELECTIVE INSURANCE COMPANY OF SOUTH  
 CAROLINA, JOSE NINO, B & B CONSTRUCTION  
 CO., INTERCOASTAL CONSTRUCTION, INC.  
 d/b/a and a/k/a INTRACOASTAL  
 CONSTRUCTION, CAROLINA APARTMENT  
 INTERIORS, LLC, ARMANDO MEDINA CORTEZ  
 a/k/a ARMANDO MEDINA a/k/a ARMANDO  
 CORTES d/b/a MJG CONSTRUCTION, VINCENT  
 MORALES d/b/a V. MORALES MASONRY, MJG  
 CONSTRUCTION AND HOMEBUILDERS, INC., B  
 & B CONSTRUCTION OF CHARLESTON, INC.,  
 SUPERSEAL MANUFACTURING, INC.,  
 MAJESTIC WINDOW MANUFACTURING, LTD.  
 f/k/a SOURCE WINDOWS, LTD., VWD (2008) NC,  
 INC f/k/a VINYL WINDOW DESIGNS-USA, INC.,  
 a/k/a VINYL WINDOWS DESIGN, LTD. PEGRAM-  
 WEST INC., CHASE HOMES, INC., CHASE-  
 ROBERTSON BUILDERS, INC., SGM  
 ARCHITECTS, INC. f/k/a SMITH, GERBER,  
 MCCLURE & ASSOCIATES, INC. f/k/a SMITH  
 GERBER & ASSOCIATES, INC., TRADEMARK  
 PROPERTIES, INC., STEPHEN R. HEAPE,  
 Individually and Independently As General Partner  
 of CAMBRIDGE LAKES, LP, ALBERT V. ESTEE,  
 Individually,

Defendants,

AND

BOSTIC BROTHERS CONSTRUCTION, INC.,

Third-Party Plaintiff,

vs.

JOSE NINO, INTERCOASTAL CONSTRUCTION,  
 INC., CAROLINA APARTMENT INTERIORS, LLC,  
 MJG CONSTRUCTION AND HOMEBUILDERS,  
 INC., B & B CONSTRUCTION OF CHARLESTON,  
 INC., AND V. MORALES MASONRY,

Third-Party Defendants.

The Plaintiffs, Cambridge Lakes Condominium Homeowners Association, Inc., and  
 Margel S. Henning, Steve Fischer, et al. as Individual Homeowners, (hereinafter  
 collectively "Cambridge") complaining of the Defendants named herein, would  
 respectfully allege and show the Court as follows:

Page 2 of 33

Ex. 10, p 2

supervision or control, including other limited partners, agents, employees, independent contractors, etc. of the Cambridge Lakes, LP.

94. That Heape, individually and as a General Partner, and Cambridge Lakes, LP have been negligent, willful, wanton, and reckless in one or more ways in the construction, sale, marketing, and/or conversion of Cambridge Lakes, as outlined above in Plaintiffs' First and Fifth Causes of Action against all Defendants and incorporated fully by reference herein.

95. That Stephen R. Heape, individually and as a named General Partner of Cambridge Lakes LP, owed and breached a duty to the Plaintiffs and is liable to the Plaintiffs for his wrongful acts, omissions, and/or recklessness, and for losses and/or injuries to the Plaintiffs according to S.C. Code Ann. § 33-41-350.

96. That Heape's negligence as a General Partner and as an individual above-described has proximately damaged the Plaintiffs in amounts to be determined by the jury.

97. Some or all of the said failures were committed in breach of his duty of due care and with reckless disregard for the rights of others; and Plaintiffs are entitled to an award of punitive damages as a result.

**FOR A EIGHTH CAUSE OF ACTION**  
**Negligence**  
**(As to Albert Estee, Individually)**

98. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if stated verbatim herein.

99. Albert V. Estee, individually is or was engaged in the business of converting the Cambridge Lakes buildings into individual units for sale to the public

Page 23 of 33

Ex. 10, p 3

as described and defined in the Horizontal Property Act, South Carolina Code Section §§ 27-31-10 et. seq. and pursuant to the provisions thereof, thereby enabling Estee, individually, and Cambridge Two, LLC to convert Cambridge Lakes and engage in the sale of these condominiums in the State of South Carolina.

100. Estee is personally responsible for any gross negligence, incompetence and/or misconduct in the practice of his profession and/or the conversion and sale of the condominiums pursuant to the Horizontal Property Act.

101. Estee, in supervising the conversion and sale of Cambridge Lakes, was grossly negligent and incompetent in the manner in which he converted and sold the units at Cambridge Lakes and that he breached the duty of due care owed to the Plaintiffs herein and to the public in general in the conversion and sale of individual units at Cambridge Lakes as is herein set forth.

102. The Cambridge Lakes units converted and sold by Estee were defective and unsafe as a direct and proximate result of Estee's gross negligence, incompetence, and misconduct; and the Plaintiffs herein have suffered actual, special, incidental, direct, indirect and consequential damages and are entitled to punitive damages in amounts to be determined at trial as hereinabove set forth.

**FOR A NINTH CAUSE OF ACTION  
Piercing the Corporate Veil/Alter Ego Liability  
(As to Albert Estee, individually, and Cambridge Two, LLC)**

103. Plaintiffs repeat and reallege the allegations contained in the above paragraphs as if stated verbatim herein.

104. Estee incorporated and/or caused to be incorporated Cambridge Two, LLC under the Laws of the State of South Carolina for the purpose of converting and

"BUILDING E"

3<sup>rd</sup> Floor

|           |           |           |           |
|-----------|-----------|-----------|-----------|
| 1609      | 1607      | 1605      | 1603      |
| VACANT    |           |           |           |
| \$132,500 | \$123,500 | \$123,500 | \$132,500 |
| 1595      | 1597      | 1599      | 1601      |
| \$129,500 | \$119,500 | \$119,500 | \$129,500 |

2<sup>nd</sup> Floor

|           |           |           |           |
|-----------|-----------|-----------|-----------|
| 1593      | 1591      | 1589      | 1587      |
| \$126,900 | \$118,900 | \$118,900 | \$126,900 |
| 1579      | 1581      | 1583      | 1585      |
| \$125,400 | \$115,900 | \$115,900 | \$125,400 |

1<sup>st</sup> Floor

|           |           |           |           |
|-----------|-----------|-----------|-----------|
| 1577      | 1575      | 1573      | 1571      |
| \$128,500 | \$119,500 | \$119,500 | \$128,500 |
| 1563      | 1565      | 1567-H    | 1569      |
| \$126,500 | \$114,900 | \$114,900 | \$126,500 |

Ex 11, p 1

Trademark 0119



APR-17-2003 09:27AM FROM

T-687 P.001/001 F-803

**Cambridge Two, LLC**  
**887 Johnnie Dodds Blvd., Suite 200**  
**Mt. Pleasant, SC 29464**  
**Office: (843) 416-2114**  
**Sales Office: (843) 881-1330**  
**Fax: (843) 416-2101**

Trademark Properties  
Attn: Dawn Mazyck  
571 Folly Road  
Mt. Pleasant, SC 29412

Reference: Price increase for Cambridge Lakes

April 17, 2003

Dear Dawn:

Per our conversation I would like to make a price change effective immediately on all new units to reflect an average price of \$125,000.00 for all two (2) bedrooms;

The average price of \$134,500.00 should be applied to all three (3)-bedroom units. Should you have any questions please contact me.

Thank you for your cooperation in this matter.

Regards,  
  
Albert Estee  
Cambridge Two, LLC

AVE/ci

Ex 12, p 1

Trademark 0120

JUN-18-2003 MON 12:58 PM

FAX NO.

P. 02

06/13/2003 FRI 9:59 FAX

002/003



May 28, 2003

Cambridge Two, LLC  
Albert V. Esteer, President  
887 Johnnie Dodds Blvd., Suite 200  
Mt. Pleasant, SC 29464

Reference: Listing agreement on Cambridge Lakes apartment to condominium conversion project

Dear Mr. Esteer:

On May 19, 2003 you attempted to terminate our listing agreement in order to keep from paying future commissions owed to Trademark Properties. Your reasoning was that my staff was made up of a "bunch of young gal's" and you felt you wanted to go in another direction. The reason I abruptly ended our meeting was simple, I will have no part in your personal preference to not have "young gal's" which by any definition is age and sex discrimination. It was clearly taught in the basic Real Estate classes that if someone enters into conversation that is discriminatory, you loudly object to participation in the conversation, much like Anti-trust. If my actions were deemed inappropriate to you then obviously you agree that I would not enter into dialogue over this subject matter.

Trademark Properties was hired for the sole purpose of converting your existing Apartment community, which by all accounts was underachieving as a rental community, into a viable condominium sales project. We did everything we said we would do and successfully got you to the closing table. We had a conference call with Eric Davidson, Dawn Mazyck and myself in Eric's conference room with you on the phone. I outlined what our original obligation was, which was to "pre-sell" 25 units with reservation agreements to prove to your bank this was a viable alternative for this project. You immediately started culling out any reservations that my agents presented to you, which didn't have an immediate closing date with no contingencies. We were then informed that we had to convert all reservations to hard contracts and close them all on the same day because the bank wasn't going to lend you as much money as you had led us to believe. All this time, you scrutinized all offers, micromanaged my sales agents and quite frankly asked questions about the buyers that were inappropriate. As long as the buyer could afford to buy the unit, you had an obligation to sign these contracts but if your questions weren't answered to fit your stereotype buyer, you wouldn't commit to selling the unit.

Ex 13, p 1

EXHIBIT **D**

06/13/2003 FRI 9:59 FAX

You have made comments to my staff over the course of this conversion process to the effect that you knew you were being difficult because you were under a lot of pressure, but they were doing a great job and you promised you would get out of their way once we got the initial closing done and it would be worth all the aggravation because it would be smooth selling until we finished out the project. You even promised to take our whole team out for dinner and drinks on you because we had just pulled off a miracle in getting this deal done by closing out all the pre-sales in a 2 day period.

You scheduled a meeting with Amber and Sarah and scrutinized every dollar you owed us and after they satisfied you with a total, you actual told them to INCREASE the future budget. They gave you a current invoice in that meeting; you said it would be paid immediately. Two more attempts to collect our money led to you scheduling a meeting with me to discuss a marketing plan through the end of the year.

Al, obviously you had a different agenda but the facts remain the same. You hired us for our expertise to convert your apartment community. I asked you up front why you came to me when your son is with Prudential and uses their site sales team. You assured Eric Davidson and me that you were going to stay with Trademark Properties until we sold out the complex, thus a listing agreement through August 2004.

The facts are simple, we did our job. We made this a no-brainer for your son's on site team and you switched horses in the middle of the race. It is my contention that you are discriminating against Trademark Properties because of an all youthful female sales staff on your project and you felt, and I quote "Richard, we both know men understand business better than women". It is my contention that our service contract can only be judged on production not your personal choice of gender and age.

I demand to be paid in full for all apartments, which we successfully converted into Condominiums, which can be identified by the issuance of a new tax map number. We have more than outperformed the pace needed to sell out the entire complex by August 2004 which was why you hired us, as outlined in our listing agreement which will stay active until we are paid in full, plus your outstanding marketing obligation, which we still have not received.

If Trademark Properties is not paid in full by July 15<sup>th</sup> 2003, we will file a lawsuit and request a jury trial and let our peers decide how much you owe Trademark Properties. I look forward to seeing you in court.

Sincerely,



Richard C Davis

Ex 13, p 2

1/00/2 2810

# Cambridge Lakes

MOUNT PLEASANT

Cambridge Two, LLC  
1930 Cambridge Lakes Drive  
Mount Pleasant, SC 29406

*Re: Notice of Condominium Conversion and Offer to Purchase*

Dear Resident:

Please be advised that Cambridge Two, LLC ("Owner") is looking into the conversion of Cambridge Lakes, located at 1930 Cambridge Lakes Drive, Mount Pleasant, South Carolina, into a condominium regime. If the Owner proceeds with this conversion, the building in which the apartment you currently lease from the Owner is located, will be subdivided into separate condominium units pursuant to S.C. Code § 27-31-10 et seq. (the "Condominium Act") and the Master Deed of Cambridge Lakes Horizontal Property Regime.

Please be advised that pursuant to the Condominium Act you have the following rights:

(a) Owner may not require you to vacate your apartment until expiration of your lease or for one hundred twenty days (if you are age sixty or older) or ninety days (if you are under the age of sixty) following delivery of this letter, whichever is longer, and the terms of your tenancy may not be altered during that period. Your rights and obligations during any tenancy extended by the Condominium Act will remain the same as before the extension. Notwithstanding the foregoing, any notice which under the terms of your tenancy is required to be given to prevent the automatic renewal or extension of the term of your tenancy may be given by Owner during the foregoing period. In addition, the Condominium Act does not prevent termination of a lease according to law for violation of its terms. This letter serves as notice that the Owner will be terminating your lease, unless other arrangements have been made and put in writing by you and the property manager, effective on the earliest possible date permitted by your lease and the law and in accordance with the terms thereof.

(b) Owner is required to offer you the right to purchase the apartment you occupy at a specified price and upon specified terms. If you accept such offer, which is provided by Trademark Properties, please be advised that the Owner's obligation to sell the apartment to you will be conditioned on its decision, in its sole discretion, to proceed with the conversion. The price and terms offered to you are required to be at least as favorable as the price and terms offered to prospective purchasers who are not tenants in possession of apartments in the complex. You must be allowed sixty days



Ex 14, p 1

in which to accept such offer and, in the event you shall not have accepted the offer within the sixty days, Owner shall be prohibited for an additional fifty days (if you are age sixty or older) or fifteen days (if you are under the age of sixty) from making an offer to convey the apartment to any other person at a price or upon terms more favorable than those offered to you, unless such more favorable offer first shall have been extended to you for your exclusive consideration for a period of ten days. Acceptance of an offer by you must be in writing.

(c) In connection with the offer to purchase required to be extended to you by Owner, Owner is required to provide you with the written report of an independent registered architect or engineer describing the physical condition of the apartment building that has been converted, the general condition of all common elements, a good faith estimate of the remaining useful life of the items reported on, and a list of any notices of uncured violations of building codes or other county or municipal regulations, together with the estimated cost of curing those violations. Such a report will be forwarded to you in due course. Notwithstanding the time periods set forth in paragraph (b) above, you will not be required to accept the offer in paragraph (b) sooner than ten (10) days after this report is sent to you.

In accordance with your rights under the Condominium Act, Owner hereby offers to sell the apartment occupied by you at the price and upon the terms and conditions of the Purchase and Sale agreement provided by Trademark Properties. Therefore, if you are interested in executing a purchase and sale agreement, please contact Trademark Properties within sixty (60) days.

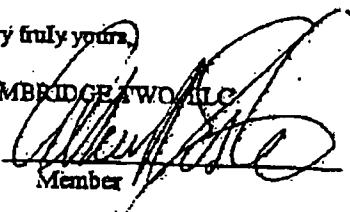
Our goal is to provide all of our residents with an affordable home ownership opportunity while undertaking improvements that will make you proud to call Cambridge Lakes your home.

Our Resident Manager, Roxanne Robbins can be reached at 881-1330 for lease related questions. The Trademark Properties Real Estate Team is can be reached by telephone at (843) 762-0110

Thank you for making Cambridge Lakes your home. We look forward to serving you in the future.

Very truly yours,

CAMBRIDGE TWO, LLC

By: 

Member

Ex 14, p 2

# Deposition of ALBERT ESTEE taken JULY 24, 2009

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
2 COUNTY OF CHARLESTON CASE NO.: 2008-CF-10-3506  
3  
4 CAMBRIDGE LAKES CONDOMINIUM  
5 HOMEOWNERS ASSOCIATION, INC.,  
6 et al.,  
7 Plaintiffs,  
8 vs.  
9 BOSTIC BROTHERS CONSTRUCTION, INC.,  
10 CAMBRIDGE TWO, LLC, CAMBRIDGE LAKES,  
11 LP, CLASSIC PROPERTIES INC. OF  
12 CHARLESTON, CAMBRIDGE CONTRACTING, LP,  
13 and CAMBRIDGE LAKES APARTMENTS, LP  
14 Defendants,  
15 and  
16 BOSTIC CONSTRUCTION, INC.,  
17 Third-Party Plaintiff,  
18 vs.  
19 JOSE RENO, INTERCOASTAL CONSTRUCTION,  
20 INC., CAROLINA APARTMENT INTERIORS,  
21 LLC, HJS CONSTRUCTION AND HOMEBUILDERS,  
22 INC., B & S CONSTRUCTION OF CHARLESTON,  
23 INC., V. MORALES MASONRY,  
24 INC.,  
25 Third-Party Defendants.

26 The deposition of ALBERT V. ESTEE, taken before  
27 Heather H. Cudlin, Professional Court Reporter and Notary  
28 Public, at the Hayes Law Firm, 180 Meeting Street, Suite  
29 305, Charleston, South Carolina, on Friday, July 24, 2009,  
30 commencing at 10:00 a.m.

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2  
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18  
19 Also Present: Kevin O'Quinn, CLU

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42 [doparrish@hessenbruy.com](mailto:doparrish@hessenbruy.com)

## INDEX TO EXAMINATION

1 Witness:  
2 ALBERT V. ESTEE (sworn)  
3  
4 Examination by Mr. Hayes  
5 Examination by Mr. Belcher  
6 Examination by Mr. Allen  
7 Examination by Ms. Gangi  
8 Further Examination by Mr. Hayes  
9 Certificate of Reporter  
10 Dependent Correction Sheet

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1 Marked for I.D.:  
2 1. Cambridge Lakes, LP Agreement of  
3 Limited Partnership  
4 2. Secretary of State Website Report  
5 on Albert Estee as Registered Agent  
6 3. 08/05/02 Cambridge Two & Trademark  
7 Properties Listing Agreement  
8 4. 01/07/03 AMCS Letter to Cambridge Lakes  
9 Residents  
10 5. Cambridge Two Notice of Conversation and  
11 Offer to Purchase

12  
13  
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1 investors.  
2 Q. Okay. So you would have made the  
3 decisions on behalf of Cambridge Two, LLC?  
4 A. Correct.  
5 Q. All right. And what -- can you just give  
6 me the names of any of the investors that were  
7 involved in Cambridge Two, LLC?  
8 A. Well, initially there was only one person.  
9 Q. Would that be Albert Estes (sic)?  
10 A. No. That was -- one other individual was  
11 involved with me initially, and that was -- it will  
12 come to me --  
13 MR. PARRISH: Warren.  
14 A. Jim Warren. James Warren. And so as we  
15 proceeded and started trying to figure out financing  
16 and so forth and so on, Jim came up with an idea to  
17 say, well, why don't we just -- why don't we just --  
18 let me not be involved with that, but let me just buy  
19 units. So that -- that took off where there were  
20 several people buying units, which is a matter of  
21 record.  
22 BY MR. HAYES:  
23 Q. Okay. And what -- when you say "several  
24 people buying units," you mean more than one unit?  
25 Instead of people becoming investors in Cambridge

1 Two --  
2 A. Exactly.  
3 Q. -- LLC, they said, well, here, I'll just  
4 buy a number of these units from you?  
5 A. Right. Correct.  
6 Q. And when you say that -- I guess I'm  
7 saying they committed to buying these once they were  
8 available for sale?  
9 A. Correct.  
10 Q. Okay. In regards to marketing these units  
11 once Cambridge Two, LLC acquired the Cambridge Lakes  
12 Apartment buildings, did you hire a company to market  
13 those --  
14 A. Uh-huh.  
15 Q. -- apartments?  
16 A. Yes, I did.  
17 Q. Who did you hire?  
18 A. Trademark Properties.  
19 Q. Okay. Why did you decide to hire  
20 Trademark Properties?  
21 A. Several of his salespeople I had -- worked  
22 for me years gone by. They also were involved with  
23 several conversions. And so I consulted with them  
24 and felt that they would -- would do a good job for  
25 me.

Southeastern Transcript

(843)762-2442

1 Q. Okay. Did you rely on Trademark  
2 Properties to assist you in converting these  
3 properties to individual sales?  
4 A. Yes.  
5 Q. And was that one of the reasons that you  
6 hired Trademark Properties --  
7 A. Yes.  
8 Q. -- because they had done this in the past?  
9 A. Yes.  
10 Q. Who did you deal with directly at  
11 Trademark Properties?  
12 A. Initially, Richard Davis.  
13 Q. And who is Richard -- what -- Richard  
14 Davis with Trademark Properties?  
15 A. Yes.  
16 Q. Is he -- is he the owner --  
17 A. Yes.  
18 Q. -- of Trademark Properties?  
19 A. His name is out in neon, so I assume so.  
20 Q. Is it -- is it fair to say that you  
21 contacted Mr. Davis and said, I'm getting -- I want  
22 to convert these buildings into individual units I  
23 can then sell to the public?  
24 A. Correct.  
25 Q. And I need your help in doing so?

1 A. Correct.  
2 Q. Are you still a member of Cambridge Lakes  
3 Limited Partnership?  
4 A. No. Well, let me -- let me take that  
5 back. I -- I don't know whether it's been officially  
6 dissolved or what have you. But when I purchased the  
7 units from them, we ceased; as far as my activity, I  
8 ceased to exist in terms of any involvement with  
9 them.  
10 Q. All right.  
11 MR. HAYES: Exhibit 3? Is that where  
12 we are?  
13 (Exhibit No. 3 was marked.)  
14 Q. All right. Mr. Estes (sic), can you take  
15 a second to look at what's been marked as Exhibit 3  
16 to your deposition we handed to you, and take a  
17 minute to look at that and tell me if you can  
18 identify that document.  
19 A. Do you represent Mr. Davis in any way?  
20 Q. No, I do not represent Mr. Davis.  
21 A. It looks -- it looks familiar.  
22 Q. Okay. Would you -- just for everyone in  
23 here, would you identify what that document is?  
24 A. A listing agreement between Cambridge Two,  
25 LLC and Trademark Properties.

11 of 45 sheets

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1 understand the reasoning behind why that's required?  
2 I mean, why that should be given to prospective  
3 purchasers of these units?

4 MR. PARRISH: Objection to the form.  
5 It calls for a legal conclusion. Please answer  
6 it.

7 A. I know that there needs to be a  
8 disclosure, which I've lived with and know about,  
9 disclosure of any known latent defects. And we  
10 responded to that. So I'm aware of that.

11 BY MR. HAYES:

12 Q. Okay. When you say you have to make --  
13 who do you have to make aware -- somebody aware of  
14 the defects? Explain to me your answer.

15 MR. PARRISH: Object to the question.  
16 Go ahead and answer.

17 A. It is my understanding and my experience  
18 that we disclose to the marketing companies, to the  
19 real estate agents selling properties, any known  
20 problem, latent defect. So that's -- that's known to  
21 me. So when you asked the question as it relates to  
22 this, yes, I'm familiar with that.

23 BY MR. HAYES:

24 Q. Okay. But you agree that your letter  
25 doesn't reference anything about any known latent

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1 defects. It says we've got to provide you with a  
2 written report of an independent registered architect  
3 or engineer describing the condition, physical  
4 condition of the apartment buildings that have been  
5 converted, the general conditions of all elements,  
6 the good faith estimate of the remaining useful life  
7 of the items reported on, and a list of any notices  
8 of uncured violations of building codes or other  
9 county or municipal regulations together with  
10 estimated costs of curing those violations.

11 A. I understand.

12 Q. Okay. So you understand that when you  
13 converted these, when Cambridge Two, LLC that you  
14 were a member of, only member of, converted these  
15 units to individual sale that you were supposed to  
16 give the prospective purchasers a report stating the  
17 condition of these units, if there were any problems  
18 with these units, and what it would cost to remedy  
19 these problems. Correct?

20 A. If that -- if any of those things existed,  
21 I feel -- I'm -- I'm sure we would have addressed it.

22 Q. Okay. Well, how would you find -- what  
23 did you do to see if any of those things existed?

24 Tell me what Cambridge Two, LLC --

25 A. Number one --

Southeastern Transcript

(843)762-2442

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1 Q. -- did to see if there was --

2 A. I -- I think if that was required, that --  
3 that I still believe we should have or must have  
4 complied.

5 Secondly, and a general answer, we've had  
6 these -- this -- these units for two years. They  
7 were just -- multiple, multiple inspections. So most  
8 of these people lived there, knew it. In the process

9 of converting, we established a homeowners  
10 association. As such, we have to establish a cost of  
11 any repairs and future capital costs. That was done.  
12 So that's my general explanation, if you will, of my  
13 awareness, that I did what -- Cambridge Two, LLC, I  
14 did what, in fairness, what had to be done.

15 Q. Well, what if someone bought one of these  
16 units that didn't live there beforehand?

17 MR. PARRISH: Object to the form.

18 A. Again, awareness, confidence of what we've  
19 got, I got no problem.

20 BY MR. HAYES:

21 Q. So you're saying your -- you had -- when  
22 you say confidence in what you had, you felt  
23 confident that there weren't any problems with that  
24 building? Is that what you're telling us?

25 A. Cambridge Two, based on its information,

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1 based on all of this knowledge, it went forth,  
2 honestly, with confidence that there were no  
3 problems.

4 Q. But my question isn't whether you were  
5 confident or not. My -- my question is purely you  
6 don't have any evidence or knowledge that Cambridge  
7 Two, LLC ever had a report generated such as in  
8 Paragraph C, or if it did, it did not give it to the  
9 prospective owners. Is that fair to say?

10 MR. PARRISH: Object to the form.

11 A. Again, I cannot recall all the documents  
12 or individual situations that -- that -- that  
13 occurred during the conversion of this -- this  
14 project. I know there was -- there was a lot of  
15 details, and I cannot recall specifically what  
16 documents were given out during the marketing of  
17 these things.

18 BY MR. HAYES:

19 Q. Well, in regards to giving out documents  
20 during the marketing of these things, who would have  
21 given out documents in regards to marketing these  
22 things?

23 A. Trademark Properties was hired to market  
24 and -- and convey whatever information had to be  
25 conveyed.

17 of 45 sheets



## STATE OF SOUTH CAROLINA

## IN THE COURT OF COMMON PLEAS

## COUNTY OF CHARLESTON

CAMBRIDGE LAKES CONDOMINIUM HOMEOWNERS' ASSOCIATION, INC.; MARGEL S. HENNING; STEVE FISCHER; MARK and BRENDA SCHILLACI; GARY and BILLIE COMLEY; GERALD DARNELL; JOHN MASCIOLI and GLORIA IARDIN; CLINT GASKINS; MITCHELL GASKILL; THOMAS MURPHY; EDWARD BOGGS; BRUCE ADKINS; CHARLESTON HOME TEAM PROPERTY, LLC; PAM SNYDER; LOUELLA ENK; JEREMIAH and GLORIA MORRISON; ERIN BLEVINS; CHARLES TAYLOR, JR.; MARION RIZZARDINI; KAREN ABRAMS; E. MIKELL CARROLL; VERNILL ROBERTS; KIM JACKSON; META KING; JAMES and MARGARET AYERS; MARY B. BURKE; SEVENTH WING, LLC; RUTH CATE and CHARLES WHITE; ROBERT and MARY ORTIZ-ABREU, JR.; LAURA LOTORRE; MARVIN and PAULA SWINDLE; DONNA and DAVID WIGGINS; EMILIE COLE SANDERS; PHILIP and CYNTHIA JONES; ANDREW MOHR; ALISON SMITH; BOBBIE FAULKNER; MARCUS and GRACE THOMAS; DORIS SKUHRA; ROBERT and RAGAN ALBERT; WILLIAM SILER; MARVA CARD; SAMUEL RUBINO; MATT TATHAM; SCOTT HERRMAN; JAY and JENNIFER MERRIMAN; MARY ELLEN CARS; ELIZABETH MOSELEY; ALI and MICHELLE ERFANT; EMILY CHAPMAN; JOHN T. and LAURA L. MARTIN; ROSEANN TECHMAN; ROBERT PRICE; HENRY EDWARD TIENCKEN; JEAN B. WALLACE; MICHAEL B. MARTINETT; CAROLYN CARRICO; JENNIFER SNOWDEN; JOSHUA LONG; J. MICHAEL and GLORIA McDONNELL; SANDRA GIRT; JANE THOMPSON; JOHN HILL, III; GLENNA MCKENZIE; JEFF GARDNER; FREEMAN THARP; PETE DUNHAM; JEANNE-MARIE BUSUTTIL; GLADYS J. JOHNSON; ROBERT

CASE NO.:  
08-CP-10-3506

DEPOSITION OF:  
RICHARD DAVIS

1

AND

BOSTIC BROTHERS CONSTRUCTION, INC.,)

Third-Party Plaintiff,

-versus-

JOSE NINO, INTERCOASTAL  
CONSTRUCTION, INC.; CAROLINA  
APARTMENT INTERIORS, LLC; MJG  
CONSTRUCTION AND HOMEBUILDERS,  
INC.; B4B CONSTRUCTION OF  
CHARLESTON, INC.; and V. MORALES  
MASONRY,

Third-Party Defendants.)

THE DEPOSITION OF RICHARD DAVIS was taken as a witness on behalf of the Plaintiff, pursuant to South Carolina Rules of Civil Procedure, at 10:00 a.m. on Thursday, the 9th day of September 2010, at the offices of Nexsen Pruet, LLC, 205 King Street, Suite 400, in the City of Charleston, State of South Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

3

W. SIMPSON; HEIDI J. RICHTER; MARK COMMANDER; KATHLEEN WAITE; and KOO HWANG, as Individual Homeowners,

Plaintiffs,

-versus-

BOSTIC BROTHERS CONSTRUCTION, INC.; CAMBRIDGE TWO, LLC; CAMBRIDGE LAKES, LP, a/k/a CAMBRIDGE LAKES APARTMENTS HOMES, LP; CAMBRIDGE LAKES APARTMENTS, LP, a/k/a CAMBRIDGE LAKES APARTMENTS HOMES, LP; CLASSIC PROPERTIES, INC., OF CHARLESTON; CAMBRIDGE CONTRACTING, LP; SELECTIVE INSURANCE COMPANY OF AMERICA; SELECTIVE INSURANCE COMPANY OF SOUTH CAROLINA; JOSE NINO; B4B CONSTRUCTION CO.; INTERCOASTAL CONSTRUCTION, INC., d/b/a and a/k/a INTRACOASTAL CONSTRUCTION; CAROLINA APARTMENT INTERIORS, LLC; ARMANDO MEDINA CORTEZ a/k/a ARMANDO MEDINA a/k/a ARMANDO CORTES d/b/a MJG CONSTRUCTION; VINCENT MORALES d/b/a V. MORALES MASORRY; MJG CONSTRUCTION AND HOMEBUILDERS, INC.; B4B CONSTRUCTION OF CHARLESTON, INC.; SUPERSEAL MANUFACTURING, INC.; MAJESTIC WINDOW MANUFACTURING, LTD., f/k/a VINYL WINDOW DESIGNS-USA, INC., a/k/a VINYL WINDOWS DESIGN, LTD.; PEGRAM-WEST, INC.; CHASE HOMES, INC.; CHASE-ROBERTSON BUILDERS, INC.; SCH ARCHITECTS, INC., f/k/a SMITH, GERBER, McCLURE & ASSOCIATES, INC., f/k/a SMITH GERBER & ASSOCIATES, INC.; TRADEMARK PROPERTIES, INC.; STEPHEN R. HEAPE, Individually and Independently as General Partner of CAMBRIDGE LAKES, LP; ALBERT V. ESTEE, Individually,

Defendants.

