

**ORIGINAL**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

68090

Appellate Case No. 2013-000279

The Honorable W. Jeffrey Young,  
Charleston County  
Trial Court Case No.: 2010-CP-10-9158

JOHNSON KOOLA,	)
	)
Plaintiff,	)
	)
vs.	)
	)
CAMBRIDGE TWO, LLC, et al.,	)
	)
Defendants	)

**RECEIVED**

APR 19 2013

**SC Court of Appeals**

**PETITION FOR REINSTATEMENT OF APPEAL**

Plaintiff/Appellant Johnson Koola ("appellant") hereby petitions this Court to reinstate the above-captioned appeal which was dismissed by the April 16, 2013 Order of this Court on the grounds that the appellant had failed to provide proof of having ordered the transcript and/or failed to serve and file the appellant's initial brief and designation of matter, as required by Rules 207, 208 and 209 of the South Carolina Appellate Court Rules.

The grounds for the Petition to Reinstate this appeal are set forth in the attached affidavit of appellant's counsel, William B. Jung, Esq., sworn to April 18, 2013 ("Jung

Aff.”). As set forth in the Jung Affidavit, the appellant, Johnson Koola, had requested a copy of the July 25, 2012 motion hearing transcript directly from the reporter, Rolayne M. Volpe, prior to his retaining William B. Jung, Esq. on this appeal. Jung Aff., par. 2. The appellant’s Notice of Appeal was filed on February 3, 2013. *Id.* On March 4, 2012, appellant’s counsel paid a retainer of \$97.50 to the court reporter as requested in a March 3, 2013 email from the reporter to the appellant. A copy of Ms. Volpe’s March 3, 2013 email to Mr. Koola and my March 4, 2013 check to Ms. Volpe are attached as Exhibit “1.” In her March 3, 2013 email to Mr. Koola, Ms. Volpe acknowledges that 30 days have already passed from the time of the appellant’s request for a copy of the transcript. This 30-day time period coincides with Mr. Koola’s representation to me that he had requested a copy of the hearing transcript at or about the same time, February 2, 2013, that he retained my services for his appeal.

On or about April 5, 2013, the appellant’s counsel received a copy of the hearing transcript from the reporter; however, this document incorrectly designated that the motion in question was heard by Judge Roger Young instead of Judge W. Jeffrey Young. *Id.* at par. 4. Appellant’s counsel notified the reporter in a telephone conversation of this discrepancy. *Id.* The reporter advised appellant’s counsel to disregard the transcript bearing references to the Hon. Roger Young and promised to remit a correct transcript expeditiously. *Id.* A copy of an April 8, 2013 cover letter from the reporter forwarding a corrected hearing transcript is attached as Exhibit “2.” This letter and its enclosed transcript were in counsel’s mail box in the morning of April 15, 2013, indicating that it was delivered on mail for Saturday, April 13, 2013. Jung Aff., par. 4.

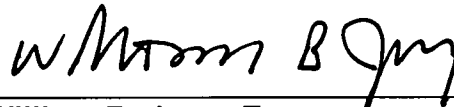
On April 26, 2012, after conferring with the Clerk’s Office regarding the manner of

notification needed to acknowledge receipt of the hearing transcript, appellant's counsel wrote the Clerk of Court to the attention of Ms. Elizabeth Carter, confirming that the appellant's counsel had received a copy of the hearing transcript on Monday, April 15, 2013. Jung Aff., par. 5. A copy of appellant's counsel's April 16, 2013 letter to the Clerk of Court is attached as Exhibit "3." Given the appellant's requested a copy of the hearing transcript in a timely and expeditious manner and that appellant's failure to receive a copy of said transcript within 60 days was in no way attributable to the appellant, the appellant respectfully requests and petitions that the above-captioned appeal be reinstated.

Dated: Mt. Pleasant, S.C.  
April 18, 2013

Respectfully submitted,

**WILLIAM B. JUNG, ESQ.**  
Attorney for the Appellant

A handwritten signature in black ink, appearing to read "William B. Jung", written over a horizontal line.

**William B. Jung, Esq.**  
1156 Bowman Road, Ste. 100-D  
Mt. Pleasant, S.C. 29464  
(843) 416-1104

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JOHNSON KOOLA, )  
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Plaintiff, )  
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vs. )  
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CAMBRIDGE TWO, LLC, et al., )  
 )  
\_\_\_\_\_  
Defendants. )

**AFFIDAVIT IN SUPPORT OF PETITION FOR REINSTATEMENT OF APPEAL**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

**WILLIAM B. JUNG, ESQ.**, being duly sworn, deposes and says:

1. I am counsel to the appellant, Johnson Koola, on the above-captioned appeal. I submit this Affidavit in support of the appellant's Petition for Reinstatement of the above-captioned appeal. I have personal knowledge of the following averments.

