

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

STATE OF SOUTH CAROLINA  
In The Court of Appeal

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas for the Eleventh Judicial Circuit

The Honorable R. Knox McMahon, Circuit Court Judge

Case No. 2010-CP-32-00442

Dr. Joseph G. Carew and Dr. Karen Carew, ..... Appellants,

v.

RBC Centura Bank, RBC Bank as successor in interest of RBC Centura Bank, Clifton W. Hall,  
Hall Builders, LLC, Mid Carolina Appraisal Company, LLC, and Teresa Addy-Haltiwanger,  
Defendants,

Of Whom, RBC Centura Bank, RBC Bank as successor in interest of RBC Centura Bank, are  
..... Respondents.

RECORD ON APPEAL  
VOLUME I

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JUN 05 2013

**SC Court of Appeals**

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STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS FILED

C/A No.: 2010-CP-32-442

2011 JUL 27 P 1:29

Dr. Joseph G. Carew and Dr. Karen  
Carew,

Plaintiff

vs.

RBC Centura Bank; RBC Bank as  
successor in interest of RBC Centura  
Bank; Clifton W. Hall; Hall  
Builders, LLC; Appraisal Team of  
of Mid Carolina, LLC; and Teresa  
Addy Haltiwanger,

Defendants

KETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

**ORDER GRANTING  
TERESA ADDY-HALTIWANGER  
AND APPRAISAL TEAM OF MID  
CAROLINA, LLC'S MOTION FOR  
SUMMARY JUDGMENT**

This matter came before me on June 14, 2011, 2:00 p.m., at the Lexington County Judicial Center, by way of the Defendants' (Teresa Addy-Haltiwanger and Appraisal Team of Mid Carolina, LLC) Motion for Summary Judgment. Teresa Addy-Haltiwanger and Appraisal Team of Mid Carolina, LLC are referred to herein as "the Appraisers" or "the Defendants." Joey R. Floyd appeared and argued the Motion on behalf of the Defendants. Eric G. Fosmire appeared on behalf of the Plaintiffs and opposed the Defendants' Motion.

**Findings of Fact**

The Plaintiffs, Drs. Joseph and Karen Carew (referred to herein as "the Carews" or "the Plaintiffs") purchased a lot in Lexington County, 34 Edens Point Road, Columbia, South Carolina 29212, on January 23, 2008.

On, or about, January 30, 2008, the Plaintiffs entered into a contract with their builder, Hall Builders, LLC ("Hall Builders"), whereby Hall Builders agreed to build the Plaintiffs' a home at 34 Edens Point Road.



The Carews entered into a Construction Loan Agreement on February 29, 2008, with RBC Centura Bank ("RBC"), whereby RBC agreed to serve as the lender for the Carews. RBC financed the lot purchase and the construction on behalf of the Carews.

The Carews admitted in their responses to the Defendants' Requests for Admission that they signed the Agreement and initialed each page of the Agreement.

Dr. Joseph Carew admitted in his deposition that he did not read the Construction Loan Agreement.

The Construction Loan Agreement is an eleven page document that details the duties and responsibilities of RBC as the construction lender. The references to "you" or "your" in the Agreement refers to RBC and the reference to "I," "me" or "my" refers to the Carews/the Plaintiffs. Section 7.2.2 of the Construction Loan Agreement, entitled Inspection provides:

**Before you make a disbursement on the basis of a Draw Request, either or both you and the Construction Monitor may perform an on-site inspection of the Premises. If you request, the General Contractor, if there is one, and I will be present when such inspections are undertaken. You will not be under any obligation to make inspections and you will not be under any obligation to instruct the Construction Monitor to conduct inspections. All inspections made by you [RBC] and all inspections made by the Construction Monitor will be for your sole and exclusive benefit and they may not be relied upon in whole or in part by me or any other person. (Language is in bold in Construction Loan Agreement.)**

Section 8.4 of the Construction Loan Agreement, entitled Inspection of Construction provides as follows:

**You and the Construction Monitor, either together or separately, may enter upon the Premises at any time either you or the Construction Monitor desire for the purposes of inspecting the construction of the Improvements. I agree that your failure or the Construction Monitor's failure (1) to discover defects in the Improvements, including errors or omissions in design, workmanship, materials, supplies, fixtures, parts, products or**

equipment, or (2) to otherwise reject design, workmanship, materials, supplies, fixtures, parts, products or equipment due to non-compliance with the Construction Documents, or due to defects in any of the foregoing, will not make either you or the Construction Monitor liable to me and will not make either you or the Construction Monitor liable to any other person on account of such deficiency; and I agree that any prior failure will not constitute a waiver of your right to subsequently reject any such design, workmanship, materials, supplies, fixtures, parts, products and equipment. I agree that all inspections conducted by you or the Construction Monitor are for your sole and exclusive benefit, and I may not, nor may any other person, rely upon such inspections and I am not nor is any other person a third party beneficiary of such inspections. I agree, for myself and for all other persons other than you, to waive and I do hereby waive any present or future rights, if any, I or any of such other persons may have relating to or arising out of inspections made by you or the Construction Monitor – it being understood and agreed that such waiver is material to you and a material inducement to you entering into this Agreement with me and making the Loan to me on the terms and conditions set forth herein and in the other Loan Documents. (Language is in bold in Construction Loan Agreement.)

The Defendants Appraisal Team of Mid Carolina, LLC and Teresa Addy Haliwanger (collectively referred to herein as “the Appraisers”), were retained by RBC to perform (1) a “subject-to” completion appraisal and (2) conduct periodic appraisal inspections during construction for RBC.

The term “Construction Monitor” is defined in the Construction Loan Agreement (page 8 of the Construction Loan Agreement) as follows:

“Construction Monitor” means a Construction inspector or monitor, or other persons designated by you to monitor and otherwise inspect the construction of the improvements, including reviewing and approving all Draw Requests and performance of on-site inspections. The Construction Monitor will be an independent contractor, and I will pay the costs and expenses associated with the Construction Monitor.

The Appraisers prepared the subject-to completion appraisal and performed a number of inspections in its/her role as the Construction Monitor during the construction of the Plaintiffs' home between June 18, 2008 and June 12, 2009.

The Plaintiffs acknowledge, in Paragraph 14 of their Amended Complaint, that "RBC retained Appraisal Team and Teresa Addy-Haltiwanger to provide inspection and/or construction status assessments with regards to Cliff Hall and Hall Builders' construction of the Carew home at 34 Edens Point Road, Irmo, South Carolina."

In February 2009, the Plaintiffs' builder, Hall Builders, encountered financial troubles. Hall Builders' financial problems were so severe, that on February 11, 2009, the principal of Hall Builders advised the Plaintiffs that he/Hall Builders would not be able to complete the Plaintiffs' home. On that same day, February 11, 2009, Hall Builders released the Plaintiffs' from their contract with Hall Builders.

In February 2009, it became clear that Hall Builders could not and would not perform the remaining work on the Plaintiffs' home in accordance with the terms of the contract between Hall Builders and the Plaintiffs.

The Plaintiffs have filed this action and asserted a single cause of action, Negligence, against the Appraisers. In summary, the Plaintiffs contend that the Appraisers did not properly perform the periodic construction inspections for RBC as RBC's Construction Monitor.

Any of the conclusions of law set forth herein which may be considered findings of fact are incorporated herein as findings of fact.

#### Summary Judgment Standard

Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Quality Towing, Inc. v. City*

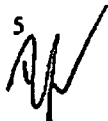
of Myrtle Beach, 340 S.C. 29, 530 S.E.2d 369 (2000). "Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." *Hedgepath v. American Telephone and Telegraph Company*, 348 S.C. 340, 559 S.E.2d 327, 335 (Ct.App.2002) citing *Baughman v. American Tel. And Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537, 545 (1991). "Once the moving party carries its initial burden, the opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial.'" (emphasis in original) *Hedgepath* at 335, citations omitted.

#### CONCLUSIONS OF LAW

- A. *The terms of the Construction Loan Agreement between Plaintiffs/Borrowers and RBC clearly indicate that the Appraisers owe no duty(ies) to the Plaintiffs/Borrowers in this civil action.*

Without question, the language in the Construction Loan Agreement makes it absolutely clear that RBC had no duty to even conduct inspections during the construction of the Plaintiffs' home. In fact, RBC could have, if it so desired, relied entirely on the payment applications submitted by the builder, Hall Builders, LLC, for purposes of disbursing the construction loan proceeds. The inspections were for the "sole and exclusive benefit" of RBC (emphasis in Construction Loan Agreement).

The rights and responsibilities of RBC regarding the inspections are clearly defined and conspicuous in the Construction Loan Agreement. In particular, as shown in the Findings of Fact, certain portions of these terms in the Construction Loan Agreement are in bold, thereby highlighting certain terms in the Construction Loan Agreement.

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Section 8.4 of the Construction Loan Agreement reiterates that the inspections are exclusively for the benefit of RBC and are not to be relied upon by the Plaintiffs. But, of greater importance, this section also clearly states that the Construction Monitor provided by RBC (1) does not owe any duties to the Plaintiffs, (2) can not be relied upon by the Plaintiffs and (3) the Plaintiffs have waived and released any claims that they may have against the Construction Monitor, i.e. the Appraisers.

Based on the pleadings, the information provided to this Court in connection with the appraisers' Motion for Summary Judgment and the arguments of Counsel at the hearing, it is undisputed that the Appraisers were hired by and served as the "Construction Monitor" for RBC.

Generally speaking, "a person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it." *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct.App.2003), citations omitted. As such, "[w]here an agreement is clear and capable of legal interpretation, the Courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 SE.2d 485, 493 (Ct.App. 2004) citations omitted.

"The law does not impose a duty on the bank to explain to an individual what he could learn from simply reading the document." *Citizens and Southern Nat. Bank of South Carolina v. Lanford* 313 S.C. 540, 545, 443 S.E.2d 549, 551 (S.C.,1994).

Based on the express terms of the Construction Loan Agreement, I FIND that the Appraisers do not/did not owe any duty(ies) to the Plaintiffs in this civil action.

Plaintiffs' Counsel suggested that the Construction Loan Agreement is an adhesion contract because, in summary, the terms of the Construction Loan Agreement were not negotiable.

The Plaintiffs' Memorandum in Opposition to the appraisers' Motion for Summary Judgment is the first assertion by the Plaintiffs that the Construction Loan Agreement is an adhesion contract. It is well settled that counsel may not use facts not presented in evidence as part of their argument. In *South Carolina Dept. of Transp. v. Thompson*, 357 S.C. 101 (Ct. App. 2003), the South Carolina Court of Appeals provided that "[a]rguments made by counsel are not evidence." As a preliminary matter, the Plaintiffs' assertion that the Construction Loan Agreement is an Adhesion Contract fails because there is no evidence in the record to support Plaintiffs' theory.

Moreover, the Plaintiffs fail to address how a contract can be non-negotiable when Dr. Joseph Carew has unequivocally testified that he did not read the Construction Loan Agreement.

The Plaintiffs in this case are both sophisticated and well-educated parties in that both of them are practicing Chiropractors. Furthermore, the loan amount, based on the first page of the Construction Loan Agreement was "an amount up to \$1,112,000.00."

"[U]nder general principles of state contract law, an adhesion contract is a standard form contract offered on a "take-it-or-leave-it" basis with terms that are not negotiable." *Simpson v. MSA of Myrtle Beach, Inc.* 373 S.C. 14, 26-27, 644 S.E.2d 663, 669 (S.C. 2007) citations omitted. "Adhesion contracts, however, are not per se unconscionable. Therefore, finding an adhesion contract is merely the beginning point of the analysis." *Simpson v. MSA of Myrtle Beach, Inc.* 373 S.C. 14, 27, 644 S.E.2d 663, 669 (S.C.,2007) citations omitted.

Unconscionability, on the other hand, requires a greater showing. Unconscionability is characterized by the "absence of meaningful



choice on the part of one party due to one-sided contract provisions, *together with* terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Lackey v. Green Tree Financial Corp.*, 330 S.C. 388, 395, 498 S.E.2d 898, 902 (S.C.App.,1998) citing *Fanning v. Fritz's Pontiac-Cadillac-Buick Inc.*, 322 S.C. 399, 402, 472 S.E.2d 242, 245 (1996) (emphasis added) (citing *Jones Leasing v. Gene Phillips and Assocs.*, 282 S.C. 327, 318 S.E.2d 31 (Ct.App.1984)).

The Plaintiffs in this action have not made this Court aware of any case, in any jurisdiction, finding a Construction Loan Agreement to be an adhesion contract nor have the Plaintiffs made this Court aware of any case where a Court refused to enforce the terms of a Construction Loan Agreement on the basis that the Construction Loan Agreement was an adhesion contract.

While this Court does not believe that the Construction Loan Agreement is an adhesion contract, even if this Court assumed that the Construction Loan Agreement was an adhesion contract, this Court finds the South Carolina Court of Appeals language in *Lackey* to be persuasive, which is as follows:

"The contract of adhesion is a part of the fabric of our society. It should neither be praised nor denounced...." That is because there are important advantages to its use despite its potential for abuse. These advantages include the fact that standardization of forms for contracts is a rational and economically efficient response to the rapidity of market transactions and the high costs of negotiations, and that the drafter can rationally calculate the costs and risks of performance, which contributes to rational pricing. *Lackey v. Green Tree Financial Corp.* 330 S.C. 388, 395-396, 498 S.E.2d 898, 902 (S.C.App.,1998) quoting *Goodwin v. Ford Motor Credit Co.*, 970 F.Supp. 1007, 1015 (M.D.Ala.1997) citing 1 *Corbin on Contracts* § 1.4 (rev. ed. 1993)).

Assuming that this Court were to find that the Construction Loan Agreement was an adhesion contract, this Court would not find the terms to be unconscionable to render the contract unenforceable.

Notwithstanding Plaintiffs' Counsel's argument, I FIND that the Construction Loan Agreement is not/was not an adhesion contract.

Viewing the facts in a light most favorable to the Plaintiffs in this action, there is no genuine issue of material fact in this matter regarding the Plaintiffs' claims against the Appraisers, Appraisal Team of Mid-Carolina, LLC and Teresa Addy-Haltiwanger; therefore, these same Defendants are entitled to judgment as a matter of law on the cause of action asserted against these same Defendants by the Plaintiffs, pursuant to Rule 56 of the SCRPC.

*B. Appraisal Team of Mid-Carolina, LLC and Teresa Addy-Haltiwanger did not owe any duties to the Plaintiffs in this matter; therefore, Appraisal Team of Mid-Carolina, LLC and Teresa Addy-Haltiwanger are entitled to Summary Judgment on Plaintiffs' negligence cause of action, as a matter of law.*

"In order to prevail in a negligence cause of action, the plaintiff must establish: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached the duty by a negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages." *Moore v. Weinberg*, 373 S.C. 209, 220, 644 S.E.2d 740, 746 (Ct. App. 2007) (internal citations omitted). "An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." *Id.* at 221 644 S.E.2d at 746. "Without a duty, there is no actionable negligence." *Id.* Here, Plaintiff cannot establish the "duty" element of their claim. The determination of the existence of a duty is solely the responsibility of the court. *Ellis by Ellis v. Niles*, 325 S.C. 223, 479 S.E.2d 47 (1996).

In *Robertson v. First Union National Bank*, 350 S.C. 339, 348, 565 S.E.2d 309, 314 (Ct. App. 2002), the Plaintiffs asserted a cause of action, among other causes of action, against the Defendant appraiser for negligent misrepresentation. The Plaintiffs in *Robertson* alleged that the appraiser, the bank, and others negligently misrepresented the value of the property at issue in

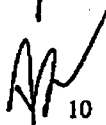


the case, causing Plaintiff to suffer damages. *Id.* at 349. Negligent misrepresentation, like the tort of negligence, requires that the plaintiff show that the defendant owed plaintiff a duty and that the defendant breached that duty. *Id.* In *Robertson*, the court found that the appraiser "was employed by the bank and was acting as an agent of the bank; thus it had no independent duty to appellants [Plaintiffs]." *Id.* at 350 (emphasis mine). The Plaintiffs' negligent misrepresentation claim in *Robertson* failed because the appraiser owed no duty to the Plaintiffs. *Id.* at 350.

In the case at hand, the Appraisers were hired by RBC and acting as an agent of the bank in performing the periodic inspections. As such, the appraisers did not owe a duty to the Plaintiffs in this case. The Plaintiffs' claim for negligence against the appraisers fails as a matter of law because the Plaintiffs cannot establish that the Appraiser owed a duty to the Plaintiffs.

Viewing the facts in a light most favorable to the Plaintiffs in this action, there is no genuine issue of material fact to be decided by the trier of fact in this action. Appraisal Team of Mid-Carolina, LLC and Teresa Addy-Haltiwanger are entitled to judgment as a matter of law on the negligence cause of action asserted against them by the Plaintiffs pursuant to Rule 56 of the SCRCF.

Any of the findings of fact set forth herein which may be considered conclusions of law are incorporated herein as conclusions of law.

  
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**ORDER**

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendants, Appraisal Team of Mid-Carolina, LLC and Teresa Addy-Haltiwanger, Motion for Summary Judgment be granted, in accordance with Rule 56 of the SCRCP.

IT IS SO ORDERED.

  
\_\_\_\_\_  
R. Knox McMahon  
Presiding Judge, 11<sup>th</sup> Judicial Circuit

Lexington, South Carolina

July 27<sup>th</sup>, 2011

ORIGINAL

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF LEXINGTON ) ELEVENTH JUDICIAL CIRCUIT  
Dr. Joseph G. Carew and ) Civil Action No. 2010-CP-32-0042  
Dr. Karen Carew, )  
Plaintiffs, )  
vs. )  
RBC Centura Bank; RBC Bank as )  
successor in interest of RBC Centura )  
Bank; Clifton W. Hall; Hall Builders, )  
LLC; Mid Carolina Appraisal )  
Company, LLC; and Teresa Addy )  
Haltiwanger, )  
Defendants. )

**ORDER GRANTING**  
**RBC BANK (USA)'S MOTION FOR**  
**SUMMARY JUDGMENT**

FILED  
JUL 17 PM 1:55  
J. A. GARRIG  
CLERK OF COURT  
LEXINGTON SC

This matter is before the Court by way of a Motion for Summary Judgment filed by Defendant RBC Bank (USA), incorrectly identified as "RBC Centura Bank and RBC Bank, as successor in interest of RBC Centura Bank" (hereinafter collectively "RBC Bank"). A hearing was held before this Court on April 9, 2012. After considering the memoranda submitted by the parties, as well as the oral arguments presented by counsel, RBC Bank's Motion for Summary Judgment is GRANTED.

**FINDINGS OF FACT<sup>1</sup>**

The Plaintiffs, Drs. Joseph and Karen Carew (referred to herein as "the Carews" or "the Plaintiffs") purchased a lot in Lexington County, 34 Edens Point Road, Columbia, South Carolina 29212, on January 23, 2008.

<sup>1</sup> Except for the last paragraph, these Findings of Fact are identical to those contained in this Court's July 27, 2011 Order granting summary judgment to Defendants Mid Carolina Appraisal Company, LLC and Teresa Addy Haltiwanger.

*[Handwritten signature]*

On or about January 30, 2008, the Plaintiffs entered into a contract with their builder, Hall Builders, LLC ("Hall Builders"), whereby Hall Builders agreed to build the Plaintiffs a home at 34 Edens Point Road.

The Carews entered into a Construction Loan Agreement on February 29, 2008, with RBC Centura Bank ("RBC"), whereby RBC agreed to serve as the lender for the Carews. RBC financed the lot purchase and the construction on behalf of the Carews.

The Carews admitted in their responses to the Defendants' Requests for Admission that they signed the Agreement and initialed each page of the Agreement.

Dr. Joseph Carew admitted in his deposition that he did not read the Construction Loan Agreement.

The Construction Loan Agreement is an eleven page document that details the duties and responsibilities of RBC as the construction lender. The references to "you" or "your" in the Agreement refers to RBC and the reference to "I," "me" or "my" refers to the Carews/the Plaintiffs. Section 7.2.2 of the Construction Loan Agreement, entitled Inspection provides:

Before you make a disbursement on the basis of a Draw Request, either or both you and the Construction Monitor may perform an on-site inspection of the Premises. If you request, the General Contractor, if there is one, and I will be present when such inspections are undertaken. You will not be under any obligation to make inspections and you will not be under any obligation to instruct the Construction Monitor to conduct inspections. All inspections made by you [RBC] and all inspections made by the Construction Monitor will be for your sole and exclusive benefit and they may not be relied upon in whole or in part by me or any other person. (Language is in bold in Construction Loan Agreement.)

Section 8.4 of the Construction Loan Agreement, entitled Inspection of

Construction provides as follows:

 2

You and the Construction Monitor, either together or separately, may enter upon the Premises at any time either you or the Construction Monitor desire for the purposes of inspecting the construction of the Improvements. I agree that your failure or the Construction Monitor's failure (1) to discover defects in the Improvements, including errors or omissions in design, workmanship, materials, supplies, fixtures, parts, products or equipment, or (2) to otherwise reject design, workmanship, materials, supplies, fixtures, parts, products or equipment due to non-compliance with the Construction Documents, or due to defects in any of the foregoing, will not make either you or the Construction Monitor liable to me and will not make either you or the Construction Monitor liable to any other person on account of such deficiency; and I agree that any prior failure will not constitute a waiver of your right to subsequently reject any such design, workmanship, materials, supplies, fixtures, parts, products and equipment. I agree that all inspections conducted by you or the Construction Monitor are for your sole and exclusive benefit, and I may not, nor may any other person, rely upon such inspections and I am not nor is any other person a third party beneficiary of such inspections. I agree, for myself and for all other persons other than you, to waive and I do hereby waive any present or future rights, if any, I or any of such other persons may have relating to or arising out of inspections made by you or the Construction Monitor -- it being understood and agreed that such waiver is material to you and a material inducement to you entering into this Agreement with me and making the Loan to me on the terms and conditions set forth herein and in the other Loan Documents. (Language is in bold in Construction Loan Agreement.)

The Defendants Appraisal Team of Mid Carolina, LLC and Teresa Addy Haltiwanger (collectively referred to herein as "the Appraisers"), were retained by RBC to perform (1) a "subject-to" completion appraisal and (2) conduct periodic appraisal inspections during construction for RBC.

The term "Construction Monitor" is defined in the Construction Loan Agreement (page 8 of the Construction Loan Agreement) as follows:



1. "Construction Monitor" means a Construction inspector or monitor, or other persons designated by you to monitor and otherwise inspect the construction of the improvements, including reviewing and approving all Draw Requests and performance of on-site inspections. The Construction Monitor will be an independent contractor, and I will pay the costs and expenses associated with the Construction Monitor.

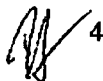
The Appraisers prepared the subject-to completion appraisal and performed a number of inspections in its/her role as the Construction Monitor during the construction of the Plaintiffs' home between June 18, 2008 and June 12, 2009.

The Plaintiffs acknowledge, in Paragraph 14 of their Amended Complaint, that "RBC retained Appraisal Team and Teresa Addy-Haltiwanger to provide inspection and/or construction status assessments with regards to Cliff Hall and Hall Builders' construction of the Carew home at 34 Edens Point Road, Irmo, South Carolina."

In February 2009, the Plaintiffs' builder, Hall Builders, encountered financial troubles. Hall Builders' financial problems were so severe that on February 11, 2009, the principal of Hall Builders advised the Plaintiffs that he/Hall Builders would not be able to complete the Plaintiffs' home. On that same day, February 11, 2009, Hall Builders released the Plaintiffs from their contract with Hall Builders.

In February 2009, it became clear that Hall Builders could not and would not perform the remaining work on the Plaintiffs' home in accordance with the terms of the contract between Hall Builders and the Plaintiffs.

On or about January 29, 2010, Plaintiffs filed their initial Complaint against the Builder, Appraisers and RBC Bank. In their Complaint, Plaintiffs asserted claims against RBC Bank for negligence and breach of contract. RBC Bank filed its Motion for

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Summary Judgment on or about January 5, 2012. I find that this matter is properly before the Court and the Motion is ripe for adjudication at this time.

### **SUMMARY JUDGMENT STANDARD**

Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 530 S.E.2d 369 (2000). "Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." *Hedgepath v. American Telephone and Telegraph Company*, 348 S.C. 340, 559 S.E.2d 327, 335 (Ct.App.2002) citing *Baughman v. American Tel. And Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537, 545 (1991). "Once the moving party carries its initial burden, the opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial.'" *Hedgepath*, 559 S.E.2d at 335 (citations omitted).

### **CONCLUSIONS OF LAW**

#### **I. RBC Bank is Entitled to Summary Judgment on Plaintiffs' Negligence Claim**

##### **A. RBC Bank Did Not Owe a Duty to Plaintiffs Regarding the Construction Progress Inspections**

On July 27, 2011, this Court entered an Order granting summary judgment in favor of the Appraiser (the "Order"). In ruling on the Appraiser's motion, the Order held that the Loan Agreement "makes it absolutely clear that RBC had no duty to even conduct inspections during the construction of the Plaintiffs' home," and that "the inspections were for the 'sole and exclusive benefit' of RBC" and "are not to be relied upon by the Plaintiffs." (Order at 5-6). Because Plaintiffs did not appeal this ruling, it

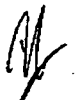
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has become the law of this case and, therefore, applies with equal force to Plaintiffs' claims against RBC Bank. *See Ables v. Gladden*, 378 S.C. 558, 569, 664 S.E.2d 442, 448 (2008) (holding an unappealed ruling is the law of the case).