2

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4

SOUTHEASTERN TRANSCRIPT

1 and Cambridge Two.

2 MR. MCLEOD: Tad McLeod, Jose Wino.

3 MR. LOFTIS: Todd Loftis here for  
4 Bostic Construction.

5 MR. HAYES: And who is on the phone?

6 MS. GIFFORD: This is Emily Gifford  
7 also for Pegram-West.

8 MS. COKER: And Meredith Coker for  
9 Classic Properties.

10 EXAMINATION

11 BY MR. HAYES:

12 Q Mr. Davis, my name is John Hayes. We've  
13 met. I'm here to take your deposition in the  
14 Cambridge Lakes matter. Have you ever had your  
15 deposition taken before?

16 A Yes, sir.

17 Q Well, I'm going to tell you some ground  
18 rules. Now that it's started, refer any questions  
19 you have to me and not to your attorney.

20 If you need to take a break for any  
21 reason, let me know. We'll take a break. It's not  
22 a marathon.

23 If you don't understand the question I'm  
24 asking you, let me know so I can make sure that you  
25 understand it or at least rephrase it in such a way

1 words what's your real estate brokerage.

2 A If you have a house to sell, you call me  
3 up. We'll come price it. We'll tell you, you know,  
4 cut your yard, paint the fence, put your dog away,  
5 give you advice on how to best present that  
6 property. And then we list it and sell it.

7 Q You-all also represent buyers, too.

8 Correct?

9 A Yeah, we represent buyers as well.

10 Correct.

11 Q Is it fair to say that Trademark

12 Properties in some form or fashion has the capacity  
13 or has in the past represented buyers and sellers?

14 A Yeah, that would be fair.

15 Q Is that something they do quite often?

16 A Every day, yeah.

17 Q In regards to Trademark Properties, is it  
18 still a going concern?

19 A Yes.

20 Q How many employees does it have?

21 A I don't know that answer.

22 Q More than you can count?

23 A Well, no, not necessarily. If I walk in  
24 a sales meeting yesterday, this is about how many  
25 people we had in the room.

11

1 that you will understand it.

2 You are under oath just as if you were in  
3 a courtroom. Is there any reason that you cannot  
4 answer my questions truthfully and honestly and to  
5 the best of your capabilities today?

6 A No. I'm good.

7 Q Mr. Davis, you are the owner of a company  
8 Trademark Properties. Correct?

9 A Yes, sir.

10 Q How long have you owned Trademark  
11 Properties?

12 A I believe 19 years.

13 Q And are you the sole owner of it?

14 A Yes, sir.

15 Q Have you always been the sole owner of  
16 it?

17 A Yes, sir.

18 Q And how long have you been in the real  
19 estate business?

20 A I think I've had my license 21 or 22  
21 years, something like that.

22 Q Trademark Properties, what kind of  
23 business is that?

24 A It's a real estate brokerage.

25 Q And if you'll just tell us in your own

1 Q Is it fair to say 10 to 12 employees,  
2 thereabout?

3 A Again, they are agents. So independent  
4 contractors versus employees, I would say probably  
5 half and a half.

6 Q In regards to Trademark Properties, you  
7 also had a television show as I recall. Correct?

8 A I created a television show.

9 Q You did. It wasn't Trademark Properties  
10 that had the show?

11 A Well, I mean, I created it. I wrote it.  
12 It was my left hand that wrote the show. I don't  
13 know what that's got to do with Trademark

14 Properties.

15 Q I was just curious. You were involved in  
16 a TV show?

17 A Yeah. Richard C. Davis created that  
18 show.

19 Q What was the name of the show?

20 A It was called Worst to First.

21 Q Worst to First?

22 A Worst to First. And when I went on TV,  
23 they changed the name to Flip This House.

24 Q What was the premise of the show?

25 A The premise of that show was basically

12

SOUTHEASTERN TRANSCRIPT

Ex 16, p 2

Trademark 0231

1 following me and a select few of my people buying  
2 properties, fixing them up and selling them.

3 Q The select few of your people, were they  
4 also affiliated in any way with Trademark  
5 Properties?

6 A Yes.

7 Q Was Trademark Properties' logo ever shown  
8 on the show?

9 A Yeah. As a matter of fact,  
10 contractually, yeah.

11 Q Trademark Properties --

12 A I'm sorry. You said if I had a question  
13 to direct it to you?

14 Q Sure.

15 A It seems to me I got stuck for a bill on  
16 this in 2002. Right?

17 Q Oh, you're talking about in this case?

18 A I'm talking about when Al Estee didn't  
19 pay me and kicked me off the job. That's 2002. My  
20 TV show didn't go on air until 2005. So I really  
21 don't understand what's that got to do with --

22 Q Part of the thing is we're asking  
23 questions about -- asking you questions, trying to  
24 get information that you know about this.

25 A Okay.

13

1 Q Well, Mr. Davis, Trademark Properties has  
2 been involved in the conversion of condominiums  
3 before. Correct?

4 A Yes, we have.

5 Q How many condominiums has Trademark  
6 Properties been involved in, at least as far as the  
7 conversion from a rental unit to an individual unit  
8 for sale?

9 A I'd venture to say anybody in the state  
10 of South Carolina owning an apartment building that  
11 thought of converting called us. I would say we  
12 turned down 90 percent of them.

13 Q Why did you turn down 90 percent of them?

14 A Well, because it's, you know -- The only  
15 thing we would look at is marketability, is there a  
16 buyer out there that would want that unit in this  
17 market today. And so not everything for sale can be  
18 sold. And so the ones that we felt lent  
19 themselves -- a floor plan that a buyer was looking  
20 for, you know, we give it the thumbs up. If not, we  
21 wouldn't do it.

22 Q So if you thought it was a good  
23 conversion, then it's a project that Trademark might  
24 take on?

25 A If we thought it was a marketable

14

1 product. We are in the business of selling real  
2 estate. If it's a toaster and you can fit a mouse  
3 in it and you want to call it a piece of real  
4 estate, I won't put a roof over its head. If it's  
5 viable and fits, I'll sell a doghouse.

6 Q Well, in regards to condominium  
7 conversions, not doghouses, how many has Trademark  
8 been involved in? Not turned down. How many have  
9 they been involved in?

10 A I could pull MLS numbers and show you.

11 But I couldn't tell you off the top of my head.

12 Q Do you think it's over ten?

13 A Over ten units?

14 Q Over ten projects.

15 A It might be single digits. It might have  
16 tipped into double digits. That's not a crazy  
17 number. That's probably close to whatever it ended  
18 up being.

19 Q Is that information -- You said pull MLS.  
20 So you could probably provide that to your attorney?

21 A Yeah, very easy.

22 Q In that regards, do you remember off the  
23 top of your head any conversion products that you've  
24 been involved in, the names of them?

25 A Yeah. Off the top of my head, I could

15

1 probably --

2 Q If you don't mind just telling us those.

3 A An apartment name I can't remember, but  
4 The Peninsula on James Island, Mira Vista, Riverway  
5 up in North Charleston, Montclair in Mt. Pleasant.  
6 There's more. That's not what I do all day, every  
7 day.

8 Q But those are the ones that you recall  
9 off the top of your head?

10 A Yeah. And there's more. I just can't  
11 remember the names of them. It's easy enough. I  
12 can pull the MLS and tell you exactly what we sold.

13 Just so you know, because I hate being  
14 labeled, when I first started listing new  
15 construction for Horres Rook (phonetic), I got  
16 listed -- an article in the paper that I represent  
17 new construction. So my clients who are resale  
18 clients, you know, called me up and said, wow, we  
19 love using you, but now that you're new  
20 construction, we're going to use so-and-so down the  
21 street.

22 Same thing with condo conversions. We  
23 did 2,600 closings the year that we were doing condo  
24 conversions. I would say -- and I don't know that I  
25 can bring you the stats -- most of them were single

16

## SOUTHEASTERN TRANSCRIPT

1 family residential resales. Book of business,  
2 clients that we've had since I started the company  
3 and we built the business up.

4 So that is a speck of our business. It's  
5 not our specialty. It's not a niche -- My point is  
6 it's not all we do. So we are not condo converters.  
7 If you would have called me up and said, hey, Nexsen  
8 Pruet wants you to price this building, I would have  
9 been over here in seven seconds to tell you what  
10 it's worth to sell. It's what we do.

11 Whatever is hot in the market tends to  
12 get the most requests to list them. So whatever is  
13 going on, yeah. Believe me, I'm waiting for the  
14 next wave right now. When I get that phone call,  
15 we'll put a price on it.

16 Q In that regards, but at some point you  
17 did get involved in the condo -- as we have  
18 discussed, the conversion of rental units?

19 A Absolutely. I think if you look under  
20 the umbrella of National Association of Realtors,  
21 find me a company in this town that didn't get paid  
22 to sell a condo. Find me one. I think it's pretty  
23 representative of what was popular in the market.  
24 You had all the young Mt. Pleasant people that  
25 didn't want to buy a house. They wanted to buy a

17

1 condo. And that's what was selling.

2 Q Well, you-all also did marketing.  
3 Correct? Trademark did marketing. Right?

4 A That's mostly what we do. Mostly what we  
5 did was the marketing of it, getting the word out  
6 there, making sure that people knew that we had  
7 something that was -- Whether it was affordable or  
8 whether it was new countertops, whatever, that  
9 particular project, our job was to blast it out  
10 there and make sure everyone knew about it.

11 Q Let's talk about that. It was common for  
12 someone to call up and -- call you up at Trademark  
13 Properties and say, hey, I've got this building that  
14 has a bunch of rental apartments in it, and I would  
15 like to convert this into condos. Can you help me  
16 with this project? Is that a fair statement?

17 A Well, the statement usually is, "What do  
18 you think?" It always comes down to money. What do  
19 you think? I talked to your competition and  
20 Prudential said they can get 200 a unit. What do  
21 you think you can get?

22 So whenever I got the first phone call  
23 always as a real estate company, how much can you  
24 get and how cheap will you let me beat your  
25 commission down. It's that simple. It always comes

18

1 down to a mathematical equation.

2 Q Let's say you are engaged -- Trademark  
3 Properties is engaged in the conversion of  
4 apartments to condominiums. You-all do more than  
5 just put it up on a web site. Correct?

6 A Yeah. We have a marketing plan that we  
7 present to the developer. We are not builders. We  
8 are not developers. Your project, we go to you and  
9 we say we think for this to be effective we've got  
10 to spend X amount of dollars to make sure any

11 possible buyer out there looks at it. And then if

12 it comes back and it's not a viable project, then  
13 you spent money to find out it's not viable and, you  
14 know, we basically work for nothing and we move on.

15 Q It's true that you also -- not only do  
16 you help them with the marketing, but you also help  
17 them with the conversion process. Correct?

18 A I mean, I'll price it out. I don't  
19 physically build anything, if that's what you're  
20 getting at.

21 Q I'm talking about as far as  
22 communications with the homeowners.

23 A Oh, yeah, absolutely.

24 Q And making sure that the process goes --  
25 I mean, it's not just a -- When you take a building

19

1 from rental units to individual units for sale, it's  
2 not just a, hey, throw it up on the MLS web site and  
3 let it sell. There's some things that you have to  
4 do in order to sell those places to individual  
5 units?

6 A Not things I have to do. I'm not the  
7 builder. I'm not the developer. What I have to do  
8 is find out -- If I put it out there and advertise  
9 it and I put a price on it and I get no calls, it's  
10 not viable. My job is to figure out what the  
11 pricing model is, what's popular in the market as  
12 far as location. I mean, you can have the best unit  
13 in the wrong location. I can't help you.

14 Q What about the legalities as far as  
15 converting rental units into units for sale? Do you  
16 get involved in that?

17 A I'm not a lawyer.

18 Q I know you're not a lawyer --

19 A If you want to sue me for bad taste, bad  
20 carpet and bad paint colors, go right ahead. I'm  
21 not a contractor. I don't build it. We deal with  
22 people who already own those buildings. That's what  
23 they do for a living. That's what they did for 40  
24 years before I met them. My job is to come in and  
25 say, you asked me to price this thing. Okay, here's

20

## SOUTHEASTERN TRANSCRIPT

1 a project down the way called Montclair.  
 2 Q Was it a conversion project?  
 3 A Right.  
 4 Q Montclair was a conversion?  
 5 A It was a conversion. It was a big, rich  
 6 Chicago developer telling me how much money I'm  
 7 going to make off of him. He did all of his legal,  
 8 conversion, did every bit of that stuff.  
 9 Well, Al Estee and his wife walk in.  
 10 Acted like they are trying to buy a unit, do this  
 11 secret shopping thing. Right? I guess they were  
 12 impressed with my sales team, because then I got a  
 13 phone call saying will you come look -- he owns a  
 14 building right down the way. We thought he was a  
 15 buyer. Will you come take a look and see -- he's  
 16 got a building and wants to know if we can sell  
 17 units for more or less than we're selling Montclair  
 18 for.  
 19 All right. So I go there. I want to say  
 20 Dawn called me to go meet with the guy or walk  
 21 through with him and his wife. And basically he  
 22 told me he's done this for 40 years. All he needs  
 23 to know from me -- and I thought it was real  
 24 peculiar, because I said, well, you know, Danny  
 25 Castle is a good friend of mine. He lives next to

25

1 your son. He told me your son has a real estate  
 2 company. Why are you calling me?  
 3 And he said point-blank that my bank  
 4 won't finance this unless I get 30 resales, and you  
 5 are the go-to guys on selling condos in Charleston.  
 6 Whether it's new construction -- We sold new  
 7 construction. I mean, "condo" was a hot word. We  
 8 had the hot hand selling them. And we were doing  
 9 the best that we can. We were trying to sell as  
 10 many as we could.  
 11 Q But the fact is that Trademark Properties  
 12 did assist Mr. Estee in the conversion of --  
 13 A I walked through the property -- Hold on.  
 14 I walked through the property. He told me he's been  
 15 doing this 40 years. He's a developer. And that  
 16 basically he wanted me to price it.  
 17 And what I said -- this is what I was  
 18 trying to get to. When I gave an opinion on that  
 19 carpet on the first floor, it was unwarranted. They  
 20 didn't want to hear about. She told me she is an  
 21 interior decorator. They liked it just the way it  
 22 was and started cracking on the project they just  
 23 came from, Montclair, and why theirs was better.  
 24 And I said, okay, it sounds like you  
 25 don't need me, but I would take this carpet up.

26

1 Q So it's your testimony today that the  
 2 only thing that Trademark Properties did --  
 3 A No, no. I'm saying me personally. I'm  
 4 telling you exactly what happened the one time I  
 5 walked -- I've been to that property twice in my  
 6 life. That day, and then another day when he asked  
 7 me to come speak to the existing owners, who he  
 8 caused a big old ruckus because we ran an ad. He  
 9 was supposed to tell -- He was supposed to tell the  
 10 owners, because it's his project, he was supposed to  
 11 let them know before we ran the ad that they had the  
 12 option to buy it.  
 13 Well, he told us. We did it. We ran the  
 14 ad. What happens? Beehive. Totally bullshitted  
 15 me. Did not tell the owners. I had to go and  
 16 diffuse that and say you have the right -- we're  
 17 happy to sell it to you. Here's your unit.  
 18 So it was just an awkward situation from  
 19 the get-go.  
 20 Q So you got called in to meet with the  
 21 homeowners, explain to them their rights they had as  
 22 far as --  
 23 A Not their rights. If they could buy  
 24 their unit.  
 25 Q That's what I'm saying. Their rights as

27

1 far as their ability to buy the unit, et cetera.  
 2 A Hey, I'm selling pancakes. If you're  
 3 sitting at IHOP, I'm going to sell them to you. The  
 4 fact that you live there obviously makes it easier  
 5 on everybody.  
 6 Q My understanding of your testimony was  
 7 you got caught in a beehive and that you explained  
 8 to the homeowners that they had the right to buy  
 9 these units?  
 10 A The exact question was -- the lady said  
 11 somebody came knocking on my door, saw your ad, and  
 12 walked into my unit and said I want to buy this  
 13 unit. When can you get out? Well, there's nothing  
 14 in the ad that said that. The ad simply said  
 15 here's the price. We are testing the market.  
 16 Here's condos. Here's the location. Here's the  
 17 price. Let's wait for that phone to ring. If we're  
 18 any good at what we do, the phone rings. If it  
 19 doesn't ring, I've got to go back and say it's not  
 20 going to work. We overpriced it. We underpriced  
 21 it. Unit is too big. Unit is too small.  
 22 But at the end of the day, my  
 23 recollection of that is that it was a viable -- at  
 24 whatever number we ran the ad at, the phone rang.  
 25 Q So you're saying that you only physically

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## SOUTHEASTERN TRANSCRIPT

1 MR. CISA: Richard, take your time  
2 and read through it like he asked you, and then he's  
3 going to ask you questions about it.

4 THE WITNESS: I just think it's a  
5 bunch of horse shit.

6 A Okay.

7 BY MR. HAYES:

8 Q Is there anything in there you disagree  
9 with?

10 A That's a pretty open statement.

11 Q We can walk through it.

12 A That's his opinion. I can't get in his  
13 head. I'm sure my opinion is different from him.  
14 I've got a different brain. I'm left-handed. He's  
15 right-handed. I didn't write it.

16 Q I understand that.

17 A So I have no opinion on it.

18 Q Just for the record, this is  
19 chronological events drafted by Al Estee in regards  
20 to --

21 A I think it's a very condescending stance  
22 of his view of Dawn. So I think it's a bunch of  
23 shit, is what it is.

24 Q What we're talking about is a document  
25 that was drafted by Mr. Estee basically stating, as

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1 he refers to it, chronological events in regards to  
2 his relationship and termination of Trademark  
3 Properties in regards to Cambridge Lakes. You  
4 obviously disagree with it. During your reading of  
5 it, you made some comments.

6 I just want -- I'm not saying this is  
7 your opinion. What I'm asking you to do is go  
8 through it and tell me the points that you remember  
9 differently than how he describes them.

10 A I mean, this is eight years ago. This is  
11 his version of -- his spin on it. Today, I just  
12 don't recall it that way. I remember we had success  
13 in every project we did. We got him his pre-sales.  
14 He got his bank financing. He kicked us off and  
15 gave it to his son. I felt like an idiot for  
16 believing that -- The bottom line is -- The bottom  
17 line is my recollection is the bank made him use us  
18 because of our reputation and our success. So all  
19 of this is a bunch of bullshit on why he beat us out  
20 of fees. So I don't agree with it.

21 Q Is it your belief that he used Trademark  
22 because of its reputation in these conversions to be  
23 able to pre-sell these units to satisfy the bank,  
24 and then once that was done he obtained funding and  
25 kicked you off the job to give the rest of it to his

38

1 son?

2 A Look, I might be wrong. I'll go to my  
3 grave knowing it. That's what I believe.

4 Q That's what you believe?

5 A I totally believe that. I think it's  
6 real obvious. I got a smart-ass e-mail from one of  
7 his son's agents basically laughing -- I'm not  
8 saying it was premeditated, but the minute they got  
9 the listings, the guy said thanks for doing all the  
10 hard work, now we'll collect the commissions.

11 Q Do you still have that e-mail?

12 A Yeah, I do.

13 Q Will you provide that to your attorney?

14 A Yeah, I would be happy to. And I think  
15 if you look back, I think -- Look, this is way back  
16 before I had to deal with any lawyers. I don't know  
17 why I was such a dumbass. I didn't believe in suing  
18 anybody. So I didn't. I took it -- I remember I  
19 got Robert Dodds to go to Lisa Herbert and surely,  
20 you know -- Hell, I went to Clemson with Robert and  
21 Lisa. We can sit down logically. I want to get  
22 paid. It just doesn't work that way. Because if  
23 someone doesn't want to pay you, they're not going  
24 to pay you.

25 And I think, you know, Frank even

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1 suggested at that time we sue them. And I was just  
2 like, no, I don't believe in doing that.

3 Q But you have sued people?

4 A At that point I hadn't.

5 Q But you have since then?

6 A Yeah, absolutely. Absolutely. I  
7 think -- Well, I don't know how many. Only one  
8 comes to mind.

9 Q Before Mr. Estee contacted Trademark and  
10 basically kicked it off the job, had he registered  
11 any complaints in regards to Trademark's handling of  
12 the project?

13 A You know, the one thing I will -- he says  
14 it right there that I didn't attend the meetings.  
15 That's not what I did. When he went to Montclair  
16 and shopped it, he didn't see Richard Davis sitting  
17 out there. He shopped it numerous times, and he  
18 decided to hire us based on who was on that site.

19 I think, if I'm not mistaken, if you look  
20 on the sales sheet on Montclair who worked that  
21 project, and I might be wrong, but I think it was  
22 the same people. I think we kind of wrapped up  
23 Montclair and rolled those same people that he was  
24 so enamored with. And it wasn't Richard Davis. I  
25 wasn't sitting out there.

40

## SOUTHEASTERN TRANSCRIPT

1 Q The Montclair project, did that involve a  
2 guy named Patrick Barber?

3 A I don't think so.

4 Q Have you ever done any business with  
5 somebody named Patrick Barber?

6 A Yes.

7 Q What business did you do with Patrick  
8 Barber?

9 A Well, we bought the Amar building back in  
10 '94. I moved him here from Houston.

11 Q What building? I'm not familiar with --

12 A Amar building on King Street, 409. We  
13 bought it in 1994.

14 Q Have you ever done any business with him  
15 since then?

16 A Yeah, I think we've done a couple things.

17 Q Have you ever done any conversions with  
18 him?

19 A We did one up in North Charleston.

20 Q What was that conversion?

21 A It was called the Riverway. Now, let me  
22 go ahead and tell you the difference. I was a  
23 partner in that deal. Me, Pat Barber, Kaz  
24 Danielowski (phonetic) and Kevin Maloney. Kevin  
25 Maloney was brought in to do the construction. He

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1 was the construction partner. I was sales and  
2 marketing. Pat and Kaz were the rich partners.  
3 Perfect partnership. And everybody did their job  
4 and we sold out of that one. We hit our numbers on  
5 that one as far as I remember.

6 Q Were those buildings similar to Cambridge  
7 Lakes?

8 A No. These are much older. I would say a  
9 Class D apartment. It was kind of beat down.

10 When I saw Cambridge Lakes, you know, I  
11 think it had been operating as apartments for a  
12 couple of years, but it was still relatively new.  
13 Had elevators. I think they are on the whole  
14 opposite side of the spectrum.

15 Q You do understand and Trademark  
16 understands that when you -- under South Carolina  
17 law when you convert a rental unit to an individual  
18 unit for sale that you're required by law to have a  
19 professional architect or engineer licensed in South  
20 Carolina to do a report about the condition of the  
21 property that is then given to the prospective  
22 purchasers. You are aware of that. Correct?

23 A I'm not a developer. I would venture to  
24 say that I assumed that everyone we worked for did  
25 that. I would assume. I don't know that.

42

1 Q But you know that's required?

2 A Surely, I know that now.

3 Q When you say "know it now," when did you  
4 become aware of that?

5 A Well, I mean, I'm sales and marketing.

6 So I wasn't sure. Pat and Kaz would have handled  
7 that on the one that we did.

8 I felt confident if you go pull the file,  
9 whatever report you're addressing, I would feel  
10 confident we had it done.

11 But that wasn't my job. That was the  
12 rich partners. That was the guys that owned the  
13 building partners. My job was sales and marketing.  
14 Kevin's job was to pick out, you know, the  
15 contractors and get stuff done on that.

16 Q That was not done in Cambridge Lakes?

17 A I couldn't tell you whether it was or  
18 wasn't. It wasn't what I did.

19 Q But you knew it was required to be done  
20 in Cambridge Lakes. Correct?

21 A You know what? It's eight years ago. At  
22 the end of the day when a developer comes to me and  
23 asks me to sell his project, he's a developer, he's  
24 a builder, he built it himself, you know, I have no  
25 idea whether he did or didn't.

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1 What are we here for? Just out of  
2 curiosity? I mean seriously.

3 MR. CISA: Do you want me to answer?

4 MR. HAYES: No.

5 A I know you're deposing me, but --

6 BY MR. HAYES:

7 Q Trademark has been sued in a lawsuit --

8 A Well, I understand that, but everyone I  
9 heard sitting around here are contractors. I'm not  
10 a contractor. I didn't build anything.

11 Q There's been allegations in regards to  
12 the actions of Trademark, and your attorney can  
13 discuss that with you. But we're here to take your  
14 deposition and find out what information you know in  
15 that regard. So if you can just answer my  
16 questions.

17 A Okay. For the record, I didn't build it.  
18 I didn't put the elevators in. I didn't make the  
19 grass green. We said here's what we can sell it  
20 for, here's what we do. And I think we did our job,  
21 and I think we got beat out of money.

22 Q I'm going to hand you what's been marked  
23 as Exhibit 5 to Al Estee's deposition. And it was a  
24 letter that was sent out to residents of Cambridge  
25 Lakes in regards to the conversion and offer to

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## SOUTHEASTERN TRANSCRIPT

1 (Recess taken.)  
 2 THE VIDEOGRAPHER: This is the  
 3 beginning of videotape No. 2 of Richard Davis. On  
 4 the record at 11:36.  
 5 BY MR. HAYES:  
 6 Q Mr. Davis, we've taken a quick break.  
 7 But if you would look back at Exhibit 34, this  
 8 letter that we've discussed quite a bit.  
 9 A Right.  
 10 Q Would you just let me know -- Is it your  
 11 testimony that -- My question was did Trademark

12 Properties draft that letter, and all I want is  
 13 either a yes, no, or I don't know.  
 14 A I don't know. I don't know.  
 15 While we had the break, you asked me on  
 16 Exhibit 38, Charleston Row, and it didn't strike a  
 17 memory of a project that we did. Okay. And this  
 18 one you're asking me about the expenses. This  
 19 was -- I remember this is a project that's in  
 20 Charlotte, North Carolina. You mentioned my TV show  
 21 earlier. Well, the TV show was about buying  
 22 properties from banks. Everything you ever saw on  
 23 that show was a foreclosure. This was when a  
 24 bank -- Wachovia asked us to come up to Charlotte.  
 25 Charleston Row was the proposed name of a project

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1 that they had just taken back an apartment complex  
 2 in Charlotte. And they asked us to come up there  
 3 and do the sales and marketing.  
 4 So this was, you know -- My point is  
 5 Wachovia was in charge of legal. Wachovia was in  
 6 charge of HOA. It wasn't Parades. It was some guy  
 7 out of Charlotte.  
 8 Q Is it true that people's obligations can  
 9 change from job to job?  
 10 MR. CISA: Object to the form of the  
 11 question.  
 12 A Well, sales and marketing is sales and  
 13 marketing. I mean, you can dress it up like a duck,  
 14 walks like a duck -- I'm not a lawyer. So the legal  
 15 part -- At the end of the day, you hand me a legal  
 16 document, and I can take it from her and give it to  
 17 you, it doesn't make me a lawyer, doesn't give me an  
 18 opinion of it.  
 19 BY MR. HAYES:

20 Q Have you ever done a TV show about  
 21 converting rentals to individual units for sale?  
 22 A We did. We did. That was on -- not  
 23 Discovery. TLC.  
 24 Q Have you-all ever been kicked off a job  
 25 by the building inspector?

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1 A No. You watch too much TV. That was  
 2 totally set up for a TV show. I'm not the builder.  
 3 Go back and look at the permits. What's that guy  
 4 that went to The Citadel that was the builder on  
 5 that? He don't want to take the hit on the show, so  
 6 I just stood in. I'm not a builder. I went in  
 7 and -- What's the guy's name, the builder from The  
 8 Citadel?  
 9 Anyway, Kevin Maloney was the general  
 10 contractor, and he subbed out the construction to  
 11 some guy.

12 Q Do you remember the name of that project?  
 13 A East West. It was a house. East West  
 14 was a house. And I took the hit on that one. But  
 15 again, that's 2005. This is 2002.  
 16 (Exhibit No. 39 marked for  
 17 identification.)

18 BY MR. HAYES:  
 19 Q Do you recognize what's been marked as  
 20 Exhibit 39?  
 21 A Yeah. It looks like a web site that Open  
 22 Vision designed for us.  
 23 Q For Trademark Properties. Correct?  
 24 A Yes, correct.  
 25 Q And on that first page it says Trademark

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1 Properties, Charleston, South Carolina Real Estate  
 2 Services is a full-service Charleston, South  
 3 Carolina real estate firm specializing in a number  
 4 of things. One of the things it says it specializes  
 5 in is condominium conversions and sales.

6 So at least on your web site you're  
 7 stating that Trademark is a specialist in  
 8 condominium conversions. Correct?

9 A Selling them, yeah.  
 10 Q Well, it says condominium conversion and  
 11 sales. It doesn't say condominium conversion sales,  
 12 does it?

13 A It's right there. Real estate services.  
 14 We are a broker. I don't build condos. I don't  
 15 build businesses. We sell them.

16 Q Isn't it true that most condominium  
 17 conversions are already built? Isn't that the fact  
 18 of the matter; that they are rental properties being  
 19 converted into individual unit sales?

20 A For the most part. For the most part.  
 21 Some of them we caught like pre-construction. And  
 22 one we did for Ray Wrenn on James Island, it was  
 23 supposed to be all rental and we caught it early on  
 24 and got him to convert.

25 Q But you would agree with me that

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## SOUTHEASTERN TRANSCRIPT



1 Trademark Properties at least in its advertising  
2 represents that it's a specialist in condominium  
3 conversions?

4 A Well, like I said earlier, there's one,  
5 two, three, four, five, six, seven, eight, nine, ten  
6 things. Ten different things. And I was saying  
7 earlier about a niche. Is that one of the ten  
8 things that we do? Sell conversions? Absolutely.

9 Q That's what I'm saying. I'm not saying  
10 you don't do anything else. One of the things  
11 you-all do is sell condominium conversions.  
12 Correct? That's one thing Trademark Properties  
13 does?

14 A Used to. I don't see that as -- Now, if  
15 the market changes and it was viable, absolutely.  
16 We would be right back into selling condos. It's  
17 just not a viable thing in this market.

18 Q If you'll turn to the one, two, three,  
19 four, five, six, seven, eight, nine -- the tenth  
20 page, do you see that?

21 A Which one?

22 Q This one (indicating).

23 A Yes.

24 Q And if you look on that, it says, "Real  
25 Estate Investment Properties." Correct?

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1 A Correct.

2 Q And it says, "Our project work division  
3 specializes in Charleston area real estate such  
4 as" -- it says a number of things, and one of them  
5 is apartment conversions. Correct?