2. On February 2, 2013, I was retained by the appellant, Johnson Koola, to represent him on an appeal from an Order of the Hon. W. Jeffrey Young which denied appellant's motion for reconsideration of a prior Order granting summary judgment

dismissal of certain claims appellant had filed against defendants/appellees Cambridge Two, LLC, et al. A Notice of Appeal was filed on February 3, 2013. At that time, my client represented that he had already requested from the court reporter a copy of a July 25, 2012 hearing transcript on the summary judgment motion of which Judge Young from which ultimately granted and then denied reconsideration.

3. On or about March 4, 2013, I received a copy of an email sent by Rolayne Volpe, the court reporter, requesting prior payment of \$97.50 for the transcript, and I paid Ms. Volpe my check dated March 4, 2013. A copy of Ms. Volpe's email to Mr. Koola and my check to Ms. Volpe are attached as Exhibit "1." In her March 3, 2013 email to Mr. Koola, Ms. Volpe acknowledges that 30 days have already passed from the time of the appellant's request for a copy of the transcript. This 30-day time period coincides with Mr. Koola's representation to me that he had requested a copy of the hearing transcript at or about the same time, February 2, 2013, that he retained my services for his appeal.

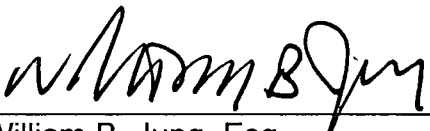
4. On or about April 5, 2013, I received a copy of the hearing transcript from Ms. Volpe; however, this document incorrectly designated that the motion in question was heard by Judge Roger Young instead of Judge Jeffrey Young. I telephoned Ms. Volpe about this discrepancy. Ms. Volpe instructed me to disregard the transcript I had received and promised to remit a correct transcript expeditiously. A copy of an April 8, 2013 cover letter from Ms. Volpe forwarding a corrected hearing transcript is attached as Exhibit "2." I did not receive this letter until the morning of April 15, 2013, indicating that package must have been delivered on mail for Saturday, April 13, 2013.

5. On April 16, 2012, after conferring with the Clerk's Office regarding the manner of notification needed to acknowledge receipt of the hearing transcript, I wrote

the Clerk of Court to the attention of Ms. Elizabeth Carter, confirming that I had received a copy of the hearing transcript on Monday, April 15, 2013. A copy of my April 16, 2013 letter to the Clerk of Court is attached as Exhibit "3."

6. On April 17, 2013, I received a copy of this Court' April 16, 2013 Order dismissing this appeal for failure to comply with Rules 207, 208 and 209 regarding notice to the Clerk of Court regarding the status of the request for the hearing transcript and compliance by the court reporter.

**WHEREFORE**, the appellant respectfully requests that his Petition for Reinstatement of this Appeal be granted.

  
\_\_\_\_\_  
William B. Jung, Esq.  
Attorney for the Appellant

Sworn to before me this 18<sup>th</sup>  
Day of April, 2013

  
Notary Public for State of  
South Carolina  
My Commission Expires \_\_\_\_\_



THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

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Appellate Case No. 2013-000279

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The Honorable W. Jeffrey Young,  
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JOHNSON KOOLA, )  
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 Plaintiff, )  
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 vs. )  
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 CAMBRIDGE TWO, LLC, et al., )  
 )  
 Defendants. )

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**MEMORANDUM IN SUPPORT OF PETITION FOR REINSTATEMENT OF APPEAL**

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Appellant Johnson Koola ("Koola" or "appellant") submits this Memorandum of Law in support of his Petition for Reinstatement of the above-captioned appeal.

**Procedural Background**

Reference is made to the April 18, 2013 Affidavit from appellant's counsel, William B. Jung, Esq. related to the procedure history of relevant facts and dates to this application.

As set forth therein, Koola had requested a copy of the July 25, 2012 motion hearing transcript directly from the reporter, Rolayne M. Volpe, prior to his

retaining counsel for this appeal on February 2, 2013. Jung Aff., par. 2. On February 3, 2013, appellant's Notice of Appeal was filed. *Id.* On March 4, 2012, appellant's counsel paid a retainer of \$97.50 to the court reporter as requested in a March 3, 2013 email to Koola. A copy of Ms. Volpe's March 3, 2013 email to Mr. Koola is attached Exhibit "1." In this email to Koola, Ms. Volpe acknowledges that 30 days have already passed from the time of Koola's original request for a copy of the transcript. This 30-day time period coincides with Koola's representation to counsel me that he had requested a copy of the hearing transcript at or about the same time, February 2, 2013, that he retained the services of counsel for his appeal.