As set forth in the Order, the Loan Agreement clearly and conspicuously defines the rights and responsibilities of RBC regarding construction inspections. Sections 7.2.2 and 8.4 of the Loan Agreement provide that (1) RBC Bank had no obligation to conduct inspections; (2) all inspections were for RBC Bank's sole benefit; and (3) Plaintiffs had no right to rely on any such inspections. Accordingly, RBC Bank did not owe Plaintiffs any duties regarding inspections of the home during construction.

This conclusion is supported by South Carolina law, which recognizes that periodic inspections during construction are "fundamentally for the protection of the lending institution and do[] not impose upon the lending institution a duty to see that the builder is getting a job free of defects." *Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp.*, 282 S.C. 415, 422, 321 S.E.2d 46, 50 (1984).

As mentioned above, Dr. Joseph Carew testified that he did not read the Loan Agreement. However, as set forth in this Court's prior Order, "a person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it." *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct.App. 2003). As such, "[w]here an agreement is clear and capable of legal interpretation, the Courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct.App. 2004); *see also Citizens and Southern Nat'l Bank of South Carolina v. Lanford*, 313 S.C. 540, 545, 443 S.E.2d 549,

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551 (1994) ("The law does not impose a duty on the bank to explain to an individual what he could learn from simply reading the document.").

Plaintiffs also allege the Loan Agreement is a contract of adhesion and/or is unconscionable. However, this Court has already held that the Loan Agreement is not an unenforceable contract of adhesion and that the terms of the Loan Agreement are not unconscionable so as to render it unenforceable. (Order at 7-9). Because Plaintiffs did not appeal this ruling, it has become the law of this case and applies equally to Plaintiffs' claims against RBC Bank. *See Ables*, 378 S.C. at 569, 664 S.E.2d at 448.

Therefore, viewing the facts in a light most favorable to the Plaintiffs, there is no genuine issue of material fact in this matter regarding the Plaintiffs' negligence claim against RBC Bank or the Loan Agreement's enforceability. Accordingly, RBC is entitled to judgment as a matter of law.

**B. Plaintiffs Released RBC for any Liability Related to Construction Progress Inspections**

Plaintiffs also expressly released any claims against RBC Bank related to the construction progress inspections upon which most of Plaintiffs' claims rely. Section 8.4 of the Loan Agreement states in pertinent part as follows:

I [Plaintiffs] agree that your [RBC's] failure or the Construction Monitor's [Appraiser's] failure (1) to discover defects in the Improvements, including errors or omissions in design, workmanship, materials, supplies, fixtures, parts, products or equipment due to non-compliance with the Construction Documents, or due to defects in any of the foregoing, will not make either you or the Construction Monitor liable to me ....

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The plain language of this provision makes clear that by signing the Loan Agreement, Plaintiffs expressly agreed to release RBC Bank from any liability related to construction defects or defects in the construction progress inspections. Moreover, as set forth above, the Loan Agreement is a valid and enforceable contract between the parties. Therefore, viewing the facts in a light most favorable to the Plaintiffs, there is no genuine issue of material fact regarding the Plaintiffs' negligence claim against RBC Bank because Plaintiffs have released RBC Bank from any such liability. Accordingly, RBC Bank is entitled to judgment as a matter of law as to Plaintiffs' negligence claim.

**C. RBC Bank is Entitled to Summary Judgment on Plaintiffs' Negligence Claims Based on Acts and Omissions Unrelated to Construction Progress Inspections.**

In addition to alleging that RBC Bank was negligent based on the construction progress inspections, Plaintiffs have also asserted negligence claims against RBC Bank based on other alleged wrongful acts and omissions. However, these claims also fail.

Plaintiffs' Amended Complaint first alleges RBC Bank was negligent by "failing to timely assist Plaintiffs when advised that the asset was in peril of not being completed" and by "failing to timely respond to Plaintiffs, which resulted in liens being placed against the property in question, imperiling the asset." Amended Compl. ¶¶ 51(g), (h). However, Plaintiffs have not identified any legal duty or contractual provision under which RBC Bank was obligated to (1) help Plaintiffs enforce their own construction contract against the builder they selected and hired and/or (2) timely respond to Plaintiffs to ensure construction liens were not placed on their property as a result of Plaintiffs' builder's alleged misuse of funds.

Plaintiffs next allege RBC Bank was negligent “[b]y paying for the same construction draws twice.” Amended Comp. ¶ 51(c). In response to this allegation, RBC Bank presented evidence that it credited Plaintiffs’ loan account back for these construction draws so that Plaintiffs would be able to draw against these funds for future construction expenditures. RBC Bank also presented evidence that it released all construction draws, including these funds, directly to the Plaintiffs who, in turn, were responsible for reviewing the invoices and paying their builder. Plaintiffs have not presented any evidence contradicting these facts or explaining how they were harmed by RBC Bank’s construction draws in light of the undisputed fact that the second disbursement was restored to their available loan proceeds.

Lastly, as to all claims of negligence, Plaintiffs have failed to offer any expert testimony or other evidence establishing a duty of care owed by a lender to a borrower under these circumstances, or RBC Bank’s alleged failure to meet such a standard of care. Because these elements of Plaintiffs’ negligence claims have not been established after sufficient time for discovery, Plaintiffs’ negligence claim must fail.

Because there is no genuine issue of material fact regarding the Plaintiffs’ negligence claim against RBC Bank, this cause of action fails as a matter of law and is dismissed with prejudice.

**II. RBC Bank is Entitled to Summary Judgment on Plaintiffs’ Breach of Contract Claim.**

In their Amended Complaint, Plaintiffs also allege that RBC Bank breached several provisions of the Loan Agreement. However, like their negligence claim, Plaintiffs’ breach of contract claim also fails.

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Plaintiffs first allege that RBC Bank breached Section 6.2 of the Loan Agreement, which governs the completion of improvements to the property. Specifically, that provision states that the improvements “must be Completed” and that RBC Bank is entitled to receive “final lien waivers/releases from the General Contractor.” This provision does not place any obligations on RBC Bank and, therefore, cannot support a claim for breach of contract.

Plaintiffs next allege that RBC Bank breached Section 10.3 of the Loan Agreement, which gives RBC Bank “the right, but not the obligation,” to take possession, use, operate, construct, complete, preserve, or control any of the collateral for the loan. (Emphasis added). As the plain language of this provision makes clear, Section 10.3 outlines RBC Bank’s rights with relation to the collateral for the loan, and does not impose upon RBC Bank any obligations in that respect. Therefore, this provision cannot support a claim for breach of contract.

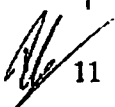
Plaintiffs next allege that RBC Bank breached Sections 5 and 7 of the Loan Agreement, which govern the disbursement of loan proceeds. Section 5 and its subsections provide that certain conditions must be resolved to RBC Bank’s satisfaction and in its opinion before RBC Bank is required to disburse any loan proceeds. These provisions do not obligate RBC Bank to perform any actions before disbursing loan proceeds, but instead gives RBC Bank the right to disburse loan proceeds when it is satisfied with the progress of construction. Similarly, Section 7.2 of the Loan Agreement gives RBC Bank the right to determine the amount of loan proceeds to be disbursed, and Section 7.4 expressly gives RBC Bank the right to disburse loan proceeds to the contractor without Plaintiffs’ prior approval and without prior notice.

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These provisions are for the benefit of RBC Bank and do not impose upon it any obligations to Plaintiffs regarding the distribution of loan proceeds. Indeed, as discussed above and in this Court's prior Order, "RBC could have, if it so desired, relied entirely on the payment applications submitted by the builder, Hall Builders, LLC, for purposes of disbursing the construction proceeds." (Order at 5). Accordingly, Sections 5 and 7 cannot support a claim for breach of contract.

Finally, Plaintiffs allege that RBC Bank breached Section 8 of the Loan Agreement, which relates to the performance of construction progress inspections. As discussed above and in this Court's prior Order, the Loan Agreement expressly provides that (1) RBC Bank had no obligation to conduct any inspections; (2) all inspections were for RBC Bank's sole benefit; and (3) Plaintiffs had no right to rely on any such inspections. Accordingly, Section 8 cannot support a claim for breach of contract.

Viewing the facts in a light most favorable to the non-moving party, Plaintiffs have failed to submit evidence that RBC Bank breached any contractual provision in this case. Because there is no genuine issue of material fact regarding the Plaintiffs' breach of contract claim, RBC Bank is entitled to judgment as a matter of law.

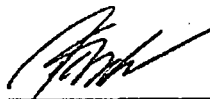
  
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**CONCLUSION**

For the reasons set forth above, this Court hereby orders, adjudges, and decrees that Defendant RBC Bank (USA)'s Motion for Summary Judgment is GRANTED. Therefore, the Amended Complaint and all causes of action therein asserted against RBC Bank (USA) are hereby dismissed with prejudice.

AND IT IS SO ORDERED.



R. Knox McMahon  
Presiding Judge, 11<sup>th</sup> Judicial Circuit

Lexington, South Carolina

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STATE OF SOUTH CAROLINA )

COUNTY OF LEXINGTON )

Dr. Joseph G. Carew and  
Dr. Karen Carew,

Plaintiffs, )

vs. )

RBC Centura Bank; RBC Bank as  
successor in interest of RBC Centura Bank;  
Clifton W. Hall; Hall Builders, LLC;  
Appraisal Team of Mid Carolina, LLC; and  
Teresa Addy-Haltiwanger,

Defendants. )

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

CIVIL ACTION №: 2010-CP-32-00442

**FIRST AMENDED  
COMPLAINT**

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CLERK OF COURT  
LEXINGTON, SC

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Plaintiffs, Dr. Joseph Carew and Dr. Karen Carew ("Plaintiffs"), complaining of the  
above-named Defendants allege as follows:

**PARTIES AND JURISDICTION**

1. Plaintiffs are citizens and residents of Columbia, South Carolina, and are the owners of the property located at 34 Edens Point Road in Irmo, South Carolina, which is in Lexington County, South Carolina.

2. Defendant RBC Centura Bank ("RBC Centura") is a North Carolina corporation and, at all times herein, transacted business within Lexington County within the state of South Carolina. RBC Centura provided certain financing for construction of the Carew home at 34 Edens Point Road, Irmo, South Carolina.

3. RBC Bank ("RBC Bank") is a North Carolina corporation and is the successor in interest of RBC Centura which at all times herein transacted business within Lexington County, within the state of South Carolina. RBC Bank as successor in interest is responsible for the liabilities of RBC Centura which arose as a result of its handling of construction financing.

4. Defendant Clifton W. Hall ("Cliff Hall") is, upon information and belief, a citizen and resident of Richland County, South Carolina, a licensed contractor and residential home builder in South Carolina, and was at all times relevant to this Complaint acting personally and as an agent for Defendant Hall Builders, LLC, regarding the construction of Plaintiffs' home located at 34 Edens Point Road, Irmo, South Carolina.

5. Defendant Hall Builders, LLC ("Hall Builders"), is and was at all times relevant to this Complaint a company existing under the laws of the State of South Carolina and doing business in Lexington County, South Carolina, and contracted with the Plaintiffs to build the home at 34 Edens Point Road, Irmo, South Carolina.

6. Defendant Appraisal Team of Mid Carolina, LLC ("Appraisal Team"), is a South Carolina limited liability company which transacted business in Lexington County within the state of South Carolina by providing certain inspection, appraisal, or construction status assessments for RBC Centura regarding the construction of Plaintiffs' home located at 34 Edens Point Road, Irmo, South Carolina.

7. Defendant Teresa Addy-Haltiwanger is a South Carolina resident and licensed appraiser who transacted business in Lexington County within the state of South Carolina by providing certain inspections, appraisal, or construction status assessments for RBC Centura regarding the construction of Plaintiffs' home located at 34 Edens Point Road, Irmo, South Carolina.

8. This Court has jurisdiction over these parties and venue is proper in Lexington County, South Carolina.



## FACTS

9. Plaintiffs purchased Lot 25 in the Harbour Pointe neighborhood with a street address of 34 Edens Point Road, Irmo, South Carolina.

10. Plaintiffs entered a construction contract with Hall Builders, LLC, for the construction of a home at 34 Edens Point Road, Irmo, South Carolina. The home was to be completed by June 14, 2009.

11. On or about February 29, 2008, Plaintiffs entered a construction loan agreement with RBC Centura with loan number 213-10017776.

12. Pursuant to this loan agreement, Defendants Cliff Hall and Hall Builders were allowed to request draws from RBC Centura upon completion of certain stages of construction.

13. On April 29, 2008, Cliff Hall and Hall Builders obtained a building permit in the name of Cliff Hall Builders and, thereafter, began construction of the home at 34 Edens Point Road, Irmo, South Carolina.

14. RBC Centura retained Appraisal Team and Teresa Addy-Haltiwanger to provide inspection and/or construction status assessments with regard to Cliff Hall and Hall Builders' construction of the Carew home at 34 Edens Point Road, Irmo, South Carolina.

15. RBC Centura disbursed funds, including but not limited to the following draws, to Hall Builders:

- a. \$40,000 on 6/23/08;
- b. \$45,000 on 6/30/08;
- c. \$37,800 on 7/3/08;
- d. \$38,000 on 7/14/08;
- e. \$15,000 on 7/18/08;
- f. \$45,000 on 7/29/08;

- g. \$10,000 on 7/31/08;
- h. \$83,000 on 8/22/08;
- i. \$36,601 on 9/8/08;
- j. \$21,675 on 9/22/08;
- k. \$72,250 on 9/30/08;
- l. \$14,450 on 12/23/08;
- m. \$39,950 on 12/24/08; and
- n. \$86,700 on 2/2/09.

16. On January 7, 2009, Defendant Cliff Hall of Hall Builders informed Plaintiffs via e-mail of the following:

- a. "We are confident that we can meet our deadline."
- b. "The roof is scheduled to start this week. We've had minor water damage from not having the roof but that's getting resolved right away."
- c. "Things will pick up significantly over the next few days."

17. On Monday February 9, 2009, Jack Hanrahan of RBC in Columbia, South Carolina informed Plaintiffs via e-mail of the following:

- a. RBC Centura funded the most current draw on 2/2/09 of \$86,700;
- b. The inspection claimed 67% of the house was complete;
- c. \$124,665.40 of the loan is remaining; and
- d. RBC Centura holds back 10% until a Certificate of Occupancy is issued.

18. On Tuesday February 10, 2009, Defendant Cliff Hall informed Gail Chaffin of RBC Centura via e-mail, on which he also copied Plaintiffs, of the following:

- a. Cliff Hall and Plaintiffs are working through payment issues;
- b. The roof has not been installed;
- c. The roofing material is currently in the driveway;

- d. It is critical for the roof to be installed quickly to prevent water damage to the interior of the house; and
- e. He requests RBC Centura directly advance Plaintiffs \$24,000 to pay the roofer.

19. On February 10, 2009, Defendant Cliff Hall of Hall Builders informed Plaintiffs via e-mail of the following:

- a. "I asked the bank for the full \$24,000 so that there is no chance of me causing a delay."
- b. "I have still yet to pull together the \$10,000 shortage from the 2% on the bank's draw schedule."

20. On or about February 11, Defendant Cliff Hall advised Plaintiffs that he was having financial troubles and would not be able to complete Plaintiffs' partially constructed home.

21. On Wednesday February 11, 2009, Defendant Cliff Hall informed Plaintiffs via e-mail that he was releasing them from the contract between Plaintiffs and Hall Builders.

22. On or before February 11, 2009, Defendants Cliff Hall and Hall Builders ceased work and withdrew from the worksite of the partially constructed home.

23. On February 12, 2009, Plaintiffs informed Anderson Griffin at RBC Centura via e-mail of the following:

- a. Hall Builders released Plaintiffs from the contract;
- b. Pyramid Contracting, Bobby Alexander, is taking over the project; and
- c. Pyramid Contracting is helping to determine how much money Hall Builders stole from Plaintiffs.

24. Plaintiffs were left with an incomplete house under construction; a house with water damage; and were exposed to additional construction costs because RBC Centura had disbursed funds when it should not have done so.

25. Plaintiffs had to then seek out another contractor to complete the home. Pyramid Contracting provided an estimate for the cost to complete the residence which was unfinished by Defendant Hall and Hall Builders. This estimate did not include the removal and replacement of water damaged material.

26. On February 13, 2009, RBC Centura informed Plaintiffs via e-mail that it would pull its file to review where it was and would get back in touch with them.

27. On February 25, 2009, Stock Building Supply, Inc. f/k/a Columbia Lumber filed a Mechanics Lien in the amount of \$15,257.94 for materials and services furnished to Cliff Hall for the erection of Plaintiffs' home as of February 10, 2009.

28. On March 2, 2009, counsel for Plaintiffs served Defendant Cliff Hall of Hall Builders notice of a claim pursuant to the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §§ 40-59-810, *et seq.* Also included in the letter was the following information:

- a. RBC Centura has paid directly to Hall Builders approximately 85% of the available funds.
- b. Only 67% of the home has been claimed as completed.
- c. Defendant Hall Builders has failed to pay its subcontractors even though it requested and received construction loan proceeds for the subcontractors work.
- d. Plaintiffs now face multiple liens being placed on their property.
- e. Defendants Cliff Hall and Hall Builders' failure to properly sequence construction had led to flooring and sheetrock damage as a result of the flooring and sheetrock being installed before appropriate water tight roofing was installed.
- f. Plaintiffs' demand Defendants Cliff Hall and Hall Builders remove and repair damaged flooring, sheetrock and all other building components impaired by the water intrusion; Defendant Hall Builders complete the residence; and Defendant Hall Builders provide lien waivers for all work performed by subcontractors.

- g. Pursuant to South Carolina Code § 40-59-850, Defendant Hall Builders had 30 days to inspect, remedy, settle, or deny the defects claim in writing.

29. Defendants Cliff Hall and Hall Builders failed to cure the defects in accordance with the Act and further failed to complete the home.

30. On March 12, 2009, counsel for Plaintiffs informed RBC Centura via e-mail of the scope of work and costs for the Plaintiffs' residence per the teleconference earlier in the week between the parties.

31. On March 12, 2009, American Builders and Contractors Supply Company, Inc. filed a Mechanics Lien in the amount of \$28,997.61 for labor and materials provided to Cliff Hall for the construction of Plaintiffs' home.

32. Plaintiffs requested from RBC Centura assistance in recovering improper payments made by RBC Centura to Cliff Hall and Hall Builders; in determining why interior work was allowed when the roof was not complete; in pursuing Cliff Hall and Hall Builders for improperly taking funds; and funding construction for the completion of the home.

33. On March 17, 2009, counsel for Plaintiffs again requested RBC Centura's position on the matter via e-mail.

34. On March 24, 2009, counsel for Plaintiffs again requested RBC Centura's proposed resolution regarding Plaintiffs' loan.

35. On March 25, 2009, Palmetto Builders Concrete, LLC filed Notice of Mechanics Lien in the amount of \$4,074 for labor and materials furnished virtue of an agreement with Hall Builders, LLC for the erection of Plaintiffs' home.

36. On March 26, 2009, Plaintiffs' counsel again requested RBC Centura's position on a proposed resolution of Plaintiffs' loan since the mortgage asset was not completed.

37. On March 27, 2009, Pyramid Contracting obtained a building permit to complete the home which had been started and abandoned by Cliff Hall and Hall Builders.

38. On April 29, 2009, American Builders and Contractors Supply Company, Inc. filed a Complaint for foreclosure of the Mechanics Lien in which they requested \$28,997.61, interest, late charges, and attorneys' fees.

39. The liens placed on the property were by subcontractors for whose work Cliff Hall and Hall Builders received construction draws, but failed to pay the subcontractors.

40. Cliff Hall and Hall Builders' failure to pay their subcontractors exposed Plaintiffs to mechanics liens.

41. RBC Centura's failure to resolve the construction loan issues exposed Plaintiffs to mechanics liens.

#### **FOR A FIRST CAUSE OF ACTION**

**(Negligence/Negligence *Per Se* – Defendants Cliff Hall and Hall Builders)**

42. Plaintiffs repeat and reallege Paragraphs 1 through 41 above as if set forth herein verbatim.

43. Defendants Cliff Hall and Hall Builders owed a duty to build the subject home in good condition, free of substantial defects, and in compliance with all applicable building codes and standards.

44. Defendants Cliff Hall and Hall Builders breached the duty as set forth above, and further breached the duty in numerous particulars including, but not limited to, the following:

- a. By failing to comply with applicable building codes constituting negligence per se;
- b. By failing to properly sequence the construction of the home in question, which allowed water to intrude and damage the building and its components;
- c. By failing to complete the home;

- d. By failing to properly install flashing;
- e. By causing moisture damage in the subflooring, flooring, sheetrock, and framing;
- f. By failing to properly construct the roof;
- g. By failing to properly grade the site;
- h. By failing to construct the home using watertight means and methods in violation of applicable building codes, industry standards, and manufacturers' requirements;
- i. By failing to adequately seal building penetrations;
- j. By failing to supervise subcontractors;
- k. By withdrawing from the construction contract;
- l. By failing to assure compliance with the applicable plans, specifications, industry standards, manufacturers' requirements, and standard building construction practices
- m. By failing to pay subcontractors;
- n. By exposing Plaintiffs to mechanics liens by failing to pay subcontractors; and
- o. By any and all acts and omissions which shall become apparent through discovery process and further investigation into the matter.

45. Plaintiffs are the prospective homeowners for whom the applicable building codes and standards are specifically enacted to protect.

46. As a direct and proximate result of Defendants Cliff Hall and Hall Builders' combined and concurring negligence, carelessness, recklessness, willfulness, and wantonness, numerous parts of the home have been continuously and repeatedly exposed to leaks causing moisture infiltration resulting in damage, mold, rot, and degradation of the home.

47. As a direct and proximate result of Defendants Cliff Hall and Hall Builders' combined and concurring negligence, carelessness, recklessness, willfulness, and wantonness, Plaintiffs had to hire another contractor to complete the home. The hiring of the new contractor

to complete the home caused Plaintiffs to incur substantial additional expenses, substantial additional completion costs, and substantial additional repair costs.

48. As a direct and proximate result of Defendants Cliff Hall and Hall Builders' negligence and negligence *per se*, Plaintiffs are entitled to damages as prayed for in this Complaint in amounts to be proven at trial.

**FOR A SECOND CAUSE OF ACTION**  
(Negligence – Defendants RBC Centura and RBC Bank)

49. Plaintiffs repeat and reallege Paragraphs 1 through 48 above as if set forth herein verbatim.

50. Plaintiffs have a pecuniary interest in the home under construction and in the construction loan agreement. Plaintiffs reasonably relied on RBC Centura to conduct itself in a reasonable manner in distributing construction loan proceeds and in otherwise administering the loan.

51. RBC Centura and RBC Bank owed Plaintiffs a duty to conduct themselves in a reasonable manner and avoid foreseeable harm to Plaintiffs. RBC Centura Bank and RBC Bank breached the duty in one or more of the following particulars:

- a. By failing to retain a competent inspector;
- b. By issuing funds to the general contractor when those funds were not due;
- c. By paying for the same construction draws twice;
- d. By allowing the general contractor to complete interior portions of the home when the roof and shell of the home were not complete;
- e. By failing to monitor its inspector and the general contractor so as to avoid water intrusion damage to the home;
- f. By issuing funds in an amount greater than the actual completion percentage of the home;



- g. By failing to timely assist Plaintiffs when advised that the asset was in peril of not being completed; and
- h. By failing to timely respond to Plaintiffs which resulted in liens being placed against the property in question, imperiling the asset.

52. Plaintiffs' pecuniary interest in the home in question was affected by RBC Centura's actions and non-action.

53. As a direct and proximate result of Defendants RBC Centura and RBC Bank's combined and concurring negligence, carelessness, recklessness, willfulness, and wantonness, numerous parts of the home have been continuously and repeatedly exposed to leaks causing moisture infiltration resulting in damage, mold, rot, and degradation of the home.

54. As a direct and proximate result of Defendants RBC Centura and RBC Bank's combined and concurring negligence, carelessness, recklessness, willfulness, and wantonness, Plaintiffs were exposed to a greater debt under the construction lending agreement.

55. As a direct and proximate result of Defendants RBC Centura and RBC Bank's combined and concurring negligence, carelessness, recklessness, willfulness, and wantonness, Plaintiffs had to hire another contractor to complete the home. The hiring of the new contractor to complete the home caused Plaintiffs to incur substantial additional expenses, substantial additional completion costs, and substantial additional repair costs.

56. As a direct and proximate result of Defendants RBC Centura and RBC Bank's negligence, Plaintiffs are entitled to damages as prayed for in this Complaint in amounts to be proven at trial.

### **FOR A THIRD CAUSE OF ACTION**

(Negligence – Defendants Appraisal Team and Teresa Addy-Haltiwanger)

57. Plaintiffs repeat and reallege Paragraphs 1 through 56 above as if set forth herein verbatim.

58. Defendants Appraisal Team and Teresa Addy-Haltiwanger owed a duty to properly inspect the subject home and accurately report whether the home was completed to certain percentages and that the work was of good quality, of a workmanlike manner, free of substantial defects, and in compliance with applicable building codes and standards.

59. Defendants Appraisal Team and Teresa Addy-Haltiwanger breached this duty by approving and reporting to Defendant RBC certain completion percentages which were not accurate.

60. Defendants Appraisal Team and Teresa Addy-Haltiwanger failed to address the sequencing errors committed by Cliff Hall and Hall Builders.

61. Defendants Appraisal Team and Teresa Addy-Haltiwanger failed to report that the roof was not complete when interior work was being performed by Cliff Hall and Hall Builders or their subcontractors.