6 A Correct.

7 Q And under that it shows some conversions  
8 or projects that Trademark has been in. Correct?

9 A S-o-l-d. That's what we do.

10 Q S-o-l-d.

11 A Sold.

12 Q And on that it says Cambridge Lakes?  
13 A Not b-u-i-l-d. It's s-o-l-d. Big  
14 difference.

15 Q You have Cambridge Lakes on there.  
16 Right?

17 A We did.

18 Q Well, you do. This was printed out  
19 yesterday.

20 A Well, I guess we do.

21 Q So at least on this page you're  
22 advertising that Trademark Properties specializes in  
23 apartment conversions, and then right below that has  
24 Cambridge Lakes as an example of one. Correct?

25 A I think it's pretty evident that

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1 "s-o-l-d" over it means these are units that we have  
2 sold.

3 Q So yes is your answer?

4 A What was the question?

5 Q Okay; that on this page, this  
6 advertisement -- And you do agree this is a  
7 Trademark Properties advertisement?

8 A Absolutely. I think we're saying that we  
9 sold units at Cambridge Lakes. I'm also saying that  
10 we never got paid, but that's a different story.

11 Q If you turn to the page that says "Team  
12 Trademark Investment."

13 A Is it further back?

14 Q It's further back.

15 A Okay.

16 Q It says, "Team Trademark Investment." It  
17 shows a picture of you standing next to a  
18 helicopter. Correct?

19 A I believe so, yes.

20 Q And it says Richard C. Davis, president  
21 and CEO and director of acquisitions. Is that your  
22 title with the company?

23 A No. This is a web site guy getting all  
24 fancy. I might have said president, but I wouldn't  
25 put the other ones on there.

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1 Q But you're the president?

2 A Yeah.

3 Q Always have been?

4 A Yeah. I mean, I'm just saying I wouldn't  
5 have characterized it that way. I will say he  
6 probably went and pulled some comments from  
7 different articles that I did. One time someone  
8 asked me -- I want to say New York Times asked me  
9 what I did. I said I'm basically the director of  
10 acquisitions. I look through all the foreclosures.  
11 I look through 3,000 a month to find maybe five or  
12 ten to buy across the state.

13 So that's the only time I remember using  
14 that quote, so I'm sure that's where he picked that  
15 up from.

16 Q If you'll turn a few pages further.  
17 You've got it advertised that you-all have a  
18 property management division. Correct?

19 A That's right.

20 Q So Trademark also manages properties:  
21 Correct?

22 A We don't manage regimes. We manage  
23 like -- Like if you're my client and you buy a  
24 property and you move out of town, we will manage  
25 that for you. We don't manage regimes. We manage

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## SOUTHEASTERN TRANSCRIPT

1 Q I may not quote this exactly, but a  
2 minute ago you said words to the effect that we  
3 didn't make any money on this project?

4 A I think if you netted out -- I think of  
5 our net commissions minus the advertising bill I got  
6 stuck with, I think it's a negative \$2,000 is the  
7 way I recall it.

8 Q I was going to say, how much money did  
9 Trademark Properties make in commissions related to  
10 Cambridge Two?

11 A I asked Dawn to pull those numbers up for  
12 me, and I've seen them. Like I said, I think it  
13 ended up being a negative \$2,000. But on a gross  
14 basis, I wouldn't know. I can get that for you if  
15 you want me to.

16 Q Somebody is pulling that information for  
17 you?

18 A If you need it, I'd be happy to.

19 Q You said you asked her to pull that  
20 information. Is she in the process of pulling that?

21 A No. A while back, because I was -- I  
22 went to Frank and I was going to sue Al to get my  
23 money, and it just wasn't worth it.

24 But my listing agreement, if you read  
25 that, I should have got paid on every single unit in

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1 there. And we sent a letter to Lisa Herbert -- I  
2 believe that's her last name -- that represented  
3 him, and we tried to sit down and say, look, you  
4 know what? You want to boot me off, that's fine --

5 Q My question is, I'm asking about the  
6 commissions on this property. You or somebody in  
7 your office can go in the computer and print out  
8 every single commission you made on this --

9 A Yes, sir.

10 Q And you can also net your expenses and  
11 anything else you want to?

12 A Absolutely. Yes, we can do that.

13 Q When Mr. Hayes was asking you questions,  
14 you referenced a meeting with Mr. Al Estee.

15 A Yes, sir.

16 Q He came to your office at some point in  
17 time and expressed some dissatisfaction, rightly or  
18 wrongly, with Trademark's performance on the  
19 project?

20 A I remember the exact quote. And he got  
21 it right on what I said to him --

22 Q Hang on. He came and met with you in  
23 person. Right?

24 A He came and met with me in person, which  
25 was not normal and customary.

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1 Q I take it from your tone and demeanor and  
2 comments during this deposition that that meeting  
3 did not go very well?

4 A Yes, sir. That's true.

5 Q Did you behave towards him as you've  
6 behaved in your deposition here today?

7 A Yeah. I think my attitude today is a  
8 direct follow-up from the last time I saw him. It  
9 brings up memories of getting beat out of that  
10 money. Absolutely.

11 Q Were you angrier at that meeting than  
12 you've exhibited here so far in this deposition  
13 today?

14 MR. CISA: Object to the form of the  
15 question.

16 A I think it's pretty similar.

17 BY MR. PARRISH:

18 Q Okay. Just wanted to get a feel for what  
19 happened.

20 A I think it's pretty similar, you know.

21 Q Did you call him an asshole during that  
22 meeting?

23 A That wouldn't be out of -- I don't recall  
24 that, but that could very well have happened.

25 Q I do want to be careful, because you've

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1 made the distinction a couple of times. The words  
2 "you" and "Trademark" get used interchangeably here.  
3 I'm really talking more about Trademark, not you  
4 personally. But if it makes a difference in your  
5 answer, let me know, and we'll figure out how to  
6 deal with that.

7 A Thank you.

8 Q Trademark was in the middle of the  
9 Montclair condominium conversion/sale project that  
10 was going on?

11 A Yes, sir.

12 Q Montclair is not too far down the street  
13 from where Cambridge Two is. Right?

14 A Yes, sir, right down the way.

15 Q At what stage of the project was  
16 Trademark Two (sic) in at Montclair when Al Estee  
17 approached Trademark about doing the same thing for  
18 Cambridge Two?

19 A My recollection is that we were pretty  
20 much at the end of the sales, because I think the  
21 same sales team rolled over. Like I think, you  
22 know, we had proven success. We had the record of  
23 the sales. And my recollection is it was Molly,  
24 Shelly and I want to say Michelle, the same people  
25 that worked on Montclair just rolled on over to the

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SOUTHEASTERN TRANSCRIPT

Trademark 0250

Ex 16, p 10

1 A I don't.  
 2 Q You're sitting here today, you're aware  
 3 that there's certain information you have to give to  
 4 tenants and potential buyers when apartments are  
 5 converted to condominiums. You know that now  
 6 sitting here at least in general?  
 7 A Oh, absolutely.  
 8 Q And that same requirement was in place  
 9 during the Montclair and the Riverway conversions.  
 10 Who communicated the information to the  
 11 tenants and buyers at Montclair? Who or how was  
 12 that communicated to them?  
 13 A I don't know. I know Bruce, the owner,  
 14 would have hired the architect, the engineer,  
 15 whatever, had the reports, and his job was to make  
 16 it readily available. I don't know the language. I  
 17 don't know the legal. But I know that was his job.  
 18 So on the Riverway that was, you know --  
 19 Again, technically on Riverway I'm an owner on that  
 20 one, so obviously, but I know Pat and Kaz handled  
 21 that stuff. I handled sales and marketing. Kevin  
 22 handled the construction.  
 23 And on this one Al Estee --  
 24 Q Hold on. I was asking about Montclair  
 25 and Riverway. Don't get ahead of me. Let's break

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1 it down. Montclair?  
 2 A Montclair. That would have been Bruce.  
 3 Q Bruce who?  
 4 A The owner.  
 5 Q What's Bruce's last name?  
 6 A Bruce Kenny. I don't know how you spell  
 7 it.  
 8 Q I'm talking about physically. I'm not  
 9 talking about who prepared the document. I want to  
 10 know how the document got put in the buyer's hand.  
 11 A I don't know that.  
 12 Q Because the buyer walks in and Trademark  
 13 is on site. Trademark is dealing with the buyers?  
 14 A Right.  
 15 Q Trademark is involved in the closing  
 16 because it's getting its commission.  
 17 A Right.  
 18 Q So how at Montclair from the time a buyer  
 19 walked in the door to look at the property from the  
 20 time they went to the real estate closing did that  
 21 information get put in their hand?  
 22 A You know, I don't know that. I don't  
 23 know that. I don't know that.  
 24 Q Fair enough. Let's ask about Riverwalk  
 25 (sic). Since you were an owner on that one, same

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1 question: Buyers walked into that project, I'm  
 2 assuming Trademark was the listing agent on  
 3 Riverwalk?  
 4 A Yes.  
 5 Q So buyers would walk in and meet with  
 6 Trademark, we love the property, we want a contract.  
 7 How would the information get physically put in  
 8 their hand prior to closing?  
 9 A I don't know that answer.  
 10 Q Is it safe to say you don't know the  
 11 answer on Cambridge Lakes how that information got  
 12 put in their hands, too?  
 13 A I don't know that answer.  
 14 Q Does Trademark have any policies -- have  
 15 or had any policies -- or has it received any  
 16 training -- Let me rephrase that better than I just  
 17 did.  
 18 Does Trademark have policies for its  
 19 agents, or does it conduct training for its agents  
 20 as to what information has to be provided to buyers  
 21 before closing on condo conversion projects?  
 22 A Yeah. I mean, yes. We've got a policy  
 23 manual that's stated -- it's a regular policy  
 24 manual. Not specific for condo conversions. Any  
 25 piece of real estate you sell, whether it's a

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1 \$10 million house or it's \$20,000, it's the same  
 2 thing.  
 3 Q Tell me what's in this policy manual,  
 4 please.  
 5 A I'll be happy to get a copy of it.  
 6 Q Just kind of give me a three-sentence  
 7 overview of what's in it.  
 8 A I'll get you a copy. It's probably 32  
 9 pages.  
 10 Q And does that policy manual discuss  
 11 requirements or things that have to be done in  
 12 connection with condo conversion?  
 13 A I don't know that it -- Real estate, the  
 14 two-word umbrella, I don't know that it breaks it  
 15 out into that.  
 16 Q If once we see the policy manual there's  
 17 nothing in there about condo conversion  
 18 requirements, would there be any other  
 19 documentation, materials or training that Trademark  
 20 gives agents, its people, in connection with what  
 21 they have to do at condo conversions?  
 22 A Again, it's sales and marketing. We're  
 23 pretty regimented on how we -- I want to say in that  
 24 agreement that he signed it says we do guerrilla  
 25 marketing, and all the different ways we're going to

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## SOUTHEASTERN TRANSCRIPT

1 do sales and marketing. So it lays out what we're  
2 going to do, who is going to pay for what. So  
3 everyone is trained on exactly what their role is.

4 Q Thank you for the answer, but I'm not  
5 sure I was clear, so I'll repeat it.

6 Are there any places other than possibly  
7 in this policy manual where Trademark has policies,  
8 procedures, guidelines or training specific to condo  
9 conversion projects?

10 A I don't know. I will defer to Dawn on  
11 that. I don't know that answer off the top of my  
12 head.

13 Q It seems kind of ironic sitting here in  
14 2010, but is it fair to say back when Cambridge  
15 Lakes came on line that people were very interested  
16 in buying real estate?

17 A Well, specifically condos, yes.

18 Q Real estate sold back in 2003. Right?

19 A Yeah. Yeah. I've got an opinion on that  
20 since you asked.

21 Q Sure.

22 A '86 tax laws killed -- made "condos" a  
23 dirty word. So on normal buyer and seller  
24 equilibrium, you had a ton of pent-up people that  
25 their lifestyle fit condos that didn't buy for years

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1 and years and years because they weren't built  
2 because it was no longer a tax haven.

3 So what happened was once people started  
4 putting them on the market, it's not like someone  
5 all of the sudden changed their lifestyle. Now they  
6 had a product that fit their lifestyle better. And  
7 so it was really where you had way more demand for  
8 condos than you really had the actual supply out  
9 there, because it wasn't economically -- didn't make  
10 sense to build them because of that tax law change.  
11 So it was unique because of that '86 tax law, so you  
12 had a ton of it.

13 So it wasn't a normal time. And you knew  
14 it was a short-gap window specifically for condos.  
15 New construction, conversion, whatever. And  
16 conversions became popular because you couldn't  
17 build them fast enough. It wasn't that somebody  
18 preferred a conversion to new construction. There  
19 wasn't enough product out there. You can go look at  
20 MLS. There wasn't enough out there for the number  
21 of people -- number of buyers who wanted it.

22 Q And Cambridge Lakes, possibly with the  
23 exception of the astroturf, was a brand-new building  
24 and it was a nice building?

25 A Yeah. My recollection is it was -- I

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1 don't know if it was a year old, two years old, but,  
2 yeah, it was in good shape. Had elevators. It had  
3 a lot of things that I thought they had foresight in  
4 building that you normally would not do in

5 apartments. You know, I couldn't believe they had  
6 elevators built in, because when I went over there I  
7 was like, God, man, it's a shame we didn't talk to  
8 these guys ahead of time. It would be nice if they  
9 had elevators. And Dawn told me in the car on the  
10 way over it does have elevators. And that was huge  
11 for us, because we just came out of a project that

12 didn't have them and it's tough. People on that  
13 third floor, you know, it's tough to sell something  
14 without an elevator.

15 Q Did anybody ever mention to you that  
16 these units had been built in contemplation of being  
17 condominiums?

18 A I don't know that anyone ever said that  
19 to me.

20 MR. PARRISH: Let's take a quick  
21 off-the-record a second.

22 THE VIDEOGRAPHER: Off the record at  
23 12:41.

24 (Recess taken.)

25 THE VIDEOGRAPHER: Back on the

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1 record at 12:46.

2 BY MR. PARRISH:

3 Q Mr. Davis, thank you for your patience.  
4 I'm going to try to wrap this up.

5 If I recall correctly, you said that you  
6 believed the bank, Cambridge Two, LLC's, lender  
7 required Cambridge Two to use Trademark in this  
8 project. Do you recall something along those lines?

9 A My interpretation was that he -- you  
10 know, his son -- his son had a real estate company.  
11 That bothered me. Because I was like why are you  
12 trying to hire my team? You know, your son has a  
13 real estate company. And my recollection of that  
14 conversation, he was saying that his bank was  
15 requiring somebody that had experience with the  
16 sales and marketing.

17 Q Well, you beat me to my question. I  
18 wanted to know what was the basis for your belief  
19 that the bank required Cambridge Two to use  
20 Trademark.

21 A I think Al told me that.

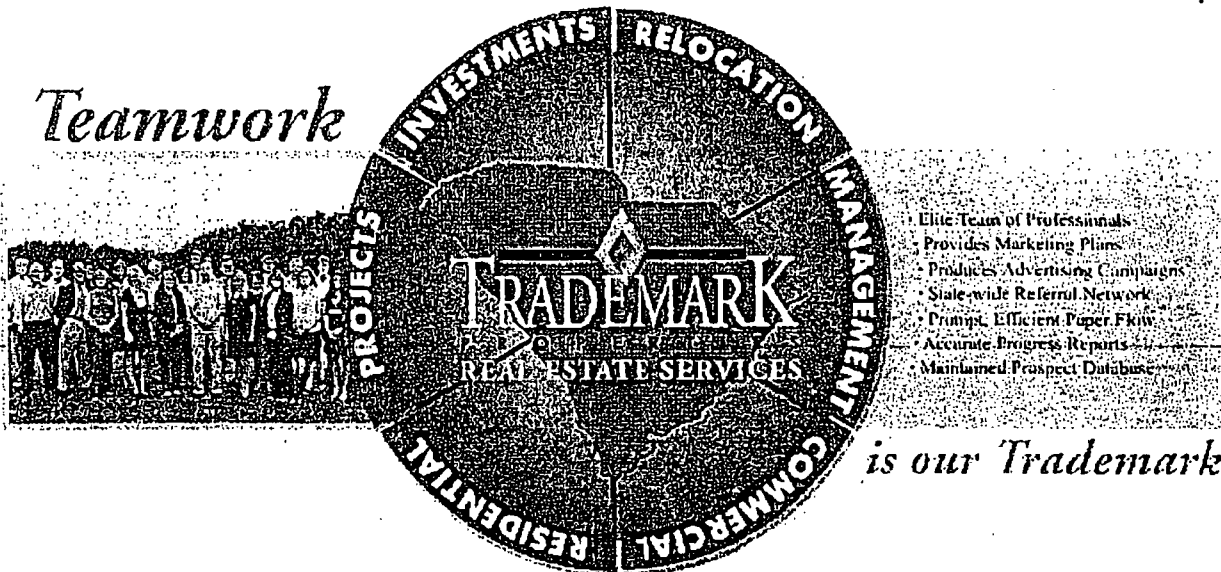
22 Q Because I'm trying to piece the timeline  
23 together. And at the time that you and Mr. Estee  
24 met, he didn't even have the contract -- property  
25 under contract yet. Could that have been a later

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## SOUTHEASTERN TRANSCRIPT

| Month        | Time Line                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | PROJECTED DATE                                                                                                            |
|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| July 1, 2004 | <u>Sales and Marketing</u><br>~finalize listing agreement<br>~final marketing budget<br>~finalize contract documentation<br>~finalize name and logo<br>~design all marketing material<br>~finalize tenant incentives<br>~meet with interior decorator<br>~order initial signage<br>~begin refurbishing model<br>~finalize pricing<br>~completion of sales center and model<br>~send tenant notices / conversion letters<br>~sales center open to tenants only<br>~order sales center supplies<br>~commit to preferred lenders and closing atty.<br>~sales and traffic reports begin | 7/1/04<br>7/30/04<br>in progress<br>completed<br>in progress<br>in progress<br><br><br><br><br><br><br><br><br><br>August |
|              | <u>Legal Documentation</u><br>~Master Deed and Bylaws Drawn and recording process to begin<br>~sellers disclosures after review of inspections<br>~order Engineering Report                                                                                                                                                                                                                                                                                                                                                                                                         | completed                                                                                                                 |
|              | <u>HOA</u><br>~hire HOA management<br>~HOA prepares preliminary regime budget                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 7/15/04<br>7/15/04                                                                                                        |
| August       | ~Tenant Event<br>~Continued marketing campaign                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | continuous                                                                                                                |

**DEPOSITION  
EXHIBIT**  
Davis 38



Trademark Properties Charleston SC Real Estate Services is a full-service Charleston, SC Real Estate firm. Specializing in Residential Listings and Sales, Commercial Listing and Sales, Business Brokerage, Condominium Conversion and Sales, New Construction Sales, Property Management, Corporate Apartments, Relocation, and Investments.

*The Main philosophy* of Trademark Properties is unique in that we treat every Real Estate transaction as an investment. Whether it is a personal residence, vacation home, apartment building, shopping center, office building, or hotel-- it is still a major purchase and should be treated as such.

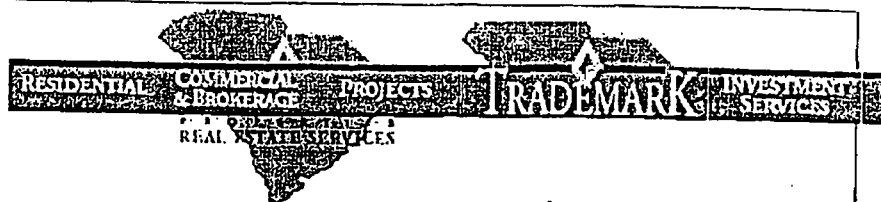
*The Trademark Advantage* is found in our unique strategy of channeling each investment through multiple divisions that contain fully educated Charleston, SC Real Estate specialists.

Enter Trademark Properties  
Charleston SC Real Estate

**Green**  
SITE  
DESIGN

DEPOSITION  
EXHIBIT

Davis 39

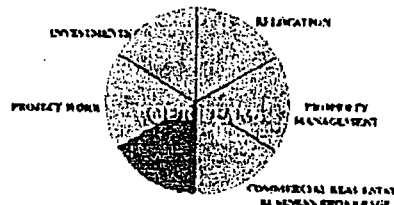


## Residential Division

[Click here to view Lowcountry listings](#)

### Charleston, SC Residential Real Estate- Trademark Properties

**E**xperience, integrity and teamwork are the foundation for the Charleston residential real estate services at Trademark Properties. *The Charleston Residential Real Estate Division of Trademark Properties averages the highest percentage of listings sold in-house of any real estate company in Charleston's Lowcountry ... 55.5%! It's no wonder that our client retention rate is second to none.*



*The Charleston Residential Real Estate Division of Trademark Properties specializes in:*

- Residential Buyer/Seller Representation
- Consultation/Problem Resolution
- Relocation Assistance
- Residential Market Analysis for Sale or Lease
- Concentrated Knowledge of Each Market Segment
- Pre-qualification and mortgage assistance

*The Trademark Properties Charleston Residential Real Estate Advantage*

1. Trademark's residential agents are full-time real estate specialists, each with a strong network of well-established local contacts.
2. Trademark residential agents take the time to educate and inform the client of the many details involved in their real estate transaction. This "education" ensures that the client's expectations will be met to everyone's satisfaction.
3. Trademark residential agents are educated in finance, appraisal and the legal aspects of the real estate industry. They strive to keep up-to-date on industry trends, as well as the legal and tax issues affecting the sale or purchase of a property. Our agents' knowledge is broad-based and constantly being updated through Continuing Education courses.
4. Our agents are knowledgeable in residential real estate marketing as well as evaluating and understanding the selling process.
5. Our residential team has knowledge of each company listing. They have seen every listing; therefore, can discuss all properties with confidence to any

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CAMBRIDGE LAKES CONDOMINIUM  
HOMEOWNERS ASSOCIATION, INC.,  
MARGEL S. HENNING, STEVE  
FISCHER, MARK AND BRENDA  
SCHILLACI, GARY CONLEY,  
GERALD DARNELL, JOHN MASCIOLI  
AND GLORIA HARDIN, CLINT  
GASKINS, MITCHELL GASKILL,  
THOMAS MURPHY, EDWARD BOGGS,  
BRUCE ADKINS, CHARLESTON HOME  
TEAM PROPERTY, LLC, LOUELLA  
ENK, JEREMIAH AND GLORIA  
MORRISON, ERIN BLEVINS, CHARLES  
TAYLOR, JR., MARION RIZZARDINI,  
KAREN ABRAMS, E. MIKELL  
CARROLL, VERNELL ROBERTS, KIM  
JACKSON, META KING, JAMES AND  
MARGARET AYERS, MARY B. BURKE,  
SEVENTH WING, LLC, RUTH AND  
CHARLES CATE, ROBERT AND MARY  
ORTIZ-ABREU, JR., LAURA LaTORRE,  
MARVIN AND PAULA SWINDLE,  
DONNA WIGGINS, EMILIE COLE  
SANDERS, PHILIP AND CYNTHIA  
JONES, ANDREW MOHR, ALISON  
SMITH, BOBBIE FAULKNER, MARCUS  
AND GRACE THOMAS, DORIS  
SKUHRA, ROBERT AND RAGAN  
ALBERT, WILLIAM SILER,  
MARVA CARD, SAMUEL RUBINO,  
MATT TATHAM, SCOTT HERMAN,  
JAY AND JENNIFER MERRIMAN,  
MARY ELLEN OAKS, ELIZABETH  
MOSELEY, ALI AND MICHELLE  
ERFANI, EMILY CHAPMAN, JOHN T.  
AND LAURA L. MARTIN, ROSEANN  
TECHMAN, ROBERT PRICE, HENRY  
EDWARD TIENCKEN, JEAN B.  
WALLACE, MICHAEL B. HARTNETT,  
CAROLYN CARRICO, JENNIFER  
SNOWDEN, JOSHUA LONG, J.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
Case No.: 2008-CP-10-3506

TRADEMARK PROPERTIES, INC.'S  
MEMORANDUM IN SUPPORT OF ITS  
MOTION FOR SUMMARY JUDGMENT

BY \_\_\_\_\_

JULIE J. ARMSTRONG  
CLERK OF COURT

2011 JAN -6 PM 1:15

FILED

Ex 17, p 1



WINDOW MANUFACTURING, LTD.  
F/K/A SOURCE WINDOWS, LTD., VWD  
(2008) NC, INC F/K/A VINYL WINDOW  
DESIGNS-USA, INC. N/K/A VINYL  
WINDOWS DESIGN, LTD. PEGRAM-  
WEST INC., CHASE HOMES, INC.,  
CHASE-ROBERTSON BUILDERS,  
INC., SGM ARCHITECTS, INC.  
F/K/A SMITH, GERBER, MCCLURE &  
ASSOCIATES, INC. F/K/A SMITH  
GERBER & ASSOCIATES, INC.,  
TRADEMARK PROPERTIES, INC.,  
STEPHEN R. HEAPE, INDIVIDUALLY  
AND INDEPENDENTLY AS GENERAL  
PARTNER OF CAMBRIDGE LAKES, LP,  
ALBERT V. ESTEE, INDIVIDUALLY,

Defendants,

and

BOSTIC BROTHERS CONSTRUCTION,  
INC.,

Third-Party Plaintiff,

v.

JOSE NINO, INTERCOASTAL  
CONSTRUCTION, INC., CAROLINA  
APARTMENT INTERIORS, LLC, MJG  
CONSTRUCTION AND  
HOMEBUILDERS, INC., B & B  
CONSTRUCTION OF CHARLESTON,  
INC., AND V. MORALES MASONRY,

Third-Party Defendants.

#### BACKGROUND

This is a construction defect case relative to a condominium complex known as Cambridge Lakes in Mt. Pleasant, S.C. The project was built as apartments in 1999. In 2003, the rental apartments were converted to condominiums by the Defendant Cambridge Two, LLC

Cambridge Lakes consist of six (6) buildings with 104 units. In addition, there is a community clubhouse adjacent to a pool and four (4) garages. The primary Plaintiff is the Cambridge Lakes Homeowners Association which owns the common elements of the condominium project including roofs, exterior of the buildings and the clubhouse. The other Plaintiffs are approximately 82 unit owners.

The Defendants include, Bostic Brothers Construction, who originally constructed the units; Cambridge Two, LLC, which owned and sold the condominium units; the architect who prepared plans for the construction of the complex; numerous subcontractors and material suppliers; Cambridge Lakes, L.P., who originally owned the complex before it was converted to condominiums; and Trademark Properties, Inc., ("Trademark") who marketed and sold approximately thirty (30) of the condominium units when they were first converted from apartments to condominiums.

On August 9, 2002 Cambridge Two, LLC entered into an Exclusive Right to Sell Listing Agreement with Trademark., a copy of which is attached as Exhibit "A". Trademark's duties are clearly set out in the Exclusive Right to See Listing Agreement under paragraph "O". Trademark contracted with Cambridge Two, LLC to make continuous efforts to bring about a sale of the condominium units. Trademark did not undertake any other duties.

#### **ARGUMENT AS TO THE PLAINTIFFS' CLAIMS**

The Plaintiffs have asserted three (3) causes of action against Trademark. The Plaintiffs assert a first cause of action for negligence; a second cause of action for breach of express and implied warranties; and a third cause of action for a violation of the Unfair Trade Practices Act.

#### **NEGLIGENCE AS TO TRADEMARK PROPERTIES**

Trademark contends that Summary Judgment should be granted relative to the Plaintiffs' negligence cause of action. The Plaintiffs do not allege duties owed by Trademark to the Plaintiffs. The only allegation found in paragraph 56 of the Plaintiffs' Third Amended Complaint that arguably could apply to Trademark is an allegation that Trademark failed to comply with the Horizontal Property Act.

Pursuant to the Horizontal Property Act and more particularly Section 27-31-430, Provides:

"Whenever the lessee, sole owner, or co-owner of a building declares the undertaking of a conversion of rental units to condominium ownership through the recordation of a master deed or master lease, written disclosure shall be made within thirty days of the date of the recordation to all prospective purchases, including tenants in possession as to the physical condition of the building. The disclosure shall contain a written report prepared by an independent registered architect or engineer licensed to practice his profession in this State, describing the present condition of all general common elements." (copy attached)

There are no requirements in the Act that real estate agents or brokers obtain the report on the physical condition of the building. The obligation to make the disclosure as to the physical condition is an obligation of the owner, Cambridge Two, LLC.

Trademark's Exclusive Right to Sell Listing Agreement with the owner does not provide that Trademark will undertake any duty or obligation to have a physical condition report prepared. In fact, the owner Cambridge Two, LLC's by a letter signed by Al Estee advised the residents that the owner is required to provide a written report of an independent registered architect or engineer describing the physical condition of the apartment buildings that have been converted. A copy of Cambridge Lakes Two, LLC's letter is attached as Exhibit "B".

In addition, the Plaintiff, Cambridge Lakes Condominium Homeowners Association, Inc. is not a prospective purchaser under the Code Section 27-31-430 The Plaintiff, Cambridge Lakes Condominium Homeowners Association, Inc. was incorporated on April 25, 2003.

Ex 17, p 4

Trademark Properties was only involved in the sale of approximately thirty (30) condominium units at Cambridge Lakes and was terminated as the listing real estate company in May of 2003.

Trademark Properties was not involved in the development or construction of the Cambridge Lakes project. Trademark Properties did not owe or breach any duties as described by the Plaintiffs in their negligence cause of action.

#### **BREACH OF WARRANTY AS TO TRADEMARK PROPERTIES**

The Plaintiffs have alleged that Trademark Properties expressly and impliedly warranted that the construction and repair of the Cambridge Lakes project would be performed in a workmanlike manner. Trademark Properties, however, was not involved with the development or construction of the Cambridge Lakes project.

#### **UNFAIR TRADE PRACTICES ACT AS TO TRADEMARK PROPERTIES**

The Plaintiffs allege that Trademark as well as the other Defendants violated construction standards, building codes and failed to comply with the South Carolina Horizontal Property Act. Again, Trademark Properties was not involved in the construction or repair of the Cambridge Lakes project. Trademark Properties is not the owner of the Cambridge Lakes and had no duty nor any obligation to have a report as to the physical condition of the buildings prepared by an architect or engineer.

#### **SUMMARY JUDGMENT AS TO CROSS CLAIM OF CAMBRIDGE TWO, LLC**

##### **AND ALBERT V. ESTEE**

The Defendants, Cambridge Two, LLC and Albert V. Estee, asserted a Cross Claim against Trademark Properties, Inc. for negligence, breach of warranty and indemnification. Cambridge Two, LLC was the owner of the Cambridge Lakes project at the time that it was

converted to condominium units. Albert V. Estee was the managing member of Cambridge Two, LLC.