On or about April 5, 2013, the appellant's counsel received a copy of the hearing transcript from the reporter; however, this document incorrectly designated that the motion in question was heard by Judge Roger Young instead of Judge W. Jeffrey Young. Jung Aff., at par. 4. Appellant's counsel notified the reporter in a telephone conversation of this discrepancy. *Id.* The reporter advised appellant's counsel to disregard the transcript bearing references to the Hon. Roger Young and promised to remit a correct transcript expeditiously. *Id.* A copy of an April 8, 2013 cover letter from the reporter forwarding a corrected hearing transcript is attached as Exhibit "2." This letter and its enclosed transcript were in counsel's mail box in the morning of April 15, 2013, indicating that it was delivered on mail for Saturday, April 13, 2013. Jung Aff., par. 4.

On April 26, 2012, after conferring with the Clerk's Office regarding the manner of notification needed to acknowledge receipt of the hearing transcript, appellant's counsel wrote the Clerk of Court to the attention of Ms. Elizabeth Carter, confirming that the appellant's counsel had received a copy of the hearing transcript on

Monday, April 15, 2013. Jung Aff., par. 5. A copy of appellant's counsel's April 16, 2013 letter to the Clerk of Court is attached as Exhibit "3."

### Argument

Koola acknowledges that Rule 207 of the South Carolina Rules of Appellate Procedure requires that an appellant shall contemporaneously furnish the Office of Court Administration and the Clerk of Court with copies of all correspondence with a reporter from whom a hearing transcript is sought and that an appellant must notify these entities of a reporter's failure to provide a transcript in 60 days. *Id.* It is acknowledged that the Koola's counsel did not copy of the Office of Court Administration and the Clerk of Court in dealing with the court reporter and did not receipt a transcript within the allotted 60 day period.

However, apart from these admitted points, the appellant otherwise complied with Rule 207 by requesting a transcript contemporaneously with the filing of the notice of appeal. It is also clear that the delay in gaining the transcript is not attributable to any act or omission on the part of the appellant; rather, as provided by the court, the reporter's other duties in recording trials prevented her from being able to provide the transcript in a timely manner. See March 3, 2013 email from Rolayne Volpe to Koola, attached as Exhibit "1." As further set forth in the Jung Affidavit, Koola promptly notified the Clerk of Court by letter dated April 16, 2013 that his counsel had received the corrected transcript promised by the court reporter on April 15, 2013. Jung Aff., par. 5.

In consideration of this Petition for Reinstatement, Koola respectfully submits that the defendants-appellees have suffered and will suffer no prejudice if said relief is granted. The appellees have not changed any position or incurred any cost in

reliance of the matters relevant to this Petition. Given that Koola requested a copy of the hearing transcript in a timely and expeditious manner and that the failure to receive a copy of said transcript within 60 days was in no way attributable to Koola, the appellant respectfully requests and petitions that the above-captioned appeal be reinstated.

Dated: Mt. Pleasant, S.C.  
April 18, 2013

Respectfully submitted,

**WILLIAM B. JUNG, ESQ.**  
Attorney for the Appellant



---

**William B. Jung, Esq.**  
1156 Bowman Road, Ste. 100-D  
Mt. Pleasant, S.C. 29464  
(843) 416-1104

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JOHNSON KOOLA, )  
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 Plaintiff, )  
 )  
 vs. )  
 )  
 CAMBRIDGE TWO, LLC, et al., )  
 )  
 Defendants. )

**PROOF OF SERVICE OF PETITION FOR REINSTATEMENT OF APPEAL**

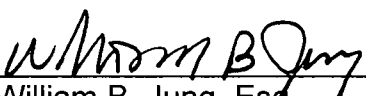
I, William B. Jung, Esq., an attorney admitted to practice before this Court, under penalty of perjury, certify that on April 18, 2013, I served a copy of the appellant's Petition for Reinstatement of Appeal by mailing a true and accurate complete copy thereto to the following counsel of record for the defendants-appellees:

Linda Weeks Gangi, Esq.  
Thompson & Henry, P.A.  
1300 Second Avenue, Third Floor  
P.O. Box 1740  
Conway, S.C. 29528

David J. Parrish, Esq.  
Nexsen Pruet, LLC  
P.O. Box 486  
Charleston, S.C. 29402

Attorneys for the Defendants/Appellees

Dated: April 18, 2013

  
\_\_\_\_\_  
William B. Jung, Esq.

**EXHIBIT "1"**

# Fw: Estimate on Transcript 7/25/2012, Judge Young

From: **Johnson Koola** (johnson.koola@msn.com) This sender is in your contact list.  
Sent: Sun 3/03/13 10:49 PM  
To: brad jung (bradjung@msn.com)

[REDACTED]

Johnson Koola

----- Original Message -----

From: Rolayne Volpe  
To: johnson.koola@msn.com  
Sent: Sunday, March 03, 2013 2:50 PM  
Subject: Estimate on Transcript 7/25/2012, Judge Young

Hello, Mr. Koola:

I'm sorry I am just getting to followup. I have been in trial after trial after trial. I'm doing catch-up work this weekend.