62. As a direct and proximate result of Defendants Appraisal Team and Teresa Addy-Haltiwanger's combined and concurring negligence, carelessness, recklessness, willfulness, and wantonness, numerous parts of the home have been continuously and repeatedly exposed to leaks causing moisture infiltration resulting in damage, mold, rot, and degradation of the home.

63. As a direct and proximate result of Defendants Appraisal Team and Teresa Addy-Haltiwanger's combined and concurring negligence, carelessness, recklessness, willfulness, and wantonness, Plaintiffs had to hire another contractor to complete the home. The hiring of the new contractor to complete the home caused Plaintiffs to incur substantial additional expenses, substantial additional completion costs, and substantial additional repair costs.

64. As a direct and proximate result of Defendants Appraisal Team and Teresa Addy-Haltiwanger's negligence, Plaintiffs are entitled to damages as prayed for in this Complaint in amounts to be proven at trial.

**FOR A FOURTH CAUSE OF ACTION**  
**(Breach of Implied Warranty of Workmanlike Service - Defendants Cliff Hall and Hall Builders)**

65. Plaintiffs repeat and reallege Paragraphs 1 through 64 above as if restated herein verbatim.

66. Defendants Cliff Hall and Hall Builders by undertaking the construction work made an implied warranty as a matter of law to Plaintiffs that the subject property would be constructed in a good and workmanlike manner.

67. Defendants Cliff Hall and Hall Builders breached the aforesaid implied warranties by failing to construct the subject home in accordance with the approved construction plans and specifications provided, by failing to use good construction practices, and by failing to construct the subject property in accordance with applicable building codes and construction standards.

68. As the direct and proximate result thereof, Plaintiffs are entitled to damages as prayed for in this Complaint in an amount to be proven at trial.

**FOR A FIFTH CAUSE OF ACTION**  
**(Breach of Implied Warranty of Habitability and Fitness for Intended Purpose - Defendants Cliff Hall and Hall Builders)**

69. Plaintiffs repeat and reallege Paragraphs 1 through 68 above as if restated herein verbatim.

70. Defendants Cliff Hall and Hall Builders by undertaking the construction of the home made an implied warranty that the home would be habitable and fit for its intended use as a residence.

71. Defendants Cliff Hall and Hall Builders breached the warranty of habitability and fitness for the home's intended purpose by failing to construct the subject home in accordance with approved construction plans and specifications provided, by failing to use good construction practices, and by failing to construct the subject property in accordance with applicable building codes and construction standards.

72. As a direct and proximate result thereof, Plaintiffs have suffered damages and are entitled to damages as prayed for in this Complaint in an amount to be determined at trial.

**FOR A SIXTH CAUSE OF ACTION**  
**(Breach of Express Warranties – Defendants Cliff Hall and Hall Builders)**

73. Plaintiffs repeat and reallege Paragraphs 1 through 72 above as if restated herein verbatim.

74. Defendants Cliff Hall and Hall Builders in contracting to undertake the construction work made express warranties regarding the quality of their workmanship pursuant to Article 15 of the contract.

75. Defendants Cliff Hall and Hall Builders breached their express warranties as set forth hereinabove.

76. As a direct and proximate result thereof, Plaintiffs have suffered damages and are entitled to damages as prayed for in this Complaint in an amount to be proven at trial.

**FOR A SEVENTH CAUSE OF ACTION**  
**(Breach of Contract – Defendants Cliff Hall and Hall Builders)**

77. Plaintiffs repeat and reallege Paragraphs 1 through 76 above as if restated herein verbatim.

78. Plaintiffs entered into a contract with Defendants Cliff Hall and Hall Builders to build their house located at 34 Edens Point Road, Irmo, South Carolina.

79. Defendants Cliff Hall and Hall Builders breached their contract with Plaintiffs by failing to perform as warranted and agreed to under the terms of the contract entered into with Plaintiffs, including but not limited to Article 3 – Time of Completion, Article 5 – Progress Payments, and Article 15 – Warranty.

80. Defendants Cliff Hall and Hall Builders further breached their contract with Plaintiffs by failing to perform as required by applicable building codes and standards.

81. Defendants Cliff Hall and Hall Builders breached their contract by wrongfully requesting draws; by converting funds to their own use; by failing to pay subcontractors; by failing to timely complete the home; and, by withdrawing from the construction site.

82. Defendants Cliff Hall and Hall Builders have no legal excuse for the breach and for their failure to perform as warranted and agreed to under the terms of the contract entered into with Plaintiffs, and for which Plaintiffs paid valuable consideration.

83. As a direct and proximate result of Defendants Cliff Hall and Hall Builders' breach of the contract, Plaintiffs are entitled to damages as prayed for in this Complaint in an amount to be proven at trial.

### **FOR AN EIGHTH CAUSE OF ACTION**

**(Breach of Construction Lending Agreement – Defendants RBC Centura and RBC Bank)**

84. Plaintiffs repeat and reallege Paragraphs 1 through 83 above as if restated herein verbatim.

85. Plaintiffs entered into a construction lending agreement with Defendants RBC Centura and RBC Bank to provide funding for the construction of their home located at 34 Edens Point Road, Immo, South Carolina.

86. Defendants RBC Centura and RBC Bank breached their contract with Plaintiffs by authorizing construction draws that were not in line with the actual construction progress of Plaintiffs' home.

87. Defendants RBC Centura and RBC Bank further breached their contract with Plaintiffs by failing to hire an inspection company or individual who would properly inform Defendants RBC Centura and RBC Bank of the progress and adequacy of construction at Plaintiffs' home.

88. Defendants RBC Centura and RBC Bank further breached their contract by engaging in conduct which exposed Plaintiffs to delay and mechanics liens.

89. Defendants RBC Centura and RBC Bank have no legal excuse for their breach and for their failure to perform as warranted and agreed to under the terms of the construction loan agreement entered into with Plaintiffs, and for which Plaintiffs' paid valuable consideration.

90. As a direct and proximate result of Defendants RBC Centura and RBC Bank's breach of the contract, Plaintiffs' are entitled to damages as prayed for in this Complaint in amounts to be proven at trial.

**FOR A NINTH CAUSE OF ACTION**  
**(Fraud – Defendants Cliff Hall and Hall Builders)**

91. Plaintiffs repeat and reallege Paragraphs 1 through 90 above as if restated herein verbatim.

92. Defendants Cliff Hall and Hall Builders represented to the Plaintiffs that the money Defendants Cliff Hall and Hall Builders were receiving from Plaintiffs' bank was going and/or would go towards the construction of their residence, including specific charges by various subcontractors. Defendants Cliff Hall and Hall Builders, up until withdrawal, represented the home was in good condition; the construction was on schedule and financing

obligations were being met. Defendants Cliff Hall and Hall Builders made further representations in Article 29 of the contract.

93. These representations made by Defendants Cliff Hall and Hall Builders were false.

94. These representations made by Defendants Cliff Hall and Hall Builders were material.

95. Defendants Cliff Hall and Hall Builders either knew these representations were false or recklessly disregarded whether they were true or not.

96. Defendants Cliff Hall and Hall Builders intended that Plaintiffs and Plaintiffs' bank act upon Defendants Cliff Hall and Hall Builders' representations, and Plaintiffs' bank accordingly sent funds for the work allegedly performed.

97. Defendants Cliff Hall and Hall Builders failed to pay various subcontractors who performed work on the project.

98. Defendants Cliff Hall and Hall Builders did not complete the home to the percentage for which the draws were authorized.

99. Plaintiffs were unaware of the falsity of these representations made by Defendants.

100. Plaintiffs relied upon the truth of these statements in order to pay for the construction of their residence.

101. Plaintiffs had a right to rely upon the representation of Defendants.

102. Plaintiffs consequently, as a proximate result of Defendants Cliff Hall and Hall Builders' representations, have suffered injury and are entitled to recover damages as prayed for in this Complaint in an amount to be proven at trial.

**FOR A TENTH CAUSE OF ACTION**  
**(Breach of Contract Accompanied by Fraudulent Act – Defendants Cliff Hall and Hall Builders)**

103. Plaintiffs repeat and reallege Paragraphs 1 through 102 above as if restated herein verbatim.

104. Defendants Cliff Hall and Hall Builders entered into a contract with Plaintiffs.

105. Defendants Cliff Hall and Hall Builders had fraudulent intent relating to their breaching of the contract and not merely to the making of the contract.

106. Defendants Cliff Hall and Hall Builders committed fraudulent acts accompanying the breach through dishonesty in fact and unfair dealing. In particular, Defendants Cliff Hall and Hall Builders misappropriated at least \$115,000 in funds that were sent by Plaintiffs' bank for the construction of the house for work which was either never performed or for which Cliff Hall and Hall Builders failed to pay subcontractors.

107. Additionally, Defendants Cliff Hall and Hall Builders did not use the money Plaintiffs' bank sent them to pay the subcontractors on the project for the subcontractors' work on the residence.

108. Accordingly, Plaintiffs are entitled to damages as prayed for in this Complaint in amounts to be proven at trial.

**FOR AN ELEVENTH CAUSE OF ACTION**  
**(Conversion – Defendants Cliff Hall and Hall Builders)**

109. Plaintiffs repeat and reallege Paragraphs 1 through 108 above as if restated herein verbatim.

110. Plaintiffs had an interest in the construction draws requested by Cliff Hall and Hall Builders and paid by RBC Centura under the terms of the construction loan agreement.



111. Defendants Cliff Hall and Hall Builders, rather than using the funds to pay suppliers and subcontractors who had provided goods or services for the home in question, converted the funds paid pursuant to the construction draws to the purposes of Cliff Hall and Hall Builders.

112. Defendants Cliff Hall and Hall Builders' conversion of funds to their own purposes was without the permission of the Plaintiffs.

113. The conversion by Defendants Cliff Hall and Hall Builders was illegal, or tortious, or fraudulent, or otherwise wrongful.

114. The conversion by Defendants Cliff Hall and Hall Builders was accomplished with conscious indifference to the rights of Plaintiffs, was accomplished recklessly, and imperiled the construction of the home, imperiled Plaintiffs' rights to the home, imperiled the construction loan agreement, and imperiled the real property since resulting liens attached.

115. As a direct and proximate result of Defendants Cliff Hall and Hall Builders' conversion, Plaintiffs were damaged and are entitled to damages as prayed for in this Complaint in amounts to be proven at trial.

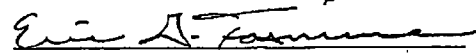
WHEREFORE, Plaintiffs Dr. Joseph G. Carew and Dr. Karen Carew pray for judgment against all Defendants for:

- a. actual damages;
- b. incidental and consequential damages;
- c. loss of use;
- d. punitive damages;
- e. interest;
- f. costs;
- g. attorneys fees;

and such other and further relief as this court deems just and proper.

Respectfully submitted,  
COLLINS & LACY, P.C.

By:



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ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

24 February, 2010

|                                      |   |                                  |
|--------------------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA              | ) | IN THE COURT OF COMMON PLEAS     |
|                                      | ) |                                  |
| COUNTY OF LEXINGTON                  | ) | ELEVENTH JUDICIAL CIRCUIT        |
|                                      | ) |                                  |
| Dr. Joseph G. Carew and              | ) | Civil Action No. 2010-CP-32-0042 |
| Dr. Karen Carew,                     | ) |                                  |
|                                      | ) |                                  |
| Plaintiffs,                          | ) |                                  |
|                                      | ) | <u>ANSWER OF RBC BANK (USA)</u>  |
| vs.                                  | ) |                                  |
|                                      | ) |                                  |
| RBC Centura Bank; RBC Bank as        | ) |                                  |
| successor in interest of RBC Centura | ) |                                  |
| Bank; Clifton W. Hall; Hall          | ) |                                  |
| Builders, LLC; Mid Carolina          | ) |                                  |
| Appraisal Company, LLC; and          | ) |                                  |
| Teresa Addy Haltiwanger,             | ) |                                  |
|                                      | ) |                                  |
| Defendants.                          | ) |                                  |

Defendant RBC Bank (USA), incorrectly named as RBC Centura Bank, and RBC Bank as successor in interest of RBC Centura (hereinafter "RBC"), replies to Plaintiffs' Amended Complaint as follows:

**FOR A FIRST DEFENSE AND BY WAY OF ANSWER**

1. RBC lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 and, therefore, denies same and demands strict proof thereof.

2. RBC admits so much of Paragraph 2 as alleges that RBC is a financial institution organized and existing under the laws of a state other than South Carolina, and that it also transacted business in Lexington County, South Carolina. RBC further admits that it entered into a loan transaction with Plaintiffs as evidenced in certain documents including, but not limited to, the Promissory Note and Construction

Loan Agreement (collectively "Loan Documents"), the terms of which speak for themselves. RBC denies any allegations in Paragraph 2 inconsistent with the Loan Documents.

3. RBC admits so much of Paragraph 3 as alleges that RBC Bank is a financial institution organized and existing under the laws of a state other than South Carolina, and that it also does business in Lexington County, South Carolina. RBC denies the remaining allegations of Paragraph 3.

4. RBC lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 4, 5, 6, and 7 and, therefore, denies same and demands strict proof thereof.

5. The allegations contained in Paragraph 8 constitute conclusions of law to which this Defendant is required to neither admit nor deny. To the extent a response is required, RBC denies same and demands strict proof thereof.

6. RBC admits so much of Paragraphs 9, 10, 11, and 12 as allege that RBC entered into a loan agreement with Plaintiff as evidenced by the Loan Documents, the terms of which speak for themselves. RBC denies any allegations in Paragraphs 9, 10, 11, and 12 inconsistent with the Loan Documents. RBC lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations of these Paragraphs and, therefore, denies same and demands strict proof thereof.

7. RBC lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 and, therefore, denies same and demands strict proof thereof.

8. RBC admits so much of Paragraph 14 as alleges that RBC retained Appraisal Team of Mid Carolina, LLC to perform certain inspections of the subject property in accordance with the Loan Documents, the terms of which speak for themselves. RBC denies any allegations of Paragraph 14 inconsistent with the Loan Documents.

9. RBC admits so much of Paragraph 15 as alleges that RBC disbursed funds in accordance with the Loan Documents, the terms of which speak for themselves. RBC further admits that it funded draw requests as evidenced in certain funding documents, including but not limited to funding request forms and draw requests (collectively "Funding Documents"), the terms of which speak for themselves. RBC denies any allegations of Paragraph 15 inconsistent with the Funding Documents.

10. RBC lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16, including all subparts thereof, and therefore denies same and demands strict proof thereof.

11. RBC admits so much of Paragraph 17 as alleges Mr. Hanrahan sent Plaintiffs an email on February 9, 2009, the contents of which speak for themselves. RBC denies any allegations of Paragraph 17 that are inconsistent with the February 9, 2009 email.

12. RBC admits so much of Paragraph 18 as alleges Ms. Chaffin received an email from Defendant Hall on February 10, 2009, the contents of which speak for themselves. RBC denies any allegations of Paragraph 18 that are inconsistent with the February 10, 2009 email.

13. RBC lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 19, 20, 21, and 22 and, therefore, denies same and demands strict proof thereof.

14. RBC admits so much of Paragraph 23 as alleges Mr. Griffin received an email from Plaintiffs on February 12, 2009, the contents of which speak for themselves. RBC denies any allegations of Paragraph 23 inconsistent with the February 12, 2009 email.

15. RBC denies so much of Paragraph 24 as alleges that RBC improperly disbursed funds. RBC lacks information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 24 and, therefore, denies same and demands strict proof thereof.

16. RBC lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 and, therefore, denies same and demands strict proof thereof.

17. On information and belief, RBC admits so much of Paragraph 26 as alleges Plaintiffs received an email from RBC dated February 13, 2009, the contents of which speak for themselves. RBC denies any allegations inconsistent with the February 13, 2009 email and demands strict proof thereof.

18. On information and belief, RBC admits the allegations contained in Paragraph 27.

19. RBC lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 28 and 29 and, therefore, denies same and demands strict proof thereof.

20. RBC admits so much of Paragraph 30 as alleges that counsel for Plaintiffs sent RBC an email on March 12, 2009. RBC denies any allegations of Paragraph 30 inconsistent with the March 12, 2009 email.

21. On information and belief, RBC admits the allegations contained in Paragraph 31.

22. RBC denies the allegations contained in Paragraph 32.

23. RBC admits so much of Paragraph 33 as alleges that counsel for Plaintiffs sent RBC an email on March 17, 2009. RBC denies any allegations of Paragraph 33 inconsistent with the March 17, 2009 email.

24. RBC admits so much of Paragraph 34 as alleges that counsel for Plaintiffs sent RBC an email on March 24, 2009. RBC denies any allegations of Paragraph 34 inconsistent with the March 24, 2009 email.

25. On information and belief, RBC admits the allegations contained in Paragraph 35.

26. RBC admits so much of Paragraph 36 as alleges that counsel for Plaintiffs sent RBC correspondence on March 26, 2009. RBC denies any allegations of Paragraph 36 inconsistent with the March 26, 2009 correspondence.

27. RBC lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 and, therefore, denies same and demands strict proof thereof.

28. On information and belief, RBC admits the allegations contained in Paragraph 38.

29. RBC lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 39 and 40 and, therefore, denies same and demands strict proof thereof.

30. RBC denies the allegations contained in Paragraph 41.

**FOR A FIRST CAUSE OF ACTION**  
**(Negligence/Negligence *Per Se* - Defendants Cliff Hall and Hall Builders)**

31. Answering Paragraph 42, RBC repeats and realleges the foregoing Paragraphs of its Answer.

32. Paragraphs 43, 44, 45, 46, 47, and 48 do not contain any allegations against RBC and, moreover, contain legal conclusions to which RBC is not required to respond. To the extent a response is required, RBC lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in these Paragraphs and, therefore, denies same and demands strict proof thereof.

**FOR A SECOND CAUSE OF ACTION**  
**(Negligence - Defendants RBC Centura and RBC Bank)**

33. Answering Paragraph 49, RBC repeats and realleges the foregoing Paragraphs of its Answer.

34. RBC denies the allegations contain in Paragraphs 50, 51, 52, 53, 54, 55, and 56.

**FOR A THIRD CAUSE OF ACTION**  
**(Negligence - Defendants Appraisal Team and Teresa Addy-Haltingwanger)**

35. Answering Paragraph 57, RBC repeats and realleges the foregoing Paragraphs of its Answer.



36. Paragraphs 58, 59, 60, 61, 62, 63, and 64 do not contain any allegations against RBC and, moreover, contain legal conclusions to which RBC is not required to respond. To the extent a response is required, RBC lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in these Paragraphs and, therefore, denies same and demands strict proof thereof.

**FOR A FOURTH CAUSE OF ACTION**  
**(Breach of Implied Warranty of Workmanlike Service – Defendants Cliff Hall and Hall Builders)**

37. Answering Paragraph 65, RBC repeats and realleges the foregoing Paragraphs of its Answer.

38. Paragraphs 66, 67, and 68 do not contain any allegations against RBC and, moreover, contain legal conclusions to which RBC is not required to respond. To the extent a response is required, RBC lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in these Paragraphs and, therefore, denies same and demands strict proof thereof.

**FOR A FIFTH CAUSE OF ACTION**  
**(Breach of Implied Warranty of Habitability and Fitness for Intended Purpose – Defendants Cliff Hall and Hall Builders)**

39. Answering Paragraph 69, RBC repeats and realleges the foregoing Paragraphs of its Answer.

40. Paragraphs 70, 71, and 72 do not contain any allegations against RBC and, moreover, contain legal conclusions to which RBC is not required to respond. To the extent a response is required, RBC lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in these Paragraphs and, therefore, denies same and demands strict proof thereof.

**FOR A SIXTH CAUSE OF ACTION**  
**(Breach of Express Warranties- Defendants Cliff Hall and Hall Builders)**

41. Answering Paragraph 73, RBC repeats and realleges the foregoing Paragraphs of its Answer.

42. Paragraphs 74, 75, and 76 do not contain any allegations against RBC and, moreover, contain legal conclusions to which RBC is not required to respond. To the extent a response is required, RBC lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in these Paragraphs and, therefore, denies same and demands strict proof thereof.

**FOR A SEVENTH CAUSE OF ACTION**  
**(Breach of Contract- Defendants Cliff Hall and Hall Builders)**

43. Answering Paragraph 77, RBC repeats and realleges the foregoing Paragraphs of its Answer.

44. Paragraphs 78, 79, 80, 81, 82, and 83 do not contain any allegations against RBC and, moreover, contain legal conclusions to which RBC is not required to respond. To the extent a response is required, RBC lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in these Paragraphs and, therefore, denies same and demands strict proof thereof.

**FOR AN EIGHTH CAUSE OF ACTION**  
**(Breach of Construction Lending Agreement - Defendants RBC Centura and RBC Bank)**

45. Answering Paragraph 84, RBC repeats and realleges the foregoing Paragraphs of its Answer.

46. RBC admits so much of Paragraph 85 as alleges that it provided certain funds pursuant to the Loan Documents signed by the Plaintiffs, the terms of

which speak for themselves. RBC denies any allegations inconsistent with the Loan Documents as well as the remaining allegations of Paragraph 85.

47. RBC denies the allegations contained in Paragraphs 86, 87, 88, and 89.

48. RBC denies the allegations contained in Paragraph 90 and denies that Plaintiff is entitled to any damages as alleged in Paragraph 90.

**FOR A NINTH CAUSE OF ACTION**  
**(Fraud – Defendants Cliff Hall and Hall Builders)**

49. Answering Paragraph 91, RBC repeats and realleges the foregoing paragraphs of its Answer.

50. Paragraphs 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, and 102 do not contain any allegations against RBC and, moreover, contain legal conclusions to which RBC is not required to respond. To the extent a response is required, RBC lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in these Paragraphs and, therefore, denies same and demands strict proof thereof.

**FOR A TENTH CAUSE OF ACTION**  
**(Breach of Contract Accompanied by a Fraudulent Act – Defendants Cliff Hall and Hall Builders)**

51. Answering Paragraph 103, RBC repeats and realleges the foregoing paragraphs of its Answer.

52. Paragraphs 104, 105, 106, 107, and 108 do not contain any allegations against RBC and, moreover, contain legal conclusions to which RBC is not required to respond. To the extent a response is required, RBC lacks knowledge and

information sufficient to form a belief as to the truth of the allegations contained in these Paragraphs and, therefore, denies same and demands strict proof thereof.

**FOR AN ELEVENTH CAUSE OF ACTION**  
**(Conversion – Defendants Cliff Hall and Hall Builders)**

53. Answering Paragraph 109, RBC repeats and realleges the foregoing paragraphs of its Answer.

54. Paragraphs 110, 111, 112, 113, 114, and 115 do not contain any allegations against RBC and, moreover, contain legal conclusions to which RBC is not required to respond. To the extent a response is required, RBC lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in these Paragraphs and, therefore, denies same and demands strict proof thereof.

55. RBC denies that Plaintiffs are entitled to any of the relief demanded in the unnumbered WHEREFORE Paragraph, including all its subparts, against RBC.

**FOR A SECOND DEFENSE**  
**(Failure to State a Claim)**

56. The Plaintiffs' Amended Complaint fails to state a claim upon which relief may be granted and fails as a matter of law.

**FOR A THIRD DEFENSE**  
**(Equitable Estoppel)**

57. The Plaintiffs' claims against RBC are barred, in whole or in part, by the doctrine of equitable estoppel.

**FOR A FOURTH DEFENSE**  
**(Payment/Release/Waiver/Consent)**

58. Plaintiffs' claims against RBC are barred, in whole or in part, by the doctrines of payment, voluntary payment, release, waiver, and consent.

**FOR A FIFTH DEFENSE**  
**(Acts of Third Party)**

59. If Plaintiffs incurred any loss or damage as alleged in the Amended Complaint, such loss or damage resulted from the acts of omissions of another party or parties over whom RBC neither exercised nor had any right of control, for which RBC is not responsible, and whose conduct RBC had no duty or reason to anticipate or control.

**FOR A SIXTH DEFENSE**  
**(Failure to Mitigate Damages)**

60. Plaintiffs' claims are barred, in whole or in part, because they failed to mitigate their damages.

**FOR A SEVENTH DEFENSE**  
**(No Wrongful Acts or Omissions)**

61. RBC specifically denies that it or any of its officers, directors, or employees was guilty of any wrongful acts or omissions which proximately caused or contributed to the damages or other losses alleged and incurred, if any, by Plaintiffs.

**FOR AN EIGHTH DEFENSE**  
**(Comparative Negligence)**

62. Plaintiff's recovery, if any, may be reduced or barred by the doctrine of comparative negligence.

**FOR A NINTH DEFENSE**  
**(Consent/Ratification)**

63. Plaintiffs have consented to, approved of, ratified and/or condoned the conduct which forms the basis for their claims, which acts as a complete bar to Plaintiffs' claims.

**FOR A TENTH DEFENSE**  
**(Economic Loss Rule)**

64. The Plaintiffs' alleged losses are purely economic and the alleged duties of RBC derive solely from contract. Therefore the Plaintiffs' tort claims are barred by the economic loss rule.

**FOR AN ELEVENTH DEFENSE**  
**(Unclean Hands)**

65. The Plaintiffs' claims are barred by the equitable doctrine of unclean hands.

**FOR A TWELFTH DEFENSE**  
**(Agents of Plaintiffs)**

66. The Plaintiffs' claims against RBC must fail as the other Defendants, particularly Cliff Hall and Hall Builders, were acting at all times herein as agents for the Plaintiffs.