**CAMBRIDGE TWO, LLC AND ALBERT V. ESTEE'S CLAIM FOR  
NEGLIGENCE**

Cambridge Two, LLC and Estee's allege that Trademark was negligent as it breached a duty to obtain or provide a report as to the physical condition of the buildings. The only duties owed by Trademark to Cambridge Two, LLC and Estee's are contained in the Exclusive Right and Sell Listing Agreement entered into between Cambridge Two, LLC and Trademark on August 9, 2002. The only duties assumed by Trademark pursuant to the agreement are found in paragraph O of the Exclusive Right to Sell Listing Agreement which were to market and sell the condominium units. Trademark did not assume any duties relative to obtaining a report as to the physical condition of the buildings. The only duty that Trademark had as to Cambridge Two, LLC and Estee was the contractual duty contained within the Exclusive Right to Sell Listing Agreement. Trademark had no legal duty to obtain a report as to the physical condition of the building on behalf of Cambridge Two, LLC or Estee. Furthermore, Estee on behalf of Cambridge Two, LLC advised all of the residents of Cambridge Lakes that the owner was required to provide a written report of the physical conditions of the buildings, as shown by Exhibit "B".

**BREACH OF WARRANTY**

Cambridge Two, LLC and Estee allege that Trademark expressly and impliedly warranted to Cambridge Two, LLC that the conversion and sale of the condominiums were done in accordance with required laws and procedures. The contract entered into between Cambridge Two, LLC, however, sets forth the specific duties of Trademark Properties relative to the

**Ex 17, p 6**

Cambridge Lakes project. The duty that Trademark Properties owed was to market and sell the condominium units not to obtain a physical condition report.

#### INDEMNIFICATION

Cambridge Two, LLC and Estee allege that they are entitled to indemnification from Trademark for any money they are adjudged to owe the Plaintiffs together with attorney's fees and costs. There is, however, no indemnification provision in the Exclusive Right to Sell Listing Agreement entered into between Trademark and Cambridge Two, LLC. In addition, Cambridge Two, LLC and Estee are being sued by the Plaintiffs for their own individual acts of negligence, breach of warranty, unfair trade practices, and aiding and abetting. Equitable indemnity applies when a person is compelled to pay damages because of negligence imputed to him as a result of a tort committed by another, however, this rule is subject to the requirement that no personal negligence or fault of his own has joined in causing the injury. In this case, Cambridge Two, LLC and Estee had been sued by their own alleged misconduct. Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp. 518 S.E.2d 301, 336 S.C. 53 (S.C. App. 1999)

CISA & DODDS, LLP



Frank M. Cisa  
858 Lowcountry Blvd., Suite 101  
Mt. Pleasant, SC 29464  
(843)881-6530

This 5<sup>th</sup> day of January, 2011

Ex 17, p 7

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CAMBRIDGE LAKES CONDOMINIUM  
HOMEOWNERS ASSOC., INC., MARGEL S.  
HENNING and STEVE FISCHER, MARK AND  
BRENDA SCHILLACI, GARY CONLEY,  
GERALD DARNELL, JOHN MASCIOLI AND  
GLORIA HARDIN, CLINT GASKINS, MITCHELL  
GASKILL, THOMAS MURPHY, EDWARD  
BOGGS, BRUCE ADKINS, CHARLESTON HOME  
TEAM PROPERTY, LLC., LOUELLA ENK,  
JEREMIAH and GLORIA MORRISON, ERIN  
BLEVINS, CHARLEST TAYLOR, JR., MARION  
RIZZARDINI, KAREN ABRAMS, E. MIKELL  
CARROLL, VERNELL ROBERTS, KIM  
JACKSON, META KING, JAMES and  
MARGARET AYERS, MARY B. BURKE,  
SEVENTH WING, LLC., RUTH and  
CHARLESTON CATE, ROBERT and MARY  
ORTIZ-ABREU, JR., LAURA LATORRE,  
MARVIN and PAULA SWINDLE, DONNA  
WIGGINS, EMILIE COLE SANDERS, PHILIP and  
CYNTHIA JONES, ANDREW MOHR, ALISON  
SMITH, BOBBIE FAULKNER, MARCUS and  
GRACE THOMAS, DORIS SKUHRA, ROBERT  
and RAGAN ALBERT, WILLIAM SILVER,  
MARVA CARD, SAMUEL RUBINO, MATT  
TATHAM, SCOTT HERMAN, JAY and JENNIFER  
MERRIMAN, MARY ELLEN OAKS, ELIZABETH  
MOSELEY, ALI and MICHELLE ERFANI, EMILY  
CHAPMAN, JOHN & LAURA MARTIN,  
ROSEANN TECHMAN, ROBERT PRICE, HENRY  
E. TIENCKEN, JEAN WALLACE, MICHAEL  
HARTNETT, CAROLYN CARRICO, JENNIFER  
SNOWDEN, JOSHUA LONG J. MICHAEL and  
GLORIA MCDONNELL, SANDRA GIRT, JANE  
THOMPSON, JOHN HILL, III, and GLENDA  
MCKENZIE, as individual homeowners,

Plaintiffs,

vs.

BOSTIC BROTHERS CONSTRUCTION, INC.,  
CAMBRIDGE TWO LLC., CAMBRIDGE LAKES,  
LP., a/k/a CAMBRIDGE LAKES APARTMENT  
HOMES, LP., a/k/a CAMBRIDGE LAKES APT.  
HOMES, LP., CLASSIS PROPERTIES, INC., OF  
CHARLESTON, CAMBRIDGE CONTR., LP.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2008-CP-10-3506

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2011 JAN -5 AM 10:23

FILED

PLAINTIFFS' MEMORANDUM IN  
OPPOSITION TO DEFENDANT  
TRADEMARK PROPERTY, INC.'S  
MOTION FOR SUMMARY  
JUDGMENT

Ex. 18, p 1

|                                                      |   |
|------------------------------------------------------|---|
| SELECTIVE INSURANCE. CO. OF AMERICA,                 | ) |
| SELECTIVE INSURANCE COMPANY OF                       | ) |
| SOUTH CAROLINA, JOSE NINO, B&B CONST.                | ) |
| OF CHARLESTON, INC., INTERCOASTAL                    | ) |
| CONST., INC., d/b/a and a/k/a INTERCOASTAL           | ) |
| CONSTRUCTION, CAROLINA APARTMENT                     | ) |
| INTERIORS, LLC., ARMANDO MEDINA                      | ) |
| CORTEZ, a/k/a ARMANDO MEDINA, a/k/a                  | ) |
| ARMANDO CORTES, a/b/a MJG CONSTR.,                   | ) |
| VINCENT MORALES a/b/a V. MORALAS                     | ) |
| MASONRY, MJG CONSTRUCTION AND                        | ) |
| HOMEBUILDERS, INC., GEORGIA-PACIFIC                  | ) |
| CORP., GEORGIA-PACIFIC CONSUMER PROD.,               | ) |
| LLC., GEORGIA-PACIFIC BUILDING PROD.,                | ) |
| LLC., SUPERSEAL MANUFACTURE, INC.,                   | ) |
| MAJESTIC WINDOW MANUFACTURING, LTD.,                 | ) |
| f/k/a SOURCE WINDOWS, LTD., VWD (2008)               | ) |
| NC., INC., f/k/a VINYL WINDOW DESIGNS USA,           | ) |
| INC., a/k/a VINYL WINDOWS DESIGN, LTD.,              | ) |
| PEGRAM-WEST INC., CHASE HOMES, INC.,                 | ) |
| CHASE-ROBERTSON BLDERS, INC., SGM                    | ) |
| ARCHITECTS, INC., f/k/a SMITH GERBER                 | ) |
| MCCLURE & ASSOCIATES, INC., f/k/a SMITH              | ) |
| GERBER & ASSOCIATES INC., TRADEMARK                  | ) |
| PROPERTY, INC., STEPHEN R. HEAPE,                    | ) |
| individually and independently as General Partner of | ) |
| CAMBRIDGE LAKES, LP., and ALBERT V.                  | ) |
| ESTEE, individually                                  | ) |
| Defendants,                                          | ) |
| and                                                  | ) |
| BOSTIC CONSTRUCTION, INC.,                           | ) |
| Third-Party Plaintiff,                               | ) |
| vs.                                                  | ) |
| JOSE NINO, INTERCOASTAL CONSTR.,                     | ) |
| INC., CAROLINA APARTMENT INTERIORS,                  | ) |
| LLC., MJG CONSTR. AND HOMEBUILDERS,                  | ) |
| INC., B&B CONSTR. OF CHARLESTON, INC.,               | ) |
| and V. MORALES MASONRY,                              | ) |
| Third-Party Defendants.                              | ) |

Ex. 18, p 2



COME NOW the above named Plaintiffs, through their undersigned counsel, responding to Defendant Trademark Property Inc.'s [hereinafter referred to as "Trademark"] Motion For Summary Judgment. Pursuant to the South Carolina Rules of Civil Procedure, Plaintiffs hereby file their Memorandum in Opposition based upon applicable case law, the Pleadings and discovery in this case, and any affidavits and other exhibits attached hereto.

# I. INTRODUCTION AND FACTUAL BACKGROUND

Defendant Trademark's Motion for Summary Judgment should fail because there is a genuine issue of material fact as to the scope of Trademark's liability under the Horizontal Property Act, its liability under the SCUTPA, and its liability under a Negligence theory.

This case involves construction defects throughout the residential condominium complex known as Cambridge Lakes Condominiums located in Mount Pleasant, South Carolina in Charleston County [hereinafter referred to as "Cambridge Lakes Project"]. The Cambridge Lakes units and clubhouse are located in seven buildings constructed in 1999. The certificates of occupancy for the buildings were issued between May 2000 and August 2000.

The buildings were originally built to serve as an apartment complex; however, Albert Estee, a limited partner of Cambridge Lakes, L.P., sought to convert the property into individual condominiums for sale. To this effect, Mr. Estee formed the Limited Liability Company, Cambridge Two, LLC, [hereinafter referred to as "Cambridge Two"] in order to purchase the Cambridge Lakes Apartments and convert them pursuant to South Carolina Code of Laws Section 27-31-10 et seq., the Horizontal Property Act. The Horizontal Property Act requires the Developer to provide prospective purchasers with a Disclosure Report detailing the physical condition of the converted buildings. Discovery and testimony has revealed that prospective purchasers were never provided with a copy of this statutorily required report.

Ex. 18, p 3

On August 9, 2002, Cambridge Two and Trademark entered into an Exclusive Right to Sell Agreement where Cambridge Two granted Trademark the exclusive right to sell, market, and convert the Cambridge Lakes properties as individual condominiums for sale. [The Exclusive Right to Sell Agreement is herein attached as Exhibit "A"] After this contract was entered into, Trademark began aggressively marketing the Cambridge Lakes Condominiums and acted as the sole contact and liaison between the Owners and Developers and the prospective purchasers of the condominiums in the conversion. The majority of this marketing campaign occurred in late 2002 and in 2003. Deposition of Richard Davis, Page 118, Lines 9 through 25.

On February 24, 2003, Cambridge Two filed the Master Deed for the Cambridge Lakes Horizontal Property Regime. [Herein attached in part as Exhibit "B"] By April 2003, Trademark had contracted the thirty pre-sales required for Cambridge Two to get a bank loan to purchase the Cambridge Lakes Property. Finally, on April 3, 2003, Cambridge Two actually purchased the Cambridge Lakes Properties from Cambridge Lakes, L.P. At that point, Cambridge Two, with the assistance of Trademark, proceeded with the conversion and final sales of the individual condominium units. The Cambridge Lakes Condominium Homeowners Association was later incorporated on April 25, 2003.

## II. SUMMARY JUDGMENT STANDARD

Our Supreme Court has held that the standard which governs the trial court under Rule 56(c), SCRCP makes summary judgment proper only when "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. Sumner v. Carpenter, 328 S.C. 36, 43, 492

S.E.2d 55, 59 (1997) (emphasis added). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976); Osborne v. Adams 346 S.C. 4, 550 S.E.2d 319 (2001).

In general, if the pleadings and evidentiary matter in support of summary judgment do not establish the absence of a genuine issue of material fact, summary judgment must be denied, even if no opposing evidentiary matter is presented. Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999) (*See Title Ins. Co. of Minnesota v. Christian*, 267 S.C. 71, 226 S.E.2d 240 (1976); Rule 56(c), SCRCP). In fact, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting the determination of a question of fact by the jury. Tanner v. Florence County, 333 S.C. 549, 511 S.E.2d 369 (Ct. App. 1999).

"If more than one reasonable inference can be drawn or if the inferences to be drawn from the evidence are in doubt, the case should be submitted to the jury." Chaney v. Burgess, 246 S.C. 261, 266, 143 S.E.2d 521, 523 (1965). Thus Defendant Trademark has the burden of proof of the non-existence of disputed material facts and of its entitlement to judgment in its favor as a matter of law. Plaintiffs are not required to prove their allegations at this stage, but are only required to make a "prima facie showing of the existence of a genuine issue of material facts" in order to defeat this motion. Osborne v. Adams 346 S.C. 4, 550 S.E.2d 319 (2001).

### **III. SUMMARY JUDGMENT MAY NOT BE GRANTED BECAUSE MATERIAL FACTS REMAIN IN DISPUTE IN REGARD TO LIABILITY OF TRADEMARK**

The South Carolina Horizontal Property Act defines those disclosures a developer must provide to prospective purchasers, when the developer engages in converting rental units into

condominium ownership. The act states that "[w]henver the [...] owner [...] of a building declares the undertaking of a conversion of rental units to condominium ownership through the recordation of a master deed or master lease, written disclosure shall be made within thirty days of the date of the recordation to all prospective purchasers, including tenants in possession, as to the physical condition of the building." S.C. Code Ann. §27-31-430 (emphasis added). The developer is under a duty to provide prospective purchasers with a report detailing said disclosures, and if it fails to do so, this failure constitutes a violation of the South Carolina Unfair Trade Practices Act. Id.

A limited liability company may act as part developer of a condominium conversion, and when doing so it must comply with the requirement of the Horizontal Property Act. However, under the South Carolina Uniform Limited Liability Company Act of 1996, an LLC has the right to delegate or assign any duties that it may have. Specifically, the Limited Liability Company Act, provides that officers/directors of an LLC have the right to assign or delegate certain responsibilities to an agent or independent contractor. S.C. Code Ann. §33-44-303, Comments ("[...] a member or manager delegates or assigns the authority or duty to exercise appropriate company functions [...]").

Once an agent or independent contractor assumes a duty of the LLC, that agent/contractor has a duty to act with the care, competence, and diligence normally exercised by agents/contractors in similar situations. Restatement (Third) of Agency §8.08 (2006). If an agent or independent contractor has held itself out to have special skills or knowledge, those special skills or knowledge are circumstances to be taken into account in determining whether that agent/contractor exercised the requisite due care and diligence. Id.

Ex. 18, p 6

Generally, when determining whether it was reasonable to rely on a company's expertise and experience, the reasonableness of this reliance and requisite experience to perform a duty is a fact specific inquiry. As such, whether Plaintiffs and Defendants should have relied on a particular agent or independent contractor is the kind of factual inquiry which would be more appropriately submitted to a jury, thus making summary judgment an inappropriate remedy for Trademark.

Albert Estee served as the managing principal for Cambridge Two, LLC. His actions in regard to Cambridge Two indicated that Albert Estee was the guiding force behind the Cambridge Two, or in other words the man "who made the decisions." Deposition of John Freeman, Page 31, Lines 15-22. [All deposition testimony is herein collectively attached as Exhibit "C"] When Albert Estee sought to begin the process of converting the Cambridge Lakes Apartments into condominiums for individual sale, he sought out an expert in the field to assist him with the conversion. Trademark held itself out to be one such expert in the field of condominium conversions. Trademark advertised on its website that it was a specialist in condominium conversions. As Richard Davis, the owner of Trademark, testified in his deposition, "Is that one of the ten things we do? Sell conversions? Absolutely." Deposition of Richard Davis, Page 73, Lines 1-8. Furthermore, in a letter written from Richard Davis to Albert Estee, Richard Davis admits that Albert Estee hired Trademark for its expertise in conversions. See May 28, 2003 Letter attached as Exhibit "D" ("You hired us for our expertise to convert your apartment community.")

Albert Estee testified that he decided to hire Trademark to assist in the conversion, because several of Trademark's people were involved with several other condominium conversions. He consulted with those employees and was convinced that they would do a good

job in the conversion of the Cambridge Lakes project. Deposition of Albert Estee, Page 42, Lines 19-25. In fact, at the time Albert Estee hired Trademark to convert Cambridge Lakes, Trademark was just finishing up with the conversion of another project, the Montclair Condominium Conversion. Deposition of Richard Davis, Pages 88-89. As the Montclair conversion was at the end of the sales, Trademark rolled its team at that project over to the Cambridge Lakes project. Id.

Based on Trademark's representations, Albert Estee hired Trademark to market, sale, and manage the conversion of the Cambridge Lakes project.<sup>1</sup> In his deposition, Albert Estee stated that he relied on Trademark to assist Cambridge Two in the conversion of the Cambridge Lakes property to individual sales.

Question: Did you rely on Trademark Properties to assist you in converting these properties to individual sales?

Answer: Yes

Question: And was that one of the reasons that you hired Trademark Properties –

Answer: Yes

Question: --because they had done this in the past?

Answer: Yes

Deposition of Albert Estee, Page 43, Lines 1-9. See Also Affidavit of Albert Estee, Herein attached as Exhibit "E" ("We relied on Trademark to assist Cambridge Two in the conversion of the Cambridge Lakes property to individual sale.") Albert Estee, on behalf of Cambridge Two, relied upon Trademark to handle all required communication with prospective purchasers. Albert Estee relied further upon Trademark to "convey whatever information had to be conveyed" to prospective purchasers of the Cambridge Lakes Condominiums. Id. at Page 68,

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<sup>1</sup> Question: {D}id you hire a company to market those [...] apartments?

Answer: Yes, I did.

Question: Who did you hire?

Answer: Trademark Properties

Deposition of Albert Estee, Page 42, Lines 12-18

Lines 11-25. Even Richard Davis acknowledged that Trademark acted as the "first line of communicat[ion] with the buyers." Deposition of Richard Davis, Page 108, Lines 3-4.

Furthermore, Cambridge Two was contractually obligated to refrain from dealing directly with prospective buyers of the property. This requirement is spelled out in the Exclusive Right to Sell Listing Agreement between Trademark and Cambridge Two. Attached as Exhibit "A". In Paragraph P. Owners Duties, Number 7 states that the "Owner agrees as follows: Owner shall not deal directly with prospective buyers of this property during the period of this agency and shall refer any inquires received to the Broker." Even the pre-sale Reservation Agreements signed by prospective purchasers instructed the prospective purchaser to direct all communication to Trademark Properties. A sample Reservation Agreement for Cambridge Lakes is attached as Exhibit "F". Looking at the facts in a light most favorable to the non-moving party, a reasonable jury could conclude that Cambridge Two delegated its duties under the Horizontal Property Act to Trademark as an agent or independent contractor for Cambridge Two or assigned their duties to Trademark Properties as an independent company.

Not only did Cambridge Two rely on Trademark to assist it in the conversion of the Cambridge Lakes property, but Trademark, through its actions, actually did take on the duties and responsibilities enumerated in the Horizontal Property Act. As Richard Davis stated in his letter, Trademark was successful in the conversion of the apartments to condominiums. See Exhibit "D" ("I demand to be paid in full for all apartments, which we successfully converted into Condominiums, which can be identified by the issuance of a new tax map number.") This is further evidenced by the fact that Trademark acted as the front line contact for the conversion to the Cambridge Lakes property into individual condominiums for sale. Trademark accomplished this task in numerous ways. First and foremost, Trademark had a physical presence at the

Ex. 18, p 9

Cambridge Lakes property. It staffed a sales office on site and its sales representatives were on the property six days a week. Deposition of Richard Davis, Page 117, Line 14 through Page 118, Line 2. Any time an issue arose at the property, Richard Davis personally handled the problem.

In fact, one such situation arose in October 2002, while the Cambridge Lakes properties still had apartment tenants on site. Trademark had run an ad in the newspaper announcing the potential for Cambridge Lakes to become condominiums. Id. at Page 103, Lines 14-21. As a result, the tenants at the Cambridge Lakes Apartments became very upset and disgruntled as they felt that their homes would be sold and they would be forced to move. Albert Estee called Richard Davis and told Richard Davis to handle the situation. Id. at Page 105. Wherein, Richard Davis went to the property and conducted a meeting with the tenants in order to diffuse the situation. Id. at Page 27. Albert Estee did not attend that meeting. During the meeting with the tenants, Richard Davis explained to the tenants that they had the right to purchase their unit. Id. at Page 27. Richard Davis told them that "they would have the ability to buy [the units], just like the general public." Id. at Pages 29-30. This situation is just one example where Trademark took a leadership role in managing the issues surrounding the conversion of the Cambridge Lakes properties into condominiums. Id. at Page 105, Lines 13-14 ("And I showed up. I did what a leader does. I showed up and took a beating [...]"). This activity goes above and beyond the four corners of the Exclusive Right to Sale Agreement, and as such, Trademark actively took on duties and responsibilities that are not listed in that agreement.

Other examples of Trademark taking an active role in the conversion of the properties are apparent in the fact that Trademark negotiated listing agreements and priced the units. Id. at 30. As stated earlier, any correspondence exchanged with prospective purchasers during the pre-sale agreements were sent to Cambridge Two, LLC C/o Trademark Properties. See Exhibit "D". In

Ex. 18, p 10



fact, Bobbie Faulkner, a homeowner, testified that she knew that she dealt with Trademark. That "it was Trademark that [she] signed the papers with." Deposition of Bobbie Faulkner, Page 83. Thus, even prospective purchasers associated the conversion of the condominiums with Trademark.

One final element that could lead a reasonable jury to conclude that Trademark had assumed the duties under the Horizontal Property Act, and thus the duty to provide prospective purchasers with the disclosure report, is the fact that at closing, it was Trademark, not Cambridge Two, who supplied the statutorily required lead disclosure paperwork. A sample of the Lead Disclosure Form is attached as Exhibit "G". Trademark also provided the paper work for any Addendums to the Closing Documents. A sample of the Addendum is attached as exhibit "H". These kinds of statutorily required documents are listed in the Exclusive Right to Sale Agreement as something an "Owner shall" provide to the prospective buyer. See Exhibit "A". The fact that it was Trademark, not Cambridge Two, who provided the buyer with these documents is further evidence that could lead a reasonable jury to conclude that Trademark was assigned the duty or voluntarily undertook the duty to ensure that the statutorily required provisions for the conversion of the Cambridge Lakes properties to condominiums were fulfilled.

Viewing the facts, and all those inferences determined by those facts in a light most favorable to the non-moving party, a reasonable jury could conclude that Trademark had undertaken a duty to the prospective purchasers of the Cambridge Lakes properties to properly comply with the provisions of the Horizontal Property Act in the conversion of the Cambridge Lakes property. Once Trademark undertook this duty, it had a duty to act with due care and diligence. Additionally, because Trademark held itself out as an expert in the field of condominium conversions, Trademarks duty of due care rose to the level of similarly situated

Ex. 18, p 11

entities with this sort of special skill and knowledge. Discovery and testimony has revealed that prospective purchasers were not provided with a copy of the statutorily required report detailing potential deficiencies to the property. This material fact along with the connections between Trademark and Cambridge Two, LLC could be interpreted by a jury to find that Trademark in fact breached its duty towards the association and homeowners of Cambridge Lakes. Furthermore, by not providing the homeowners with a copy of such a report, Trademark is in violation of the South Carolina Unfair Trade Practices Act.

Notwithstanding Plaintiffs' claims against Trademark for violation of the Horizontal Property Act and the SCUTPA, the above stated facts could also lead a reasonable jury to conclude that Trademark is liable to the Plaintiffs through a negligence theory. Trademark had a duty to act in a reasonable manner in the marketing, sales, and conversion of the Cambridge Lakes Property. Trademark further had a duty to disclose defects at the property. This disclosure was to be made by providing prospective purchasers with the Disclosure Report. By acting as the primary entity responsible for marketing, selling, converting, and disclosing required information, Trademark took on a duty towards the prospective purchasers, the individual condominium homeowners, and the Cambridge Lakes Homeowners Association.

Trademark breached its duties by failing to act as a reasonable person with Trademark's expertise and knowledge would have acted in a similar situation. Trademark was negligent by failing to disclose the condition of the property during marketing and sales to the Plaintiffs. Trademark was also negligent by misrepresenting the condition of the structures to the Plaintiffs.

Viewing the facts in a light most favorable to the non-moving party, a reasonable jury could conclude that Trademark had a duty towards the Plaintiffs and that Trademark breached its

duties. As such, there are questions of material fact in regards to Trademark's negligence liability, and Trademark's Motion for Summary Judgment should be denied.

**IV. THE CAMBRIDGE LAKES CONDOMINIUM HOMEOWNERS ASSOCIATION, INC. CAN SUSTAIN ITS CAUSES OF ACTIONS AGAINST TRADEMARK**

Trademark attempts to contend that it does not owe a duty to the Cambridge Lakes Condominium Homeowners Association, Inc. because the Homeowners Association is was not a perspective purchaser. Such a finding would be contrary to public policy as it would rely on a legal fiction based on a technicality.

Trademark may not take on all of the Developer's duties and the sole ability to communicate to potential purchasers, and not expect to have claim for the breach of this duty asserted against them by the Association or the individual unit owners. The Statutory Report was required to be disclosed to potential purchasers and was to include a description of the physical condition of the building and present condition of all general common elements. These common elements, by their very nature, were to be transferred to the control of the Cambridge Lakes Homeowners Association, and through the Association to each individual homeowner. The Cambridge Lakes Homeowners Association, as well as the Individual Owners of Units together were supposed to receive the benefit of the added protection of being provided with the disclosure report. Since this disclosure report was never provided to the individual homeowners, they were unaware of the potential and present defects at the Cambridge Lakes Property. Trademark breached its duties to the individual homeowners by not providing them with this report and in such other ways as outlined above, and through the homeowners, it breached its duties to the Homeowner Association.

**Ex. 18, p 13**

### CONCLUSION

There are clear issues of fact in this case which prevent the granting of summary judgment. Furthermore, if Trademark is deemed to have breached its duties to the individual homeowners, it follows as a matter of law that Trademark also breached its duties to the Cambridge Lakes Homeowners Association. Therefore, for the reasons stated herein, the Motion for Summary Judgment filed by Trademark should be denied.

Respectfully submitted,

**HAYES LAW FIRM, LLC**

By: \_\_\_\_\_

John C. Hayes, IV, Esquire  
180 Meeting Street, Suite 330  
Charleston, SC 29401  
(843) 805-7003 Phone  
(843) 720-5999 Facsimile  
[jhayes@hayeslaw.org](mailto:jhayes@hayeslaw.org)

Attorney for Plaintiffs

4 day of Jan, 2011  
Charleston, SC

Ex. 18, p 14

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

CAMBRIDGE LAKES CONDOMINIUM  
HOMEOWNERS ASSOCIATION, INC.,  
MARGEL S. HENNING, STEVE  
FISCHER, MARK AND BRENDA  
SCHILLACI, GARY CONLEY,  
GERALD DARNELL, JOHN MASCIOLI  
AND GLORIA HARDIN, CLINT  
GASKINS, MITCHELL GASKILL,  
THOMAS MURPHY, EDWARD BOGGS,  
BRUCE ADKINS, CHARLESTON HOME  
TEAM PROPERTY, LLC, LOUELLA  
ENK, JEREMIAH AND GLORIA  
MORRISON, ERIN BLEVINS, CHARLES  
TAYLOR, JR., MARION RIZZARDINI,  
KAREN ABRAMS, E. MIKELL  
CARROLL, VERNELL ROBERTS, KIM  
JACKSON, META KING, JAMES AND  
MARGARET AYERS, MARY B. BURKE,  
SEVENTH WING, LLC, RUTH AND  
CHARLES CATE, ROBERT AND MARY  
ORTIZ-ABREU, JR., LAURA LATORRE,  
MARVIN AND PAULA SWINDLE,  
DONNA WIGGINS, EMILIE COLE  
SANDERS, PHILIP AND CYNTHIA  
JONES, ANDREW MOHR, ALISON  
SMITH, BOBBIE FAULKNER, MARCUS  
AND GRACE THOMAS, DORIS  
SKUHRA, ROBERT AND RAGAN  
ALBERT, WILLIAM SILER,  
MARVA CARD, SAMUEL RUBINO,  
MATT TATHAM, SCOTT HERMAN,  
JAY AND JENNIFER MERRIMAN,  
MARY ELLEN OAKS, ELIZABETH  
MOSELEY, ALI AND MICHELLE  
ERFANI, EMILY CHAPMAN, JOHN T.  
AND LAURA L. MARTIN, ROSEANN  
TECHMAN, ROBERT PRICE, HENRY  
EDWARD TIENCKEN, JEAN B.  
WALLACE, MICHAEL B. HARTNETT,  
CAROLYN CARRICO, JENNIFER  
SNOWDEN, JOSHUA LONG, J.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
Case No.: 2008-CP-10-3506

ORDER DENYING  
TRADEMARK PROPERTIES,  
INC.'S MOTION FOR  
SUMMARY JUDGMENT  
AS TO THE PLAINTIFFS  
CLAIMS

2011 MAR 30 AM 11:53  
FILED  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

Ex 19, p 1

KLH  
3/28/11

WINDOW MANUFACTURING, LTD.  
F/K/A SOURCE WINDOWS, LTD., VWD  
(2008) NC, INC F/K/A VINYL WINDOW  
DESIGNS-USA, INC. N/K/A VINYL  
WINDOWS DESIGN, LTD. PEGRAM-  
WEST INC., CHASE HOMES, INC.,  
CHASE-ROBERTSON BUILDERS,  
INC., SGM ARCHITECTS, INC.  
F/K/A SMITH, GERBER, MCCLURE &  
ASSOCIATES, INC. F/K/A SMITH  
GERBER & ASSOCIATES, INC.,  
TRADEMARK PROPERTIES, INC.,  
STEPHEN R. HEAPE, INDIVIDUALLY  
AND INDEPENDENTLY AS GENERAL  
PARTNER OF CAMBRIDGE LAKES, LP,  
ALBERT V. ESTEE, INDIVIDUALLY,

Defendants,

and

BOSTIC BROTHERS CONSTRUCTION,  
INC.,

Third-Party Plaintiff,

v.

JOSE NINO, INTERCOASTAL  
CONSTRUCTION, INC., CAROLINA  
APARTMENT INTERIORS, LLC, MJG  
CONSTRUCTION AND  
HOMEBUILDERS, INC., B & B  
CONSTRUCTION OF CHARLESTON,  
INC., AND V. MORALES MASONRY,

Third-Party Defendants.

The above matter came before this Court pursuant to the Defendant, Trademark  
Properties, Inc.'s Motion for Summary Judgment as to the Plaintiffs' claims. The hearing was  
held in this matter on January 6, 2011 at the Charleston County Courthouse. Participating in the

Ex 19, p 2

AKH  
3/28/11

hearing was Frank M. Cisa, attorney for the Defendant, Trademark Properties, Inc. and John C. Hayes, IV, attorney for the Plaintiffs.