An estimate of your transcript is \$97.50. If you are interested in ordering, please send a check in that amount to Rolayne M. Volpe, to P.O. Box 342, Summerville, SC 29484. I have 60 days according to state law to complete the transcript after receipt of the deposit. Since we're 30 days out at this point, I'll turn in around in 30 days from receiving your deposit. If more money is required, I will request that before shipping the transcript to you; if it's less, I'll refund the funds when I ship the transcript to you.

Sincerely,

Rolayne M. Volpe, CCR, RPR

WILLIAM B. JUNG, ESQ., L.L.C. 05-00  
1156 BOWMAN RD. STE. 200  
MT. PLEASANT, SC 29464

4235

DATE 3/4/13

67-448/539 SC  
2927

PAY TO THE ORDER OF

Polayne M. Volpe

\$ 97.50

Ninty seven and 50

DOLLARS

Bank of America

10-CP-10-9158

ACH R/T 053904483

Hearing transcript

FOR

Koola v. Cartridge Two LLC  
etal

William B Jung

⑈004235⑈ ⑆053904483⑆ 000773002584⑈

**EXHIBIT "2"**

**ROLAYNE M. VOLPE, CCR, RPR**  
Official Court Reporter for the Ninth Judicial Circuit  
State of South Carolina  
P.O. Box 342  
Summerville, South Carolina 29484  
Personal Cell Phone: (615) 337-7355

April 8, 2013

William B. Jung  
William B. Jung, Esq., LLC  
Bowman Center  
1156 Bowman Road, Suite 100-D  
Mount Pleasant, South Carolina 29464


Re: Koola v Cambridge Two, et al -- Replacement Transcript

Dear Mr. Jung:

Please find enclosed the replacement transcript to correct Judge Roger Young to Judge Jeffrey Young.

Should you need anything further, please do not hesitate to let me know.

Sincerely,

  
Rolayne M. Volpe, CCR,

Enclosures

WILLIAM B. JUNG, ESQ.

BOWMAN CENTER  
1156 BOWMAN ROAD, STE. 100D  
MOUNT PLEASANT, S.C. 29464  
PHONE (843) 416-1104  
FAX (843) 416-1184  
EMAIL: bradjung@msn.com

ADMITTED  
SOUTH CAROLINA  
NEW YORK

April 16, 2013

Ms. Elizabeth Carter  
Office of the Clerk of Court  
S.C. Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

Re: Johnson Koola v. Cambridge Two, LLC, et al.  
Appeal No.: 2013-00279  
Case No.: 2010-CP-10-9158

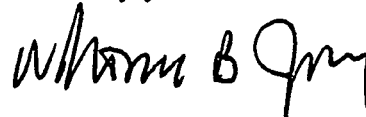
Dear Ms. Carter:

I represent the appellant, Johnson Koola, in the above appeal.

I am writing to confirm that on Monday, April 15, 2013, I received a copy of the hearing transcript from the order which is the subject of this appeal from the court reporter. It is my understanding that a scheduling order will be issued by the Clerk's Office.

Thank you for your courtesy.

Sincerely yours,



William B. Jung

WBJ:wbj

cc. Linda Gangi, Esq.  
David Parrish, Esq.

WILLIAM B. JUNG, ESQ.

BOWMAN CENTER  
1156 BOWMAN ROAD, STE. 100D  
MOUNT PLEASANT, S.C. 29464  
PHONE (843) 416-1104  
FAX (843) 416-1184  
EMAIL: bradjung@msn.com

ADMITTED  
SOUTH CAROLINA  
NEW YORK

April 18, 2013

**By FedEx**

Ms. Elizabeth Carter  
Office of the Clerk of Court  
S.C. Court of Appeals  
1015 Sumter Street  
Columbia, S.C. 29201

Re: Johnson Koola v. Cambridge Two, LLC, et al.  
Appeal No.: 2013-00279  
Case No.: 2010-CP-10-9158

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APR 19 2013

SC Court of Appeals

Dear Ms. Carter:

I represent the appellant, Johnson Koola, in the above appeal.

I am writing to file the appellant's Petition for Reinstatement of the above appeal. A supporting affidavit and memorandum of law are attached, as is a proof of service. Please also find my firm's check for \$25.00 for the motion fee.

Thank you for your courtesy.

Sincerely yours,



William B. Jung

WBJ:wbj

Encl.

cc. Linda Gangi, Esq.  
David Parrish, Esq.