**FOR A THIRTEENTH DEFENSE**  
**(Laches)**

67. Plaintiffs' claims are barred by the equitable doctrine of laches.

**FOR A FOURTEENTH DEFENSE**  
**(Set-off and Recoupment)**

68. RBC reserves all rights to set-off and recoupment.

**FOR A FIFTHTEENTH DEFENSE**  
**(Amendment)**

69. RBC specifically reserves the right to amend its Answer to supplement with any additional defenses and/or counterclaims that may become relevant or available during the course of discovery.

**FOR A SIXTEENTH DEFENSE**  
**(Punitive Damages Unconstitutional)**

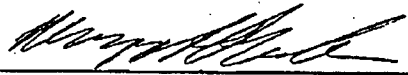
70. Plaintiffs are not entitled to an award entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- i. the judiciary's ability to correct a punitive damage award at the appellate level only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;
- ii. any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- iii. to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- iv. the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- v. even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- vi. the Plaintiffs' claims for punitive damages violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth and status of Plaintiff.

**FOR A SEVENTEENTH DEFENSE**  
**(Punitive Damages - Statutes of Limitations)**

71. With respect to Plaintiffs' claim for punitive damages, RBC incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMS of North America v. Gore*, 517 U.S. 559 (1996); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for RBC Bank (USA)

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April 19, 2010.



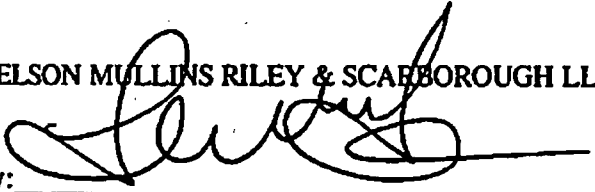
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| STATE OF SOUTH CAROLINA              | ) | IN THE COURT OF COMMON PLEAS              |
|                                      | ) |                                           |
| COUNTY OF LEXINGTON                  | ) | ELEVENTH JUDICIAL CIRCUIT                 |
|                                      | ) |                                           |
| Dr. Joseph G. Carew and              | ) | Civil Action No. 2010-CP-32-0042          |
| Dr. Karen Carew,                     | ) |                                           |
|                                      | ) |                                           |
| Plaintiffs,                          | ) |                                           |
|                                      | ) | <b><u>RBC BANK (USA)'S MOTION FOR</u></b> |
| vs.                                  | ) | <b><u>SUMMARY JUDGMENT</u></b>            |
|                                      | ) |                                           |
| RBC Centura Bank; RBC Bank as        | ) |                                           |
| successor in interest of RBC Centura | ) |                                           |
| Bank; Clifton W. Hall; Hall          | ) |                                           |
| Builders, LLC; Mid Carolina          | ) |                                           |
| Appraisal Company, LLC; and          | ) |                                           |
| Teresa Addy Haltiwanger,             | ) |                                           |
|                                      | ) |                                           |
| Defendants.                          | ) |                                           |
|                                      | ) |                                           |

YOU WILL PLEASE TAKE NOTICE that RBC Bank (USA), incorrectly identified as "RBC Centura Bank and RBC Bank as successor-in-interest of RBC Centura Bank" (hereinafter "RBC Bank"), by and through its undersigned attorneys, will move before the Judge of the above-referenced Court in chambers in the appropriate courthouse on the tenth (10th) day after service hereof, at 10:00 o'clock a.m., or as soon thereafter as counsel may be heard, for an Order granting RBC Bank summary judgment as to all claims asserted against it by Plaintiffs.

The grounds for this Motion are that there is no genuine issue as to any material fact which would entitle Plaintiffs to obtain judgment against RBC Bank. More specifically, the agreements signed by Plaintiffs and RBC Bank and applicable case law preclude recovery against RBC Bank as a matter of law. Accordingly, RBC Bank is entitled to summary judgment on all claims raised in the case at bar.

Plaintiff's Motion may be supported by a memorandum of law, as well as the South Carolina Rules of Civil Procedure, discovery between the parties, relevant statutes and case law, oral argument by counsel of record, and/or any other documents and support that may be permitted by the Court.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for RBC Bank (USA)

Columbia, South Carolina

January 5, 2012.

COPY

|                                      |   |                                     |
|--------------------------------------|---|-------------------------------------|
| I STATE OF SOUTH CAROLINA            | ) | IN THE COURT OF COMMON PLEAS        |
|                                      | ) |                                     |
| COUNTY OF LEXINGTON                  | ) | ELEVENTH JUDICIAL CIRCUIT           |
|                                      | ) |                                     |
| Dr. Joseph G. Carew and              | ) | Civil Action No. 2010-CP-32-0042    |
| Dr. Karen Carew,                     | ) |                                     |
|                                      | ) |                                     |
| Plaintiffs,                          | ) |                                     |
|                                      | ) |                                     |
| vs.                                  | ) | <u>RBC BANK (USA)'S MEMORANDUM</u>  |
|                                      | ) | <u>IN SUPPORT OF ITS MOTION FOR</u> |
|                                      | ) | <u>SUMMARY JUDGMENT</u>             |
| RBC Centura Bank; RBC Bank as        | ) |                                     |
| successor in interest of RBC Centura | ) |                                     |
| Bank; Clifton W. Hall; Hall          | ) |                                     |
| Builders, LLC; Mid Carolina          | ) |                                     |
| Appraisal Company, LLC; and          | ) |                                     |
| Teresa Addy Haltiwanger,             | ) |                                     |
|                                      | ) |                                     |
| Defendants.                          | ) |                                     |

Defendant RBC Bank (USA), incorrectly identified in the Amended Complaint as "RBC Centura Bank and RBC Bank, as successor in interest of RBC Centura Bank" (hereinafter collectively "RBC"), hereby submits its Memorandum in Support of its previously-filed Motion for Summary Judgment:<sup>1</sup>

#### PROCEDURAL HISTORY

This Case involves a dispute over Plaintiffs' construction of \$1.4 mm home on Lake Murray. Plaintiffs filed their initial Complaint on January 29, 2010. Plaintiffs sued their lender (RBC), their contractor (Clifton W. Hall and Hall Builders, LLC), and the appraiser retained by RBC (Mid Carolina Appraisal Co., LLC and Teresa Addy Haltiwanger (collectively "Appraiser")). By Order of Judge R. Knox McMahon dated July 27, 2011, the Appraiser was granted summary judgment. Exhibit 1, Order of

<sup>1</sup> As of March 2, 2012, the correct name for this Defendant is "PNC Bank, National Association, successor to RBC Bank (USA)."

7/27/11. Default judgment was entered against Defendant Hall Builders, LLC on March 8, 2012.

In their Complaint, Plaintiffs asserted causes of action against RBC for negligence and breach of the construction loan agreement ("Construction Loan Agreement" or "Agreement"). RBC filed its Motion for Summary Judgment as to both claims on January 5, 2012. Based on the evidence properly before the Court, applicable case law, and this Court's prior findings of fact and conclusions of law, RBC's Motion must be granted.

#### FACTS

As mentioned above, this Court previously granted the Appraiser's Motion for Summary Judgment. Plaintiffs did not appeal this final Order and, therefore, it has become the law of the case. See Ables v. Gladden, 378 S.C. 558, 569, 664 S.E.2d 442, 448 (2008) (holding an unappealed ruling is the law of the case). In its July 27, 2011 Order, Judge McMahon made the following findings of fact, which are taken verbatim from his Order, and are now the law of this case:

The Plaintiffs, Drs. Joseph and Karen Carew (referred to herein as "the Carews" or "the Plaintiffs") purchased a lot in Lexington County, 34 Edens Point Road, Columbia, South Carolina 29212, on January 23, 2008.

On, or about, January 30, 2008, the Plaintiffs entered into a contract with their builder, Hall Builders, LLC ("Hall Builders"), whereby Hall Builders agreed to build the Plaintiffs' a home at 34 Edens Point Road.

The Carews entered into a Construction Loan Agreement on February 29, 2008, with RBC Centura Bank ("RBC"), whereby RBC agreed to serve as the lender for the Carews. Exhibit 2, Construction Loan Agreement. RBC financed the lot purchase and the construction on behalf of the Carews.

The Carews admitted in their responses to the Defendants' Requests for Admission that they signed the Agreement and initialed each page of the Agreement.

Dr. Joseph Carew admitted in his deposition that he did not read the Construction Loan Agreement.

The Construction Loan Agreement is an eleven page document that details the duties and responsibilities of RBC as the construction lender. The references to "you" or "your" in the Agreement refers to RBC and the reference to "I," "me" or "my" refers to the Carews/the Plaintiffs. Section 7.2.2 of the Construction Loan Agreement, entitled Inspection provides:

Before you make a disbursement on the basis of a Draw Request, either or both you and the Construction Monitor may perform an on-site inspection of the Premises. If you request, the General Contractor, if there is one, and I will be present when such inspections are undertaken. You will not be under any obligation to make inspections and you will not be under any obligation to instruct the Construction Monitor to conduct inspections. All inspections made by you [RBC] and all inspections made by the Construction Monitor will be for your sole and exclusive benefit and they may not be relied upon in whole or in part by me or any other person. (Language is in bold in Construction Loan Agreement.)

Section 8.4 of the Construction Loan Agreement, entitled Inspection of Construction provides as follows:

You and the Construction Monitor, either together or separately, may enter upon the Premises at any time either you or the Construction Monitor desire for the purposes of inspecting the construction of the Improvements. I agree that your failure or the Construction Monitor's failure (1) to discover defects in the Improvements, including errors or omissions in design, workmanship, materials, supplies, fixtures, parts, products or equipment, or (2) to otherwise reject design, workmanship, materials, supplies, fixtures, parts, products or equipment due to non-compliance with the Construction Documents, or due to defects in any of the foregoing, will not make either you or the Construction Monitor liable to me and will not make either you or the Construction Monitor liable to any other person on account of such deficiency; and I agree that any prior failure will not constitute a waiver of your right to subsequently reject any such design, workmanship, materials, supplies, fixtures, parts, products and equipment. I agree that all inspections conducted by you or the Construction Monitor are for your sole and exclusive benefit, and I may not, nor may any other person, rely upon such inspections and I am not nor is any other person a third party beneficiary of such inspections. I agree, for myself and for all other persons other than you, to waive and I do hereby waive any present or future rights, if any, I or any of such other persons may have relating to or arising out of inspections made by you or the Construction Monitor – it being understood and agreed that such waiver is material to you and a material inducement to you entering into this Agreement with me and making the Loan to me on the terms and conditions set forth herein and in the other Loan Documents. (Language is in bold in Construction Loan Agreement.)

The Defendants Appraisal Team of Mid Carolina, LLC and Teresa Addy Haltiwanger (collectively referred to herein as "the Appraisers"), were retained by RBC to perform (1) a "subject-to" completion appraisal and (2) conduct periodic appraisal inspections during construction for RBC.

The term "Construction Monitor" is defined in the Construction Loan Agreement (page 8 of the Construction Loan Agreement) as follows:

1. "Construction Monitor" means a Construction inspector or monitor, or other persons designated by you to monitor and otherwise inspect the construction of the improvements, including reviewing and approving all Draw Requests and performance of on-site inspections. The Construction Monitor will be an independent contractor, and I will pay the costs and expenses associated with the Construction Monitor.

The Appraisers prepared the subject-to completion appraisal and performed a number of inspections in its/her role as the Construction Monitor during the construction of the Plaintiffs' home between June 18, 2008 and June 12, 2009.

The Plaintiffs acknowledge, in Paragraph 14 of their Amended Complaint, that "RBC retained Appraisal Team and Teresa Addy-Haltiwanger to provide inspection and/or construction status assessments with regards to Cliff Hall and Hall Builders' construction of the Carew home at 34 Edens Point Road, Irmo, South Carolina."

In February 2009, the Plaintiffs' builder, Hall Builders, encountered financial troubles. Hall Builders' financial problems were so severe, that on February 11, 2009, the principal of Hall Builders advised the Plaintiffs that he/Hall Builders would not be able to complete the Plaintiffs' home. On that same day, February 11, 2009, Hall Builders released the Plaintiffs' from their contract with Hall Builders.

In February 2009, it became clear that Hall Builders could not and would not perform the remaining work on the Plaintiffs' home in accordance with the terms of the contract between Hall Builders and the Plaintiffs."

### SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where there is no genuine issue as to any material fact. In Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986), the United States Supreme Court stated, "[I]n our view, Rule 56 mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." (emphasis added). Where a party fails to prove an essential element of its claim, there can be no genuine issue as to any material fact. Id.

Furthermore, "[w]hen a plaintiff is faced with a defendant's motion for summary judgment that is supported by evidence, the plaintiff cannot defeat the motion by relying upon the mere allegations of his complaint, but must disclose the facts he intends to rely on by affidavit or proof." Shupe v. Settle, 315 S.C. 510, 445 S.E.2d 651 (Ct. App. 1994). Neither is "the existence of a mere scintilla of evidence in support of the non-moving party's position . . . sufficient to overcome a motion for summary judgment." Thomas v. Waters, 315 S.C. 524, 445 S.E.2d 659 (Ct. App. 1994). Indeed, summary judgment is not to be regarded as a disfavored procedural shortcut, but rather as an integral part of the Rules of Procedure which are designed "to secure the just, speedy and inexpensive determination of every action." Celotex, 477 U.S. at 327. It is intended to expedite the disposition of cases not requiring the services of a fact-finder. Banker's Trust of S.C. v. Benson, 267 S.C. 152, 226 S.E.2d 703 (1976).



## LEGAL ARGUMENT

### 1. Plaintiffs' Negligence Claim Fails as a Matter of Law

- A. The terms of the Construction Loan Agreement between Plaintiffs and RBC expressly state that RBC owes no duty to the Plaintiffs in regard to construction progress inspections.

In its July 27, 2011 Order, this Court held:

Without question, the language in the Construction Loan Agreement makes it absolutely clear that RBC had no duty to even conduct inspections during the construction of the Plaintiffs' home. In fact, RBC could have, if it so desired, relied entirely on the payment applications submitted by the builder, Hall Builders, LLC, for purposes of disbursing the construction loan proceeds. The inspections were for the "sole and exclusive benefit" of RBC (emphasis in Construction Loan Agreement).

The rights and responsibilities of RBC regarding the inspections are clearly defined and conspicuous in the Construction Loan Agreement. In particular, as shown in the Findings of Fact, certain portions of these terms in the Construction Loan Agreement are in bold, thereby highlighting certain terms in the Construction Loan Agreement.

Section 8.4 of the Construction Loan Agreement reiterates that the inspections are exclusively for the benefit of RBC and are not to be relied upon by the Plaintiffs.

In addition to the plain language of the Construction Loan Agreement and the law of the case cited above, South Carolina case law also supports the finding that RBC owed Plaintiffs no duty in regard to progress inspection reports. For example, in Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp., 282 S.C. 415, 422, 321 S.E.2d 46, 50 (1984), the Supreme Court held:

The builder of a house [the Carews] is entitled to make his own contract with the construction company. In like fashion, a lending institution [RBC] is entitled to make its

own contract with one who is building a house. Traditionally, lenders, in making a construction loan, make periodic inspections to assure that the construction loan advancements are being applied appropriately. This is fundamentally for the protection of the lending institution and does not impose upon the lending institution a duty to see that the builder is getting a job free of defects. Both the lender and the borrower have a common interest in seeing that the construction company builds a building free of defects but, absent a contract, the builder has no common law duty to protect the lender and the lender has no common law [duty] to protect the builder. (Emphasis added).

Because South Carolina precedent also supports the finding that RBC owed no duty to Plaintiffs, their negligence claim should be dismissed.

B. Plaintiffs have released RBC for any liability related to construction progress inspections.

Pursuant to Section 8.4 of the Construction Loan Agreement, Plaintiffs have released RBC from the very claims they now assert:

I [Plaintiffs] agree that your [RBC] failure or the Construction Monitor's [Appraiser's] failure (1) to discover defects in the Improvements, including errors or omissions in design, workmanship, materials, supplies, fixtures, parts, products or equipment due to non-compliance with the Construction Documents, or due to defects in any of the foregoing, will not make either you or the Construction Monitor liable to me ....

Therefore, to the extent Plaintiffs' negligence claim is based on any alleged deficiencies with the Construction Monitor's inspections, their claims are barred by the Doctrine of Release.

C. Plaintiffs' negligence claims based on alleged acts or omissions other than the inspection reports also fail.

In Paragraph 51 of their Amended Complaint, Plaintiffs identify eight instances in which RBC was allegedly negligent. Five of these instances involve the construction inspections, which fall in the reasons discussed above. Amended Complaint at ¶ 51(a), (b), (d), (e) and (f). The three remaining allegations also must be dismissed.

First, Plaintiffs allege that RBC was negligent "[b]y paying for the same construction draws twice." Amended Complaint at ¶ 51(c). However, the only evidence on this issue is that (1) like all construction draws in this case, RBC released these funds directly to the Plaintiffs, who in turn chose what to pay their builder and (2) RBC agreed to restore the second credit so Plaintiffs would be able to draw against the amount for future draws. Exhibit 3, Depo. Trans. of Kathy Robertson at 148:23 – 149:9, 153:20 – 154:19 (also noting that this amount may be recovered from Plaintiffs when the construction loan is converted to a permanent loan).

Second, Plaintiffs allege RBC was negligent "[b]y failing to timely assist Plaintiffs when advised that the asset was in peril of not being completed." Amended Complaint at ¶ 51(g). However, there is no contractual or legal duty for RBC to help Plaintiffs enforce their construction contract against the builder they chose to hire.

Lastly, Plaintiffs allege RBC was negligent "[b]y failing to timely respond to Plaintiffs, which resulted in liens being placed against the property in question, imperiling the asset." Amended Complaint at ¶ 51(h). Again, there is no such duty owed to Plaintiffs, either in common law or under the Construction Loan Agreement.

In sum, Plaintiffs' negligence claim fails because there is no duty owed by RBC as alleged by the Plaintiffs. Moreover, under the terms of the Construction Loan Agreement, Plaintiffs have expressly released RBC from such claims. Accordingly, under the law of this case, the terms of the Construction Loan Agreement, and South Carolina common law, Plaintiffs' negligence claim must be dismissed.

2. Plaintiffs' Claim for Breach of the Construction Loan Agreement Fails as a Matter of Law.

Plaintiffs allege that RBC breached Sections 5, 6.2, 7, 8 and 10.3 of the Construction Loan Agreement. Exhibit 4, Plaintiffs' Answers to RBC's Interrogatories at No. 21. However, these claims are wholly unsupported by the Agreement itself.

Section 5 states, in part, that "[a]ll of the conditions in the following paragraphs of this Section must be satisfied and completed to your [RBC's] satisfaction before you are obligated to make any disbursements ...." (Emphasis added). Moreover, Section 5.5 provides that "[i]n your [RBC's] opinion, (1) construction of the Improvements must have been proceeding and will continue to proceed in accordance with the Construction Documents and this Agreement ...." (Emphasis added). In other words, Section 5 gives RBC full discretion in deciding when it releases loan proceeds to Plaintiffs for payment to their builder. In fact, it is the law of this case that RBC could simply have paid all of the loan proceeds directly to the builder if it so chose. 7/27/11 Order at p.5.

Section 6.2 requires the project to be completed and lien releases submitted to RBC. There is no obligation on the part of RBC in this Section of the Agreement. Therefore, no breach by RBC can occur.

Section 7 relates to the disbursement amounts and procedure for draw requests. Again, the law of this case is – and Section 7.4 expressly provides – that RBC could have paid all loan proceeds directly to the contractor "without my prior approval and without prior notice to [Plaintiffs]." Also, Section 7.2 states that "[RBC] will determine the amount to be disbursed under each Draw Request ... Once [RBC] determine[s] the amount to disburse, if the amount is less than the amount requested in a Draw Request, [it] will be amended to reflect the adjustments and [Plaintiffs] agree to execute the Amended Draw Request ...." (Emphasis added). In short, by signing the Agreement, Plaintiffs agreed that RBC – not Plaintiffs, their contractor or anyone else – would have authority to decide what amounts would be paid in response to draw requests. There is no evidence or support for any alleged breach of this Section of the Agreement.

Section 8 relates to the inspection of construction and is fully discussed above. There is no evidence in the record that supports Plaintiffs' allegation of an RBC breach of this Section of the Agreement.

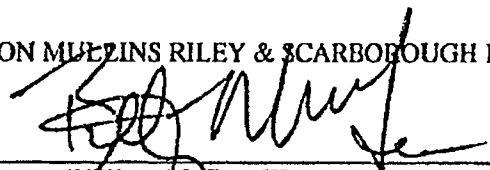
Lastly, Section 10.3 governs the management of the collateral by RBC. More specifically, this Section states that "[RBC] will have the right, but not the obligation" to take possession, preserve, protect, etc., the collateral under certain circumstances. (Emphasis added). As with all other allegations of RBC's breach of the Agreement, there is no evidence to support Plaintiffs' claim.

In sum, Plaintiffs have failed to demonstrate any genuine issue of material fact as to a breach of the Construction Loan Agreement by RBC.

**CONCLUSION**

For the reasons set forth above, Plaintiffs' Amended Complaint must be dismissed with prejudice.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for RBC Bank (USA)

Columbia, South Carolina

April 6, 2012.

## **EXHIBIT 1**

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2010CP3200442

Joseph G Carew vs. RBC Centura Bank

**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.
- ☐ **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: \_\_\_\_\_

IT IS ORDERED AND ADJUDGED:

☒ See attached order;

☐ Statement of Judgment by the Court:

*Court Reporter:* \_\_\_\_\_

\_\_\_\_\_  
PRESIDING JUDGE -

This judgment was entered on the n/a, and a copy mailed first class this 29th day of July, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

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2309 Devine Street Suite B Columbia, SC 29205

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/lc

SCRPC APP-24/FORM 4

Beth A. Carrigg - Clerk of Court

CPFORM4M



COPY

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS FILED

C/A No.: 2010-CP-32-442

2011 JUL 27 P 1:29

Dr. Joseph G. Carew and Dr. Karen )  
Carew, )

Plaintiff )

vs. )

RBC Centura Bank; RBC Bank as )  
successor in interest of RBC Centura )  
Bank; Clifton W. Hall; Hall )  
Builders, LLC; Appraisal Team of )  
of Mid Carolina, LLC; and Teresa )  
Addy Haltiwanger, )

Defendants )

ETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC

**ORDER GRANTING  
TERESA ADDY-HALTIWANGER  
AND APPRAISAL TEAM OF MID  
CAROLINA, LLC'S MOTION FOR  
SUMMARY JUDGMENT**

This matter came before me on June 14, 2011, 2:00 p.m., at the Lexington County Judicial Center, by way of the Defendants' (Teresa Addy-Haltiwanger and Appraisal Team of Mid Carolina, LLC) Motion for Summary Judgment. Teresa Addy-Haltiwanger and Appraisal Team of Mid Carolina, LLC are referred to herein as "the Appraisers" or "the Defendants." Joey R. Floyd appeared and argued the Motion on behalf of the Defendants. Eric G. Fosmire appeared on behalf of the Plaintiffs and opposed the Defendants' Motion.

**Findings of Fact**

The Plaintiffs, Drs. Joseph and Karen Carew (referred to herein as "the Carews" or "the Plaintiffs") purchased a lot in Lexington County, 34 Edens Point Road, Columbia, South Carolina 29212, on January 23, 2008.

On, or about, January 30, 2008, the Plaintiffs entered into a contract with their builder, Hall Builders, LLC ("Hall Builders"), whereby Hall Builders agreed to build the Plaintiffs' a home at 34 Edens Point Road.



The Carews entered into a Construction Loan Agreement on February 29, 2008, with RBC Centura Bank ("RBC"), whereby RBC agreed to serve as the lender for the Carews. RBC financed the lot purchase and the construction on behalf of the Carews.

The Carews admitted in their responses to the Defendants' Requests for Admission that they signed the Agreement and initialed each page of the Agreement.

Dr. Joseph Carew admitted in his deposition that he did not read the Construction Loan Agreement.

The Construction Loan Agreement is an eleven page document that details the duties and responsibilities of RBC as the construction lender. The references to "you" or "your" in the Agreement refers to RBC and the reference to "I," "me" or "my" refers to the Carews/the Plaintiffs. Section 7.2.2 of the Construction Loan Agreement, entitled Inspection provides:

Before you make a disbursement on the basis of a Draw Request, either or both you and the Construction Monitor may perform an on-site inspection of the Premises. If you request, the General Contractor, if there is one, and I will be present when such inspections are undertaken. You will not be under any obligation to make inspections and you will not be under any obligation to instruct the Construction Monitor to conduct inspections. All inspections made by you [RBC] and all inspections made by the Construction Monitor will be for your sole and exclusive benefit and they may not be relied upon in whole or in part by me or any other person. (Language is in bold in Construction Loan Agreement.)

Section 8.4 of the Construction Loan Agreement, entitled Inspection of Construction provides as follows:

You and the Construction Monitor, either together or separately, may enter upon the Premises at any time either you or the Construction Monitor desire for the purposes of inspecting the construction of the Improvements. I agree that your failure or the Construction Monitor's failure (1) to discover defects in the Improvements, including errors or omissions in design, workmanship, materials, supplies, fixtures, parts, products or

equipment, or (2) to otherwise reject design, workmanship, materials, supplies, fixtures, parts, products or equipment due to non-compliance with the Construction Documents, or due to defects in any of the foregoing, will not make either you or the Construction Monitor liable to me and will not make either you or the Construction Monitor liable to any other person on account of such deficiency; and I agree that any prior failure will not constitute a waiver of your right to subsequently reject any such design, workmanship, materials, supplies, fixtures, parts, products and equipment. I agree that all inspections conducted by you or the Construction Monitor are for your sole and exclusive benefit, and I may not, nor may any other person, rely upon such inspections and I am not nor is any other person a third party beneficiary of such inspections. I agree, for myself and for all other persons other than you, to waive and I do hereby waive any present or future rights, if any, I or any of such other persons may have relating to or arising out of inspections made by you or the Construction Monitor - It being understood and agreed that such waiver is material to you and a material inducement to you entering into this Agreement with me and making the Loan to me on the terms and conditions set forth herein and in the other Loan Documents. (Language is in bold in Construction Loan Agreement.)