This case arises from the alleged construction defects relative to a residential condominium complex known as Cambridge Lakes Condominiums located in Mt. Pleasant, SC, hereinafter referred to as ("Cambridge Lakes"). Trademark maintains its only duty was to advertise and sell the units, and is thus not liable for any construction defects. For the reasons set forth herein, Trademark Properties, Inc.'s Motion for Summary Judgment as to Plaintiffs' Claims is denied.

"Summary Judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). "In determining whether any triable issue of facts exists, the evidence and all inferences which can reasonably drawn therefrom must be viewed used in the light most favorable to the non moving party." Summer v. Carpenter, 328, S.C. 36, 42, 492 S.E.2d 55, 58 (1997).

Cambridge Lakes consist of five buildings with 104 units. In addition, there is a community clubhouse adjacent to a pool and four (4) garages. Cambridge Lakes was constructed in 1999. The buildings were originally built to serve as an apartment complex, however, Albert Estee, a limited partner of Cambridge Lakes, L.P., sought to convert the property into individual condominiums for sale. In furtherance of the condominium conversion, Mr. Estee's formed the Limited Liability Company, Cambridge Two, LLC, hereinafter referred to as ("Cambridge Two") in order to purchase the Cambridge Lakes apartments and convert them pursuant to South Carolina Code of Laws Section 27-31-10, et seq. the Horizontal Property Act.

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Ex 19, p 3

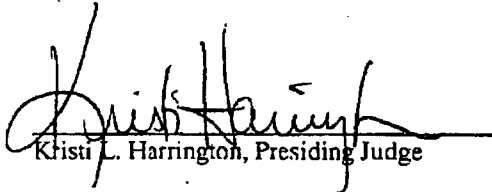
ALH  
12/3/08/11

On August 9, 2002, Cambridge Two, entered into an Exclusive Right to Sell Listing Agreement with the Trademark Properties, Inc., where Trademark was granted the exclusive right to sell the condominium units. Pursuant to the exclusive right to sell Listing Agreement Trademark undertook a duty to make a diligent and continual effort to sell the units and further agreed to advertise the units for sale. Further, the affidavit and deposition testimony of Cambridge Two's representative, Albert Estee, stated that Trademark represented itself as being an expert in the field of condominium conversions, and that Cambridge Two hired Trademark to convert the apartments into condominiums and convey all required information to prospective purchasers. Similarly, a letter dated May 28, 2003 and written by Trademark states: "Trademark was hired for the sole purpose of converting your existing Apartment community into condominiums" and "You hired us for our expertise to convert you apartment community."

Accordingly, genuine issues of material fact exist as to the extent of Trademark's involvement, and Summary Judgment not appropriate. Trademark's motion for Summary Judgment is DENIED.

IT SO ORDERED.

March 28, 2011  
Charleston, SC

  
Kristi L. Harrington, Presiding Judge

Ex 19, p 4



Search Criteria: Status <> XF

# 1439 CAMBRIDGE LAKES DR MOUNT PLEASANT, SC 29464 LP: \$114,900

MLS#: 2309529 - RES - SFA Status: Sold  
 Area: (42) CHS-Mt. Pleasant South of IOP Connector  
 TaxDistrot: CHS - 21 - Mt. Pleasant  
 Bedrooms: 2 Apx SqFt: 1,227  
 Bths Full/Hlf: 2/0 Tax Map#: 559-14-00-082  
 Stories: 1 Story Apx YrBlt: 1999  
 Address: 1439 CAMBRIDGE LAKES DR  
 City: MOUNT PLEASANT Zip: 29464  
 Lot Size: VARIES Acres: 0.00  
 Subdiv: CAMBRIDGE LAKES Subsec:  
 Grade Sch: MAMIE WHITESIDES Middle Sch: LAING  
 High Sch: WANDO  
 Possessn: New/Owned: Pre-owned  
 Legal Desc: BUILDING B, UNIT 1439, AZALEA FLOOR PLAN

Click photo for additional media and enlargement

LIST-IT Internet MLS © Solid Earth Geographics

Photo not available  
at this time

Charmls.com is a service of  
Charleston Trident MLS, Inc.

Style: SFA-Condominium  
 Roof: Fireplaces:  
 Cooling: Foundation: Slab  
 Parking: Central Heat:  
 Auction: Auction Type:  
 Lot Desc: Lakefront  
 Exterior: Brick - veneer  
 Master BR:  
 Other Rms:  
 Misc. Int:  
 Misc. Extt: Screen Porch, Pool-Inground  
 Wat/Sew: Public Water, Public Sewer  
 Amenities: Elevators, Sec. Grd/sys, Cable Available, Trash Pickup, Neighborhood Pool, Club House, Exercise Area  
 Appliances: Elec Range, Dishwasher  
 Green Features:

Directions: HWY 17 TURN BY APPLEBEE'S, TAKE RIGHT, JUST AHEAD ON LEFT

Showing:  
 Remarks: 2 AND 3 BEDROOM CONDOS AT CAMBRIDGE LAKES. THREE DIFFERENT FLOOR PLANS AVAILABLE. EXCELLENT PRICE FOR QUALITY PRODUCT! COME AND VISIT OUR SALES OFFICE. AGENT ON DUTY DAILY M-F 11-5, SAT 11-4 SUN 1-4. PRICES AND PLANS ARE SUBJECT TO CHANGE WITHOUT NOTICE. BUYER TO VERIFY SCHOOL DISTRICT  
 If square footage is important - MEASURE!!

Agnt Notes: PLEASE CONTACT OUR SALES OFFICE FOR MORE INFORMATION. HOA FEE IS APPROX 190/MONTH [Click here to report incomplete or inaccurate information](#)

|            |                |                       |              |            |            |
|------------|----------------|-----------------------|--------------|------------|------------|
| Lease/Pur: | Prospect Ex:   | Financing:            | Conventional | Assumable: | No         |
| Taxes:     | HOA Fee: \$190 | Assmt Ratio:          |              | SpAssmt:   |            |
| Owner:     | Regime Fee:    | List Date:            | 11/26/2002   | Exp Date:  | 12/31/2003 |
| C/R:       | CntngncyRsn:   | Potential Short Sale: |              |            |            |

|              |                                  |                      |                               |
|--------------|----------------------------------|----------------------|-------------------------------|
| List Agent:  | (4073) RICHARD C. DAVIS          | Type/Comp/SubAccept: | Exclusive Right to Sell/2.5 / |
| List Office: | (1761) Trademark Properties, Inc | Variables:           |                               |
| Team:        |                                  | Limited Svc:         |                               |
| Co-Off:      | ( )                              | Co-Agt:              | ( )                           |
| Contacts:    | Office Ph (843) 762-0110         |                      |                               |

|              |                                                           |                          |            |                |                                             |
|--------------|-----------------------------------------------------------|--------------------------|------------|----------------|---------------------------------------------|
| Sold Price:  | \$114,900                                                 | DOM/CDOM/DUC:            | 143/0 / 56 | NewMortType:   | CONVENTIONAL                                |
| Close Date:  | 04/18/2003                                                | CntrctDate:              | 02/21/2003 | PrjClsDate:    |                                             |
| Sell Off:    | (1761) Trademark Properties, Inc<br>Phone: (843) 762-0110 |                          |            | Sell Agent:    | (4073) RICHARD DAVIS<br>Phone: 843-762-0110 |
| Sell Co-Off: | ( )                                                       | Seller Concessions:      |            | Sell Co-Agent: | ( )                                         |
| Amount Paid: |                                                           | Seller Concession Notes: |            |                |                                             |

-Information deemed reliable but not guaranteed-Copyright: 2014 by the Charleston Trident Multiple Listing Service, Inc.  
 Prepared by RICHARD DAVIS of Trademark Properties, Inc on 4/7/2014 10:46:44 AM

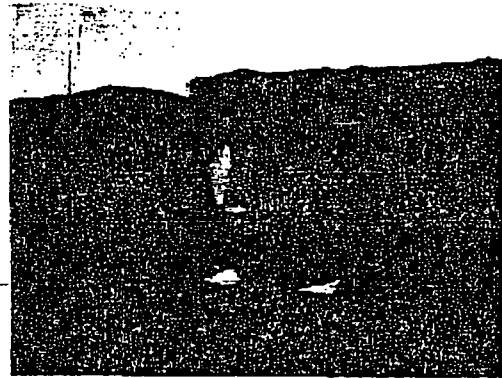
Ex 20, p 1

Trademark 0005

# 1587 CAMBRIDGE LAKES DR MOUNT PLEASANT, SC 29464 LP: \$151,325

MLS#: 2328409p - RES - SFA Status: Sold  
 Area: (42) CHS-Mt.Pleasant South of IOP Connector  
 TaxDistrict: CHS - 21 - Mt. Pleasant  
 Bedrooms: 3 Apx SqFt: 1,347  
 Bths Ful/Hlf: 2/0 Tax Map#: 559-14-00-157  
 Storeroom: YrBlt: 1999  
 Address: 1587 CAMBRIDGE LAKES DR  
 Mount Pleasant Zip: 29464  
 Lot Size: 0 Acres: 0.00  
 Subdiv: CAMBRIDGE LAKES Subsec:  
 Grade Sch: MAMIE WHITESIDES Middle Sch: LAING  
 High Sch: WANDO  
 Possession: At Closing New/Owned: Pre-owned  
 Legal Desc: BUILDING E, UNIT 1587

Click photo for additional media and enlargement



Style: SFA-Condominium Fireplace: Slab  
 Roof: Asphalt Shng Foundation: Heat Pump  
 Cooling: Central Utilities: W/w Carpet, Ceramic Tile, Vinyl  
 Parking: Detached, Other SCEandG

Auction: Lot Desc: Auction Type: Sqft Source: \$/Sqft: \$112.34  
 Lot Desc: Brick - veneer Reserve Amt:  
 Exterior: Master BR: Other Rms:  
 Misc. Int: Misc. Extt:  
 Wat/Sew: Public Water, Public Sewer  
 Amenities: Elevators, Sec. Grd/sys, Cable Available, Trash Pickup, Neighborhood Pool, Club House, Exercise Area  
 Appliances: Elec Range, Refrigerator, Dishwasher  
 Green Features:

Directions: HWY 17 LEFT AT WANDO CROSSING SHOPPING CENTER TAKE IMMEDIATE RIGHT(STUART ENGALS BLVD) CAMBRIDGE LAKES IS ON THE LEFT.

Showing: Remarks: NOW TAKING CONTRACTS ON 2 AND 3 BEDROOM CONDOS AT CAMBRIDGE LAKES. THREE DIFFERENT FLOOR PLANS AVAILABLE. EXCELLENT PRICE FOR QUALITY PRODUCT!!! SELLER TO CONTRIBUTE \$2000 TOWARDS BUYERS CLOSING COSTS AND IS PROVIDING AN AHS-WARRANTY WITH THE USE OF APPROVED SELLER LENDERS AND ATTORNEYS. COME AND VISIT OUR SALES OFFICE AT CLUBHOUSE. AGENT ON DUTY DAILY M-F 11-4, SAT 12-4, SUN 1-4. BUYER TO VERIFY SCHOOL DISTRICT. \*\*\*\$1,825 DECORATIVE ALLOWANCE\*\*\* If square footage is important - MEASURE!!

Agnt Notes: Act/Contingent on financing Click here to report incomplete or inaccurate information

Lease/Pur: Prospect Ex: Financing: Conventional Assumable: No  
 Taxes: HOA Fee: Y \$190 Assmt Ratio: SpAssmt:  
 Owner: Regime Fee: List Date: 12/8/2003 Exp Date: N/A  
 C/R: Y Contingency Req: Potential Short Sale:

List Agent: (7101) WILL E. JENKINSON, GRN Type/Comp/SubAccept: Exclusive Right to Sell/3 /  
 List Office: (7606) Carolina One Real Estate Variable: Y  
 Co-Off: () Limited Svc: Co-Agt: ()  
 Contacts: Office Ph: Agent Voice Mail (843) 266-5000

Sold Price: \$151,325 DOM/CDOM/DUC: 53/0 / 27 NewMortType: CONVENTIONAL  
 Close Date: 02/20/2004 CntrctDate: 01/24/2004 PriceBetr:  
 Sell Off: (7606) Carolina One Real Estate Sell Agent: (11577) Steve Hayes  
 Phone: (843) 266-5000  
 Sell Co-Off: () Seller Concessions: Sell Co-Agent: ()  
 Amount Paid: Seller Concession Notes:

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 Prepared by RICHARD DAVIS of Trademark Properties, Inc on 4/7/2014 10:53:09 AM

**Carolina One Real Estate**

628 Long Point Road

Mt. Pleasant, SC 29458

date

Re: Mr. Johnson Koola and Defective Property

From: Lucia H. Jaycocks

Realtor

Broker Associate

The purpose of this letter is to emphatically state that Mr. Johnson Koola demonstrated in 2001 that he would not buy a home with known defects.

He was a client of mine for several months in 2001. We looked at a number of single family homes in good neighborhoods. He was repeatedly concerned about the structural quality and integrity of these homes.

Mr. Koola is a well educated man with advanced degrees in chemistry. He moved here many years back with his family from India, has been a college professor and has worked in private industry. But, he had never actually owned a home in this country and he very much wanted to do.

While I was working with him he put in an offer on a good brick home in Brickyard Plantation. He was approved for the loan. We thought everything was fine. Then the home inspection showed the house was plumbed with polybutylene pipes. The inspector featured this on the first page of the report in oversized type as being a Major Defect for the property.

At that point Mr. Koola withdrew from the contract, even though it cost him part of his earnest money deposit. No amount of persuasion on my part, including that our company's home warrant program covered polybutylene plumbing and that the joints had copper fittings, would relieve him of his quite real fear of future trouble. The written inspection report had said there was a major defect. He accepted the written, professional report as the final word.

Shortly after this he gave up his initial home search. From my experience with Mr. Koola I saw that he depended on and trusted professional written reports. I saw that any hint of a defect in a property would have him not purchase. I can unequivocally state that he would rely on and trust written, professional inspection and engineering reports.

I will be glad to testify to these points on Mr. Koola's behalf.

Sincerely,

Lucia H. Jaycocks

Realtor

Broker Associate

Ex 22, p 1



2. Prudential admits, upon information and belief, the allegations set forth in paragraph 2 of Plaintiff's Complaint.

3. Prudential admits, upon information and belief, the allegations set forth in paragraph 3 of Plaintiff's Complaint.

4. Prudential admits, upon information and belief, the allegations set forth in paragraph 4 of Plaintiff's Complaint.

5. Prudential admits, upon information and belief, the allegations set forth in paragraph 5 of Plaintiff's Complaint.

6. Prudential admits, upon information and belief, the allegations set forth in paragraph 6 of Plaintiff's Complaint.

7. Prudential admits, upon information and belief, the allegations set forth in paragraph 7 of Plaintiff's Complaint.

8. Prudential does not have enough information to admit or deny the allegations set forth in paragraph 8 of Plaintiff's Complaint.

9. Prudential admits, upon information and belief, the allegations set forth in paragraph 9 of Plaintiff's Complaint.

10. Prudential admits, upon information and belief, the allegations set forth in paragraph 10 of Plaintiff's Complaint.

11. Prudential admits, upon information and belief, the allegations set forth in paragraph 11 of Plaintiff's Complaint.

12. Prudential denies the allegations set forth in paragraph 12 of Plaintiff's Complaint.

13. Prudential admits the allegations set forth in paragraph 13 of Plaintiff's Complaint which alleges that William E. Jenkinson, IV was an agent of O'Shaughnessy Real Estate, Inc. f/k/a Prudential Carolina Real Estate.

14. Prudential denies the allegations set forth in paragraph 14 of Plaintiff's Complaint.

15. Prudential denies the allegations set forth in paragraph 5 of Plaintiff's Complaint.

16. Prudential admits, upon information and belief, the allegations set forth in paragraph 16 of Plaintiff's Complaint.

17. Prudential does not have enough information to admit or deny the allegations set forth in paragraph 17 of Plaintiff's Complaint.

18. Prudential does not have enough information to admit or deny the allegations set forth in paragraph 18 of Plaintiff's Complaint.

19. Prudential does not have enough information to admit or deny the allegations set forth in paragraph 19 of Plaintiff's Complaint.

20. Prudential does not have enough information to admit or deny the allegations set forth in paragraph 20 of Plaintiff's Complaint.

21. Prudential admits, upon information and belief, the allegations set forth in paragraph 21 of Plaintiff's Complaint.

**FOR A FIRST CAUSE OF ACTION**  
**(Violation of the Horizontal Property Act – S.C. Code 27-31-10, et. seq.)**  
**(All Defendants)**

22. In response to paragraph 22 of Plaintiff's Complaint, Prudential repeats and realleges all proceeding paragraphs of their Answer as if set forth verbatim.

23. Prudential admits, upon information and belief, the allegations set forth in paragraph 23 of Plaintiff's Complaint.

24. Prudential denies the allegations set forth in paragraph 24 of Plaintiff's Complaint.

25. Prudential denies the allegations set forth in paragraph 25 of Plaintiff's Complaint.

**FOR A SECOND CAUSE OF ACTION**  
**(Violation of the Unfair Trade Practices Act)**  
**(All Defendants)**

26. In response to paragraph 26 of Plaintiff's Complaint, Prudential repeats and realleges all proceeding paragraphs of their Answer as if set forth verbatim.

27. Prudential denies the allegations set forth in paragraph 27 of Plaintiff's Complaint.

28. Prudential denies the allegations set forth in paragraph 28 of Plaintiff's Complaint.

29. Prudential denies the allegations set forth in paragraph 29 of Plaintiff's Complaint.

30. Prudential denies the allegations set forth in paragraph 30 of Plaintiff's Complaint.

**FOR A THIRD CAUSE OF ACTION**  
**(Breach of Contract/Warranty)**  
**(All Defendants)**

31. In response to paragraph 31 of Plaintiff's Complaint, Prudential repeats and realleges all proceeding paragraphs of their Answer as if set forth verbatim.

32. Prudential does not have enough information to admit or deny the allegations set forth in paragraph 32 of Plaintiff's Complaint.

33. Prudential does not have enough information to admit or deny the allegations set forth in paragraph 33 of Plaintiff's Complaint.

34. Prudential denies the allegations set forth in paragraph 34 of Plaintiff's Complaint.

35. Prudential denies the allegations set forth in paragraph 35 of Plaintiff's Complaint.

36. Prudential denies the allegations set forth in paragraph 36 of Plaintiff's Complaint.

**FOR A FOURTH CAUSE OF ACTION**

(Negligence)

(Cambridge Two, LLC, Albert Estes, individually, Cambridge Lakes, LP., Stephen R. Heape, individually and as General Partner of Cambridge Lakes, LP, Cambridge Lakes Apartments, LP a/k/a Cambridge Lakes Apartment Homes a/k/a Cambridge Lakes Apartment, LP, a/k/a Cambridge Lakes Apartment Homes, LP, Classic Properties Of Charleston, Inc., Cambridge Contracting, LP, Trademark Properties, Inc.)

37. In response to paragraph 37 of Plaintiff's Complaint, Prudential repeats and realleges all proceeding paragraphs of their Answer as if set forth verbatim.

38. Prudential does not have enough information to admit or deny the allegations set forth in paragraph 38 of Plaintiff's Complaint.

39. Prudential does not have enough information to admit or deny the allegations set forth in paragraph 39 of Plaintiff's Complaint.



**FOR A FOURTH CAUSE OF ACTION**

**(Negligence)**

**(O'Shaughnessy Real Estate, Inc. f/k/a Prudential Carolina Real Estate)**

40. In response to paragraph 40 of Plaintiff's Complaint, Prudential repeats and realleges all proceeding paragraphs of their Answer as if set forth verbatim.

41. Prudential denies the allegations set forth in paragraph 41 of Plaintiff's Complaint.

42. Prudential denies the allegations set forth in paragraph 42 of Plaintiff's Complaint.

**FOR A FIFTH CAUSE OF ACTION**

**(Fraud, Deceit and Negligent Misrepresentation)**

**(All Defendants)**

43. In response to paragraph 43 of Plaintiff's Complaint, Prudential repeats and realleges all proceeding paragraphs of their Answer as if set forth verbatim.

44. Prudential denies the allegations set forth in paragraph 44 of Plaintiff's Complaint.

45. Prudential denies the allegations set forth in paragraph 45 of Plaintiff's Complaint.

46. Prudential denies the allegations set forth in paragraph 46 of Plaintiff's Complaint.

47. Prudential denies the allegations set forth in paragraph 47 of Plaintiff's Complaint.

48. Prudential denies the allegations set forth in paragraph 48 of Plaintiff's Complaint.

49. Prudential denies the allegations set forth in paragraph 49 of Plaintiff's Complaint.

50. Prudential denies the allegations set forth in paragraph 50 of Plaintiff's Complaint.

**FOR A FIFTH CAUSE OF ACTION**  
**(Damages)**  
**(All Defendants)**

51. In response to paragraph 51 of Plaintiff's Complaint, Prudential repeats and realleges all proceeding paragraphs of their Answer as if set forth verbatim.

52. Prudential denies the allegations set forth in paragraph 52 of Plaintiff's Complaint.

**FOR A SECOND DEFENSE**  
**(Rule 12 Defenses)**

53. Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Prudential assert that the Plaintiff have failed to state facts sufficient to constitute a cause of action against the Answering Defendants and, as such, the complaint as to the Answering Defendants, should be dismissed with prejudice.

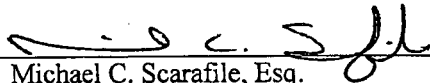
**FOR A THIRD DEFENSE**  
**(Statute of Limitations)**

55. The Plaintiff's claims are barred by the applicable statute of limitations, as the facts and circumstances that gave rise to the Plaintiff's alleged injury occurred on 2004, the date of his closing on a condominium in Cambridge Lakes, and this action was not filed until November 4, 2010.

**FOR A FOURTH DEFENSE**  
**(S.C. Code Ann. §40-57-137)**

55. Prudential plead section 40-57-137 of the South Carolina Code of Laws as a complete bar to the Plaintiff's claims in this matter.

WHEREFORE, having answered the allegations contained in the Plaintiff's Complaint, Defendant O'Shaughnessy Real Estate, Inc. f/k/a Prudential Carolina Real Estate hereby requests that the Court dismiss the Plaintiff's Complaint and for such other and further relief as this Court may deem just and proper.

  
Michael C. Scarafale, Esq.  
Carolina One Real Estate  
4390 Belle Oaks Drive, Suite 100  
North Charleston, SC 29405  
(843) 202-2061  
Fax (843) 202-3061  
Legal@carolinaone.com

Attorney for Defendant O'Shaughnessy  
Real Estate, Inc. f/k/a Prudential Carolina  
Real Estate

Charleston, South Carolina  
August 1, 2011

) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) CASE NO.: 2010-CP-10-9158

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COMES NOW Defendant O'Shaughnessy Real Estate, Inc. f/k/a Prudential Carolina Real Estate n/k/a Carolina One Real Estate (hereinafter "Defendant Prudential"), by and through it undersigned attorney, and hereby requests Summary Judgment as to all causes of action pursuant to Rule 56(c), SCRCP, based on the fact that Defendant Prudential, as the listing agent for the property purchased by the Plaintiff in 2004, cannot be held liable to the Plaintiff under any of the alleged causes of action, all of

FILED  
2014 OCT -6 PM 2:52  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

which are based upon alleged violations of The Horizontal Property Act, S.C. Code Ann 27-31-10.

Viewing all evidence in the light most favorable to the Plaintiff, there is no genuine issue of material fact and Defendant Prudential respectfully requests that this Court grant its Motion for Summary Judgment. This motion is supported by the pleadings and discovery in the case, applicable statutory and case law and any supporting memoranda which may be filed with the Court prior to the hearing on this Motion.

O'SHAUGHNESSY REAL ESTATE, INC. f/k/a  
PRUDENTIAL CAROLINE REAL ESTATE n/k/a  
CAROLINA ONE REAL ESTATE,

By:

  
Michael C. Scarafile, Esquire  
4024 Salt Pointe Parkway  
North Charleston, South Carolina 29405

Charleston, South Carolina  
October 2, 2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOHNSON KOOLA,

Plaintiff,

CAMBRIDGE TWO, LLC, ALBERT V. ESTES, individually, CAMBRIDGE LAKES, LP, STEPHEN R. HEAPE, Individually and as General Partner of CAMBRIDGE LAKES, LP, CAMBRIDGE LAKES APARTMENTS, LP a/k/a CAMBRIDGE LAKES APARTMENT HOMES, a/k/a CAMBRIDGE LAKES APARTMENTS, L.P, a/k/a CAMBRIDGE LAKES APARTMENT HOMES, L.P, CLASSIC PROPERTIES OF CHARLESTON, INC, CAMBRIDGE CONTRACTING, LP, TRADEMARK PROPERTIES, INC., CAROLINA ONE CHARLESTON HOME TEAM PROPERTIES, LLC, CHARLESTON HOME TEAM, LLC, CAROLINA ONE and WILLIAM E.JENKINSON, IV, individually)

Defendants.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE # 2010-CP-10-9158

PLAINTIFF JOHNSON KOOLA'S REPLY  
TO DEFENDANT O'SHAUGHNESSY  
REAL ESTATE, INC. f/k/a PRUDENTIAL  
CAROLINA REAL ESTATE n/k/a  
CAROLINA ONE REAL ESTATE'S  
MOTION FOR SUMMARY JUDGMENT  
and  
PLAINTIFF JOHNSON KOOLA'S MOTION  
FOR SUMMARY JUDGMENT

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2014 OCT 13 PM 4:26  
JULIE A. AMSTRONG  
CLERK OF COURT  
BY

TO: MICHAEL C. SCARAFI, ESQUIRE, ATTORNEY FOR DEFENDANT O'SHAUGHNESSY REAL ESTATE, INC. f/k/a PRUDENTIAL CAROLINA REAL ESTATE n/k/a CAROLINA ONE REAL ESTATE ("CAROLINA ONE").

Plaintiff pro se, Johnson Koola, submits his reply to Defendant Carolina One's Motion for Summary Judgment. The Plaintiff also moves the Court for a Summary Judgment in his favor under Rule 56(a), SCRPC. The Plaintiff requests the Court to render judgment based on Memorandum, Affidavits and Exhibits that will be filed under Rule 56(c), SCRPC, before the Motion hearing. If the case is not fully adjudicated on Motion, the Plaintiff would request the Court, under Rule 56(d), SCRPC, to ascertain and make an order specifying what material facts exist without substantial

controversy and what material facts are actually and in good faith controverted, and directing such further proceedings in the action as are just to continue the trial.

Carolina One's Motion for Summary Judgment should fail because there is a genuine issue of material fact as to the scope of Carolina One's liability under South Carolina Code of Laws: Title 27, Chapter 31, Horizontal Property Act; Title 39 Chapter 5, Unfair Trade Practices Act; Title 40 Chapter 57, Real Estate Brokers, Salesmen and Property Managers; Title 27 Chapter 50, The Residential Property Disclosure Property Condition Disclosure Act; Title 15 Chapter 38, South Carolina Contribution Among Tortfeasors Act, and due to Breach of Duty of Care, Negligence per se, Fraud, Aiding and Abetting Fraud in Conveyance, and Lack of Privity in South Carolina Jurisprudence as a defense to a cause of action.

The Plaintiff would present to this Court the decisions of the Appellate Court in: *Winters vs. Fiddie*, 394 S.C 629, 716 S.E.2d 316 (Cl.App. 2011), *Coake vs. Burt*, South Carolina Court of Appeals, Opinion No. 4761, Filed on Dec. 1, 2010, *Hurst v. Sandy*, 329 S.C. 471, 494 S.E.2d 847 (Cl.App. 1997) and of this Court in: *Cambridge Lakes Homeowners Association, Inc. vs. Bostic Brothers Construction, Inc.*, 2008-CP-10-3506, March 30, 2010 ["Order denying Trademark Properties, Inc.'s Motion for Summary Judgment as to the Plaintiffs Claim], *Nouvelle vs. Montclair Homes, LLC*, 2007-CP-10-2876, and *East Bridge Lofts Property Owners Association, Inc. vs. Creekstone Management, LLC*, 2010-CP-10-10204.

This the 13<sup>th</sup> day of October 2014  
Mt. Pleasant, SC 29464

  
Johnson Koola  
1587 Cambridge Lakes Dr  
Mt. Pleasant, SC 29464  
(843) 849-9241

Plaintiff pro se

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
JOHNSON KOOLA, )  
Plaintiff, )  
CAMBRIDGE TWO, LLC, ALBERT V. )  
ESTES, individually, CAMBRIDGE )  
LAKES, LP, STEPHEN R. HEAPE, )  
Individually and as General Partner of )  
CAMBRIDGE LAKES, LP, CAMBRIDGE )  
LAKES APARTMENTS, LP a/k/a )  
CAMBRIDGE LAKES APARTMENT )  
HOMES, a/k/a CAMBRIDGE LAKES )  
APARTMENTS, L.P, a/k/a CAMBRIDGE )  
LAKES APARTMENT HOMES, L.P, )  
CLASSIC PROPERTIES OF )  
CHARLESTON, INC, CAMBRIDGE )  
CONTRACTING, LP, TRADEMARK )  
PROPERTIES, INC., CAROLINA ONE )  
CHARLESTON HOME TEAM )  
PROPERTIES, LLC, CHARLESTON )  
HOME TEAM, LLC, CAROLINA ONE and )  
WILLIAM E.JENKINSON, IV, individually )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE # 2010-CP-10-9158

MEMORANDUM OF LAW AND POINTS  
OF AUTHORITIES IN OPPOSITION TO  
DEFENDANT O'SHAUGHNESSY REAL  
ESTATE, INC. f/k/a PRUDENTIAL  
CAROLINA REAL ESTATE n/k/a  
CAROLINA ONE REAL ESTATE'S  
MOTION FOR SUMMARY JUDGMENT  
AND  
IN SUPPORT OF PLAINTIFF JOHNSON  
KOOLA'S MOTION FOR SUMMARY  
JUDGMENT

BY

JULIE J. SULLIVAN  
CLERK OF COURT

2014 OCT 21 PM 4:44

FILED

TO: MICHAEL C. SCARAFILE, ESQUIRE, ATTORNEY FOR DEFENDANT  
O'SHAUGHNESSY REAL ESTATE, INC. f/k/a PRUDENTIAL CAROLINA REAL ESTATE  
n/k/a CAROLINA ONE REAL ESTATE ("Defendant Carolina One").

Plaintiff pro se Johnson Koola submits Memorandum of Law and Points of Authorities in  
Opposition to Defendant Carolina One's Motion for Summary Judgment and in Support of Plaintiff  
Koola's Motion for Summary Judgment. If the case is not fully adjudicated on after the Motion  
hearing, Plaintiff Koola requests the Court, under Rule 56(d), SCRCF, to ascertain and make an  
order specifying what material facts exist without substantial controversy, and what material facts  
are actually and in good faith controverted, and directing such further proceedings in the action as  
are just to continue the trial.



## FACTUAL BACKGROUND

### I. Plaintiff Koola's Purchase of Cambridge Lakes Condominium

In January 2004, Plaintiff Koola contracted to purchase a Cambridge Lakes condominium (converted from apartments through condo conversion) in Cambridge Lakes subdivision in Mt. Pleasant, South Carolina, from Defendant Cambridge Two, LLC and its sole managing partner, Defendant Albert Estee (collectively, "Defendant Developer/Seller"). Shortly before closing of the sale Defendant O'Shaughnessy Real Estate, Inc. f/k/a Prudential Carolina Real Estate n/k/a Carolina One Real Estate ("Defendant Carolina One"), who served as a dual agent for the real estate transaction, provided Plaintiff Koola with a copy of the Master Deed for Cambridge Lake[s] Horizontal Property Regime and a "Disclosure Report". The Master Deed stated that the Cambridge Lake[s] Horizontal Property Regime (the "Condominium") was established according to the provisions of South Carolina Horizontal Property Act, § 27-31-10 et seq. (1976) ("HPA"), (Ex.1). The Disclosure Report indicated no adverse reports about the condominium. Plaintiff Koola and his Mortgagee also received the "Builder's Certification" (Ex. 2) from Defendant Developer/Seller which stated: "For Condo Conversions: The structural, health and safety repairs and remodeling have been completed". Following the appraisal of the condominium and approval of mortgage loan, Plaintiff Koola purchased the condominium in Feb. 2004, after paying 10% down payment. Because of the representations made in the Master deed, the "Builder's certification", the "Disclosure Report", the appraisal report and no adverse information from real estate agent, ***Plaintiff Koola was made to believe that he bought a "perfect condominium".***

In June/July 2008, Plaintiff Koola was attempting to sell his condominium to enable him to pay off his mortgage related debts, as his income then was only limited Social Security benefits. In June 2008, the Cambridge Lakes Homeowners Association, Inc. ("HOA") initiated a construction defects litigation (Ex. 3). The HOA claimed \$8 million as the cost to repair the construction defects.

This translates into defects worth \$92,307 in the 3-bedroom condominium Plaintiff Koola purchased.

After initiating the lawsuit the HOA, through a letter dated June 25, 2008, informed the homeowners that there are defects “in the buildings at Cambridge Lakes in the foundation, main walls, windows, roofs, trusses, framing or any other part of the structure or building envelope”. The HOA asked the homeowners to assign their claims and rights of action to the HOA and to agree to a collection of regular or [unspecified amount of] special assessments on behalf of the HOA, (Ex. 4). Plaintiff Koola, because of his financial conditions, could not agree to the collection of special assessment and did not join the HOA’s lawsuit.

Because of the alleged massive construction defects and the stated potential liability of \$92,307, Plaintiff Koola could not sell his unit in 2008. During 2008-2011, real estate transactions in Cambridge Lakes were practically frozen except for short sales and foreclosures; nearly 30% of the homeowners lost their homes. In 2009 Plaintiff Koola became insolvent and filed for Chapter 7 Bankruptcy. After discharge from Bankruptcy in July 2009 and in the second half of 2009, Plaintiff Koola made a **second and a third attempt to sell** his condominium, but could not.

During 2007 through November 2009, Plaintiff Koola withdrew funds from his retirement accounts to pay for the mortgage related dues. By November 2009, Plaintiff Koola had no resources to continue to pay mortgage-related payments and defaulted on those payments. In April/May 2010, Plaintiff Koola made a **fourth attempt to sell** his condominium through a short sale to clear all his mortgage related debts. In late 2010 the HOA initiated a civil action for collection of unpaid monthly assessments and a foreclosure action against Plaintiff Koola. Shortly thereafter, the Mortgagees filed foreclosure actions against Plaintiff Koola. Because of these adversarial actions, Plaintiff Koola cancelled the short sale in September 2010. *The filing of the foreclosure actions and*

*HOA's civil action in 2010 marked the termination of Koola's ownership of his condominium, which resulted in huge damage to Koola.*

In September of 2010, Koola searched the case dockets of HOA's construction defects lawsuit and learned that HOA filed Second and Third Amended Complaints in June 2010 and July 2010, respectively, which included allegations against the Defendant Developer/Seller and Defendant Trademark Properties, Inc. ("Defendant Trademark") that they had violated S.C. Horizontal Property Act, specifically S.C. Code Ann. § 27-31-430 (Ex. 5, 6). Shortly thereafter, Koola learned that the Builder's Certification referred to above was a falsified and fraudulent document and also realized that the real estate agents employed by the Defendant Developer/Seller violated a host of South Carolina Code of Laws. Based on these facts, Plaintiff Koola initiated the current civil action, No.: 2010-CP-10-9158.

## **II. Cambridge Lakes HOA's Construction Defects Litigation**

### **A. Information collected from Defendant Trademark**

On November 2, 2010, Defendant Trademark filed an Affidavit of Richard C. Davis (the sole owner of Defendant Trademark) and three Exhibits (Ex. 7(A),(B),(C)) in the HOA's construction defects lawsuit. Exhibit 7(A) was the Exclusive Right to Sell Listing Agreement for Residential Multiple Listing signed on Aug. 9, 2002 between Defendant Developer/Seller and Defendant Trademark whereby: (i) Defendant Trademark undertook a duty to make a diligent and continual effort to sell the Cambridge Lakes condominiums [to tenants in possession and prospective buyers from the public], (Ex. 7(A), Clause O); and (ii) Owner [Developer/Seller] shall not deal directly with prospective buyers of this property during the period of this agency and shall refer any inquiries received to the Broker [Defendant Trademark] (Ex. 7(A), Clause P(7)). Defendant Developer/Seller selected Defendant Trademark because of Defendant Trademark's proven expertise and previous experiences in the conversion of apartments and marketing of converted

apartments, very recently conversion of 'Montclair Apartments' in Mt. Pleasant, SC to 'Montclair Condominiums', (Ex. 8) *Significantly*, the listing agreement *does not spell out the duties of Defendant Trademark in the process of conversion of the Apartments*. It is presumed that part of the agreement was an oral contract. Nevertheless, a Defendant Trademark's letter to Cambridge Two, LLC/Albert Estee dated May 23, 2003 (Ex. 9) states: "Trademark Properties was hired for the sole purpose of converting your existing Apartment community,...., into a viable condominium sales project....".

Exhibit 7(B) was a copy of an undated letter "Notice of Condominium Conversion and Offer to Purchase" sent by Defendant Developer/Seller to the tenants in possession of the Cambridge Lakes Apartments that: (i) They have the first right to buy the condominiums when they are ready for sale; and (ii) they will be provided with a copy of the "Disclosure of the Physical Condition of the Buildings" as mandated by S.C. Code Ann. §§ 27-31-420,430. The tenants in possession were also advised to contact Defendant Trademark for assistance to buy the condominiums. *This confirms that Defendant Trademark had actual and constructive knowledge about the mandate of S.C. Code Ann. § 27-31-430. For the record: Neither Defendant Developer/Seller nor Defendant Trademark nor Defendant Carolina One provided the statutorily mandated "Disclosure of the Physical Condition of the Buildings" Report to any Cambridge Lakes Condominium buyers.* c. 7

By May/June 2003 Defendant Trademark had completed the sale of approximately thirty (30) condominiums out of a total of 104 units. Nevertheless, in June 2003 Defendant Developer/Seller terminated the Listing Agreement with Defendant Trademark stating that: (i) Defendant Trademark did not sell sufficient number of units as the Defendant Developer/Seller had expected; and (ii) Defendant Trademark did not provide the statutorily required Disclosure Statements ["Disclosure of the Physical condition of the Buildings" as mandated by S.C. Code Ann. 27-31-430,420]. Immediately thereafter, Defendant Developer/Seller employed Defendant Carolina c. 7

One to continue the sale of the Cambridge Lake Condominiums to prospective purchasers; In February 2004 Plaintiff Koola purchased a condominium from Defendant Developer/Seller through Defendant Carolina One serving as a dual-listed real estate agent.

Defendant Carolina One should have signed the same contract as well as any oral contract between Defendant Carolina One and Defendant Developer/Seller comparable to those between Defendant Trademark and Defendant Developer/Seller.

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**B. Progression in the HOA's construction defects lawsuit**

In June 2008, the Cambridge Lakes Homeowners Association, Inc. ("HOA") initiated a construction defects litigation against Defendant Developer/Seller and Defendant Trademark the builder and related entities, and Defendant Cambridge Lakes, LP and its general partner, Defendant Stephen Heape, and related entities (Ex. 3). *Significantly*, the HOA did not include Defendant Carolina One as a defendant in the lawsuit, although Carolina One sold nearly sixty (60) of the units compared to Defendant Trademark's sale of nearly thirty (30) units. The HOA filed the Second and Third Amended Complaints in June and July 2010 respectively, which included allegations against the Defendant Developer/Seller and Defendant Trademark that they had violated S.C. Horizontal Property Act, specifically S.C. Code Ann. § 27-31-430 (Ex. 5, 6).

During the progression of the HOA's lawsuit, Defendant Trademark filed a Memorandum in Support of Defendant Trademark Properties, Inc's Motion for Summary Judgment, [Case No.: 2008-CP-10-3506, filed on Jan. 6, 2011) (Ex. 10) to dismiss HOA's claims against it arguing among others: (i) The Plaintiffs in the HOA lawsuit did not allege duties owed by Defendant Trademark to the Plaintiffs; (ii) Defendant Cambridge Two, LLC and Defendant Albert Estee and not Defendant Trademark owed duties to the Plaintiffs to provide the "Disclosure of the Physical Condition of the Building report to condominium buyers and Defendant Trademark is not liable for violation of

Unfair Trade Practices; and (iii) Plaintiff HOA is not a prospective purchaser of the condominiums under the code section §27-31-430.

Plaintiffs in the HOA's lawsuit filed "Plaintiff's Memorandum in Opposition to Defendant Trademark Property Inc.'s Motion for Summary Judgment" [Case No.: 2008-CP-10-3506 filed on Jan. 5, 2011] (Ex. 11) making counterarguments against Defendant Trademark. *Additionally and significantly*, the Plaintiffs in the HOA lawsuit argued that Defendant Cambridge Two, LLC and its officers/directors (Defendant Albert Estee) assigned the responsibility of providing the "Disclosure of the Physical Condition of the Building" Report mandated by S.C. Code Ann § 27-31-430 to Defendant Trademark under S.C. Limited Liability Company Act, S.C. Code Ann. 33-44-303. The presiding Judge in the HOA's Construction Defects Lawsuit denied Defendant's Trademark's arguments and issued an "Order Denying Trademark Properties, Inc.'s Motion for Summary Judgment as to the Plaintiff's Claims on March 20, 2011. (Ex.12) and let the homeowners' and the HOA's complaints against Defendant Trademark stand in the HOA's lawsuit. By the same argument and since the duties of Defendant Trademark and Defendant Carolina One are the same in the sale of the Cambridge Lakes Condominiums, Koola's complaints Defendant Carolina One should stand for further adjudication, and Defendant Carolina One should be denied its Motion for Summary Judgment. Incidentally, the presiding Judge also denied Trademark Properties, Inc.'s Motion for Summary Judgment as to the Co-Defendants Cambridge Two, LLC and Albert V. Estee Cross Claims and issued an Order to this effect on March 30, 2011 (Ex. 13).

**MEMORANDUM OF LAW AND POINTS OF AUTHORITIES  
IN OPPOSITION TO CARLOINA ONE'S MOTION FOR SUMMARY JUDGMENT  
AND  
IN SUPPORT OF PLAINTIFF KOOLA'S MOTION FOR SUMMARY JUDGMENT**

**I. Defendant Carolina One is a joint tortfeasor with other defendants**

Defendant Stephen Heape, general partner of Defendant Cambridge Lakes, LP, facilitated the sale of Cambridge Lakes Apartments to Defendant Cambridge Two, LLC and Defendant Albert Estee. Defendant Estee on behalf of Defendant Cambridge Two, LLC, converted all the apartments to condominiums with the assistance of Defendant Trademark and **later employed Defendant Trademark in the very initial stage and Defendant Carolina One in the later stage as exclusive agents** to sell all the converted condominiums to general public. Sale of the Apartments, Conversion of the Apartments into Cambridge Lakes Condominiums and the subsequent sale of the converted condominiums to the general public in violation of various statutes caused harm to Plaintiff Koola which cannot practically be divided and is a joint tort. All the joint tortfeasors will be held jointly and severally liable. The Plaintiff can sue any individual joint defendant for the entire harm or join them all together in order to recover for the entire harm. This Court, for reasons of judicial economy, has authority to limit the trial to Defendant Trademark and Defendant Carolina One and order them to pay full damage to Plaintiff Koola. The release of one tortfeasor does not constitute a release of others who contributed to the plaintiff's injuries unless the parties intended such a release or the plaintiff received full satisfaction. *Scott v. Fruehauf Corp.*, Supreme Court of South Carolina, Opinion No. 23252, filed in 1990, 396 S.E. 2d 354 (1990).

**II. Horizontal Properties**

Condominiums coming under the purview of Horizontal Property Act distinguish themselves from other types of real estate. The buyer of real estate such as an independent home has exclusive ownership and possession of the real estate with all the attachments to it. While buying,

the buyer has a duty to inspect the home for any latent defects. S.C. Code Ann. § 27-50-80. In the case of a condominium covered under the HPA, each co-owner **shall have exclusive ownership and possession of his apartment and shall have an undivided interest in the common elements.** All the co-owners jointly own the common elements. S.C. Horizontal Property Act § 27-31-60 (a). For this reason a condominium buyer cannot inspect the common elements for any latent defects. *That is why S.C. Horizontal Property Act § 27-31-430 has mandated that the seller of a converted condominium shall furnish a Disclosure Report describing any latent defects prepared by a state licensed architect or engineer to prospective buyers.* *are?*

### III. Principal and Agent

When one person authorizes another person to perform certain acts on his behalf to third parties, the first person becomes the Principal and the Second Person becomes the Agent. The Agent is endowed with Express and Implied Authority as well as Apparent Authority from the Principal to perform certain acts on behalf of the Principal to the third parties. This authority is contractual in nature. The third parties never come into contact with the Principal, but deals only with the Agent for the performance of the intended acts. Thus, the Agent is a de facto Principal in performing the contractual duties to the third party. Any act the Principal is supposed to do to the third parties shall be performed by the Agent when the Agent is employed by the Principal. If the Agent sells real estate to the public on behalf of the Principal, the Agent shall be licensed by the State, and a real estate agent is bound to follow the rules set by the Real Estate Commission

The authorized acts of an Agent are the acts of the Principal. *Charleston Dry Cleaners & Laundry, Inc. v. Zurich American Ins. Co.*, 355 S.C. 614, 586 S.E.2d 586 (2003). An agent's authority is composed of his or her actual authority, whether express or implied, together with the apparent authority, which the principal by his or her conduct is precluded from denying. *Roberson v. Southern Finance of South Carolina, Inc.*, 365 S.C. 6, 615 S.E.2d 112 (2005). An agent's



allegedly negligent actions could be imputed to the principal, when the agent had [apparent] authority to act on behalf of Principal. A principal may be held liable to a third person in a civil lawsuit for fraud, deceit, concealment, misrepresentation, negligence, and other omissions of duty of his agent which occur in the scope of the agents employment, even when the principal did not authorize, participate in or know of such misconduct or even when the principal forbade or disapproved of the act in question. *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006). The doctrine that an agent is not liable for contracts made on behalf of a disclosed principal does not apply when the agent must answer, not in contract, but in tort. *Thomas v. Delta Enterprises, Inc.*, 302 S.C. 351, 396 S.E.2d 122 (S.C.App. 1990). Agent, as well as principal, concerned in sale has a duty not to make false statements of fact as inducements to buyer. An agent's liability for his own tortuous acts is unaffected by fact that he acted in his representative capacity. An agent is liable to third person for damages from violation of a duty, which agent owes to third person, and it is immaterial whether that violation is one of malfeasance, misfeasance or nonfeasance. *Lawlor v. Scheper*, 232 S.C. 94, 101 S.E.2d 269 (1957).

#### IV: Duties of Real Estate Sellers and Real Estate Licensees.

S.C. Code Ann. §§ 27-50-40, 50(a) mandate that the owner of the real property shall furnish to a purchaser a written disclosure statement and that the owner of real property shall deliver to the purchaser the disclosure form required by S.C. Code Ann. § 27-50-40 before a real estate contract is signed by the purchaser and owner, or as otherwise agreed in the real estate contract.

S.C. Code Ann. § 27-50-50(C) mandates that a real estate licensee acting as a listing agent or a selling agent is subject to the regulations governing his license and performance of his responsibilities as licensee, as provided by the [real estate] commission....Under the terms of regulations set forth by the real estate commission, a real estate licensee acting as a listing agent or a selling agent is responsible to deliver all the disclosure reports to the purchaser.

S.C. Code Ann. § 27-50-65 imposes civil liability on the owner for failure to provide the disclosure report to the purchaser or for disclosing any material information on the disclosure statement that he knows to be false, incomplete, or misleading for actual damages proximately caused to the purchaser.

***S.C. Code Ann. § 27-50-70 mandates that a listing agent or any real estate licensee operating for any party in a residential real estate transaction must inform in writing each owner covered by the listing agreement of the owner's obligations prescribed in this article.*** If the listing agent performs this duty, he is not liable for the owner's refusal or failure to provide a prospective purchaser with disclosure statement.

The Appellate Court's decision in *Winters v. Fiddie*, 394 S.C. 269, 716 S.E.2d 316 is a remarkable application of real estate related South Carolina codes to sellers and real estate agents.

**V. As an Agent, Defendant Carolina One is liable under the S.C. Horizontal Property Act.**

S.C. Code Ann. §§ 27-31-420, 430 mandate the developer/seller of condominiums converted from apartments under South Carolina Horizontal Property Act § 27-31-10 et seq. to provide a Disclosure Report regarding the physical condition of the building [latent defects] ***prepared under the guidelines of S.C. Code Ann. § 27-31-430*** to each tenant in possession of an apartment within thirty (30) days of recordation of the Master Deed and to each prospective buyers.

The mandate of S.C. Code Ann. § 27-31-430 has two ***elements***: (i) Preparation of the Disclosure Report of the Physical Condition of the Buildings ***prepared under the guidelines of S.C. Code Ann. § 27-31-430***; and (ii) Timely delivery of the said Disclosure Report to the tenants in possession of the original apartment and to prospective purchases. When the developer/seller himself sells the converted condominiums to the buyers, then he assumes both these responsibilities. When the Developer/seller authorizes a real estate broker/licensee to sell the converted condominiums, then he ***transfers*** his responsibilities to the real estate broker/licensee, the Agent.

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S.C. Code Ann. § 40-57-137(F) has provided that a seller's agent is not obligated to discover latent defects in property. In the context of sale of converted condominiums, therefore, preparation of the "Disclosure of the Physical Condition of the Buildings" Report *mandated by S.C. Code Ann. § 27-31-430* is the sole responsibility of the developer/seller, the Principal, and the timely delivery of the said Disclosure Report to prospective purchasers falls on the real estate agent, the Agent. C.K

The argument of a real estate licensee [Defendant Carolina One] that the delivery of the Disclosure Report is the duty of the seller is a contradiction. It was noted on page 4 of this document that "Owner [Developer/Seller] shall not deal directly with prospective buyers of this property during the period of this agency and shall refer any inquiries received to the Broker, a stipulation in the Listing Agreement and is equally applicable to Defendant Carolina One (Ex. 7(A), Clause P(7)).

S.C. Code Ann. § 27-50-70 mandates that *a real estate broker/licensee, operating as a listing agent for any party in a residential real estate transaction, must inform in writing each owner covered by the listing agreement of the owner's obligations prescribed in this article*. In the context of sale of converted condominiums, it becomes the duty of the Agent to inform in writing to the Principal that he has to prepare the "Disclosure of the Physical Condition of the Building" Report prepared *under the guidelines of S.C. Code Ann. § 27-31-430* (emphasis added) and then deliver the Disclosure Report to tenants in possession and prospective purchasers.

The decisions of this Court against Defendant Trademark in the HOA's construction defects lawsuit (Ex. 12, 13), in *Nouvelle v. Montclair Homes, LLC*, Case No. 2007-CP-10-2876 (Ex. 14), and in *East Bridge Lofts Property Owners Assn v. Creekstone Management, LLC* (n/k/a Creekstone Management LP d/b/a Creekstone Management, Case No.: 2010-CP-10-10204 (Ex. 15) demonstrate the application of S.C. Horizontal Property Act, S.C. Code Ann. 27-31-430 against violators.

**VI. Defendant Carolina One's failure to make the disclosure as mandated by S.C. Code § 27-31-430 constituted a violation of the S.C. Unfair Trade Practices Act.**

The South Carolina Legislative has mandated that the failure to provide the "Disclosure of the Physical Condition of the Building" Report in S.C. Code § 27-31-430 *automatically constitutes a violation of the S.C. Unfair Trade Practices Act*. Plaintiff Koola does not have to prove that Defendant Carolina Ones' action has adversely affected the public interest; the Legislature has determined that Defendant's action shall fall under the Unfair Trade Practices Act.

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S.C. Legislature has determined that: (i) Certain trade practices such as violation of S.C. Code § 27-31-430 shall automatically constitute a violation of the S.C. Unfair Trade Practices Act; and (ii) For many trade practices to fall under S.C. Unfair Trade Practices Act, a plaintiff has to prove that a defendant's trade practice has adversely affected the public interest.

The legislative intent and mandates are supreme in all jurisprudences. Even a supreme court cannot overrule a legislative intent or mandate unless there is a violation of State or U.S. Constitution.

The question before this Court is not whether Defendant Carolina One is in violation of S.C. Unfair Trade Practices Act, but whether Plaintiff Koola has shown to this Court that Defendant Carolina One has violated the mandate in S.C. Code § 27-31-430, which Plaintiff Koola has done, *supra*. For this reason, Defendant Carolina One is automatically liable to Koola for violation of S.C. Unfair Trade Practices Act.

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The Unfair Trade Practices Act should not be construed to increase plaintiff's burden of proving liability, since its purpose is to give additional protection to victims of unfair trade practices, not to make a case harder to prove than it would be under common law principles. S.C. Code § 39-5-10 et seq. South Carolina Court of Appeal's decision in *Wright v. Craft*, Opinion No.: 4181, 640 S.E.2d 486 (S.C.App. 2006) is a remarkable application of Unfair Trade Practices Act to violators.

## **VII. Defendant Carolina One's liability for Breach of Contract/Warranty stands.**

The elements of Breach of Contract/Warranty are the existence of the contract, its breach, and the damages caused by such breach. Carolina One and its listing agent, William Jenkinson, IV, made a contract with Plaintiff Koola, sold the condominium to Plaintiff Koola, and subsequently Plaintiff Koola suffered serious damages since he did not receive the statutorily mandated <sup>Nº</sup> Disclosure Report. Carolina One and its listing agent, William Jenkinson, IV, and all the joint tortfeasors are liable to Plaintiff Koola for Breach of Contract/[Express and Implied] Warranty.

Lack of Privity was a valid defense for a cause of action in 19<sup>th</sup> Century U.S. Jurisprudences. The Cardazo test and Andrews test have eliminated Privity relationship between a Plaintiff and a Defendant as a defense for a cause of action in U.S. Jurisprudences.

Supreme Court of South Carolina, in *Kennedy vs. Columbia Lumber and Manufacturing Co., Inc.*, 299 S.C. 335, 384 S.E.2d 730 (1989) ruled:

We have been steadfast in holding that Privity of contract as a defense to an implied warranty action is abolished in this State. See, e.g. *Terlinde [v. Neeley]*, 275 S.C. 395] at 398, 271 S.E.2d at 769. In *JKT Co. v. Hardwick*, 274 S.C. 413, 417-18, 265 S.E.2d 510, 512-513, we stated: "The erosion of the concept of Privity has been a legal phenomenon for more than a decade, and this Court has not been reluctant to contribute to its demise.... [L]ack of Privity as a defense to a cause of action has been of questionable vitality in South Carolina. Today, we seek to still all whispers of its continued existence." Hence a purchaser may sue a builder on his implied warranty of service, despite the purchaser's lack of contractual privity. Any contrary implication by the Court of Appeals in *Carolina Winds* is rejected."

*Id.*

Decisions of Supreme Court of South Carolina, in *JKT Co. v. Hardwick*, 274 S.C. 413, 265 S.E.2d 510 (1980) and *Colleton Preparatory Academy, Inc. v. Hoover Universal, Inc.*, 379 S.C. 181, 666 S.E.2d 247 (S.C. 2008) are other authorities which denied privity requirement as defense in a cause of action. Because of a lack of privity requirement in South Carolina and because Defendant Trademark is a joint tortfeasor, Defendant Trademark is liable to Koola as is Carolina One and its listing agent, William Jenkinson, IV.

**VIII. Defendant Carolina One is liable to Plaintiff Koola for Negligence.**

Defendant Carolina One had a Duty of Care to Plaintiff Koola, which was created through the contract and a host of South Carolina Codes as detailed before, *supra*. Defendant Carolina One breached its duty of care to Plaintiff Koola, and therefore, Carolina One and all the joint tortfeasors are liable to Plaintiff Koola for Negligence.

A tortfeasor [agent] may be subjected to tort liability for injury to a third party arising out of the tortfeasor 's contractual relationship with another [principal], despite the absence of Privity between the tortfeasor [agent] and the third party [plaintiff]; such liability exists independently of contract, and rests upon the tortfeasor 's duty to exercise due care.

It is essential to liability for negligence that the parties have some relationship recognized by law to support the duty owed by the tortfeasor. This duty may be derived from the tortfeasor 's contractual relationship with another [contract between the Principal and Agent].

*Barker v. Bill Sauls*, Supreme Court of South Carolina, Opinion No. 22564, Decided 1986, 345 S.E.2d 244 (1986).

*In South Carolina, however, the supplier of a defective product is accountable to an injured party on ordinary negligence principles despite a lack of Privity between the seller [Defendant Trademark] and the injured party [Plaintiff Koola] [Defendant Trademark's liability for negligence]. Parties that have no legal relation to one another [Defendant Trademark and Defendant Carolina One, both sellers or Agents] and who owe the same duty of care to the injured party [Plaintiff Koola] share a common liability and are joint tortfeasors without a right of indemnity between them.*

*Scott v. Fruehauf Corp.*, Supreme Court of South Carolina, Opinion No. 23252, filed in 1990, 396 S.E. 2d 354 (1990). These authorities clearly show that Defendant Trademark is liable to Koola for negligence.

Punitive damages are recoverable in a negligence cause of action when the defendant's conduct rises to the level of a willful, wanton, or a malicious violation of plaintiff's rights, and a conscious failure to exercise due care constitute willfulness. *Scott, supra*, at 357.

**IX. Defendant Carolina One is liable to Plaintiff Koola for Fraud**

Fraud is an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable belonging to her or to surrender a legal right. Black's Law Dictionary, 660 (6<sup>th</sup> ed. 1990). Plaintiff Koola proves hereby the nine elements of fraud:

(i) A representation: The documents received by Plaintiff Koola and all other condominium buyers made available by Defendant Carolina One, for example, **the Master Deed** (Ex. 1), clearly made the **representations** that the conversion of the apartments into condominiums **complied** with South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10 *et seq.* Any other disclosure statements received by Plaintiff Koola **misrepresented** or concealed one key disclosure requirement: compilation with S.C. Code Ann. § 27-31-430;

(ii) Its falsity: Any representation made by the Defendant Carolina One was absolutely false; none of the condominium buyers received a copy of the "Disclosure of the Physical Condition of the Buildings" Report (S.C. Code Ann. § 27-31-430);

(iii) Its materiality: The mandate in S.C. Code Ann. § 27-31-430 is an absolute mandate with strict liability and subjected to automatic violation of S.C. Unfair Trade Practice Act. The misrepresentation made by Defendant Carolina One is **material**;

(iv) Knowledge of the falsity or reckless disregard of its truth or falsity: Both Defendant Trademark and Defendant Carolina One had *actual and constructive knowledge* of the truth that "Disclosure of the Physical Condition of the Buildings" Report under S.C. Code Ann. § 27-31-430 was not provided to any condominium buyers. Exhibit 7(B) attests to this statement. Moreover, both Defendant Trademark and Defendant Carolina One had prior experiences in the sale of converted condominiums. Finally Duties of Real Estate Sellers and Real Estate Licensees, *supra*, p 10, mandate that they be knowledgeable with State codes with respect to real estate transactions including sale of converted condominiums;

(v) Intent that the representation be acted upon: Defendant Carolina One worked diligently so that the unwary condominium buyers would act on the representations made to them. Exhibit 16 would show to this Court that Plaintiff Koola would act on a written professional report;

(vi) The hearer's ignorance of its falsity: Plaintiff Koola was absolutely ignorant of any representation that the sale of Cambridge Lakes condominiums did not comply with the mandate of compilation with S.C. Code Ann. § 27-31-430;

(vii) The hearer's reliance upon its truth: Plaintiff Koola absolutely relied upon the representation made in the **Master Deed and the Builder's Certification** that the sale of Cambridge Lakes condominiums complied with S.C. Code Ann. § 27-31-430;

(viii) The hearer's right to rely on: The condominium buyers can interact only with the real estate agents and not with the seller, (Ex. 7(A), Clause P(7). Therefore, the hearer has the right to rely on the representations made by the real estate agents, Defendant Carolina One; and

(ix) The hearer's consequent and proximate injury: Because of the massive construction defects in the common elements of Cambridge Lakes condominiums and the HOA's construction defects lawsuit, Plaintiff Koola could not sell his condominium when he tried to sell it *four times* during 2008-2010. Clearly, the condominium was not marketable. *The filing of the foreclosure actions and HOA's civil action in 2010 marked the termination of Koola's ownership of his condominium, which resulted in huge damage to Koola. The defendant's actions were a proximate cause of harm that Plaintiff Koola suffered.* Plaintiff Koola lost everything that he had. At 71 years of age and no resources to live on except limited Social Security benefits and mounting debts due to foreclosure and legal actions, defendants in the civil action Case No.: 2010-CP-10-9158 inflicted serious damages on Plaintiff Koola.

Plaintiff Koola has shown to this Court, that: (i) Defendant Carolina One had a duty of care to Plaintiff Koola and breached that duty of care; (ii) Defendant Carolina One's conduct rises to the



level of a willful, wanton, or a malicious violation of plaintiff's rights, and a conscious failure to exercise due care constitute willfulness, (iii) Defendant Carolina One is a joint tortfeasor with Defendant Trademark and other defendants; (iv) Citing numerous South Carolina Supreme Court authorities, Plaintiff Koola has shown to this Court that Privity requirement is no more a valid defense in South Carolina Jurisprudence; (v) Citing the South Carolina Supreme Court authority in *Scott, supra*, Plaintiff Koola has shown to this Court: *Parties that have no legal relation to one another [Defendant Trademark and Defendant Carolina One, both sellers or Agents] and who owe the same duty of care to the injured party [Plaintiff Koola] share a common liability and are joint tortfeasors without a right of indemnity between them.* (vi) Citing the Appellate Court's decision in *Winters, supra*, Plaintiff Koola has shown to this Court that sellers of real estate and real estate licensees are liable to real estate buyers. (vii) The decisions of this Court in Case No.: 2008-CP-10-3506, Case No. 2007-CP-10-2876 and Case No.: 2010-CP-10-10204 demonstrate that the violators of S.C. Horizontal Property Act, S.C. Code Ann. 27-31-430 will be held liable to condominium buyers.