The Defendants Appraisal Team of Mid Carolina, LLC and Teresa Addy Haltiwanger (collectively referred to herein as "the Appraisers"), were retained by RBC to perform (1) a "subject-to" completion appraisal and (2) conduct periodic appraisal inspections during construction for RBC.

The term "Construction Monitor" is defined in the Construction Loan Agreement (page 8 of the Construction Loan Agreement) as follows:

"Construction Monitor" means a Construction inspector or monitor, or other persons designated by you to monitor and otherwise inspect the construction of the improvements, including reviewing and approving all Draw Requests and performance of on-site inspections. The Construction Monitor will be an independent contractor, and I will pay the costs and expenses associated with the Construction Monitor.

The Appraisers prepared the subject-to completion appraisal and performed a number of inspections in its/her role as the Construction Monitor during the construction of the Plaintiffs' home between June 18, 2008 and June 12, 2009.

The Plaintiffs acknowledge, in Paragraph 14 of their Amended Complaint, that "RBC retained Appraisal Team and Teresa Addy-Haltiwanger to provide inspection and/or construction status assessments with regards to Cliff Hall and Hall Builders' construction of the Carew home at 34 Edens Point Road, Irmo, South Carolina."

In February 2009, the Plaintiffs' builder, Hall Builders, encountered financial troubles. Hall Builders' financial problems were so severe, that on February 11, 2009, the principal of Hall Builders advised the Plaintiffs that he/Hall Builders would not be able to complete the Plaintiffs' home. On that same day, February 11, 2009, Hall Builders released the Plaintiffs' from their contract with Hall Builders.

In February 2009, it became clear that Hall Builders could not and would not perform the remaining work on the Plaintiffs' home in accordance with the terms of the contract between Hall Builders and the Plaintiffs.

The Plaintiffs have filed this action and asserted a single cause of action, Negligence, against the Appraisers. In summary, the Plaintiffs contend that the Appraisers did not properly perform the periodic construction inspections for RBC as RBC's Construction Monitor.

Any of the conclusions of law set forth herein which may be considered findings of fact are incorporated herein as findings of fact.

#### Summary Judgment Standard

Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Quality Towing, Inc. v. City*

of Myrtle Beach, 340 S.C. 29, 530 S.E.2d 369 (2000). "Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." *Hedgepath v. American Telephone and Telegraph Company*, 348 S.C. 340, 559 S.E.2d 327, 335 (Ct.App.2002) citing *Baughman v. American Tel. And Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537, 545 (1991). "Once the moving party carries its initial burden, the opposing party must, under Rule 56(c), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial.'" (emphasis in original) *Hedgepath* at 335, citations omitted.

#### CONCLUSIONS OF LAW

- A. *The terms of the Construction Loan Agreement between Plaintiffs/Borrowers and RBC clearly indicate that the Appraisers owe no duty(ies) to the Plaintiffs/Borrowers in this civil action.*

Without question, the language in the Construction Loan Agreement makes it absolutely clear that RBC had no duty to even conduct inspections during the construction of the Plaintiffs' home. In fact, RBC could have, if it so desired, relied entirely on the payment applications submitted by the builder, Hall Builders, LLC, for purposes of disbursing the construction loan proceeds. The inspections were for the "sole and exclusive benefit" of RBC (emphasis in Construction Loan Agreement).

The rights and responsibilities of RBC regarding the inspections are clearly defined and conspicuous in the Construction Loan Agreement. In particular, as shown in the Findings of Fact, certain portions of these terms in the Construction Loan Agreement are in bold, thereby highlighting certain terms in the Construction Loan Agreement.

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NW

Section 8.4 of the Construction Loan Agreement reiterates that the inspections are exclusively for the benefit of RBC and are not to be relied upon by the Plaintiffs. But, of greater importance, this section also clearly states that the Construction Monitor provided by RBC (1) does not owe any duties to the Plaintiffs, (2) can not be relied upon by the Plaintiffs and (3) the Plaintiffs have waived and released any claims that they may have against the Construction Monitor, i.e. the Appraisers.

Based on the pleadings, the information provided to this Court in connection with the appraisers' Motion for Summary Judgment and the arguments of Counsel at the hearing, it is undisputed that the Appraisers were hired by and served as the "Construction Monitor" for RBC.

Generally speaking, "a person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it." *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct.App.2003), citations omitted. As such, "[w]here an agreement is clear and capable of legal interpretation, the Courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct.App. 2004) citations omitted.

"The law does not impose a duty on the bank to explain to an individual what he could learn from simply reading the document." *Citizens and Southern Nat. Bank of South Carolina v. Lanford* 313 S.C. 540, 545, 443 S.E.2d 549, 551 (S.C.,1994).

Based on the express terms of the Construction Loan Agreement, I FIND that the Appraisers do not/did not owe any duty(ies) to the Plaintiffs in this civil action.

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Plaintiffs' Counsel suggested that the Construction Loan Agreement is an adhesion contract because, in summary, the terms of the Construction Loan Agreement were not negotiable.

The Plaintiffs' Memorandum in Opposition to the appraisers' Motion for Summary Judgment is the first assertion by the Plaintiffs that the Construction Loan Agreement is an adhesion contract. It is well settled that counsel may not use facts not presented in evidence as part of their argument. In *South Carolina Dept. of Transp. v. Thompson*, 357 S.C. 101 (Ct. App. 2003), the South Carolina Court of Appeals provided that "[a]rguments made by counsel are not evidence." As a preliminary matter, the Plaintiffs' assertion that the Construction Loan Agreement is an Adhesion Contract fails because there is no evidence in the record to support Plaintiffs' theory.

Moreover, the Plaintiffs fail to address how a contract can be non-negotiable when Dr. Joseph Carew has unequivocally testified that he did not read the Construction Loan Agreement.

The Plaintiffs in this case are both sophisticated and well-educated parties in that both of them are practicing Chiropractors. Furthermore, the loan amount, based on the first page of the Construction Loan Agreement was "an amount up to \$1,112,000.00."

"[U]nder general principles of state contract law, an adhesion contract is a standard form contract offered on a "take-it-or-leave-it" basis with terms that are not negotiable." *Simpson v. MSA of Myrtle Beach, Inc.* 373 S.C. 14, 26-27, 644 S.E.2d 663, 669 (S.C. 2007) citations omitted. "Adhesion contracts, however, are not per se unconscionable. Therefore, finding an adhesion contract is merely the beginning point of the analysis." *Simpson v. MSA of Myrtle Beach, Inc.* 373 S.C. 14, 27, 644 S.E.2d 663, 669 (S.C., 2007) citations omitted.

Unconscionability, on the other hand, requires a greater showing. Unconscionability is characterized by the "absence of meaningful

choice on the part of one party due to one-sided contract provisions, *together with* terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Lackey v. Green Tree Financial Corp.*, 330 S.C. 388, 395, 498 S.E.2d 898, 902 (S.C.App.,1998) citing *Fanning v. Fritz's Pontiac-Cadillac-Buick Inc.*, 322 S.C. 399, 402, 472 S.E.2d 242, 245 (1996) (emphasis added) (citing *Jones Leasing v. Gene Phillips and Assocs.*, 282 S.C. 327, 318 S.E.2d 31 (Ct.App.1984)).

The Plaintiffs in this action have not made this Court aware of any case, in any jurisdiction, finding a Construction Loan Agreement to be an adhesion contract nor have the Plaintiffs made this Court aware of any case where a Court refused to enforce the terms of a Construction Loan Agreement on the basis that the Construction Loan Agreement was an adhesion contract.

While this Court does not believe that the Construction Loan Agreement is an adhesion contract, even if this Court assumed that the Construction Loan Agreement was an adhesion contract, this Court finds the South Carolina Court of Appeals language in *Lackey* to be persuasive, which is as follows:

"The contract of adhesion is a part of the fabric of our society. It should neither be praised nor denounced...." That is because there are important advantages to its use despite its potential for abuse. These advantages include the fact that standardization of forms for contracts is a rational and economically efficient response to the rapidity of market transactions and the high costs of negotiations, and that the drafter can rationally calculate the costs and risks of performance, which contributes to rational pricing. *Lackey v. Green Tree Financial Corp.* 330 S.C. 388, 395-396, 498 S.E.2d 898, 902 (S.C.App.,1998) quoting *Goodwin v. Ford Motor Credit Co.*, 970 F.Supp. 1007, 1015 (M.D.Ala.1997) citing 1 *Corbin on Contracts* § 1.4 (rev. ed. 1993)).

Assuming that this Court were to find that the Construction Loan Agreement was an adhesion contract, this Court would not find the terms to be unconscionable to render the contract unenforceable.



Notwithstanding Plaintiffs' Counsel's argument, I FIND that the Construction Loan Agreement is not/was not an adhesion contract.

Viewing the facts in a light most favorable to the Plaintiffs in this action, there is no genuine issue of material fact in this matter regarding the Plaintiffs' claims against the Appraisers, Appraisal Team of Mid-Carolina, LLC and Teresa Addy-Haltiwanger; therefore, these same Defendants are entitled to judgment as a matter of law on the cause of action asserted against these same Defendants by the Plaintiffs, pursuant to Rule 56 of the SCRCF.

*B. Appraisal Team of Mid-Carolina, LLC and Teresa Addy-Haltiwanger did not owe any duties to the Plaintiffs in this matter; therefore, Appraisal Team of Mid-Carolina, LLC and Teresa Addy-Haltiwanger are entitled to Summary Judgment on Plaintiffs' negligence cause of action, as a matter of law.*

"In order to prevail in a negligence cause of action, the plaintiff must establish: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached the duty by a negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages." *Moore v. Weinberg*, 373 S.C. 209, 220, 644 S.E.2d 740, 746 (Cl. App. 2007) (internal citations omitted). "An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." *Id.* at 221 644 S.E.2d at 746. "Without a duty, there is no actionable negligence." *Id.* Here, Plaintiff cannot establish the "duty" element of their claim. The determination of the existence of a duty is solely the responsibility of the court. *Ellis by Ellis v. Niles*, 325 S.C. 223, 479 S.E.2d 47 (1996).

In *Robertson v. First Union National Bank*, 350 S.C. 339, 348, 565 S.E.2d 309, 314 (Cl. App. 2002), the Plaintiffs asserted a cause of action, among other causes of action, against the Defendant appraiser for negligent misrepresentation. The Plaintiffs in *Robertson* alleged that the appraiser, the bank, and others negligently misrepresented the value of the property at issue in

the case, causing Plaintiff to suffer damages. *Id.* at 349. Negligent misrepresentation, like the tort of negligence, requires that the plaintiff show that the defendant owed plaintiff a duty and that the defendant breached that duty. *Id.* In *Robertson*, the court found that the appraiser "was employed by the bank and was acting as an agent of the bank; thus it had no independent duty to appellants [Plaintiffs]." *Id.* at 350 (emphasis mine). The Plaintiffs' negligent misrepresentation claim in *Robertson* failed because the appraiser owed no duty to the Plaintiffs. *Id.* at 350.

In the case at hand, the Appraisers were hired by RBC and acting as an agent of the bank in performing the periodic inspections. As such, the appraisers did not owe a duty to the Plaintiffs in this case. The Plaintiffs' claim for negligence against the appraisers fails as a matter of law because the Plaintiffs cannot establish that the Appraiser owed a duty to the Plaintiffs.

Viewing the facts in a light most favorable to the Plaintiffs in this action, there is no genuine issue of material fact to be decided by the trier of fact in this action. Appraisal Team of Mid-Carolina, LLC and Teresa Addy-Haltiwanger are entitled to judgment as a matter of law on the negligence cause of action asserted against them by the Plaintiffs pursuant to Rule 56 of the SCRCP.

Any of the findings of fact set forth herein which may be considered conclusions of law are incorporated herein as conclusions of law.

  
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ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendants, Appraisal Team of Mid-Carolina, LLC and Teresa Addy-Haltiwanger, Motion for Summary Judgment be granted, in accordance with Rule 56 of the SCRCP.

IT IS SO ORDERED.

  
\_\_\_\_\_  
R. Knox McMahon  
Presiding Judge, 11<sup>th</sup> Judicial Circuit

Lexington, South Carolina

July 27<sup>th</sup>, 2011

## **EXHIBIT 2**

313544300101001  
BA

Loan No. 213-10017776

## RBC Centura Bank

Construction Loan Agreement  
(Residential)

THIS CONSTRUCTION LOAN AGREEMENT ("Agreement") is entered into as of the Effective Date and by the parties identified in the following recitals:

A. Effective Date: February 29, 2008

B. Borrower (whether one or more, "I", "me", "my"): Joseph G. Carey & Karen Carey

with a mailing address of: 301 Derrick Dr, Irmo, SC 29063

PO Box 6709  
Irmo, SC 29063

C. Lender ("you" or "your"): RBC Centura Bank

with a mailing address of: 133 S. Franklin Street, Rocky Mount, NC 27804

D. You have committed to make to me the following type loan ("Loan"):

- ☐ construction loan.  
☒ construction to permanent loan.

E. I will use the proceeds of the Loan for the following purpose (Check all that apply):

- ☐ to acquire the Land.  
☒ construct and furnish improvements on the Land on or before the Last Completion Date.  
☒ for long-term financing of the Premises.

F. The Last Completion Date is: 02/28/2009

G. The Loan will be in an amount up to ("Loan Amount"): \$1,112,000.00

NOW, THEREFORE, you and I agree as follows:

Section 1. **Definitions.** Capitalized terms used in this Agreement and not defined in the specific sections or parts in which they are used will have the meanings assigned to such terms in Attachment I. In this Agreement (1) words in the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular numbered meaning include the plural number, and vice versa, (2) words importing "persons" will include individuals as well as organizations, (3) the use of the terms "including" or "included in", or the use of examples generally, are not intended to be limiting, but will mean, without limitation, (4) the phrase "costs and expenses" will include the reasonable fees of attorneys and other service providers, and will include intangible personal property taxes, documentary stamp taxes, excise taxes and other similar taxes and (5) reference to the parties to this Agreement includes their permitted successors and assigns.

Section 2. **Loan.** Subject to the terms and conditions of this Agreement, you will lend and I will borrow up to the Loan Amount, such borrowing to be evidenced by the Note. The Loan consists of a Construction Phase and if so marked and designated in the recitals to this Agreement, a Permanent Phase. All disbursements under the Loan will be made within the Construction Phase, unless you, in your sole discretion, determine that disbursements may or should be made after the end of the Construction Phase. If there is a Permanent Phase, the Loan will extend into or convert to the Permanent Phase only if, before the end of the Construction Phase, (1) the improvements have been Completed by me in accordance with the terms and conditions of this Agreement, (2) all construction costs and expenses have been paid by me in full and evidence satisfactory to you of such full payment has been delivered to, and reviewed and approved by you, (3) all of the conditions set forth in Sections 4, 5 and 6 have been satisfied and remain satisfied as required in such Sections, (4) the conditions, if any, for conversion of the Loan from a construction loan to a permanent loan as set forth in the Commitment, if there is one, have been fully satisfied, including establishment of the rate at which interest will accrue during the Permanent Phase, and (5) no Event of Default exists. If all of the conditions set forth in (1) through (5) have been fully satisfied on or before the end of the Construction Phase, then, on the date all of such conditions are determined by you to be satisfied or such other date selected by you, the Construction Phase will extend into or convert to the Permanent Phase ("Conversion Date"). On or about the Conversion Date, if requested by you, I will enter into a loan

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modification agreement or other agreement reflecting the extension or conversion, including an agreement modifying the Note and the other Loan Documents if you so require. If, however, all such conditions have not been fully satisfied before the end of the Construction Phase, then, on the first Business Day following the last day of the Construction Phase (the "Maturity Date" under the Note), the entire balance of principal, interest, fees, premiums, charges and costs and expenses then outstanding under the Note, this Agreement and the other Loan Documents will be due and payable in full.

**Section 3. Collateral.** Subject to the Permitted Encumbrances, the Loan will be secured by and I do hereby grant and assign to you a lien and security interest in the Collateral.

**Section 4. Disbursement of Loan Proceeds - Initial Funding.** All of the conditions in the following paragraphs of this Section must be satisfied and completed, or the satisfaction and completion thereof waived by you, prior to the Initial Funding.

**4.1. Loan Documentation.** I must grant to you such liens and security interests and you must receive from me all agreements, information, documents and other items which you deem necessary or appropriate to ensure (1) the proper and complete documentation of the Loan, (2) the perfection of continuing, first priority liens and security interests in the Collateral in favor of you and (3) compliance with all of your loan underwriting criteria and all applicable laws and regulations relative to the Loan and you and me. The liens and security interests and the agreements, information, documents and other items which will be required include all of the items listed on Attachment 1 as Initial Funding Conditions, unless you notify me in writing that some of them are not needed.

**4.2. Draw Request.** You must receive and approve my first Draw request.

**4.3. Default.** I must not be in Default under this Agreement.

**Section 5. Disbursement of Loan Proceeds - Interim Disbursements.** All of the conditions in the following paragraphs of this Section must be satisfied and completed to your satisfaction before you are obligated to make any disbursements after the Initial Funding, and each of the conditions must be and remain satisfied at the time of each disbursement subsequent to the Initial Funding.

**5.1. Existing Conditions.** I must have satisfied to your satisfaction all of the conditions in Section 4 and they each must remain satisfied at the time of the disbursement, or their satisfaction waived by you.

**5.2. Subsequent Liens.** Except ad valorem property taxes for the then current year, there must not be any liens or security interests which have attached to the Collateral.

**5.3. Title Insurance.** If you received a marked up Title Insurance Commitment at or before the Initial Funding, you must have received the Title Policy which conforms in all respects with the marked up Title Insurance Commitment. Also, the Title Insurance Company must have issued to you an endorsement to the Title Policy updating the effective date of the Title Policy to insure, or the Title Insurance Company must have otherwise insured under the Title Policy that since the last preceding disbursement (1) there has been no change in the status of the title to the Premises or your lien and security interest therein, (2) there are no intervening liens and there are no intervening claims of liens which may or will take priority over the disbursement to be made, and (3) there are no survey exceptions which have not been approved by you in writing.

**5.4. Foundation Survey.** If the foundations have been completed, the survey provided to you as a condition to the Initial Funding must have been updated to show the foundations; and such updated survey must have been delivered to you and the survey and all information shown thereon must be in all respects satisfactory to you.

**5.5. Progress of Construction.** In your opinion, (1) construction of the Improvements must have been proceeding and will continue to proceed in accordance with the Construction Documents and this Agreement, and (2) I must have satisfied all equity requirements established by you relative to construction of the Improvements and I will be able to continue to satisfy additional equity requirements established by you.

**5.6. Draw Request.** You must receive and approve my Draw Request.

**Section 6. Disbursement of Loan Proceeds - Final Disbursement.** All of the conditions in the following paragraphs of this Section must be satisfied and completed to your satisfaction before you are obligated to make the final disbursement of the Loan proceeds.

**6.1. Existing Conditions.** I must have satisfied to your satisfaction all of the conditions in Section 4 and Section 5 and they each must remain satisfied at the time of the disbursement, or their satisfaction waived by you.

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**6.2 Completion of Improvements.** The improvements must be Completed and you must have received final lien waivers/releases from the General Contractor, if there is one, and from any contractors, subcontractors or other persons designated by you, all in a form and containing content satisfactory to you.

**6.3 As-Built Survey; Insurance.** You must have received four (4) copies of an "as-built" survey prepared by a registered land surveyor approved by you, which survey meets in all respects your survey requirements. The Title Insurance Company which issued the Title Policy must have issued to you an endorsement to the Title Policy updating the effective date of the Title Policy through the date of the final disbursement, and such endorsement must be in all respects satisfactory to you. You must have received written evidence of insurance replacing the builder's risk insurance, as and on the terms required in a subsequent Section of this Agreement.

**Section 7. Disbursement and Draw Request Procedures.** You agree that you will, from time to time during the Construction Phase, but not more frequently than once a month, disburse Loan proceeds to me in accordance with the terms and provisions set forth in the following paragraphs of this Section, provided I am not in Default under this Agreement. Loan disbursements may be made by depositing the disbursements in my account with you, or by depositing them in a depository account with another person designated by me and approved by you, or by disbursing them as provided in the last paragraph of this Section.

**7.1 Draw Request.** Except as otherwise provided in this Agreement, a Loan disbursement may only be made to me on the basis of a Draw Request from me. I must submit each Draw Request for a disbursement at least five (5) Business Days prior to the date on which I would like to receive the disbursement. All Draw Requests submitted to you by me must be approved in advance of submission by the Construction Monitor, unless you agree otherwise in writing.

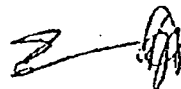
**7.2 Disbursement Amounts.** You will determine the amount to be disbursed under each Draw Request based on the information and documentation contained in, or supplied to you with each Draw Request, as supplemented by any additional information and documentation which you may gather in the course of reviewing each Draw Request, including information from the Construction Monitor. In reviewing each Draw Request, you will be guided by the criteria, standards, processes and procedures set forth in the following subparagraphs of this paragraph, and such other commercially reasonable criteria, standards, processes and procedures as may be necessary or appropriate under the circumstances existing at the time. Once you determine the amount to disburse, if the amount is less than the amount requested in a Draw Request, the Draw Request will be amended to reflect the adjustments and I agree to execute the amended Draw Request to reflect the adjustments.

**7.2.1. Review Period.** You will use reasonable efforts to review and approve or disapprove each Draw Request within five (5) Business Days of its receipt. If you cannot complete your review in such five (5) Business Day period, you will try to notify me and provide me the reason for the delay and a good faith estimate of the date by which you will complete your review. Your notice to me may be given either in writing or orally. You will not have any liability to me or any other person for your failure to make a disbursement on the date requested by me or to complete your review of a Draw Request within any specified period of time.

**7.2.2. Inspections.** Before you make a disbursement on the basis of a Draw Request, either or both you and the Construction Monitor may perform an on-site inspection of the Premises. If you request, the General Contractor, if there is one, and I will be present when such inspections are undertaken. You will not be under any obligation to make inspections and you will not be under any obligation to instruct the Construction Monitor to conduct inspections. All inspections made by you and all inspections made by the Construction Monitor will be for your sole and exclusive benefit and they may not be relied upon in whole or in part by me or any other person.

**7.2.3. Development Cost Analysis.** Each disbursement of Loan proceeds will be made in accordance with the Development Cost Analysis. Unless you deem it necessary or advisable, the individual amounts in a Draw Request representing payments for separate items or categories will not exceed corresponding amounts budgeted for such items or categories in the Development Cost Analysis, and they will not be paid before the time scheduled for their payment in the Development Cost Analysis. If the cost of any item or category listed in a Draw Request exceeds the budgeted amount as shown in the Development Cost Analysis, I will, unless you otherwise agree based on necessity or advisability, pay such excess from my own funds.

**7.2.4. Value of Work.** Unless you deem it necessary or advisable to do otherwise, disbursements will be made only for completed phases or units of construction reflected on each Draw Request. You will determine whether phases or units of construction work reflected on a Draw Request have been completed from (1) on-site inspections of the Premises by either or both you or the Construction Monitor, (2) meetings with me, the General Contractor, if there is



one, and some or all of the subcontractors, and (3) the Construction Documents and the other items submitted to you pursuant to this Agreement. Your determination of whether work has been completed, together with the disbursements resulting therefrom, shall be binding on me.

**7.2.5. Stored Materials, Deposits, Retainages.** Unless you deem it necessary or advisable to do otherwise, (1) no disbursements will be made for equipment, materials or supplies stored on-site or stored off-site, (2) no disbursements will be made for deposits and prepayments required by manufacturers, suppliers or other persons, and (3) disbursements for non-construction items (i.e., so-called "soft-costs") will not exceed the amounts of the invoices for such items, and even then, they will not be in addition to or exceed amounts for such items as itemized in the Development Cost Analysis. If retainages are required under the Commitment, if there is one, or otherwise by you, then until the final disbursement under the Loan, all disbursements will be net of the retainage so required.

**7.3 Equity Requirements.** If, as a condition to the Initial Funding, I am required to pay to you equity in \$US to be used toward payment of the costs of the Improvements, those equity funds will be held by you, will be and become a part of the Collateral and will be advanced as construction progresses in the same manner and under the same terms and conditions as proceeds of the Loan are disbursed; and, until such equity funds are depleted through construction progress payments no additional disbursements will be made under the Loan. If you, at any time, determine in your reasonable discretion that the Loan proceeds to which I will likely be entitled to receive, plus the amount of all equity investments made by me, are not sufficient to fully complete the Improvements in accordance with the Construction Documents, to pay all interest accrued and which will accrue prior to maturity of the Note and to pay all other sums due under the Loan Documents, you will have the option of requiring me to deposit with you additional equity funds in amounts sufficient to cover the resulting deficit before any additional disbursements are made under the Loan. Additional equity funds will be held by you, they will be and become a part of the Collateral and they will be advanced as construction progresses in the same manner and under the same terms and conditions as proceeds of the Loan are disbursed; and, until such additional equity funds are depleted through construction progress payments you will not be under any obligation to make any additional disbursements shall be made under the Loan.

**7.4. Option to Pay Contractors.** Unless prohibited by any applicable requirements of law, you may, without my prior approval and without prior notice to me, make Loan disbursements directly to the General Contractor, if there is one, or any contractor, subcontractor, laborer, material supplier or other person providing labor, services, materials, supplies, fixtures, parts, products or equipment in connection with the Improvements, or to any combination of such persons and me jointly.

#### **Section 8. Additional Covenants.**

**8.1. Payment/Performance.** I agree to pay when due all sums owing to you under each of the Loan Documents, and I agree to promptly perform all of my other obligations under each of the Loan Documents. At your request, I agree to do any act, and execute any additional documents consistent with the Commitment, if there is one, the Loan Documents or your customary requirements for loans similar to the Loan.

**8.2. Construction.** I agree to immediately begin construction of the Improvements and I will thereafter conscientiously continue the construction of the Improvements to their Completion in accordance with the Construction Documents and this Agreement. I will not discontinue or permit the discontinuance of work on the Improvements for a period of more than three (3) consecutive Business Days, except for matters of *Force Majeure*. In the event of matters of *Force Majeure* which cause a discontinuance of work, such discontinuance will not be a breach or default under this Agreement provided the discontinuance does not extend longer than ten (10) consecutive Business Days from the beginning of the first day of the occurrence of the matter of *Force Majeure*. I agree that under no event will Completion extend past the date of completion set forth in the Construction Documents, or as otherwise set forth in the construction schedule approved by you prior to the making of this Loan, plus a total of twenty (20) Business Days for matters of *Force Majeure*.

**8.3. Payment of Contractors.** I agree to pay and I agree to cause others acting under or on the account of me to pay, the General Contractor, if there is one, and any other persons required to be paid for labor, services, materials, supplies, fixtures, parts, products or equipment furnished to or in connection with construction of the Improvements as and when such persons are required to be so paid under the Construction Documents, or otherwise. I agree to advise you in writing within five (5) calendar days after receipt of notice from any person who claims to have not been paid for any labor, services, materials, supplies, fixtures, parts, products or equipment furnished to or in the Premises. Also, at your request, I agree to provide to you evidence satisfactory to you that I have paid for all labor, services, materials, supplies, fixtures, parts, products and equipment which have been used in constructing the Improvements up to the date

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specified by you in your request; and if payment has not been made, I agree to provide evidence establishing that such nonpayment is within applicable contractual payment terms.

**8.4. Inspection of Construction.** You and the Construction Monitor, either together or separately, may enter upon the Premises at any time either you or the Construction Monitor desire for the purpose of inspecting the construction of the Improvements. I agree that your failure or the Construction Monitor's failure (1) to discover defects in the Improvements, including errors or omissions in design, workmanship, materials, supplies, fixtures, parts, products or equipment, or (2) to otherwise reject design, workmanship, materials, supplies, fixtures, parts, products or equipment due to non-compliance with the Construction Documents, or due to defects in any of the foregoing, will not make either you or the Construction Monitor liable to me and will not make either you or the Construction Monitor liable to any other person on account of such deficiency; and I agree that any prior failure will not constitute a waiver of your right to subsequently reject any such design, workmanship, materials, supplies, fixtures, parts, products and equipment. I agree that all inspections conducted by you or the Construction Monitor are for your sole and exclusive benefit, and I may not, nor may any other person, rely upon such inspections and I am not nor is any other person a third party beneficiary of such inspections. I agree, for myself and for all other persons other than you, to waive and I do hereby waive any present or future rights, if any, I or any of such other persons may have relating to or arising out of inspections made by you or the Construction Monitor. It being understood and agreed that such waiver is material to you and a material inducement to you entering into this Agreement with me and making the Loan to me on the terms and conditions set forth herein and in the other Loan Documents.

**8.5. Preservation of Contracts and Use of Funds.** I agree that I will not, without your prior written approval, enter into or agree to Change Orders, or otherwise enter into a significant modification or amendment of any material contract or agreement I have entered into with respect to the construction of the Improvements, and I agree that I will not terminate or cancel any such material contract without your prior written approval. I agree to use all Loan proceeds disbursed to me solely in payment of costs associated with the Improvements, as itemized in the Development Cost Analysis or as otherwise specifically permitted in this Agreement and the other Loan Documents, unless agreed to in writing otherwise by you.

**8.6. Taxes and Insurance.** I agree to pay, when due, all taxes, assessments, levies and charges upon and against the Collateral which are now due and which may hereafter become due. I agree to maintain the following insurance and such other insurance as you may reasonably require: (1) from the Initial Funding until Completion, all-risk replacement cost insurance with agreed amount endorsement, written in builder's risk form; (2) at all times from and after Completion, all-risk replacement cost insurance with agreed amount endorsement and such other casualty insurance as you may require; (3) at all times from and after the Initial Funding, general liability insurance covering risks customarily carried in similar properties having a use or uses similar to that being made of the Premises from time to time; and (4) if the Premises is located in an area designated as a flood zone or an area which you deem to be prone to flooding, a flood insurance policy as soon as one can be secured under applicable requirements of law. All insurance will be with insurance carriers approved by you, the insurance must be in amounts acceptable to you and the form and terms of the insurance policies and certificates evidencing the insurance policies, including the cancellation notice provisions and the manner in which your interest is designated in such policies, must be satisfactory to you, in your sole discretion. All insurance is hereby assigned to you and it is and will be a part of the Collateral.

**Section 9. Default.** I will be in default under this Agreement and the other Loan Documents upon the occurrence of any one or more of the following events ("Default" or "Event of Default"): (1) the occurrence of any event of default under the Note; (2) I default under, breach, or fail to perform any of the terms or conditions contained in this Agreement, or I default or any other person obligated for payment of the Loan defaults under any of the other Loan Documents; (3) the failure of the Improvements to be constructed in accordance with the Construction Documents, including the Plans, or I default in performing or observing any term or condition in the Construction Documents; (4) the actual or threatened demolition, injury or waste to the Collateral, or any material part thereof, which, in your sole opinion, may impair its value; (5) the filing or attachment of a lien, security interest or other claim against the Collateral or any part thereof or interest therein, except ad valorem property taxes for the then current year and a lien or security interest in your favor, or any of my other assets, or any material part or portion thereof, are attached, seized, subjected to a writ or distress warrant, or are levied upon; (6) my insolvency or bankruptcy or the insolvency or bankruptcy of any person obligated for payment of the Loan, or the appointment of a receiver for me or any person obligated for payment of the Loan; (7) a misrepresentation by me in any loan application or other information provided by me to you in connection with the Loan; (8) I default under any other indebtedness or other obligation I now owe you or which I may hereafter owe to you; (9) if I am an individual, I die or I become physically disabled or mentally incompetent, and if I am not an individual, I dissolve, terminate my existence, merge with or into another person or a change in control occurs within me; or (10) a

determination by you that the prospect of payment or performance by me or any other person under all or any of the Loan Documents is insecure.

**Section 10. Rights and Remedies.** If an Event of Default occurs under this Agreement, in addition to any other right and remedy available to you, which rights and remedies are fully exercisable by you, you will have the rights and remedies set forth below in the following paragraphs of this Section, any and all of which you may exercise at your election, without notice of such election and without demand - subject to any applicable notice or grace periods.

**10.1. Acceleration of Maturity.** You may, at your option, accelerate and declare immediately due and payable the Note, as well as any of and all of the other indebtedness and obligations owing by me or others under this Agreement or any of the other Loan Documents.

**10.2. Power of Enforcement.** You may do, seek to be done and have done by yourself, or others on your behalf, any one or more, or all of the following: (1) limit, declare a moratorium on or terminate your obligation to make disbursement of Loan proceeds under this Agreement; (2) foreclose or authorize the foreclosure of all and any part or parts of the Collateral, or interests therein, under any powers of sale granted in the Loan Documents or through a judgment or decree of a court or courts of competent jurisdiction; (3) take possession and control of all, or such part or parts of the Collateral, or interests therein, as you may direct, through your own actions or those of your agents, or through appropriate legal or equitable proceedings; (4) obtain the appointment of a receiver or other similar official to enter upon and take possession of, and control and management over any and all of the Collateral or interests therein; or (5) pursue any other rights and remedies available to you under the Loan Documents, at law or in equity.

**10.3. Management of Collateral.** You will have the right, but not the obligation, by yourself or through your agents, a receiver or other similar official, or any other person, to take possession of, hold, store, use, operate, construct, install, complete, repair, restore, preserve, protect, manage and control all and any part or parts of, and interests in the Collateral, and conduct the business related thereto. In furtherance of the foregoing, from time to time and at any time, you may do and you may have done or direct the doing of any one or more of the following: complete the construction and upfitting of the Improvements in your name or my name; make all necessary or appropriate maintenance, repairs, renewals, replacements, additions, betterments and improvements to the Premises and parts thereof, and in connection therewith, purchase and otherwise acquire fixtures, personal property and other types of property; insure and keep the Collateral and parts thereof insured; manage and operate the Collateral and parts thereof; enter into agreements with other persons relative to the management and operation of the Collateral and parts thereof; and collect and receive all the rents, income, proceeds and other benefits arising out of the Collateral and each and all parts thereof and interests therein. You also may do any one or more of (1) use any of my funds, including any funds which may remain undistributed on the Loan, for the purpose of completing the Improvements in the manner called for by the Plans and for completing any other construction connected with or associated with the Improvements, (2) make such additions, changes and corrections in the Plans as may be necessary or desirable to complete the Improvements, (3) employ such contractors, subcontractors, laborers, suppliers, materialmen, agents, engineers, architects and inspectors as may be required or appropriate for said purposes in your opinion, (4) pay, settle and compromise all existing bills and claims which may be liens against the Improvements, or as may be necessary or desirable, in your sole discretion, for the completion of the Improvements or for clearance of title, (5) take over and use all and any part of the design, labor, materials, supplies, fixtures, parts, products and equipment contracted for, owned by, or under my control, whether or not previously incorporated into the Improvements, (6) execute all applications and certificates in my name or your name which may be required by any of the Construction Documents or otherwise, (7) prosecute and defend all actions and proceedings in connection with the Premises or the construction of the Improvements, and to take such action and require such performance as you deem necessary or appropriate under any guaranty of completion, and (8) do any and every act with respect to construction of the Improvements which I might do on my own behalf, including execution, acknowledgment and delivery of all instruments, agreements and other documents in my name or your name as may be necessary or desirable in your sole discretion.

**Section 11. Payment of Expenses and Indemnification.** At your request, I will pay you and otherwise indemnify and save you harmless for all liabilities, damages and costs and expenses you incur in connection with the Loan, any of the Loan Documents or the enforcement of your rights and remedies under any of the Loan Documents, excepting any of the foregoing resulting from your gross negligence or willful misconduct, or that of your agents. All of the foregoing liabilities, damages and costs and expenses will be paid by me with interest thereon at the highest contract rate prescribed in the Note from the date paid by you until paid by me. All amounts so paid by you and the interest thereon will be added to and be secured by your lien and security interests in the Collateral.

**Section 12. General Terms.** The following additional terms apply under this Agreement: (1) the recitals and

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rights and remedies under this Agreement shall operate as a waiver of such rights and remedies; (3) wherever possible each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision shall be prohibited or invalid, such provision will be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement, or the application thereof will be in a manner permissible under applicable law; (4) you do not intend to and will not knowingly charge or collect under any of the Loan Documents interest, fees or charges in excess of the maximum rates or amounts permitted by applicable law and if you do, it shall be construed as a mutual mistake, appropriate adjustments shall be made by you and to the extent paid, the excess shall be returned to the person making such a payment; (5) this Agreement may not be amended, except by an agreement in writing signed by you and me; (6) I will not assign this Agreement, or any of my rights or obligations hereunder, but you may assign this Agreement and any of your rights and obligations hereunder; (7) this Agreement is for the sole protection and benefit of you and me; (8) this Agreement shall be governed by and construed in accordance with the substantive laws of the State in which the Land is located, excluding, however, the conflict of law and choice of law provisions thereof; (9) I acknowledge and agree that you are authorized to maintain, store and otherwise retain the Loan Documents in their original, inscribed tangible form or a record thereof in an electronic medium or other non-tangible medium which permits such record to be retrieved in a perceivable form; (10) you may place upon the Premises a sign or signs advertising the fact that financing is being provided by you, and you may also advertise such fact through the newspapers and other media; (11) this Agreement may be executed in two or more counterparts; (12) except as provided herein to the contrary, all notices hereunder shall be deemed given when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses set forth above, provided, you and I may, by written notice, designate a different address where communications should be sent and you may require that all communications sent to you be sent electronically or in some other non-tangible medium; (13) I irrevocably constitute and appoint you as my true and lawful attorney to undertake such acts as you deem necessary or advisable to effect the terms and conditions of this Agreement, and the foregoing appointment is and the same shall be coupled with an interest in your favor; (14) this Agreement shall continue in full force and effect until (i) payment in full of the Loan and all other amounts now owing and which may in the future be owing to you under the Loan Documents, and (ii) performance of all other obligations required to be performed by me under the Loan Documents, provided, if the Loan has a Permanent Phase as set forth hereinabove, then this Agreement shall terminate effective the first (1st) Business Day following the Conversion Date; and (15) there is of the essence relative to my performance under this Agreement.

The parties have caused this Agreement to be executed as of the Effective Date.

**Notice And Disclaimer.** All risk of loss relative to construction of the Improvements will be borne by me. You will have no liability or responsibility to me or any other person relative to construction of the Improvements, including any of the following, even if you approved or your approval is or will be a condition to disbursement of Loan proceeds: (1) my selection of the General Contractor or any other person, or my election to proceed without a General Contractor; (2) the interior or final cost of the Improvements or any analysis relating thereto; or (3) the quality or sufficiency of any design, labor, work, services, materials, supplies, fixtures, parts, products or equipment related to the Improvements.

BORROWER:

Print Name: Joseph G. Carow

Print Name: Robert A. Carow

LENDER:

RBC CENTURA BANK

By: Indira H. Chakrabarti  
Print Name: Indira H. Chakrabarti  
Title: Bank Officer

# ATTACHMENT I to Construction Loan Agreement

**DEFINITIONS.** The meanings assigned to the terms listed below shall apply to this Agreement and all of the other Loan Documents, and if a term is not defined in this Agreement but is defined in the UCC, it will be assigned the meaning used in the UCC. "I", "me", "my" refers to Borrower; "you", "your" refers to Lender.

"Business Day" means any day that is not a Saturday, Sunday or other day on which banks in the jurisdiction where laws govern this Agreement are authorized or required to close.

"Change Order" means any material change in or other alteration of the Improvements as shown or depicted in the Construction Documents. A change or alteration will not be deemed material which (1) individually does not cause the cost of the Improvements as reflected in the Development Cost Analysis to be increased or decreased by more than \$1,000 and, when added to all previous change orders, does not cause such costs to be increased or decreased by more than \$5,000 in the aggregate, (2) does not result in a material change to the design or affect the structural components of the Improvements, and (3) has been approved in writing by relevant governmental authorities, if the approval of such authorities is required.

"Closing Date" means the Effective Date.

"Collateral" means the following property and property rights, both now existing and hereafter arising: (1) the Land; (2) the Improvements; (3) the Personality; (4) all rents, issues and profits arising out of or related to any one or more of the Land, Improvements and Personality; (5) the Construction Documents and all other contracts, contract rights, agreements and documents relating to construction of the Improvements or furnishing the Improvements; (6) all insurance and insurance policies relating to any one or more of the Land, Improvements and Personality, including insurance and insurance policies pertaining to the construction of the Improvements or furnishing the Improvements; (7) all funds deposited with or held by you as my equity infusion for construction of the Improvements or furnishing the Improvements; (8) all other property and property rights described in any one or more of the Loan Documents; and (9) all proceeds, products, accretions, additions, replacements and substitutions of or to the foregoing property and property rights.

"Commitment" means your commitment letter or other written agreement with me for the Loan, if there is one; and if there is one, the Commitment shall survive the Closing Date and all disbursements of Loan proceeds.

"Completion" or "Completed" means (1) completion of the Improvements in accordance with the Plans and the other Construction Documents, free and clear of all claims of liens, liens and other encumbrances (except Permitted Encumbrances and the liens and security interests of Lender), (2) issuance of all necessary certificates of completion or occupancy by applicable governmental authorities, if such certificates are necessary in your opinion under applicable requirements of law, and (3) receipt of all approvals from Private Associations, if any are required.

"Construction Contract" means the final, executed contract between me and the General Contractor, if there is one, for construction and furnishing of the Improvements.

"Construction Documents" means the Construction Contract, the Development Cost Analysis, the Plans, an architect's contract, if there is one, all other contracts, agreements, plans and documents concerning construction and furnishing of the Improvements and all licenses, permits, authorizations, usage rights and development rights relating to any one or more of the Land, Improvements and Personality, including building permits and certificates of occupancy or completion.

"Construction Monitor" means a construction inspector or monitor, or other person designated by you to monitor and otherwise inspect the construction of the Improvements, including reviewing and approving all Draw Requests and performance of on-site inspections. The Construction Monitor will be an independent contractor, and I will pay the costs and expenses associated with the Construction Monitor.

"Construction Phase" means (1) if the Loan consists only of a Construction Phase, then the period of the Loan extending from the Effective Date of this Agreement to the earlier of (i) the Last Completion Date or (ii) the tenth (10th) Business Day following Completion, and (2) if the Loan consists of a Construction Phase and a Permanent Phase, then the period of the Loan extending from the Effective Date of this Agreement to the earlier of (i) the Conversion Date or (ii) the Last Completion Date.

"Development Cost Analysis" means, at your option, either (1) a construction budget that contains a detailed breakdown of the cost of constructing the Improvements, including a detailed construction ledger with hard costs and the cost of acquiring the related Land and Personality, on AIA form G701 or other form acceptable to you, and an itemization of non-construction costs in a form and substance acceptable to you, together with such periodic updates as you may from time to time require, or (2) your internally generated analysis of the costs of the Improvements and related Land and Personality, as applicable, or (3) such other cost analysis or progress payment analysis as you may designate in writing as being the Development Cost Analysis.

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"Draw Request" means a written request for a disbursement which is (1) on a form approved by you, (2) dated no earlier than two Business Days before it is submitted to you, (3) current, complete and accurate as of its date, (4) executed by me and (5) includes or is accompanied by the following: (i) a statement of the amount being requested, (ii) a complete list of invoices to be paid from the Loan disbursement, (iii) if the Draw Request includes an application for payment of amounts to be paid to the General Contractor, originals of AIA Document G702 and AIA Document G703 (or equivalents approved by you), together with a report on the status of any stored materials, if requested by you, and (iv) such other information and documentation as may be reasonably required by you.

"Force Majeure" means strikes, lock-outs, riots or other labor troubles, unavailability of materials, a national emergency, any rule, order or regulation of governmental authorities enacted after the Closing Date, tornadoes, floods, hurricanes or other natural disasters, or other similar causes not within my control, but excluding my negligence.

"General Contractor" means the person with whom I enter into the Construction Contract, if there is one.

"Improvements" means the improvements to be made, installed, constructed, placed in service or otherwise undertaken under and pursuant to the Construction Documents, and includes furnishings, fixtures, equipment and other items of Personality provided for under the Construction Documents. In this Agreement, the phrase "construction of the improvements" and "construction and furnishing of the improvements", or variations thereof, shall have the same meaning unless the context clearly indicates otherwise.

"Initial Funding" means the time of the first disbursement of Loan proceeds under this Loan Agreement, which may occur on a date and at a time different than the Closing Date.

"Land" means the real property described in the Mortgage and all buildings and other improvements located thereon and all rights appurtenant thereto.

"Last Completion Date" means the day by which Completion must occur.

"Loan Documents" means this Agreement, the Note, the Mortgage, the Security Agreement and related financing statements, and any of the following which you require me or other persons to execute and deliver to you in connection with the Loan: collateral assignments, guaranty agreements and any other instruments, documents, statements and agreements evidencing or securing the Loan.

"Mortgage" means the deed of trust, mortgage, deed to secure debt, security deed or trust deed covering the

Premises and securing the Loan, executed and delivered by me or some other person for your benefit.

"Note" means the promissory note I execute and deliver to you which evidences the Loan, and includes all amendments, modifications, extensions, substitutions and replacements thereto and therefor.

"Permanent Phase" means the period of time extending from and after the Conversion Date.

"Permitted Encumbrances" means liens, encumbrances, easements and other matters listed as exceptions to the Title Policy and which are approved in writing by you.

"Personalty" means all furnishings, fixtures, equipment, inventory and other articles of tangible personal property now owned and all of the foregoing which may be hereafter acquired by me, attached to, located on, contained in, or used exclusively in connection with the Land or Improvements, or any portion thereof, and all replacements thereof, all articles in substitution thereof and all accessions thereto, whether or not the same are or shall be attached to the Land or Improvements in any manner, together with all accounts, promissory notes and other instruments, chattel paper (both tangible and electronic), contracts and contract rights, documents, deposit accounts, monies, investment property, financial assets and general intangibles of every nature and kind arising out of or in connection with the Collateral, both now owned and all of the foregoing which may be hereafter acquired by me, and all property described in any collateral assignments to the extent the same constitutes personal property, together with all proceeds and products thereof.

"Plans" means the plans, drawings, designs and specifications for the Improvements, including the construction of the Improvements and the furnishing of the Improvements with the Personality, which have been prepared by me, or prepared by an architect or other person for me who is acceptable to you, and which have been approved in writing by you.

"Premises" is a term sometimes used in this Agreement to refer to the Land, Improvements and Personality.

"Private Association" means a property owners' association or similar association under any covenants and restrictions referenced in the Permitted Encumbrances.

"Security Agreement" means the agreement which grants to you a UCC security interest in the Collateral, and which supplements the security interest granted in the Collateral by this Agreement, the Mortgage and any of the other Loan Documents.

"Title Insurance Commitment" means a legally binding commitment by the Title Insurance Company to issue the

Title Policy and "Title Policy" means the mortgagee title policy meeting the requirements of this Agreement.

"Title Insurance Company" means the organization issuing the Title Policy, which organization must be a recognized national title insurance company, licensed to do business in the jurisdiction in which the Premises are

located and otherwise acceptable to you, acting reasonably.

"UCC" means the Uniform Commercial Code in effect from time to time in the jurisdiction whose laws govern this Agreement.

**INITIAL FUNDING CONDITIONS.** The following is a list of the liens and security interests, and the Informations, certificates, authorizations, insurance policies, agreements and documents that I must deliver to you or which you otherwise require before the Initial Funding. Additional items may be required because of special circumstances relating to the Loan, and if so, you will let me know prior to the Initial Funding what additional items are needed. I will pay the costs and expenses associated with all of the items listed below, and any others I must provide to you in connection with the Loan.

**Loan Documents.** You must receive fully executed and, if necessary, recorded or filed, originals of all Loan Documents required by you or your attorney, including those required by the Commitment, if there is one. Also, all of the conditions listed in the Commitment, if there is one, and elsewhere in this Agreement must have been completed and satisfied.

**Appraisal.** You must receive an appraisal of the Premises (i.e., assuming "as-built", after Completion) performed in accordance with all applicable requirements of law by a state certified/licensed independent appraiser selected by you and commissioned by and addressed to you, which reflects an appraised value satisfactory to you.

**Taxes and Assessments.** I must deliver to you evidence that ad valorem taxes and all general and special assessments on the Premises have been paid through the most recent calendar year and are otherwise current in their payment under applicable requirements of law, and information as to tax parcel identification numbers, tax rates, estimated tax values, assessments and the identities of the taxing authorities.

**Utilities.** I must deliver to you evidence satisfactory to you of the suitability and availability, at normal and customary rates, of all utilities needed to properly service the Premises in its intended use.

**Licenses and Permits.** I must deliver to you copies of all necessary licenses and permits for the construction of the Improvements, including a copy of a valid current building permit for the Improvements which has been issued by the appropriate governmental authority.

**Flood Certification.** I must deliver to you evidence that the Improvements are not located within an area identified as having "special flood hazards" as such term is used in the federal Flood Disaster Protection Act of 1973, or if in such an area, I must deliver to you evidence of insurability followed by insurance as soon as it can be secured.

**Insurance.** I must deliver to you evidence that I have obtained each of the insurance policies required under the Mortgage and this Agreement, together with satisfactory evidence of premium payments.

**Plans.** I must deliver to you two (2) complete sets of the Plans in final form.

**Construction Contract.** I must deliver to you a certified copy of the Construction Contract executed by the General Contractor and me, and copies of all other executed contracts as may be reasonably required by you;

or you must have otherwise approved in writing my decision to construct the Improvements without use of a General Contractor. If requested by you, I must deliver to you the Development Cost Analysis, certified as being accurate by me, and the General Contractor if one is used.

**General Contractor.** You must approve the General Contractor, unless I elect to construct the Improvements without use of a General Contractor and such election is approved in writing by you.

**Collateral Assignments.** To the extent I use a General Contractor, I must deliver to you written consents from the General Contractor, and all prime subcontractors if you request, to my assignment to you of my interest in contracts with each of them. You also must receive copies of other consents and approvals required in order for me to construct, occupy and utilize the Improvements for its intended purposes and to comply with all of the terms of the Loan Documents, including consents and approvals from any Private Association.

**Permitted Uses.** I must deliver to you a valid and current building permit for the Improvements which has been issued by the appropriate governmental authority. I must also deliver to you any other evidence you deem necessary or appropriate showing that the Premises, and the intended uses of the Premises are in compliance with all applicable requirements of law (e.g., zoning) and other restrictions and requirements applicable to the Premises, including those of any Private Association.

**Lien Waivers.** I must deliver to you such lien waivers and lien affidavits as you deem necessary or appropriate from mechanics, materialmen, contractors and other persons who may be performing work on the Premises or who may supply materials, supplies, fixtures, parts, products or equipment thereto.