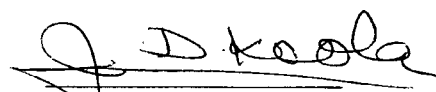
**X. Right to File Notice to Sanction to South Carolina Department of Labor, Licensing and Regulations (LLR)**

Plaintiff Koola preserves the right to file Notice of Sanction Defendant Trademark and Defendant Carolina One to South Carolina Department of Labor, Licensing and Regulations (LLR) and/or South Carolina Real Estate Commission.

## CONCLUSION

For the following reasons, Plaintiff Koola requests that Defendant Trademark's Motion for Summary Judgment be dismissed and Plaintiff Koola's Motion for Summary Judgment be granted. If the case is not fully adjudicated on after the Motion hearing, Plaintiff Koola requests the Court, under Rule 56(d), SCRPC, to ascertain and make an order specifying what material facts exist without substantial controversy, and what material facts are actually and in good faith controverted, and directing such further proceedings in the action as are just to continue the trial.

This the 20<sup>th</sup> day of October 2014  
Mt. Pleasant, SC 29464



Johnson Koola  
1587 Cambridge Lakes Dr  
Mt. Pleasant, SC 29464  
(843) 849-9241

Plaintiff pro se

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
)

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE # 2010-CP-10-9158

JOHNSON KOOLA, )  
)  
)  
Plaintiff, )  
)

CAMBRIDGE TWO, LLC, ALBERT V. )  
ESTES, individually, CAMBRIDGE )  
LAKES, LP, STEPHEN R. HEAPE, )  
Individually and as General Partner of )  
CAMBRIDGE LAKES, LP, CAMBRIDGE )  
LAKES APARTMENTS, LP a/k/a )  
CAMBRIDGE LAKES APARTMENT )  
HOMES, a/k/a CAMBRIDGE LAKES )  
APARTMENTS, L.P, a/k/a CAMBRIDGE )  
LAKES APARTMENT HOMES, L.P, )  
CLASSIC PROPERTIES OF )  
CHARLESTON, INC, CAMBRIDGE )  
CONTRACTING, LP, TRADEMARK )  
PROPERTIES, INC., CAROLINA ONE )  
CHARLESTON HOME TEAM )  
PROPERTIES, LLC, CHARLESTON )  
HOME TEAM, LLC, CAROLINA ONE and )  
WILLIAM E.JENKINSON, IV, individually,) )

Defendants. )  
)

CERTIFICATE OF MAILING

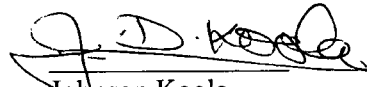
FILED  
2014 OCT 21 PM 4:44  
JULIE S. JENKINSON  
CLERK OF COURT  
BY \_\_\_\_\_

I, Johnson Koola, Plaintiff pro se, hereby certify that on 21<sup>st</sup> day of October 2014, I mailed postage prepaid, via United States First Class Mail, a true copy of Memorandum of Law and Points of Authorities in Opposition to Defendant Carolina One's Motion for Summary Judgment and in Support of Plaintiff Johnson Koola's Motion for Summary Judgment to:

R. Michael Ethridge, Esq.  
CARLOCK COPELAND & STAIR, LLP  
40 Calhoun Street, Suite 400  
Charleston, SC 29401-3531  
Counsel for Trademark

Michael Scarafale, Esq.  
Carolina One Realty  
4024 Salt Pointe Parkway  
Charleston, SC 29405  
Counsel for Carolina One

This the 21st day of October 2014  
Mt. Pleasant, SC 29464

  
Johnson Koola  
1587 Cambridge Lakes Dr  
Mt. Pleasant, SC 29464  
(843) 849-9241  
Plaintiff pro se

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
JOHNSON KOOLA, )  
Plaintiff, )  
CAMBRIDGE TWO, LLC, ALBERT V. )  
ESTES, individually, CAMBRIDGE )  
LAKES, LP, STEPHEN R. HEAPE, )  
Individually and as General Partner of )  
CAMBRIDGE LAKES, LP, CAMBRIDGE )  
LAKES APARTMENTS, LP a/k/a )  
CAMBRIDGE LAKES APARTMENT )  
HOMES, a/k/a CAMBRIDGE LAKES )  
APARTMENTS, L.P, a/k/a CAMBRIDGE )  
LAKES APARTMENT HOMES, L.P, )  
CLASSIC PROPERTIES OF )  
CHARLESTON, INC, CAMBRIDGE )  
CONTRACTING, LP, TRADEMARK )  
PROPERTIES, INC., CAROLINA ONE )  
CHARLESTON HOME TEAM )  
PROPERTIES, LLC, CHARLESTON )  
HOME TEAM, LLC, CAROLINA ONE and )  
WILLIAM E.JENKINSON, IV, individually,) )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE # 2010-CP-10-9158

**MEMORANDUM OF LAW AND POINTS  
OF AUTHORITIES IN SUPPORT OF  
MOTION FOR AMENDMENT AND  
RECONSIDERATION OF THE ORDER  
GRANTING SUMMARY JUDGMENT  
TO DEFENDANT O'SHAUGHNESSY  
REAL ESTATE, INC., f/k/a  
PRUDENTIAL CAROLINA REAL  
ESTATE n/k/a CAROLINA ONE REAL  
ESTATE**

Plaintiff Johnson Koola ("Koola") respectfully submits this Memorandum of Law and Points and Authorities in support of Koola's Motion for Amendment and Reconsideration of this Court's November 10, 2014 Order, filed on November 18, 2014, which granted summary judgment to O'Shaughnessy Real Estate Inc., f/k/a Prudential Carolina Real Estate n/k/a Carolina One Real Estate ("Carolina One") and dismissed Koola's claims against Carolina One.

**A: FACTUAL BACKGROUND**

Koola's claims against Carolina One are for violations of South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10 *et seq.* ("HPA"), specifically S.C. Code Ann. § 27-31-430

and various other South Carolina statutes in its role as an agent in the sale of a Cambridge Lakes condominium in Mt. Pleasant, SC, in February 2004 to Koola.

#### **A I. Establishment of Cambridge Lakes Condominiums**

Cambridge Lakes condominiums (“Condominiums”) were converted from Cambridge Lakes Apartments (Apartments”) according to the provisions of HPA. Defendant Cambridge Lakes, LP, built the Apartments around the time period 1999-2000 and operated as rental Apartments. Defendant Stephen Heape was the general partner and defendant Albert Estee was one of the limited partners of Cambridge Lakes, LP. Defendant Cambridge Two, LLC and its sole managing partner, defendant Albert Estee (collectively, “developer/seller”), offered to buy out the Apartments from Cambridge Lakes, LP, in 2002 with the aim of converting them to Condominiums.

On August 9, 2002, the developer/seller hired Trademark Properties, Inc.(“Trademark”) (*Ex. 1, p 1,3, Ex. 2) for help in the conversion process and subsequent sale of the converted Condominiums.* Hiring took place well before the establishment of the Cambridge Lake Horizontal Property Regime on February 24, 2003 (*Ex. 3, p 1*). In June 2003, the developer/seller terminated Trademark’s services as the exclusive real estate agent stating, among others, that Trademark failed to deliver statutorily required disclosure statements, “Disclosure of the Physical Condition of the Buildings” Report as mandated by S.C. Code Ann. § 27-31-430 (“S.C. Code Ann. § 27-31-430-mandated Disclosure Report”), to the prospective Condominium buyers (*Ex. 2, p 3, Ex. 4, Ex. 5*) and immediately hired Carolina One as the exclusive real estate selling agent to complete the sale of the Condominiums.

#### **A II. Kola’s Purchase of a Cambridge Lakes Condominium and Subsequent Termination of Koola’s Ownership of His Condominium**

In January 2004, Koola entered into a Buyer Representation Agreement (*Ex. 6*) with Carolina One to represent Koola [Principal/Buyer Client] in the acquisition of real property as an Exclusive Buyer’s Agent, agreed to pay 3% of the purchase price as compensation to Carolina One

for its services, signed a Consent to Dual Agency relationship (Ex. 7) with Carolina One, which acknowledged that Koola is the Principal/Buyer Client and Carolina One is the Brokerage Company/Licensee Dual Agent, and finally a contract to purchase a Condominium from developer/seller (Ex. 8). **Koola's Agent Carolina One, as well as, the contract to buy the Condominium (Ex. 8) did not inform Koola that the condominium in question was a converted condominium.** Carolina One provided Koola with a copy of the State of South Carolina Residential Property Condition Disclosure Statement under S.C. Code Ann. § 27-50-1 (Ex. 9), which contained a brief statement: "Condo Conversion – Still Rentals on Property" (Ex. 9, p 3). **Koola's Agent Carolina One did not disclose to Koola that Koola, as a prospective buyer of a converted condominium, has a right to receive the "S.C. Code Ann. § 27-31-430-mandated Disclosure Report".** Carolina One sold the condominium to Koola stating "**excellent price for quality product!**" (Ex. 10).

Shortly before the closing of the sale, Carolina One provided Koola with a copy of the Master Deed for Cambridge Lake[s] Horizontal Property Regime (Ex. 3, p 1), which stated that the Cambridge Lake[s] Horizontal Property Regime (the "Condominium") was established according to the provisions of HPA. These factual statements (Ex. 2, Ex. 4, Ex. 5, Ex. 9, p 3) would establish that Carolina One had actual and constructive knowledge that the condominium under transaction is/was a "condo conversion" and should have alerted Carolina One that the sale of the converted condominium has to comply with the provisions of HPA and more specifically to the provisions of S.C. Code Ann. § 27-31-430, "Disclosure of the Physical Condition of the Buildings".

Koola interacted with the developer/seller only through Carolina One. Koola received the copy of the Master Deed (Ex. 3) and State of South Carolina Residential Property Condition Disclosure Statement under S.C. Code Ann. § 27-50-1 (Ex. 9) from Carolina One. The hiring agreement between developer/seller and Trademark (Ex. 1) stipulated that the developer/seller shall

not deal directly with prospective buyers of the Condominiums during the period of Agency, and that developer/seller shall refer any inquiries received from buyers to Trademark. It is to be presumed that the hiring agreement between developer/seller and Carolina One included the same stipulation that the developer/seller shall not deal directly with prospective buyers of the Condominiums, but through Carolina One only.

Koola and his Mortgagee received the "Builder's Certification" (Ex. 11) from developer/seller which stated: "For Condo Conversions: The structural, health and safety repairs and remodeling have been completed", which was intended to affirm that the developer/seller had complied with S.C. Code Ann. § 27-31-430.

Koola purchased the condominium in Feb. 2004, after paying 10% down payment. Because of the representations made in the Master Deed, the "Builder's Certification", the appraisal report, lack of any cautionary or adverse information from Carolina One, and the assurance that Carolina One is Koola's Exclusive Buyer's Agent and/or Dual Agent, Koola was made to believe that he bought a "Quality Product for Excellent Price", which complied with the HPA.

In June/July 2008, Koola was attempting to sell his condominium to enable him to pay off his mortgage related debts. In June 2008, the Cambridge Lakes Homeowners Association, Inc. ("HOA") initiated a lawsuit<sup>1</sup> ("HOA's lawsuit") against the defendants named in this case at bar and a host of other defendants stating massive construction defects (Ex.12, p 3, Ex. 13) and violation of South Carolina Horizontal Property Act, S.C. Code Ann. 27-31-10 et seq. (Ex.14, p 19, and Ex. 15, p 24). The HOA claimed \$8 million as the cost to repair the construction defects (Ex. 13, p 6) in the common elements of Cambridge Lakes Condominiums. This translates into defects

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<sup>1</sup> Summons and Complaint, *Cambridge Lakes HOA v. Bostic Bros. Construction, Inc. et al.*, Case No.: 2008-CP-10-3506, June 8, 2008 (Ex 13); Second Amended Complaint, June 28, 2010 (Ex. 14) and Third Amended Complaint, July 14, 2010 (Ex. 15).

worth \$92,307 in the 3-bedroom condominium Koola purchased. From the Second and Third Amended Complaints filed in the HOA's lawsuit in 2010, Koola realized that the conversion of the Apartments to Condominiums did not comply with the HPA, the developer/seller did not comply with the mandate of S.C. Code Ann. § 27-31-430, and that the Builder's Certification (Ex. 11) was falsified and fraudulent.

Because of the alleged massive construction defects and the stated potential liability of \$92,307 attributable to Koola's unit, Koola could not sell his unit in 2008. During 2008-2011, all real estate transactions in Cambridge Lakes were practically frozen except for short sales and foreclosures, and nearly 30% of the Condominium owners lost their homes. In 2009, Koola became insolvent and filed for Chapter 7 Bankruptcy. After discharge from Bankruptcy in July 2009 and in the second half of 2009, Koola made a **second and a third attempt to sell** his condominium but could not.

In April/May 2010, Koola made a **fourth attempt to sell** his condominium through a short sale to clear all his mortgage related debts. In late 2010, the HOA and the Mortgagees initiated civil action for collection of unpaid monthly assessments as well as multiple foreclosure actions against Koola. Because of these multiple adversarial actions, Koola cancelled the short sale in September 2010. **The filing of the foreclosure actions and HOA's civil action in 2010 marked the termination of Koola's ownership of his condominium, which caused large damages to Koola.**

### **A III. Carolina One's Non-compliance with the Hon. J. C. Nicholson's Order**

On February 20, 2013, the Hon. J. C. Nicholson, Jr., issued an Order, filed on February 27, 2013 (Ex. 16 p 7), which ordered:

".... [A]s the Amended Complaint was never filed by counsel for the plaintiff, the Answer filed by Carolina One to the Amended Complaint is hereby struck and of no effect. The Caption to the original complaint shall be amended as follows, Defendant Carolina One Charleston Home Team Properties, LLC, Charleston Home Team, LLC,



Carolina One Real Estate and William E. Jenkinson, IV, individually shall be dismissed, without prejudice, and replaced with O'Shaughnessy Real Estate, Inc. f/k/a Prudential Carolina Real Estate n/k/a Carolina One Real estate. O'Shaughnessy Real Estate, Inc. f/k/a Prudential Carolina Real Estate n/k/a Carolina One Real Estate shall file its answer, to the newly captioned Complaint, within thirty (30) days from the execution of this Order."

Koola realizes that the amendment to the Caption is to be executed by the Clerk of the Court; for unknown reasons, the caption to the original Complaint has not been amended as per the Order. Carolina One changed the Caption on its own accord<sup>2</sup>. Significantly, Carolina One has not yet filed its Answer to Koola's Complaint. As such, there is no Answer by Carolina One to Koola's Summons and Complaint on file.

#### **A IV. Carolina One's Failure to Make or Cooperate in Discovery and Koola's Motion to Compel**

Koola served Discovery on Carolina One in December 2012 (Ex. 17) and March 2013 (Ex. 18, Ex. 19). Carolina One did not respond to Koola's Discovery (Ex. 17-19). Nevertheless, Carolina One filed a Motion for Summary Judgment on October 2, 2014 (Ex. 20). Carolina One did not respond to Koola's request to provide Koola with a copy of its original Discovery responses with Proof of Service. Koola filed a Motion to Compel on October 13, 2014 (Ex. 21) and Memorandum in Support of Motion to Compel on October 20, 2014 (Ex. 22). On October 23, 2014, one day after the Motion hearing Koola received Carolina One's Discovery responses (Ex. 23, 24) to Koola's March 2013 Discovery; Koola has not yet received Carolina One's responses to Koola's December 2012 Discovery.

#### **B: SUMMARY JUDGMENT STANDARD**

"The motion for [Summary Judgment] [and supporting documents] shall be served at least 10 days before the time fixed for the hearing....The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and

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<sup>2</sup> Currently, Carolina One uses an Amended Caption and plaintiff and all other defendants use the Original Caption.

admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law....”.

Rule 56(c), SCRPC; *Epstein v. Coastal Timber Co. Inc.*, 393 S.C. 276, 711 S.E.2d 912 (2011).

“Summary Judgment is proper where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Summary judgment should not be granted even when there is no dispute as to the evidentiary facts if there is dispute as to the conclusions to be drawn from those facts. In determining whether any triable issues exist, the evidence and all inferences, which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Summary judgment should be invoked cautiously to avoid improperly denying a party a trial on the disputed factual issues. (Internal citations omitted).

*Angus v. Burroughs & Chapin Co.*, 358 S.C. 498, 596 S.E.2d 67, 69 (Ct.App. 2004).

This Court has plainly stated that “even when there is no dispute as to the evidentiary facts, but only to as to the conclusions or inferences to be drawn from them, summary judgment should be denied.

*Montgomery v. CSX Transportation, Inc.*, 376 S.C. 37, 656 S.E.2d 20 (2008).

Summary Judgment is not appropriate where further inquiry into facts of the case is desirable to clarify the application of law....All ambiguities, conclusions and inferences arising from the evidence must be construed most sternly against the moving party.

*Redwend Ltd. Partnership v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (Ct.App. 2004).

[W]e hold that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand summary Judgment.

*Hancock v. Mid-South Management Co.*, 381 S.C. 326, 673 S.E.2d 801, 803 (2009);

South Carolina has defined the evidence, which meets the scintilla standard as any material evidence that, if true, would tend to establish the issue in the mind of a reasonable juror.

*Young v. Hyman Motors, Inc.* 199 S.C. 233, 242-243, 19. S.C.2d 109, 113 (1942).

## **C: PRINCIPLES OF STATUTORY INTERPRETATION**

The contradicting interpretation of S.C. Code Ann. 27-31-430, is the primary cause of the legal dispute between Koola and the defendants in the case at bar.

The Appellate Courts have laid out the Principles of Statutory Interpretation by the Courts.

“The issue of interpretation of a statute is a question of law for the court....

The cardinal rule of statutory interpretation is to determine the intent of the legislature....

The legislative intent should be ascertained from the plain language of the statute. The language must be read in a sense, which harmonizes with its subject matter and accords with its general purpose....

When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning....

If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself. An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law....

A statute as a whole must receive a practical, reasonable, and a fair interpretation consonant with the purpose, design, and policy of the lawmakers....

Courts will reject a statutory interpretation, which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention. A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and policy of the law.

*Wieters v. Bon-Secours-St. Francis Xavier Hospital, Inc. et al.* 378 S.C. 160, 662 S.E.2d 430 (CtApp. 2008).

Determination of legislative intent has been emphasized in multiple Appellate Courts authorities: *Epstein v. Coastal Timber Co. Inc.*, supra; *Kennedy v. S.C. Retirement System*, 345 S.C. 339, 549 S.E.2d 243 (2001); *Marichris, LLC v. Derrick*, 384 S.C. 345, 682 S.E.2d 301 (Ct..App. 2009).

## **D: ARGUMENTS**

### **D.I. THE TRIAL JUDGE'S REFUSAL TO HEAR ALL OF KOOLA'S REPRESENTATIONS DURING MOTION HEARING WAS VERY PREJUDICIAL TO KOOLA AND VIOLATIVE OF CONSTITUTIONAL PROVISIONS.**

Carolina One is a joint tortfeasor with other defendants in the case at bar and is jointly and severally liable to Koola. Establishment of tortfeasor liability is crucial for the adjudication of Koola's claims against Carolina One. S.C. Code Ann. § 15-38-10 *et seq.*

Just prior to Carolina One's Motion for Summary Judgment hearing on October 22, 2014, the Trial Judge heard Trademark's Motion for Summary Judgment. Koola represented to the Trial Judge that Trademark is a joint tortfeasor with other co-defendants for violation of HPA and is therefore liable to Koola. Immediately, the Trial Judge told Koola that the Trial Judge does not accept Koola's argument that Trademark is a joint tortfeasor. Koola attempted to provide a basis for the finding that Trademark is a joint tortfeasor based on authorities from previous Supreme Court decisions: *Barker v. Sauls*, Supreme Court of South Carolina, Opinion No. 22564, Decided 1986, 345 S.E.2d 244 (1986); *JKT Company, Inc. v. Hardwick*, Supreme Court of South Carolina, No. 21162, 265 S.E.2d 519 (1980); *Terlinde v. Neely*, Supreme Court of South Carolina, No. 21319, 271 S.E.2d 768 (1980)

However, the Trial Judge refused to hear Koola's position. The Trial Judge advised Koola that the Trial Judge's Ruling from the Bench on Joint Tortfeasor stands, and Koola could appeal the Trial Judge's decision and get his Decision reversed. The Trial Judge promulgated Court's own "rules governing practice and procedure". *The State v. Duncan, Jr.*, Opinion No. 21172, Supreme Court of South Carolina, 264 S.E.2d 421 (1980). The Trial Judge did not hear any further Koola's arguments detailed in his Memorandum of Law and Points of Authorities on file. Shortly thereafter, the Trial Judge granted Trademark Summary Judgment; this ruling became the Law of the Case. Because of this ruling from the bench Koola could not present the argument that Carolina One is a joint tortfeasor with all other defendants during Carolina One's motion hearing. Subsequently, the Trial Judge granted Summary Judgment to Carolina One.

In *The State v. Duncan, Jr., supra*, the Supreme Court held that a circuit court may not promulgate its own "...rules governing practice and procedure....", and the promulgation of rules by the respective circuits is inconsistent with the South Carolina constitutional mandates, S.C.

CONST. art. V, § 1 and § 4 of the South Carolina Constitution, and that the Circuit Court's Order in *Duncan* is unconstitutional and void.

Modifications or limitations of Supreme Court's decisions [on joint tortfeasors] also violated S.C. CONST. art. V, § 9 of South Carolina Constitution. *Daniels v. City of Goose Creek*, 314 S.C. 494, 431 S.E.2d 256 (Ct.App. 1993);

The Trial Judge did not hear all of Koola's representations during motion hearing and denied Koola Due Process of Law of the U.S. Constitution.

The Trial Judge's refusal to hear Koola's arguments in support of joint tortfeasors and the Trial Judge advice that that the Trial Judge's Decision on joint tortfeasors stands, and Koola could appeal the Trial Judge's decision and get his Decision reversed, created two classes of citizens; one class can get relief in the Circuit Court, and another class shall go to the Appellate Courts to get relief; the said decisions denied Koola Equal Protection Law of the U.S. Constitution.

An appeal is a very burdensome process, time consuming and very expensive, especially for a 71-year old pro se appellant; Koola is uncertain whether he would outlive the appeal's process. Thus, the Trial Judge's Decision amounts to denial of Justice to Koola and an unusual punishment, violation of U.S. Constitution.

Code of Judicial Conduct, Rule 501, SCACR, provides as follows:

A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity, and impartiality of the judiciary. Canon 2. (A), CJC, Rule 510, SCACR.

A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law....Canon 3 B.(7), Rule 510, SCACR.

In effect, the Trial judge overruled Appellate Courts' decisions on joint tortfeasors and precedents and established law on joint tortfeasor.

In *McLeod*, the Supreme Court states: “The doctrine of stare decisis says that where a principle of law has become settled by a series of court decisions, it should be followed in similar cases.”.... Therefore, “[s]tare decisis should be used to foster stability and certainty in the law, but [] not to perpetuate error.”....“Stare decisis applies with full force with respect to questions of statutory interpretation because the legislature is free to correct us if we misinterpret its words. *McLeod v. Starnes*, 396 S.C. 647, 723 S.E.2d 198 (2012).

## **D II. CAROLINA ONE’S DUTY OF CARE TO KOOLA IS STATUTORILY CREATED**

### **D II (i) Principal and Agent, Buyer Representation Agreement, Dual Agency and Fiduciary Duty**

In January 2004 Koola entered into a Buyer Representation Agreement (Ex. 5) with Carolina One to represent Koola in the acquisition of real property as an Exclusive Buyer’s Agent, which has been acknowledged as a legally binding document (Ex 5). In consideration of the services provided to Koola by Carolina One, Carolina One will be compensated 3% of the purchase price of any property purchased by Koola. This Buyer’s Representation Agreement established: (i) Koola is a Principal/Buyer Client<sup>3</sup>, who is distinguished from a customer<sup>3</sup>; (ii) Carolina One is an agent; (iii) As an agent, Carolina One owed utmost loyalty to Koola; and (iv) Moreover, a Fiduciary Duty and the Duty of Care on the part of Carolina One toward Koola were established. S.C. Code Ann. 40-57-30(A); *Peoples Fed. S & L v. Myrtle Beach Golf*, Court of Appeals of South Carolina, Decided in 1992, 425 S.E.2d 764 (Ct.App. 1992). *Munn v. Haymount Rehab. & Nursing Center*, Court of Appeals of North Carolina, No. COA10-105, 704 S.E.2d 290 (N.C.App. 2010). Because of the Agency agreement, Carolina One is bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting to Koola. S.C. Code Ann. 40-57-137(A).

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<sup>3</sup> An agent owes fiduciary duty to a client, but not to a customer.

Subsequently, Koola also signed a Dual Agency Agreement with Carolina One, S.C. Code Ann. 40-57-137(M)(1), which also acknowledged that: (i) Koola is a Principal/Buyer Client; (ii) Developer/seller is a Principal/Seller Client; and (iii) Brokerage Company/Licensee (Carolina One) is the Dual Agent representing both Buyer Client and Seller Client. As a Dual Agent, Carolina One owed Fiduciary Duty as well as Duty of Care to both Koola (Buyer/Client) and developer/seller (Seller/Client). In real estate, the agent is a fiduciary of the principal and is legally bound to act in good faith to promote and protect the interests of the principal. *Peoples Fed. S & L v. Myrtle Beach Golf, supra*, *Munn v. Haymount Rehab. & Nursing Center, supra*.

An Agent is endowed with Express, Implied and Apparent Authority from the Principal to perform certain acts on behalf of the Principal to the third parties and acts as a de facto Principal in performing the duties to the third party. The Agent stands in the shoes of the Principal.

“An agent’s authority is composed of his or her actual authority, whether express or implied, together with the apparent authority which the principal by his or her conduct is precluded from denying....

While actual authority is expressly conferred upon the agent by the principal, apparent authority is when the principal knowingly permits the agent to exercise authority, or the principal holds the agent out as possessing such authority.”

*Roberson v. Southern Finance of South Carolina, Inc.*, 365 S.C. 6, 615 S.E.2d 112 (2005). Also, *Munn v. Haymount Rehab. & Nursing Center, supra*.

“General agent’s authority is determined by nature of business, and is coextensive with his scope of employment, as he has right to do not only what is customary in obtaining business, but whatever is reasonably incidental thereto.”

*Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 468 S.E.2d 292 (1996).

The authorized acts of an Agent are the acts of the Principal. An Agent’s allegedly negligent actions could be imputed to the Principal, when the agent had authority to act on behalf of Principal.

*Roberson v. Southern Finance of South Carolina, Inc., supra*; *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006).

“Doctrine that an agent is not liable for contracts made on behalf of disclosed principal did not apply to suit by buyers of mobile home against salesman and secretary; buyers sued in tort, alleging that salesman had committed fraud by telling the buyers they could not rescind their contract to buy the mobile home and in misrepresenting the interest rate and that the salesman was negligent in all aspects of handling the

transaction, and alleged that secretary was negligent in administering an oath and attesting signatures....

The doctrine that an agent is not liable for contracts made on behalf of a disclosed principal does not apply when the agent must answer, not in contract, but in tort.”

*Thomas v. Delta Enterprises, Inc.*, 302 S.C. 351, 396 S.E.2d 122 (Ct.App. 1990).

“Agent as well as principal concerned in sale has a duty not to make false statements of fact as inducements to buyer....

An agent’s liability for his own tortious acts is unaffected by fact that he acted in his representative capacity. An agent is liable to third person for damages from violation of a duty, which agent owes to third person, and it is immaterial whether that violation is one of malfeasance, misfeasance or nonfeasance.

*Lawlor v. Scheper*, 232 S.C. 94, 101 S.E.2d 269 (1957). Also, *Gilbert v. Mid-South Machinery Co., Inc.*, 267 S.C. 211, 227 S.E.2d 189 (1976)

“Agency is the fiduciary relation, which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other to act.”

*Munn, supra*; Restatement (second) of Agency § 1 (1958); *Peoples Fed. S & L v. Myrtle Beach Golf, supra*.

Thus, the developer/seller (Principal), through his authority, conferred upon Carolina One (Agent) the duty to convey the “S.C. Code ann. § 27-31-430-mandated Disclosure Report” to Koola and all prospective Cambridge Lakes condominium buyers. The agency laws and fiduciary duty created a Duty of Care by Carolina One to Koola; Carolina One is liable to Koola for the Breach of Duty.

In addition to the Agency laws and under South Carolina Limited Liability Company Act, S.C. Code Ann. § 33-44-303, the developer/seller *assigned or delegated* the responsibility of providing the HPA-mandated “Disclosure Report” to condominium buyers onto Carolina One.

In *State of South Carolina v. C&L Corp. Inc.*, 280 S.C. 519, 313 S.E.2d 334, the Appellate Court affirmed the lower court’s decision that the developer and its agent are liable for misrepresentations made by salesman during negotiation for sale of lots, regardless of their knowledge as to those representations and confirmed civil penalty under Unfair Trade Practices Act. The Trial Judge failed to apprehend that Carolina One breached its Duty of Care to Koola which were established through the Agency laws and Fiduciary Duty



**D II (ii). Carolina One is a joint tortfeasor**

Defendant Stephen Heape, general partner of Defendant Cambridge Lakes, LP, facilitated the sale of Cambridge Lakes Apartments to Defendant Cambridge Two, LLC and Defendant Albert Estee (collectively, developer/seller), who later converted all the apartments to condominiums with the assistance of Trademark and employed Trademark in the very initial stage and Carolina One in the later stage as exclusive agents to sell all the converted condominiums to general public including Koola. Sale of the Apartments, Conversion of the Apartments into Condominiums and the subsequent sale of the converted condominiums to the general public were in violation of S.C. Code Ann. § 27-31-430, which caused harm to Koola. The culpability on the part of each defendant cannot practically be divided and is a joint tort. All the joint tortfeasors shall be held jointly and severally liable. S. C. Contribution Among Tortfeasors Act, S.C. Code Ann. § 15-38-10 et seq.; *Scott by McClure v. Fruehauf Corp.*, 302 S.C. 364, 396 S.E.2d 35 (1990).

Currently there are no privity requirements in South Carolina Jurisdiction for a plaintiff's cause of action against a joint tortfeasor.