**Compliance with Laws.** I must provide you verifiable evidence that I have, for my account and yours: (1) timely posted, mailed, delivered or otherwise sent all notices of commencement of construction, notices of responsibility, notices of lease, notices of disbursement of funds or other notices which may be necessary under applicable construction lien or mechanic's or materialmen's lien laws for you to have a perfected first lien priority in the Collateral over contractors, materialmen, mechanics, suppliers, laborers and any other persons; and (2) taken such other steps as may be necessary or appropriate in your opinion to ensure, under all applicable requirements of law, that you have and will have until the Loan is paid in full, a perfected, first priority lien and security interest in the Collateral and that you will not have any corporate liability to any contractor, materialmen, mechanic, supplier, laborer or any other person.

**Fees.** I must have paid all fees and costs and expenses required to be paid by me under the Commitment, if there is one, or as you may otherwise require me to pay as a condition to the Loan.

**Equity.** At your direction, I must provide you either satisfactory evidence that I have invested equity in the Land as of the Initial Funding in an amount not less than the amount specified in the Commitment, if there is one, or as otherwise required by you; or I must have paid such equity to you in \$US to be held and disbursed by you toward payment of the costs of the Improvements, in the manner provided in this Agreement.

## **EXHIBIT 3**



| Page 2 |                                                       | Page 4 |                                           |
|--------|-------------------------------------------------------|--------|-------------------------------------------|
| 1      | at the Law Offices of Poyner & Spruill, 130 South     | 1      | C O N T E N T S                           |
| 2      | Franklin Street, Rocky Mount, North Carolina, at 9:09 | 2      | THE WITNESS EXAMINATION BY COUNSEL FOR    |
| 3      | a.m., September 9, 2011, and the proceedings being    | 3      | KATY PATTERSON: Plaintiffs Defendants     |
| 4      | taken down by Stenotype by DARLENE M. BRYANT and      | 4      | By Mr. Fosmire: 7 & 156                   |
| 5      | transcribed under her direction.                      | 5      | By Mr. McGee: 145.                        |
| 6      |                                                       | 6      |                                           |
| 7      |                                                       | 7      | E X H I B I T S                           |
| 8      |                                                       | 8      | EXHIBIT NO. PAGE NO.                      |
| 9      |                                                       | 9      | 1 - 30(b)(6) Deposition Notice 9          |
| 10     |                                                       | 10     | 2 - RBC's Document Production 12          |
| 11     |                                                       | 11     | 3 - Screen Shot of Carew's DDA 13         |
| 12     |                                                       | 12     | 4 - RBC's Hall Builders File Documents 14 |
| 13     |                                                       | 13     |                                           |
| 14     |                                                       | 14     |                                           |
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| Page 3 |                                         | Page 5 |                                                        |
|--------|-----------------------------------------|--------|--------------------------------------------------------|
| 1      | APPEARANCES:                            | 1      | S T I P U L A T I O N S                                |
| 2      | On behalf of the Plaintiffs:            | 2      |                                                        |
| 3      | ERIC G. FOSMIRE, ESQUIRE                | 3      | It was stipulated by and between counsel               |
| 4      | McAngus Goudelock & Courie, LLC         | 4      | representing the respective parties, and the witness.  |
| 5      | Meridian Building, Tenth Floor          | 5      | as follows:                                            |
| 6      | 1320 Main Street                        | 6      | 1. That any defect in the notice of the                |
| 7      | Columbia, SC 29201                      | 7      | taking of this deposition, either as to time or place, |
| 8      | (803) 779-2300                          | 8      | or otherwise as required by statute is expressly       |
| 9      |                                         | 9      | waived, and this deposition shall have the same effect |
| 10     | On behalf of the Defendants:            | 10     | as if formal notice in all respects as required by     |
| 11     | THOMAS WILLIAM MCGEE, III, ESQUIRE      | 11     | statute had been given and served upon the counsel in  |
| 12     | Nelson Mullins Riley & Scarborough, LLP | 12     | the manner proscribed by law.                          |
| 13     | Meridian Building, 17th Floor           | 13     | 2. That this deposition shall be taken for             |
| 14     | 1320 Main Street                        | 14     | the purpose of discovery or for use as evidence in the |
| 15     | Columbia, SC 29201                      | 15     | above-entitled action, or for both purposes.           |
| 16     | (803) 225-2431                          | 16     | 3. That this deposition is deemed opened and           |
| 17     |                                         | 17     | all formalities and requirements with respect to the   |
| 18     |                                         | 18     | opening of the same, expressly including notice of the |
| 19     |                                         | 19     | opening of this deposition, are hereby waived, and     |
| 20     |                                         | 20     | this deposition shall have the same effect as if all   |
| 21     |                                         | 21     | formalities in respect to the opening of the same had  |
| 22     |                                         | 22     | been complied with in detail.                          |
| 23     |                                         | 23     | 4. That the undersigned, Darlene M. Bryant, a          |
| 24     |                                         | 24     | Registered Professional Reporter and Notary Public in  |
| 25     |                                         | 25     | and for the State of North Carolina, is duly qualified |

Page 10

1 Q. Are you the person for RBC that can best  
2 answer any questions relating to that topic?  
3 A. I believe so.  
4 Q. Okay. The second bullet point, RBC's  
5 retention of Appraisal Team of Mid-Carolina.  
6 Are you the best person to respond to that  
7 category?  
8 A. Yes.  
9 Q. All right. Third. All communication between  
10 RBC and Appraisal Team of Mid-Carolina and/or Teresa  
11 Addy-Halliwanger.  
12 Are you the best person to respond to that?  
13 A. Yes.  
14 Q. All communication between RBC, Hall Builders,  
15 and Cliff Hall.  
16 Are you the best person to respond to that?  
17 A. Yes.  
18 Q. All communication between RBC and Joe and  
19 Karen Carew.  
20 Are you the best person to respond to that?  
21 A. Yes.  
22 Q. RBC's policies and procedures for residential  
23 and construction lending agreements.  
24 Are you the best person to respond to that?  
25 A. Yes.

Page 11

1 Q. And then as to the construction loan itself,  
2 each dispersal of funds pursuant to draw requests or  
3 submittals to RBC.  
4 Are you the one to respond to that --  
5 A. Yes.  
6 Q. -- for this case?  
7 All right. You can set that aside.  
8 A. Okay.  
9 Q. I've marked as Exhibit 2 --  
10 MR. McGEE: And -- I'm sorry, Eric, I just  
11 want to note for the record that she's been -- she's  
12 the person that's been designated by the bank to -- to  
13 answer these questions. There may be somebody that  
14 knows more about one of those topics or not --  
15 MR. FOSMIRE: Okay.  
16 MR. McGEE: -- but she's the one that's here  
17 to testify on behalf of the bank.  
18 MR. FOSMIRE: All right.  
19 BY MR. FOSMIRE: (RESUMED.)  
20 Q. If there's an area that we get into that it's  
21 just outside of your knowledge or you go, you know  
22 what, there may be someone better that can -- to cover  
23 that, just tell me.  
24 A. Sure.  
25 Q. Just let me know who that person might be.

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1 A. I will.  
2 Q. Okay. The next bundle of joy I have for you,  
3 we've marked as Exhibit 2.  
4 (The document referred to was  
5 marked Deposition Exhibit No. 2  
6 for identification.)  
7 BY MR. FOSMIRE: (RESUMED.)  
8 Q. These are documents that are Bates marked at  
9 the bottom right, which I hope you're familiar with,  
10 and these are documents that were produced by RBC's  
11 attorneys as the representative documents in these  
12 case responsive -- in this case, responsive to our  
13 discovery requests.  
14 I'm going to have a substantial number of  
15 questions regarding these documents. Okay?  
16 A. Okay.  
17 Q. And when we refer to them, I'll probably not  
18 continue to refer to Exhibit 2, I'll just refer to an  
19 RBC number at the bottom right and it's going to be  
20 sequential 1 through some 600 documents. Okay?  
21 A. Okay.  
22 Q. All right. I marked as Exhibit 3, something  
23 that was presented to us this morning which doesn't  
24 have a Bates number. And can you explain what Exhibit  
25 3 is?

Page 13

1 A. Yes, I can.  
2 This is a screen shot of a DDA, which is a  
3 direct deposit account, with RBC. The borrowers on  
4 the account are listed as Joseph G. Carew and Karen J.  
5 Carew.  
6 This DDA account is now closed, has since been  
7 closed, but this was the checking account that the  
8 Carews' construction draw funds went into. So, each  
9 time there was a draw release, it went into -- those  
10 funds went into this account.  
11 (The document referred to was  
12 marked Deposition Exhibit No. 3  
13 for identification.)  
14 BY MR. FOSMIRE: (RESUMED.)  
15 Q. Okay. As it relates to this case, that screen  
16 shot, when did you pull it? What's the date?  
17 A. Just pulled it yesterday.  
18 Q. Okay.  
19 A. Just pulled it yesterday.  
20 Q. Does that just show us a zero balance on the  
21 account?  
22 A. It shows that the loan is -- yes, the zero  
23 balance, the account is closed and the names on the  
24 account.  
25 Q. Okay. Okay. Very good. And then --

Page 18

1 A. I reported at that time -- had many -- I'm  
2 sorry. I'm thinking here. Who was it at that time?  
3 I don't recall. I don't recall.  
4 Q. Okay. The residential construction lending  
5 center, is that located here in Rocky Mount?  
6 A. It is. It's across the street.  
7 Q. Okay. As far as RBC, how long have you been  
8 with RBC?  
9 A. 19 years in November.  
10 Q. Okay. I -- I -- I -- I'm a little bit  
11 familiar with RBC and their history. Were you with  
12 another bank that was assumed by RBC?  
13 A. No, sir. I started with Centura Bank. At the  
14 time I began with the bank almost 19 years ago, it was  
15 a state bank.  
16 Q. Okay.  
17 A. Known as Centura Bank.  
18 Q. How many years do you have in banking total?  
19 A. My tenure at RBC is my only banking  
20 experience, so it's been going on 19 years.  
21 Q. Okay.  
22 A. But not all in this role.  
23 Q. All right. Although you cannot recall  
24 specifically the name of the person you were reporting  
25 to, as far as the construction lending center, what

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1 I'm trying to figure out is, what's the supervisory  
2 chain?  
3 You're the manager of that unit?  
4 A. Yes.  
5 Q. You report to who?  
6 A. Oh --  
7 Q. Vice President or --  
8 A. -- I'm sorry. Yes, Vice President and the  
9 Director of Mortgage Operations.  
10 And I apologize. I've had in the five -- five  
11 years since this -- since the inception of this  
12 particular unit, I've probably had six bosses. So,  
13 I'm just trying to get that timeline in my head.  
14 But, yes, they would be the Director of  
15 Mortgage Ops.  
16 Q. Okay. So -- and then, the Director of  
17 Mortgage Operations reports to who? What's the  
18 chain?  
19 A. Well, that has changed over the years. And I  
20 can't tell you who it was back then. I can certainly  
21 look that up and provide it if need be to Billy or to  
22 yourself.  
23 Q. Okay. As -- as it relates to your authority  
24 on a construction loan, were there any limits on your  
25 authority?

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1 A. Certainly, yes.  
2 Q. Okay. And what did you view your limits to  
3 be?  
4 A. If there were any legalities, if -- if there  
5 was a legal question, such as in this particular case,  
6 then I consulted my legal group.  
7 Q. Okay.  
8 A. If it was requests for an extension, say, of  
9 maturity date on a construction loan, I go to mortgage  
10 credit risk, I go to a risk manager --  
11 Q. Okay.  
12 A. -- for that. So, yes, many times there  
13 were --  
14 Q. All right.  
15 A. -- different authorities.  
16 Q. As it relates to dollar value of an issue or a  
17 loan, were there any dollar value limits as to what  
18 you were authorized to handle?  
19 A. No, because I didn't have any approval  
20 authority. Now, it -- I had no lending authority  
21 per se.  
22 Q. All right.  
23 A. So, no.  
24 Q. So, the lending authority decision is made by  
25 somebody else and then ya'll manage the loan once that

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1 lending authority is granted?  
2 A. Correct.  
3 Q. So, you could manage a loan for \$180,000 house  
4 or a \$10,000,000 house --  
5 A. That's correct.  
6 Q. -- depending on what -- what was actually  
7 lent; is that correct?  
8 A. That's correct.  
9 Q. Okay. I got you.  
10 All right. We're in suit in Lexington County,  
11 South Carolina, and I know you are here as a  
12 representative of RBC, but since you may be testifying  
13 at trial, if we go to trial, do you have any  
14 connections to Lexington County, South Carolina, other  
15 than RBC Bank?  
16 A. No, sir.  
17 Q. Okay. So, no personal family or connections  
18 otherwise there?  
19 A. No.  
20 Q. For litigation decisions, you said you would  
21 consult with your legal group. If a decision was to  
22 be made regarding, say, settlement of this case, would  
23 you have that authority or would it go to somebody  
24 else?  
25 A. It would go to somebody else.

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1 do you have any evidence to support the legal defense  
2 in there that the Carews are equitably estopped from  
3 bringing this ca - claim?  
4 MR. McGEE: Object to the form; calls for a  
5 legal conclusion.  
6 THE WITNESS: No, none that I know of.  
7 BY MR. FOSMIRE: (RESUMED.)  
8 Q. Do you understand the question?  
9 A. Yeah, I do.  
10 Q. Okay.  
11 A. I do.  
12 Q. Do you -- and I'm not asking you to put on  
13 the -- the lawyer hat, but I'm just asking you if you  
14 have any facts just from your knowledge relating to  
15 these defenses?  
16 A. No.  
17 Q. Do you have any evidence that the Carews  
18 consented to Hall Builders' misconduct?  
19 MR. McGEE: Object to the form.  
20 You can answer.  
21 THE WITNESS: Can you rephrase that question,  
22 please?  
23 BY MR. FOSMIRE: (RESUMED.)  
24 Q. I'll re-ask it.  
25 A. Okay.

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1 Q. I'd like to ask it the way -- and if you can't  
2 answer it just tell me you -- I can't answer it as  
3 given. So, I'm giving you an out. All right?  
4 So, but do you have any evidence that the  
5 Carews consented to Hall Builders' misconduct in this  
6 case?  
7 A. Not to my knowledge.  
8 Q. Okay. Do you have any evidence that the  
9 Carews released RBC as it relates to this case?  
10 MR. McGEE: Object to the form.  
11 THE WITNESS: Released RBC?  
12 BY MR. FOSMIRE: (RESUMED.)  
13 Q. Right.  
14 A. In terms of Hall Builders?  
15 Q. In terms of the claims in this case.  
16 MR. McGEE: Object to the form; calls for a  
17 legal conclusion.  
18 THE WITNESS: Not to my knowledge.  
19 BY MR. FOSMIRE: (RESUMED.)  
20 Q. Okay. Do you have any knowledge as to how --  
21 as to how the defenses of payment or voluntary payment  
22 applied to this case?  
23 MR. McGEE: Object to the form; calls for  
24 legal conclusion.  
25 THE WITNESS: How the construction draw

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1 payments are paid?  
2 BY MR. FOSMIRE: (RESUMED.)  
3 Q. Well, a defense was asserted by RBC of payment  
4 or voluntary payment, and I'm just asking if you have  
5 any knowledge as to why that's in there?  
6 MR. McGEE: Object to the form; calls for a  
7 legal conclusion.  
8 THE WITNESS: I can't answer that because I'm  
9 not sure I understand the question.  
10 BY MR. FOSMIRE: (RESUMED.)  
11 Q. Okay.  
12 A. I'm sorry.  
13 Q. That's fine.  
14 Do you have any evidence that Hall Builders  
15 was an actual agent of the Carews?  
16 MR. McGEE: Object to the form; calls for a  
17 legal conclusion.  
18 THE WITNESS: No, I don't know.  
19 BY MR. FOSMIRE: (RESUMED.)  
20 Q. All right. Do you have any evidence that the  
21 Carews ratified or condoned Hall Builders' misconduct  
22 in this case?  
23 MR. McGEE: Object to the form; calls for a  
24 legal conclusion, and I'm going to have a standing  
25 objection.

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1 All these -- all of these questions call for  
2 legal conclusions and they're also outside of the  
3 scope of the 30(b)(6) Deposition Notice.  
4 So, they're not the bank's -- not testifying  
5 on behalf of the bank for those issues.  
6 BY MR. FOSMIRE: (RESUMED.)  
7 Q. Go ahead if you can answer the question.  
8 A. I don't know.  
9 Q. You don't have any knowledge?  
10 A. I don't.  
11 Q. Okay. Do you have any evidence to support the  
12 claim that the Carews acted with unclean hands in this  
13 case?  
14 MR. McGEE: Object to the form; calls for a  
15 legal conclusion beyond the scope of the 30(b)(6)  
16 Notice.  
17 THE WITNESS: I don't know.  
18 BY MR. FOSMIRE: (RESUMED.)  
19 Q. All right. When you became involved in this  
20 case, do you recall approximately what the time frame  
21 was?  
22 A. I do, yes, sir. It was February '09.  
23 Q. Okay. And -- and why did you become involved?  
24 A. I received a phone call from Dr. Carew. He  
25 had apparently asked who was in charge of the

| Page 34                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Page 35                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 Q. Okay. And then you said Jamie left and was<br/>2 replaced by whom?<br/>3 A. Jack Hanrahan. H-a-n-r-a-h-a-n, I believe.<br/>4 Q. Is all of your communications, as it relates<br/>5 to the Carews' claim, is that contained in these<br/>6 materials?<br/>7 A. Yes, sir.<br/>8 Q. Okay. Did ya'll make a search of RBC's<br/>9 computer database when this request was made to gather<br/>10 all of the information as it related to the Carews'<br/>11 Complaint?<br/>12 A. Well, what we did, we didn't have a system<br/>13 that it was all kept on at that point in time. We had<br/>14 more -- actually more than one system. Excuse me.<br/>15 But everything -- there was a hard copy of everything.<br/>16 Q. Okay.<br/>17 A. So, the documentation consisted of the<br/>18 mortgage collateral file, and then the construction<br/>19 draw file.<br/>20 Q. Okay. I understand there would be hard copies<br/>21 of everything as it related to the draws and -- and<br/>22 the request for the money.<br/>23 What I'm looking for is internally within RBC,<br/>24 did you write emails to the -- the Legal Department<br/>25 recapping what happened which are not reflected in</p> | <p>1 few from Jack; very limited, very limited.<br/>2 Q. Other than talking to Joe Carew on the phone,<br/>3 did you ever talk with Karen Carew?<br/>4 A. No, I did not.<br/>5 Q. All right. Did you ever meet with either one<br/>6 face-to-face? Did you ever come to South Carolina to<br/>7 talk with them about the situation?<br/>8 A. No, sir.<br/>9 Q. Okay. All of your communications were either<br/>10 dealt with by email or by phone?<br/>11 A. Yes, sir.<br/>12 Q. Have you looked at, for any reason, the<br/>13 Carews' bank relationship with RBC?<br/>14 By that, I mean, other accounts that they have<br/>15 or other mortgages that they have with RBC.<br/>16 A. I have not looked at them. I requested that<br/>17 they be pulled --<br/>18 Q. Okay.<br/>19 A. -- for Legal. I provided them to Legal and to<br/>20 Risk so they could evaluate. And I think that was in<br/>21 response to a question you had raised.<br/>22 Q. Okay. This -- this was during -- I'm trying<br/>23 to -- I just want to be careful with this, because I'm<br/>24 trying to find out what you did. I can't get into<br/>25 what the privilege communications were with -- with</p> |
| Page 35                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Page 37                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>1 this file?<br/>2 A. I had conversations with Legal to --<br/>3 Q. Okay.<br/>4 A. -- you know, just explain the situation.<br/>5 MR. McGEE: And I just note that our privilege<br/>6 log does identify some of those.<br/>7 MR. FOSMIRE: I realize that.<br/>8 BY MR. FOSMIRE: (RESUMED.)<br/>9 Q. Did you look over the privilege log? Did you<br/>10 -- do you know what --<br/>11 A. I don't know what a privilege log is.<br/>12 Q. -- I'm referring to?<br/>13 Okay. No problem.<br/>14 Are all of the communications from either Jack<br/>15 Barfield -- I'm sorry, Jamie Barfield or Jack Hanrahan<br/>16 regarding the Carews' loan, are those contained in<br/>17 this file?<br/>18 A. I don't know if they all are, quite honestly,<br/>19 because I -- I don't recall seeing anything from Jamie<br/>20 Barfield on this loan.<br/>21 Q. Okay.<br/>22 A. I don't know when he left the bank in<br/>23 relationship to this particular loan.<br/>24 Q. Okay.<br/>25 A. I have seen in my review of the file, I saw a</p>                                                                                                                                                               | <p>1 legal counsel.<br/>2 A. Okay.<br/>3 Q. So, if -- if we're heading in that area, I<br/>4 know Billy will object --<br/>5 A. Okay.<br/>6 Q. -- but I'm not intentionally trying to get in<br/>7 that area. I'm just trying to find the scope of the<br/>8 communication and -- and what was done about the Carew<br/>9 relationship. Okay?<br/>10 A. Okay.<br/>11 Q. All right. So, as it relates to the Carews,<br/>12 do you have any specific knowledge of the dollar<br/>13 volume of their relationship with RBC?<br/>14 A. No, I have no idea.<br/>15 Q. Do you have any knowledge of whether they have<br/>16 other checking or savings accounts with RBC?<br/>17 A. I was told that they had other relationships,<br/>18 and I was asked to pull that account information.<br/>19 Actually, I did not pull it. I had someone on my team<br/>20 who's experienced on that system, has more access<br/>21 capabilities to that system --<br/>22 Q. Okay.<br/>23 A. -- to pull it for me and send it directly to<br/>24 Legal and Risk.<br/>25 Q. All right. Regarding the system, is the</p>                                                                                      |

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1 A. There is a checklist for -- with a post-  
2 closing individual. There's a post-closing individual  
3 charged with that responsibility. So, when a CP, a  
4 construction perm, for instance, comes back, he does.  
5 have a checklist.  
6 Q. Okay. I may have missed it. I didn't see  
7 anything like that type of checklist in there. Would  
8 that --  
9 A. That is not in here.  
10 Q. Okay. Where would that be?  
11 A. Because that's not in our file. That's not  
12 housed in our file. That would actually be -- that  
13 should be in the actual -- where would that be? It  
14 should be in the mortgage loan file.  
15 Q. Okay.  
16 A. It should be in the mortgage loan file, I  
17 believe.  
18 Q. All right. Did -- did you have any other -- I  
19 see with regard to Exhibit 4 some research on -- on  
20 Hall Builders.  
21 Was this loan the first time that RBC had Hall  
22 Builders on a construction project?  
23 A. I cannot answer that question. I don't know.  
24 Q. Okay. How -- how could we find out that  
25 answer? Is there some database that you have where

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1 you can search how many projects Hall Builders was on,  
2 if any other?  
3 A. No, we don't have that.  
4 Q. Okay.  
5 A. We don't have that database any longer. What  
6 we did was we had a list. And at this point in time,  
7 as we put the builders through this process, we would  
8 put their name, if -- if everything was sufficient and  
9 they provided all the necessary information, and we  
10 were able to do our -- our -- perform our due  
11 diligence, if you will, then that builder's name was  
12 kept on a list at the time.  
13 We no longer do that. But they were kept on a  
14 list at that time, and then it had to be updated  
15 yearly.  
16 Q. Okay.  
17 A. He was -- I don't know if he was ever used by  
18 another borrower.  
19 Q. All right. But their -- does that list -- is  
20 there a way to find that list?  
21 A. It doesn't exist any longer. I don't believe  
22 we can find that list. It's been taken off the  
23 system. I wouldn't even know where to begin. No.  
24 I'm sure it's gone. We no longer maintain a list like  
25 that.