"The erosion of the concept of Privity has been a legal phenomenon for more than a decade, and this Court has not been reluctant to contribute to its demise.... [L]ack of Privity as a defense to a cause of action has been of questionable vitality in South Carolina. Today, we seek to still all whispers of its continued existence." Hence a purchaser may sue a builder on his implied warranty of service, despite the purchaser's lack of contractual privity. Any contrary implication by the Court of Appeals in *Carolina Winds* is rejected." (Internal citations omitted.) *Kennedy vs. Columbia Lumber and Manufacturing Co., Inc.*, 299 S.C. 335, 384 S.E.2d 730 (1989).

"A tortfeasor [agent] may be subjected to tort liability for injury to a third party arising out of the tortfeasor's contractual relationship with another [principal], despite the absence of Privity between the tortfeasor [agent] and the third party [plaintiff]; such liability exists independently of contract, and rests upon the tortfeasor's duty to exercise due care.

....

It is essential to liability for negligence that the parties have some relationship recognized by law to support the duty owed by the tortfeasor. This duty may be derived from the tortfeasor's contractual relationship with another." (Internal citations omitted). *Barker v. Sauls, supra*.

*"In South Carolina, however, the supplier of a defective product is accountable to an injured party on ordinary negligence principles despite a lack of Privity between the seller and the injured party. Parties that have no legal relation to one another and who owe the same duty of care to the injured party share a common liability and are joint tortfeasors without a right of indemnity between them".*

*Scott v. Fruehauf Corp., supra.*

Carolina One is a joint tortfeasor with developer/seller, and that they have a contractual relationship with each other, and both have a duty of care to Koola. The authority in *Scott* established that Trademark and Carolina One have no legal relation to one another, but they have the same duty of care to Koola, and both are joint tortfeasors. Koola has demonstratively established that Carolina One is a joint tortfeasor and is liable to Koola for the damages to Koola.

Koola could not present this argument to the Court that Carolina One is a joint tortfeasor and is jointly and severally liable to Koola for damages because of the Trail Judge's ruling in the Trademark's motion hearing.

#### **D II (iii): Duties of Real Estate Licensees and Real Estate Sellers/brokers**

S.C. Code Ann. § 27-50-50(C) mandates that under the terms of regulations set forth by the real estate commission, a real estate licensee acting as a listing agent or a selling agent is responsible to deliver all the disclosure reports to the purchaser.

S.C. Code Ann. § 27-50-70 mandates that a listing agent or any real estate licensee operating for any party in a residential real estate transaction must inform in writing each owner covered by the listing agreement of the owner's obligations prescribed in this article. Koola contends that when the real property in question is a converted condominium, the listing agent or the real estate licensee must inform in writing each owner covered by the listing agreement of the owner's obligation to provide the HPA-mandated Disclosure Report as specified in S.C. Code Ann. § 27-31-430 to prospective buyers.

In *Winters v. Fiddie*, 394 S.C. 269, 716 S.E.2d 316 (Ct.App. 2011) the Appellate Court, citing S.C. Code Ann. 27-50-65 (2007), ruled that failure to provide a buyer with an accurate disclosure statement may subject the owner and his or her real estate agent to civil penalty, and affirmed the Lower Court's ruling that the complaint alleged a cause of action under statute governing actions for knowing disclosures of false, incomplete, or misleading material information regarding the condition of residential property and damages and punitive damages.

**D III: CAROLINA ONE IS LIABLE TO KOOLA UNDER HPA BECAUSE OF THE MANDATE IN S.C. CODE ANN. § 27-31-430.**

The developer/seller of converted condominiums, which are converted from apartments under the provisions of HPA is mandated to provide "S.C. Code Ann. § 27-31-430-mandated Disclosure Report" to each prospective buyers.

The mandate of S.C. Code Ann. § 27-31-430 has two elements: (i) **Preparation of the Disclosure of the Physical Condition of the Buildings Report** prepared under the guidelines of S.C. Code Ann. § 27-31-430; and (ii) **Timely delivery of the said Disclosure Report to prospective purchases**. When the developer/seller himself sells the converted condominiums to the buyers, then he assumes both these responsibilities. When the developer/seller, the **Principal**, authorizes a real estate broker/licensee to sell the converted condominiums, then he **transfers** or **delegates** these responsibilities to the real estate broker/licensee, the **Agent**.

S.C. Code Ann. § 40-57-137(F), however, has provided that a seller's agent is not obligated to discover latent defects in property. Therefore, **preparation** of the "Disclosure of the Physical Condition of the Buildings" Report **mandated by S.C. Code Ann. § 27-31-430** [discovery of latent defects] is the sole responsibility of the developer/seller, the Principal, and the **timely delivery of the said Disclosure Report** to prospective purchasers falls on Carolina One, the Agent. Carolina One as the agent failed in its duty of care to Koola. However, Carolina One interprets the mandate

in S.C. Code Ann. § 27-31-430 to imply that the developer/seller, the Principal, has to prepare the “S.C. Code Ann. § 27-31-430-mandated Disclosure Report” and deliver the “S.C. Code Ann. § 27-31-430-mandated Disclosure Report” to the prospective buyer, and that the Agent has no responsibility what so ever.

Koola and Carolina One draw different conclusions about the mandate in S.C. Code Ann. § 27-31-430. For this reason, the Trial Judge, [an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law, Preamble, Rule 501, CJC] should have determined the legislative intent of S.C. Code Ann. § 27-31-430 before ruling on Carolina One’s summary judgment motion. “If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself. An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law....” *Wieters, supra*.

A plain reading of the S.C. Code Ann. § 27-31-430 reveal the following facts: (i) The buyer of the converted condominium has no responsibility to discover any latent defects; (ii) The developer/seller has to provide the “S.C. Code Ann. § 27-31-430-mandated Disclosure Report” to all prospective buyers when the developer/seller himself sells the converted condominiums without any real estate broker/licensee/agent; (iii) The legislature did not spell out that when the developer/seller employs an exclusive real estate broker/agent to sell the converted condominiums, the duty to provide the “S.C. Code Ann. § 27-31-430-mandated Disclosure Report” falls on the exclusive real estate broker/agent because the legislature is well aware of the time honored Agency laws; (iv) The **mandate in S.C. Code Ann. § 27-31-430** is an absolute legislative mandate<sup>4</sup> with

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<sup>4</sup> In the case of a condominium covered under the Horizontal Property Act, each co-owner shall have exclusive ownership and possession of his apartment and shall have an undivided interest in the common elements. S.C. Code Ann. § 27-31-60 (a). For this reason a condominium buyer cannot inspect the common elements for any latent defects. This is the basis for the Legislative mandate in S.C. Code Ann. § 27-31-430.

Strict Liability, the violation of this mandate is automatically liable under South Carolina Unfair Trade Practices Act. This is the only violation in real estate transactions that is defined as Unfair Trade Practices by the Legislature. From these facts, a reasonable person could conclude that the **protection of buyers of converted condominiums is the only legislative intent** of S.C. Code Ann. § 27-31-430. The Trial Judge failed to apprehend the legislative intent of S.C. Code Ann. § 27-31-430 and granted summary judgment to Carolina One.

If the Principal fails to prepare the mandated Disclosure report, it becomes the duty of the Agent under the mandate of S.C. Code Ann. §27-50-70 to inform in writing to the principal that he/she has to prepare the “Disclosure of the Physical Condition of the Buildings” report under the guidelines of S.C. Code Ann. § 27-31-430. If the developer/seller fails to prepare the said Disclosure report in spite of the real estate licensee’s notice in writing, the real estate agent/licensee, because of the statutorily created duty of care to the buyer, has to disclose to the buyer that his/her right to receive the disclosure report has been violated. Carolina One did not comply with the mandate of S.C. Code Ann. §27-50-70

The Listing agreement stipulated that Owner [developer/seller] shall not deal directly with prospective buyers of this property during the period of this agency (Ex 1, Clause P(7). Koola dealt with the developer/seller only through Carolina One. Nevertheless, Carolina One argued in the Court that the developer/seller, and not Carolina One, has the duty to convey the “S.C. Code Ann. § 27-31-430-mandated Disclosure Report” to Koola. Carolina One does not address the question how can the prospective buyer receive the Disclosure report from the developer/seller, when the buyer has no direct access to the developer/seller. This stipulation in the listing agreement confirms further that Carolina One, the Agent, shall provide the “S.C. Code Ann. § 27-31-430-mandated Disclosure Report” to Koola and the prospective buyers. The Trial Judge failed to apprehend this contradiction in Carolina One’s argument.

#### **D IV: THE DOCTRINES OF THE LAW OF THE CASE AND COLLATERAL ESTOPPEL**

During the progression of the HOA's lawsuit, Trademark filed a Motion for Summary Judgment against the Plaintiff HOA (Ex.25) stating, among others: (i) Trademark has no duty to provide the S.C. Code Ann § 27-31-430-mandated "Disclosure Report" to prospective buyers; (ii) Trademark is not liable for violation of Unfair Trade Practices; and (iii) Plaintiff HOA is not a prospective purchaser of the condominiums under S.C. Code Ann. § 27-31-430. Both Trademark and Carolina argued the same reasons against Koola in their Motion for Summary Judgment.

The Plaintiff HOA filed a Memorandum in Opposition to Trademark's Motion for Summary Judgment (Ex. 26) and argued, among others: (i) Under South Carolina Limited Liability Company Act, S.C. Code Ann. 33-44-303, the developer/seller, being an LLC, *assigned or delegated* the responsibility of providing the S.C. Code Ann § 27-31-430-mandated "Disclosure Report" to condominium buyers to Trademark; and (ii) Based on Trademark's representations, the developer/seller hired Trademark to market, sale and manage the conversion of the Cambridge Lakes project and relied upon Trademark to handle and to convey all required communication or information to prospective purchasers (Ex. 2 Ex. 4 ).

The Trial Judge in HOA's lawsuit<sup>1</sup> denied Trademark's Motion for Summary Judgment and denied Trademark's argument that it is not liable to Cambridge Lakes condominium buyers and co-plaintiff HOA for violation of S.C. Code Ann. § 27-31-430 (Ex. 27). Significantly, Trademark did not appeal the decision of the Court. The Trial Court's decision became the Law of the Case with respect to Carolina One and Trademark in the sale of Cambridge Lakes condominiums. Under the Doctrine of the Law of the Case, Trademark and Carolina One, since both sold Condominiums to prospective buyers including Koola, cannot argue any more in a Court of Law that Trademark and

Carolina One have no duty to provide the “S.C. Code Ann. § 27-31-430-mandated Disclosure Report” to any Cambridge Lakes condominium buyers including Koola.

There is a massive body of case laws, which uphold the Doctrine of the Law of the Case: *Bone v. U.S. Food Service*, 399 S.C. 566, 733 S.E.2d 200 (2012); *Charleston Lumber v. Miller Housing*, 338 S.C. 171, 525 S.E.2d 869(1989); *Eldrige v. Eldrige*, 393 S.C. 113, 728 S.E.2d 24 (2012) *Floyd v. Floyd*, 365 S.C. 56, 615 S.E.2d 465 (CtApp. 2005);

The Trial Judge did not consider/apply the Doctrine of the Law of the Case while hearing Carolina One’s and Trademark’s Motion for Summary Judgment. The Memorandum of Law and Points of Authorities filed by Koola before Motion hearing clearly presented the Doctrine of the Law of the Case to the Trial Court for its consideration. The Trial Judge in the case at bar overruled the Trial Judge in the HOA’s lawsuit. **“This State has a long standing rule that one judge of the same court cannot overrule another.”** *Shirley’s Iron Works, Inc. v. City of Union*, 743 S.E.2d 778 (2013). In *Kimmer*, a Trial Judge erroneously ruled another Trial Judge’s [interlocutory, unappealable] denial of Summary Judgment as the Law of the Case; the Court of Appeals, however, ruled that the second Trial Judge erred in the ruling. *Kimmer v. Wright*, 396 S.C. 53, 719 S.E.2d 265(CtApp. 2011).

“Courts will reject a statutory interpretation, which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention”. *Wieters, supra*. Thus, in the HOA’s lawsuit related to the sale of Cambridge Lakes Condominiums, the Trial Judge ruled that the real estate agent [Trademark], but not the developer/seller, is liable to convey “S.C. Code Ann. § 27-31-430-mandated Disclosure Report” to the Condominium buyers. In Koola’s lawsuit related to the sale of Cambridge Lakes Condominiums, the Trial Judge ruled that the developer/seller, but not the real estate agent

[Carolina One], is liable to convey “S.C. Code Ann. § 27-31-430-mandated Disclosure Report” to the Condominium buyers.

Collateral Estoppel is a doctrine barring a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one (Black’s Law Dictionary, Ninth Edition).

**D V: CAROLINA ONE’S FAILURE TO MAKE THE DISCLOSURE AS MANDATED BY S.C. CODE ANN. § 27-31-430 AND MISREPRESENTATION CONSTITUTED A VIOLATION OF S.C. UNFAIR TRADE PRACTICES ACT.**

Carolina One is liable to Koola for Unfair Trade Practices on two counts: (i) Violation of S.C. Code 27-31-430 specifically and (ii) Negligence due to Misrepresentation for Violation of HPA in general.

A failure to make the disclosure statement under S.C. Code § 27-31-430 automatically constitutes a violation of the S.C. Unfair Trade Practices Act, which is the **legislative mandate** of S.C. Code § 27-31-43. S.C. Legislature has already determined that certain trade practices [e.g. the violation of S.C. Code § 27-31-430] shall automatically constitute a violation of the S.C. Unfair Trade Practices Act. Even the Supreme Court cannot overrule a legislative intent or mandates, which are supreme in S.C jurisdiction, unless there is a violation of State or U.S. Constitution.

The question before this Court is whether Koola has shown to this Court that Carolina One has violated the mandate in S.C. Code § 27-31-430, which Koola has done, *supra*. For this reason, Carolina One is automatically liable to Koola for violation of S.C. Unfair Trade Practices Act.

Carolina One is also liable to Koola for Negligence under Unfair Trade Practices Act for violation of HPA, generally, because Carolina One made a misrepresentation to Koola. Carolina One’s action adversely affected the public interest of the State of South Carolina. In Cambridge



Lakes alone, Carolina One's violation adversely affected all the Condominium buyers, which total about two hundred buyers in Cambridge Lakes.

In *State of South Carolina v. C&L Corp. Inc.*, 280 S.C. 519, 313 S.E.2d 334(Ct.App. 1984), the Appellate Court affirmed the lower court's decision that the developer and its agent are liable for misrepresentations made by salesman during negotiation for sale of lots, regardless of their knowledge as to those representations and confirmed civil penalty under Unfair Trade Practices Act.

The Unfair Trade Practices Act should not be construed to increase plaintiff's burden of proving liability, since its purpose is to give additional protection to victims of unfair trade practices, not to make a case harder to prove than it would be under common law principles.

S.C. Code § 39-5-10 et seq.; *Wright v. Craft*, Opinion No.: 4181, 640 S.E.2d 486 (Ct.App. 2006).

**D VI: MATERIAL FACTS, MATERIAL FACTS IN DISPUTE AND DISPUTES AS TO THE CONCLUSIONS OR INFERENCES DRAWN FROM THESE MATERIAL FACTS EXIST.**

The following material facts, material facts in dispute and disputes as to the conclusions and inferences drawn from those material facts exist which preclude the grant of Summary Judgment to Carolina One: (i) Koola signed a Buyer Representation Agreement with Carolina One as an Exclusive Buyer's Agent, establishing a Principal/Buyer Client – Agent relationship, Fiduciary Duty and consequently Duty of Care and Legal Duty on the part of Carolina One to Koola to act in good faith to promote and protect the interests of Koola;

(ii) Koola also signed a Dual Agency Agreement with Carolina One reestablishing Fiduciary Duty and Duty of Care to Koola;

(iii) Principal/Seller Client conferred his Express, Implied and Apparent authority on Carolina One as his agent to convey statutorily required disclosure reports to Koola; (iv) Carolina One had actual and constructive knowledge that the converted condominium being sold was subjected to S.C. Horizontal Property Act; (v) At the time of motion hearing, there was a Motion to

Compel pending for: Carolina One's failure to Make or Cooperate in Discovery, Noncompliance with a Court Order, and Not filing pleadings, depositions, answers to interrogatories, admissions, affidavits, and memoranda with the Court; (vi) Carolina One's Breach of Fiduciary Duty and Breach of Duty of Care in not informing Koola that Koola has a right to receive "S.C. Code Ann. 27-31-430-mandated Disclosure Report" and Carolina One's failure to convey the said report to Koola; (vii) Carolina One's negligent misrepresentation constituted a violation of S.C. UTPA, Breach of Warranty, Negligence, and Fraud.

#### **D VII. CAROLINA ONE'S LIABILITY FOR BEACH OF CONTRACT/ WARRANTY STANDS.**

The elements of breach of contract/warranty are the existence of the contract, its breach, and the damages caused by such breach. *Branche Builders v. Coggins*, 386 S.C. 43, 686 S.E.2d 200 (Ct.App. 2009). Under South Carolina law, the implied warranty of fitness and habitability "springs from the sale itself". *Lane v. Trenholm Bldg. Co.*, 267 S.C. 497, 229 S.E.2d 728 (1976). Koola contracted with Carolina One to buy the condominium through a Buyer Representation Agreement, which established Carolina as an Exclusive Buyer's Agent. Carolina One was also an Exclusive Seller's Agent of the developer/seller. Koola did not interact directly with the developer/seller in any way in the purchase of the Condominium. Koola's purchase of the Condominium was only thorough Carolina One as a Dual Agent. Carolina One and the developer/seller are joint tortfeasors. Under these circumstances, Carolina One is liable to Koola for Breach of Contract/Warranty.

#### **D VIII: CAROLINA ONE IS LIABLE TO KOOLA FOR NEGLIGENCE.**

The duty of care that Carolina One owed Koola arose because: (i) The developer/seller transferred or delegated his duty to provide the "S.C. Code Ann. § 27-31-430-mandated Disclosure Report" to Koola and other prospective buyers onto Carolina One, whom he hired as exclusive sales

agent through an “Exclusive Right to Sell Listing Agreement (Express, Implied and Apparent Authority);

(ii) Since the developer/seller shall not deal directly with prospective buyers as stipulated in the “Exclusive Right to Sell Listing Agreement”, then the duty of conveying the “S.C. Code Ann. § 27-31-430-mandated Disclosure Report” to Koola rested on Carolina One;

(iii) Carolina One owes Koola Fiduciary Duty and the resulting Duty of Care so that Carolina One had duty (a) to inform Koola that he has a right to receive the “S.C. Code Ann. § 27-31-430-mandated Disclosure Report”; and (b) to convey the “S.C. Code Ann. § 27-31-430-mandated Disclosure Report” to Koola;

(iv) Duties of Real Estate Licensees and Real Estate Sellers/Brokers demand that Carolina One had the duty (a) to inform Koola that he has a right to receive the “S.C. Code Ann. § 27-31-430-mandated Disclosure Report”; and (b) to convey the “S.C. Code Ann. § 27-31-430-mandated Disclosure Report” to Koola;

(v) Carolina One is a joint tortfeasor with other defendants in the case at bar including the developer/seller and all of the them are jointly and severally liable to Koola;

(vi) The authority in *Barker v. Bill Sauls, supra*, that “It is essential to liability for negligence that the parties have some relationship recognized by law to support the duty owed by the tortfeasor. This duty may be derived from the tortfeasor’s contractual relationship with another”, conferred the duty of providing the “S.C. Code Ann. § 27-31-430-mandated Disclosure Report” to Koola onto Carolina One;

(viii) The developer/seller, through an affidavit (Ex. 2) and deposition (Ex. 4) in the HOA lawsuit<sup>1</sup> affirmed that he hired Trademark to convey statutorily required disclosure statements, [“S.C. Code Ann. § 27-31-430-mandated Disclosure Report”], to the propsective Condominium

buyers and fired Trademark for failing in this duty. By presumption, the developer/seller hired Carolina One to convey statutorily required disclosure statements, ["S.C. Code Ann. § 27-31-430-mandated Disclosure Report"], to Koola and other prospective buyers;

(ix) Carolina One had *actual and constructive knowledge* that Koola and prospective buyers have to be provided with "S.C. Code Ann. § 27-31-430-mandated Disclosure Report"; and

(x) Carolina One, being a licensed and experienced real estate broker/agent, possesses superior knowledge and shall be held to a higher professional standard and shall be familiar with the provisions of HPA and specifically S.C. Code Ann. § 27-31-430 while selling a converted condominium to Koola.

Carolina One breached the Duty of Care as enumerated above and is therefore liable to Koola for Negligence.

Punitive damages are recoverable in a negligence cause of action when the defendant's conduct rises to the level of a willful, wanton, or a malicious violation of plaintiff's rights, and a conscious failure to exercise due care constitute willfulness. *Scott, supra*.

#### **D IX: CAROLINA ONE IS LIABLE TO KOOLA FOR FRAUD**

Fraud is an intentional misrepresentation of truth for the purpose of inducing another in reliance upon it to part with some valuable belonging to her or to surrender a legal right. Koola proves hereby the nine elements of fraud:

(i) A *representation*: The Master Deed (Ex. 3), made available by Carolina One to Koola [and other Condominium buyers], clearly made the ***representation*** that the conversion of the Apartments into Condominiums *complied* with HPA. Carolina One sold the condominium to Koola [and all other Condominium buyers], stating "***excellent price for quality product!***" (Ex 10).

(ii) Its *falsity*: The *representation* that the conversion of the Apartments into Condominiums *complied* with HPA made by Carolina One was absolutely ***false***; for none of the condominium

buyers received a copy of the “S.C. Code Ann. § 27-31-430-mandated Disclosure Report”. The quality product turned out to be a condominium complex with multimillion dollar construction defects;

(iii) *Its materiality*: The misrepresentations made by Carolina One are **material**;

(iv) *Knowledge of the falsity or reckless disregard of its truth or falsity*: Carolina One had **actual and constructive knowledge** of the truth that “S.C. Code Ann. § 27-31-430-mandated Disclosure Report” was not provided to any condominium buyers.

(v) *Intent that the representation be acted upon*: Carolina One worked diligently so that the unwary condominium buyers **would act on the representations** made to them in the Master Deed;

(vi) *The hearer’s ignorance of its falsity*: Koola was **absolutely ignorant of any representation** that the sale of Cambridge Lakes condominiums did not comply with the mandate of compilation with S.C. Code Ann. § 27-31-430 at the time he bought the condominium;

(vii) *The hearer’s reliance upon its truth*: Koola **absolutely believed and relied upon the representation** made in the Master Deed and the Builder’s Certification that the sale of Cambridge Lakes condominiums complied with S.C. Code Ann. § 27-31-430. Ex. 28 would show to this Court that Koola would rely and act on a written professional report;

(viii) *The hearer’s right to rely on*: The condominium buyers can interact only with the real estate agents and not with the developer/seller, (Ex. 1, Clause P(7)). Therefore, the hearer has **the right to rely on the representations** made by the real estate agents Carolina One. Additionally, Carolina One was also Koola’s Exclusive Buyer’s Agent and Carolina One owed Fiduciary duty to Koola; and

(ix) *The hearer’s consequent and proximate injury*: Because of the massive construction defects in the common elements of Cambridge Lakes condominiums and the HOA’s lawsuit, Koola could not sell his condominium when he tried to sell it **four times** during 2008-2010. Clearly, the

condominium was not marketable. *The filing of the foreclosure actions and HOA's civil action in 2010 marked the termination of Koola's ownership of his condominium, which resulted in huge damage to Koola. The Carolina One's actions were a proximate cause of harm that Koola suffered.* Koola lost everything that he had. At 71 years of age and no resources to live on except limited Social Security benefits, Carolina One and other joint tortfeasors inflicted serious damages upon Koola.

#### **D X. MOTION TO COMPEL**

As soon as the Trial Judge called out Carolina One's Motion for Summary Judgment for hearing on Oct. 22, 2014, Koola raised his hand to bring the following subject matters to the kind attention of the Trial Judge: (i) Koola has filed a Motion to Compel for Carolina One's Failure to Make or Cooperate in Discovery, Rule 37, SCRPC; (ii) Carolina One has not yet complied with a February 20, 2013 Order of the Hon. J. C. Nicholson, Jr., of the same Circuit ordering Carolina One to file Answer to Koola's Summons and Complaint within 30 days; and (iii) Carolina One has not filed any pleadings, depositions, answers to interrogatories, and admissions on file, affidavits, and memoranda in Support of Motion for Summary Judgment. Rule 56(c), SCRPC. The Trial Judge asked Koola to wait for his time to address the Court.

During his turn, Koola informed the Trial Judge that there is a Motion to Compel pending. Spontaneously and without checking the case docket, the Trial Judge replied that the Motion to Compel has not been scheduled for hearing. Koola further informed the Trial Judge that Carolina One has not complied with an [February 20, 2013] Order of the Hon. J. C. Nicholson, Jr., ordering Carolina One to file Answer to Koola's Summons and Complaint. The Trial Judge replied that he has no information on this matter. In a short period of time the Trail Judge had denied all of Koola's representations to the Court, and Koola did not raise additional representations to avoid any contempt of the Court.

Carolina One filed the Motion for Summary Judgment on October 2, 2014. The Order for Koola to appear pro se was posted on Oct. 13, 2014; within a few hours on the same day, Koola filed the Motion to Compel. On October 20, 2014, Koola filed a Memorandum in Support of the Motion to Compel. On Oct. xxxx 2014 and October 21, 2014, Koola filed an exhaustive Memorandum of Law and Points of Authorities in opposition to Carolina One's Motion for Summary Judgment and detailed Memorandum and Evidentiary Exhibits respectively, and they were on file before Motion hearing. Kola received Carolina One's responses to Koola's March 2013 Discovery on October 23, 2014, one day after the motion hearing; Koola has not yet received Carolina Ones' response to Koola's December 2012 Discovery.

The Office of the Trial Judge scheduled all the motions to be heard on Oct. 22, 2014; The Office of the Trial Judge did not inform Koola why Koola's Motion to Compel was not scheduled. The Office of the Trial Judge acknowledged all the correspondences from Trademark and Carolina One, but not those from Koola. The practice of the Circuit Court is that the Trial Judge will hear any unscheduled Motion unless the opposing parties raise any objections. In the present instance no party raised any objections. The Office of the Trial Judge had scheduled only two motions for hearing on October 22. The Trial Judge did not hear the Motion To Compel.

**Discovery:** Summary Judgment "must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Baughman v. American telephone & Telegraph Co.*, 306 S.C. 101, 410 S.E.2d 543 (1991). *Board v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). Trial Court may refuse to consider materials that were not timely served such that the opposing party had no time to prepare a response. *Black v. Lexington School Dist. No. 2*, 327 S.C. 55, 488 S.E.2d 327 (1997). "Summaruy Judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of law". *Middleborough Horizontal Property*

*Regime Council of Co-owners v. Montedison S.p.A.*, 320 S.C. 470, 465 S.E.2d 765, 771 (Ct.App. 1995).

**Noncompliance with Court's Order:** Carolina One has not yet complied with the Hon. J.C. Nicholson's February 20, 2013 Order that Carolina One "*shall file its answer, to the newly captioned Complaint, within thirty (30) days from the execution of this Order.*" Consequently, there are no pleadings on file in the case at bar. Moreover, the willful non-compliance with court order maybe subjected to contempt pf the court. *Floyd v. Floyd, supra*

**Violation of Rule 56C(c):** Under Rule 56(c), the motion [for Summary Judgment and supporting memoranda] shall be served at least 10 days before the time fixed for the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, support the Motion for summary Judgment.

Rule 56(c), SCRCPP; *Epstein v. Coastal Timber Co. Inc., supra*.

"In determining a genuine issue of material fact exists, a court must consider everything in the record – pleadings, depositions, interrogatories, admissions on file, affidavits etc....([A] court cannot consider statements of fact appearing only in argument of consul)." *Gilmore v. Ivey*, Court of Appeals of South Carolina, Opinion No. 0778, 348 S.E. 2d 180 (Ct.App. 1986);

"South Carolina Rule of Civil Procedure 56(c) requires summary judgment motions and, inferentially, supporting materials to be on file when they are to be relied upon at a summary judgment motion hearing. To be on file, we hold they ordinarily must have been filed. Rule 26(g)(1) specifically requires original discovery requests and responses to be filed with the clerk of the court when they are to be used at hearing or trial. *Loyd's Inc. v. Good*, Court of Appeals of South Carolina, Opinion No. 1729, 412 S.E.2d 441 (Ct.App. 1991);

"The Court of Appeals [held] that "[t]o warrant consideration, an affidavit must be served on the opposing party no later than the day before the start of the hearing." *Black v. Lexington School Dist. No. 2, supra*.

"When ruling on a motion for summary judgment, the trial judge must consider all of the documents and evidence within the record, including the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits." *Higgins v. Medical University of S.C.*, Court of Appeals of South Carolina, No. 2662, 486 S.E.2d 269 (Ct.App. 1997).

There were no pleadings, depositions, answers to interrogatories, and admissions, affidavits, and memoranda in the file to support Carolina One's Motion for Summary Judgment. In spite of



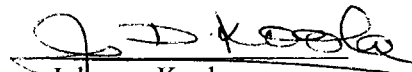
these procedural violations of Rule 56(c) of SCRPC, the Trial Judge granted Summary Judgment to Carolina One. The Trial Judge's Order prejudiced Koola very much, and the Trial Judge did not administer justice to the non-moving party.

**Koola prays that this Court grant the following relief:**

- I. Vacate its November 18, 2014 Order by finding that Carolina One is not entitled to a Summary Judgment due to the existence of genuine issues of material fact, material facts in dispute and disputes as to the conclusions or inferences to be drawn from these material facts.**
- II. Deny the Motion for Summary Judgment granted to Carolina One.**
- III. Reinstate Koola's claims against Carolina One.**

Respectfully submitted,

This the 2<sup>nd</sup> day of December 2014  
Mt. Pleasant, SC 29464

  
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Plaintiff pro se

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

SEP 10 2015

SC Court of Appeals

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No.: 2010-CP-10-9158

APPELLATE CASE No.: 2015-000111

Johnson Koola,.....Appellant,

v.

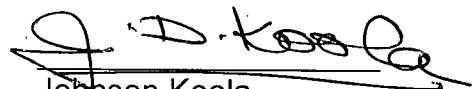
Cambridge Two, LLC, Albert V. Estee, Individually, Cambridge Lakes, LP, Stephen R. Heape, Individually and as General Partner of Cambridge Lakes LP, Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP, a/k/a Cambridge Lakes Apartment Homes, LP, Classic Properties of Charleston, Inc., Cambridge Contracting, LP, Trademark Properties, Inc., Carolina One Charleston Home Team Properties, LLC, Charleston Home Team, LLC, Carolina One, and William E. Jenkinson, IV, individually,

Of Whom Trademark Properties, Inc., and Carolina One Real Estate are the  
.....Respondents

CERTIFICATION OF COUNSEL PURSUANT TO RULE 210(g)

The undersigned, appellant pro se Johnson Koola, certifies under penalty of perjury that the above Record on Appeal includes all matters to be included by any of the parties and not any other material.

Dated: August 10, 2015



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