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1 Q. Okay. Was there any point in time at which  
2 you took Hall Builders off the list?  
3 A. As soon as Dr. Carew called me.  
4 Q. Okay. So, you struck their name off the  
5 list?  
6 A. Yes. And there's a note in here. Yes, I  
7 immediately went over to Nadine Mann and said, take  
8 them off the list. We have -- we have an issue.  
9 Q. Okay.  
10 A. And he was immediately removed.  
11 Q. All right. And you're not certain that they  
12 were on the list before the Carews' construction  
13 project?  
14 A. Well, I don't have proof of that now because  
15 we don't have the list.  
16 Q. Right.  
17 A. But he was -- I know from a letter in this --  
18 file that he was, in fact, put on the list of builders  
19 at that time.  
20 Q. Okay.  
21 A. It's an internal builder list.  
22 Q. You mentioned a couple of times as we were  
23 identifying Exhibit 4 that it was kind of an  
24 abbreviated -- abbreviated due diligence.  
25 Was there an actual checklist that Nadine or

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1 someone else went through in order to compile this  
2 information?  
3 A. There is. And it's in there.  
4 Q. That's in here?  
5 A. It sure is.  
6 Q. Okay. Rather than me, would you go through  
7 Exhibit 4 and just show me what that checklist is?  
8 A. Sure.  
9 (Pause.)  
10 A. It's right here.  
11 Q. Okay. So, the second page of this -- I'm  
12 sorry, it's actually three pages in from the exhibit  
13 sticker. We have a document entitled at the top "RBC  
14 Centura Bank." And it has Hall Builders, LLC, on  
15 there. And then the next written in -- and it's a  
16 form, right?  
17 A. Correct, it's a form.  
18 Q. And this is your -- your checklist that you  
19 used?  
20 A. Yes, this was the -- the checklist at that  
21 time.  
22 Q. And you're trying to find out what about the  
23 builder?  
24 A. Well, no draws were given directly to this  
25 builder. Of course, they all went directly to our

| Page 50                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Page 52                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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| <p>1 Nadine -- I asked Nadine to check it. She brought<br/>2 this to me at the time. And she didn't know what this<br/>3 meant. I did not know what it meant, but it said<br/>4 there was -- certain information requested was<br/>5 contained in the National Fraud -- excuse me, Fraud<br/>6 Protection Database and may warrant further inquiry by<br/>7 the client.<br/>8 And it's listing several defendants among of<br/>9 which is Cliff Hall.<br/>10 Q. Right.<br/>11 A. We don't know if that is the -- one in the<br/>12 same Cliff Hall or not. You'll see they were all<br/>13 terminated on the same date, so there were apparently<br/>14 multiple defendants here in a case; gives the docket<br/>15 number. And it was a copyright infringement case that<br/>16 had been dismissed.<br/>17 Q. Okay. And then there's an alert legend with a<br/>18 bunch of X marks in it. Is that -- what is that?<br/>19 Here's the -- the builder and these -- these same ones<br/>20 are checked every time. So, this really here tells us<br/>21 nothing?<br/>22 A. You can -- you can run a -- a FraudGuard on<br/>23 these different entities --<br/>24 Q. Okay.<br/>25 A. -- you'll see, and Builder Company is the one</p> | <p>1 Q. Well, it has a different date on it.<br/>2 A. Does it have a -- yeah.<br/>3 Q. This is 2/1/2008.<br/>4 A. Oh, okay.<br/>5 Q. There are two documents from FraudGuard dated<br/>6 2/1/2008, and then two documents dated 2 -- 2/8/2008.<br/>7 Actually three from 2/1/2008.<br/>8 (Pause.)<br/>9 Q. And you mentioned checking OFAC. Can you tell<br/>10 me for the record what that is.<br/>11 A. Oh, we don't check OFAC. Fraud -- Fraud<br/>12 does.<br/>13 Q. Okay.<br/>14 A. FraudGuard does. OFAC is the government<br/>15 issued terrorist list.<br/>16 Q. Okay.<br/>17 A. I'm sorry. I don't know what the acro --<br/>18 acronym is --<br/>19 Q. Okay.<br/>20 A. -- offhand. Office of Foreign Assets -- of<br/>21 Foreign Assets Control. Something like that.<br/>22 Q. Gotcha. And this research that's reflected in<br/>23 Exhibit 4, is that basically performed by Nadine Mann<br/>24 pursuant to the -- the checklist or categories of<br/>25 things you tell her to check on?</p>                       |
| Page 51                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Page 53                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>1 that we run the alert. And it's just saying -- the<br/>2 checklist is just saying these are the things that<br/>3 FraudGuard runs. It runs an OFAC. It will run<br/>4 against the name of the license and such.<br/>5 Q. Okay. The checkmark, looking at Page 2 of the<br/>6 2 -- 2/8/2008 document where it says, Alert Legend,<br/>7 the X mark under Builder does not mean there's Fraud<br/>8 Disc --<br/>9 A. No, sir --<br/>10 Q. -- Disciplinary --<br/>11 A. -- it doesn't.<br/>12 Q. It just means --<br/>13 A. Yes, sir.<br/>14 Q. Sorry. We'll try and talk one at a time.<br/>15 A. I'm sorry.<br/>16 Q. That's my fault. Okay. For the Court<br/>17 Reporter, we have -- we have to make sure she gets<br/>18 every question and every answer.<br/>19 So, the Fraud Disciplinary Action means that<br/>20 that's the category checked?<br/>21 A. Yes, sir.<br/>22 Q. It doesn't mean there was a positive response?<br/>23 A. Correct.<br/>24 Q. Okay.<br/>25 A. That's a duplication there.</p>                                                                                                                                                                                                                   | <p>1 A. It was.<br/>2 Q. Okay. And if there are any questions that<br/>3 were raised, she would bring them to you --<br/>4 A. Yes, sir.<br/>5 Q. -- for follow-up?<br/>6 A. Correct.<br/>7 Q. And at the time, in hindsight, I'm virtually<br/>8 certain there were judgments already existing against<br/>9 Hall or Hall Builders in 2008 when this was done.<br/>10 If that -- assume that was true, if that was<br/>11 the case, do you have any explanation why those<br/>12 weren't caught.<br/>13 MR. McGEE: Object to the form; calls for<br/>14 speculation; assumes facts.<br/>15 THE WITNESS: No, I wouldn't know.<br/>16 BY MR. FOSMIRE: (RESUMED.)<br/>17 Q. Okay.<br/>18 A. This is definitely not an all-inconclusive<br/>19 process.<br/>20 Q. Understood.<br/>21 Was Cliff Hall specifically asked in this<br/>22 process of whether he had any judgments against him?<br/>23 A. No, sir.<br/>24 Q. There's a document in Exhibit 4, I believe<br/>25 it's 12 pages deep into the -- into the exhibit, that</p> |

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1 Q. All right. Were you ever contacted by any of  
2 Hall Builders' subs --  
3 A. No.  
4 Q. -- about payment?  
5 A. I was not.  
6 Q. You never --  
7 A. No, sir.  
8 Q. Okay. So, you never spoke with any subs?  
9 A. No, I didn't.  
10 Q. All right. Did you learn that subs had not  
11 been paid on the project?  
12 A. I was told that by Dr. Carew that subs had not  
13 been paid.  
14 Q. All right.  
15 A. And that we had lien filings as well, and  
16 they -- we were copied on those.  
17 Q. All right. At the time, once you learned that  
18 Hall Builders had abandoned the job, did you speak  
19 with Teresa Addy-Haltiwanger about her role?  
20 A. I did. I called her and asked if she could go  
21 by the property again, and, you know, and she asked  
22 what was going on. And I said, I just got a call  
23 from -- from our borrower, very, very upset, you know,  
24 and the Perm Roof is not on. He's telling me the Perm  
25 Roof is not on.

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1 And she said that she also -- she understood  
2 him being upset because she said upon her last  
3 inspection, she also saw the roofing materials sitting  
4 in the driveway; asked the job superintendent, and he  
5 told her that -- she said why isn't -- why isn't the  
6 Perm Roof on? And he told her, according to her in  
7 this phone conversation, that some materials were  
8 still on backorder and that they were due in any day.  
9 And he assured her that the Perm Roof was going on  
10 within the next day or two.  
11 Q. Okay. Was the roof -- do you know if the roof  
12 status was ever communicated to RBC --  
13 A. It was not.  
14 Q. -- prior -- prior to Hall Builders walking off  
15 the job?  
16 A. No, sir.  
17 Q. Okay. So, the first time the roof status came  
18 to your attention was in a communication you had  
19 directly with Teresa Addy-Haltiwanger after you  
20 realized there was a problem?  
21 A. No, it was with -- from Dr. Carew himself who  
22 told me there was a roof issue.  
23 Q. Okay. All right. Tell me about Teresa  
24 Addy-Haltiwanger or Appraisal Team of Mid-Carolina's  
25 role. What role did they serve for RBC in this case?

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1 A. She provided the original appraisal --  
2 Q. Okay.  
3 A. -- for this particular property. I'm not  
4 involved in -- in -- in the selection of appraisers at  
5 all. That all happens in the mortgage ops world prior  
6 to when the loan file comes to me. But I can tell you  
7 that process that was in place at the time, if you'd  
8 like.  
9 Q. Well, that's what I'm going to get to, is how  
10 were -- was she an approved appraiser; was she on an  
11 approved list with ya'll?  
12 A. Yes, she was.  
13 Q. Okay. And how do you get on the approved list  
14 with RBC?  
15 A. She was required to submit certain  
16 documentation to an individual that managed that  
17 process at the time in our Mortgage Ops team. That  
18 information contained things such as copy of her  
19 license, her resume, and two to three completed  
20 appraisals. And then they were reviewed by our lead  
21 underwriting team.  
22 Q. And then if they believed the appraisals and  
23 information submitted was competent, that appraiser  
24 would be put on an approved list?  
25 A. Yes. And then the -- there was a board

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1 check -- a check with the appraisal board as well that  
2 this RBC employee checked, to make sure that the  
3 appraiser was in good standing.  
4 Q. Okay.  
5 A. And they also have daily notifications from  
6 the board, and that still exists today where this  
7 individual still checks the daily notifications to see  
8 if there are any alerts or complaints about a  
9 particular appraiser.  
10 Q. See if someone's been suspended or --  
11 A. Correct.  
12 Q. Okay. If I wanted to get that file on  
13 Appraisal Team of Mid-Carolina or Teresa  
14 Addy-Haltiwanger, what would I ask for?  
15 A. The approved appraiser file.  
16 Q. Okay.  
17 A. And Mid-Carolina.  
18 Q. Does it still exist?  
19 A. Yes, it does.  
20 Q. All right. Is Mid-Carolina still an approved  
21 appraiser for RBC?  
22 A. I don't know the answer to that question.  
23 Q. All right.  
24 A. Our process is -- has changed. We use vendors  
25 now. I don't know if they're approved under that



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1 to pay up front. And then, at the end of the day, if  
2 there are more construction inspections than  
3 originally collected for, there's a shortage, and they  
4 will have to pay to cover that.  
5 So, their funds that were collected at the  
6 closing are put into an account to pay for the  
7 inspection fees. And then when the inspector sends us  
8 the inspect -- the inspection reports and the  
9 invoices, we take the invoice and we pay it directly  
10 from that same account.  
11 Q. Okay. That account is the account that's  
12 funded with the construction loan?  
13 A. No.  
14 Q. It's not?  
15 A. No, it's a separate -- a separate account.  
16 It's part of --  
17 Q. It's a separate type of escrow?  
18 A. Yes.  
19 Q. Ya'll hold it out separately?  
20 A. It's a mortgage finance account. It's a whole  
21 different --  
22 Q. Okay. Fair enough.  
23 A. -- account, yes.  
24 Q. All right. RBC is relying on the inspector  
25 for the information at the site; is that correct?

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1 A. That's correct; to monitor the progress of  
2 construction.  
3 Q. Okay. And based on what the inspector tells  
4 you, you either disburse or don't disburse for a  
5 particular draw?  
6 A. That's correct.  
7 Q. All right. Does RBC have any of its own  
8 inspectors that are employees?  
9 A. No, sir, not allowed to do that.  
10 Q. Okay. And you have no -- no RBC employees  
11 that serve as construction monitors?  
12 A. No.  
13 Q. All right. The folks that you send out to the  
14 site, you -- you hold out, are vendors independently  
15 retained?  
16 A. That is correct, yes, sir. A lot of times  
17 it's better to have the appraiser with -- in our  
18 opinion, we believed it was better to have the  
19 appraiser, when they were able to do them, willing to  
20 do them, because the appraiser had the original plans  
21 and specs.  
22 Q. Okay.  
23 A. And so, instead of going with a checklist, in  
24 other words, if they were going through a house to  
25 tell you what was complete, an appraiser, unlike

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1 perhaps a, you know, a -- an independent inspector  
2 unfamiliar with the property, an appraiser would go  
3 through the house and say, well, the cabinets are in  
4 but those are oak cabinets and I see they were  
5 supposed to be cherry cabinets, that sort of thing.  
6 You know, they'd know greater detail having those  
7 original plans and specs.  
8 Q. Because they -- they know the project?  
9 A. Right.  
10 Q. Or supposed to?  
11 A. Right.  
12 Q. All right. Do you know how long Appraisal  
13 Team of Mid-Carolina had been an approved appraiser  
14 with RBC?  
15 A. No, sir, I don't.  
16 Q. Did you do any research on Appraisal Team of  
17 Mid-Carolina relating to this lawsuit?  
18 A. I did not. We asked if there was a -- a --  
19 correct myself. We asked if there was a file. I  
20 asked this -- this woman who was in charge of the --  
21 the approved appraiser process at that time, and --  
22 and she still does have a file, and was able to tell  
23 me that she was an approved appraiser in 2008, and she  
24 does have a file on her.  
25 Q. I've seen Gale Chaffin's information in the

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1 material a good bit. But you were telling me that if  
2 a draw request was made, it could be picked up by  
3 anybody, any of the four people within your unit; is  
4 that correct?  
5 A. That's correct. Well, at the time, Nadine did  
6 not do any construction draws. So, there would have  
7 been three construction loan coordinators at that  
8 time. The only two that I saw that worked the draws  
9 in -- in this case, were Anderson Griffin, who is  
10 still with us, and Gale Chaffin.  
11 Q. Okay. And I meant to say Gale, if I said  
12 Nadine. So, it was Gale or Anderson?  
13 A. It was Gale or Anderson, yes, sir.  
14 Q. All right. All right.  
15 MR. FOSMIRE: Do you want to take a break?  
16 I'm about to start into the -- the documents. It  
17 might be a good time to take a break.  
18 THE WITNESS: Sure. I'll take a quick break  
19 then.  
20 MR. FOSMIRE: Okay.  
21 (Whereupon, at 10:15 a.m., a recess was taken  
22 until 10:24 a.m.)  
23 FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFFS  
24 BY MR. FOSMIRE: (RESUMED.)  
25 Q. Okay. Ms. Patterson, we're back on the record

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1 A. Yes.  
2 Q. Okay. If you'd go back to the beginning of  
3 these documents.  
4 If you would go to RBC 14. This is jumping  
5 ahead in the process a bit.  
6 This is Construction Form - Inspection, I  
7 believe, Number 10.  
8 Do you see that?  
9 A. I do.  
10 Q. All right. And is -- is this your -- your  
11 form, RBC Centura's form?  
12 A. Yes, it is a blanket -- a boilerplate  
13 inspection form, if you will.  
14 Q. Okay. You send this or email this to the  
15 inspector?  
16 A. Correct.  
17 Q. And based on their experience, they know how  
18 to fill out the form?  
19 A. That's correct.  
20 MR. McGEE: What number is that, Eric?  
21 Sorry.  
22 MR. FOSMIRE: I'm sorry. RBC 14.  
23 BY MR. FOSMIRE: (RESUMED.)  
24 Q. As we look at RBC 14, just talking about the  
25 form in general, down the left-hand side of the form

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1 are different phases of construction; is that correct?  
2 A. That is correct.  
3 Q. All right. And those phases of construction  
4 generally follow how the house is built; is that fair  
5 to say?  
6 MR. McGEE: Objection to the form and  
7 foundation.  
8 THE WITNESS: For the -- for the most part.  
9 BY MR. FOSMIRE: (RESUMED.)  
10 Q. I mean, it starts with clearing the lot?  
11 A. Uh-huh.  
12 Q. Correct?  
13 A. Correct.  
14 Q. And then it -- then goes to footings and  
15 foundation, slab completion, correct?  
16 A. Correct.  
17 Q. And then there's a whole list of items that  
18 are in there, and then it ends with final cleanup?  
19 A. That's correct.  
20 Q. All right. Who determined what the order was  
21 of those items on the list?  
22 A. I don't know. That never came from -- from my  
23 group. Those templates were in place before my  
24 employment began with this group.  
25 Q. Okay. So, this is the form that RBC accepts

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1 and uses and utilized at the time; is that correct?  
2 A. That's correct.  
3 Q. Do you still use this form for construction  
4 loans?  
5 A. Yes, we do.  
6 Q. So, today the form that you send out to  
7 inspectors basically looks the same as this?  
8 A. That's correct.  
9 Q. All right. Let's go to RBC 119.  
10 A. 119?  
11 Q. Yes, ma'am.  
12 Is yours in color? Does that -- is that in  
13 red? Yeah.  
14 A. It does appear to be, yes.  
15 Q. All right. RBC 119 is, at the very top of the  
16 page, it shows Anderson Griffin as the person who  
17 printed off this email.  
18 Do you agree with that?  
19 A. Yes, I do.  
20 Q. What do we have here on RBC 119?  
21 A. It looks like we have an email, one of two, it  
22 looks like email that begins with Dr. Carew contacting  
23 Jack Hanrahan, Terry Kirven, and I don't know who that  
24 is, Brittney Martin, I don't know who that is, to  
25 those three parties, dated February 10th at 9:07 A.M.,

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1 regarding his construction loan.  
2 And his email is directing saying stop all  
3 payments immediately to Hall Builders or anyone  
4 associated with Cliff Hall.  
5 Q. Okay. That's the text of the email on  
6 February 10th at 9:07 A.M..  
7 Who put all the handwriting on here; is that  
8 your handwriting?  
9 A. No, sir, it's Anderson Griffin.  
10 Q. Okay. In red on this page it says, Thinks  
11 builder's belly-up. Is that Anderson?  
12 A. That's Anderson's professional note, yes.  
13 Q. All right. And then below that it has, Subs  
14 calling, no payments received, liens, question mark,  
15 question marks, order title update.  
16 Is that again all Anderson Griffin?  
17 A. Yes.  
18 Q. All right. Did Anderson bring this to your  
19 attention at that point?  
20 A. She called Jack first, and that's when she  
21 started making those notes. She said, Jack, what's  
22 going on?  
23 And you can see up above Jack saying to  
24 Anderson, you know, I received this email from  
25 Dr. Carew. I will call you shortly.

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1 BY MR. FOSMIRE: (RESUMED.)  
2 Q. So, that's February 2 of 2009?  
3 A. Yes.  
4 Q. And then the call from the Carews, Joe Carew,  
5 or the notice from Joe Carew, comes February 10th,  
6 eight days later?  
7 A. Yes.  
8 Q. All right. I'm going to have you flipping  
9 around a little bit.  
10 A. It's okay.  
11 MR. McGEE: I'm sorry. What -- 6 -- I was  
12 looking at a different document. On 620 you're asking  
13 about which line?  
14 MR. FOSMIRE: Right towards the bottom,  
15 2/2/09, two lines up from the bottom.  
16 MR. McGEE: Okay.  
17 MR. FOSMIRE: An advance of 86,7.  
18 (Discussion off the record.)  
19 BY MR. FOSMIRE: (RESUMED.)  
20 Q. Okay. RBC 105, please. All right. Looking  
21 at RBC 105, that is a document that it looks like the  
22 last completed column is the ninth inspection on 2/2,  
23 which I will tell you is 2/2 of 2009.  
24 A. All right.  
25 Q. Okay. And below column -- the ninth

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1 Inspection column of 2/2/2009, there are initials TAH,  
2 which I assume is Teresa Addy-Haltiwanger.  
3 A. Yes.  
4 Q. And then it has percentage complete --  
5 completion percentages down that column of the  
6 particular line items.  
7 Do you see that?  
8 A. I do.  
9 Q. All right. So, on that line for 2/2 of 2009,  
10 the first completed percentage on that column is -- it  
11 says, 5 percent is complete, and that's of the Stucco  
12 siding, correct?  
13 A. Correct.  
14 Q. But that 5 percent is a total of 7 percent for  
15 that item, right?  
16 A. That is correct, yes, sir.  
17 Q. All right. So, for the record, say a jury or  
18 a judge is looking at our transcript, we're not saying  
19 on this form that 5 percent of the siding is  
20 completed, correct?  
21 A. That's correct. We're saying a total of 7 is  
22 now completed --.  
23 Q. Okay.  
24 A. -- with a 5 percent at this date of  
25 inspection.

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1 Q. Okay. And 7 percent Stucco is the percentage  
2 assigned on the form for the entire house, correct?  
3 A. That is correct.  
4 Q. So, if that line item of 5 percent actually  
5 said 7 percent, it means all of the Stucco or siding  
6 would be on the house?  
7 A. Yes.  
8 Q. Okay. And then we come down, coming straight  
9 down the column, the next item that we have says 4  
10 percent interior trim and doors, and the total there  
11 is 4 percent, correct?  
12 A. Uh-huh. Yes, sir.  
13 Q. So, all of the interior trim and doors is  
14 done, correct?  
15 A. According to this, yes, sir.  
16 Q. All right. And then you keep coming down and  
17 it says, the next item filled in by Ms. Haltiwanger,  
18 it says -- is the line item cabinets and vanities --  
19 vanities, which is 1 percent that she's filled in on  
20 the form. And for the total for the house, that line  
21 item would be 3 percent, correct?  
22 A. Yes, sir.  
23 Q. So, basically a third of the cabinets and  
24 vanities are in?  
25 A. That's correct.

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1 Q. All right. And then you keep coming down and  
2 it says the finished flooring complete, and she has 1  
3 percent there.  
4 Do you see that?  
5 A. I do.  
6 Q. All right. And the total flooring line item  
7 for the house would be 4 percent, and with 1 of the 4  
8 completed, that would be 25 percent of the flooring is  
9 in?  
10 A. Correct.  
11 Q. Do you see that?  
12 A. I do.  
13 Q. And then for the inspection, she then totals  
14 the numbers above and she comes up with 11 percent  
15 total for this draw, correct?  
16 A. Yes, sir.  
17 Q. Which means that the house is now 11 percent  
18 more complete?  
19 A. Correct.  
20 Q. Correct?  
21 A. Correct.  
22 Q. All right. Now, if we back up from that 11  
23 percent and we add all of the preceding percentages  
24 before that, that should tell us roughly how much of  
25 the house is complete at that point, correct?

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1 plus 2 percent, plus 2 above the 6, correct?  
2 A. Correct.  
3 Q. All right. Who put that plus 2 back in there?  
4 A. I do not know.  
5 Q. Okay. Go look at RBC 332. Kind of hold them  
6 side-by-side.  
7 A. I should --  
8 Q. I'm sorry to do this to you.  
9 A. That's okay. That's all right.  
10 Q. And I know 332 is not as good a copy, but  
11 someone wrote it in, and just to -- to the naked eye,  
12 it looks different. The plus and the 2 are in a  
13 different spot.  
14 A. Uh-huh.  
15 Q. Someone is keeping track of it themselves.  
16 Was that Gale just making sure that the 2 percent was  
17 added on top of the 6?  
18 A. That was Gale. So she can track that she gave  
19 him that 2 percent.  
20 Q. Okay. So, even though it came in for the 2/2,  
21 where she wrote in plus 2 on the 6th, she didn't take  
22 a deduction of the 11 and he was given the full amount  
23 of the requested draw just before he bailed on the  
24 project?  
25 A. Yes, it appears so.

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1 Q. All right. Let's stick with RBC 105. On RBC  
2 105 and to the left-hand side, there's a red arrow  
3 that says, Permanent Roof. It's either pointing -- it  
4 looks like it's pointing to the line exactly between  
5 the line item for Roof Framing, Sheath and Felt --  
6 A. I see it.  
7 Q. -- and Permanent Roof Complete, correct?  
8 A. Uh-huh. Yes, I see.  
9 Q. All right. This is the way the document was  
10 presented to us and that's why I had it printed in  
11 color, because someone put that red arrow in there.  
12 A. Right.  
13 Q. Who did that?  
14 A. I don't know.  
15 Q. Okay. Was someone going back and looking  
16 after the complaint was made about the roof --  
17 A. Yes.  
18 Q. -- and did --  
19 A. I feel certain that, yes.  
20 Q. Do you know who that was?  
21 A. I do not. It was either Gale or Anderson --  
22 Q. All right.  
23 A. -- that went back after Dr. Carew was saying  
24 the roof was not on.  
25 Q. All right. If you look at that line item,

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1 Permanent Roof Complete, at the February 2, 2009,  
2 inspection, nothing has been entered for the permanent  
3 roof, correct?  
4 A. That's correct.  
5 Q. So, as of February 2, 2009, the permanent roof  
6 is still not on the building?  
7 A. According to this report, correct.  
8 Q. All right. Well, you would rely on this  
9 report, right?  
10 A. Yes, sir, I would.  
11 Q. And ya'll rely on the report to make financial  
12 decisions, correct?  
13 A. Yes, we do; to calculate the draw.  
14 Q. Right, I mean, you're -- you're dispersing  
15 money based on this report, correct?  
16 A. Yes, sir, that's correct, on the total  
17 percentage complete.  
18 Q. Does RBC have any guideline or requirement in  
19 place that requires that the permanent roof be on  
20 before all the interior work is being done?  
21 MR. McGEE: Object to the form.  
22 THE WITNESS: No, sir, because we're bankers.  
23 We're not -- we're not builders.  
24 BY MR. FOSMIRE: (RESUMED.)  
25 Q. Okay.

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1 A. That is the responsibility of the -- of the  
2 builder.  
3 Q. All right.  
4 A. To ensure that's done.  
5 Q. Okay. So, the answer is, there's no  
6 requirement by ya'll that the permanent roof be on for  
7 the interior work to be done?  
8 A. No, there's nothing specific in our  
9 guidelines, no.  
10 Q. Okay. Do -- do -- does anyone within your  
11 unit -- and are they given any guidelines to look out  
12 for in the sequence of construction to say, hey, this  
13 looks out of the ordinary or this looks inappropriate?  
14 MR. McGEE: Objection, asked and answered.  
15 THE WITNESS: No, because we're relying on the  
16 builder and the inspector, you know, to alert us if  
17 there are issues or problems. And again, we're  
18 bankers. And our job is to calculate the draw amount  
19 and disperse accordingly.  
20 BY MR. FOSMIRE: (RESUMED.)  
21 Q. I understand, but your -- you have a mortgage  
22 on this asset --  
23 A. That's correct.  
24 Q. -- correct?  
25 A. Yes, sir.

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1 Q. Please.  
2 A. Yes. Ideally, if you were to have a project  
3 where the construction loan amount equaled the cost to  
4 build, very rare that you're going to have both of  
5 them match, but on the occasion that you would have  
6 both of them match; for simplicity sake, you have  
7 \$100,000 construction loan and the cost to build is  
8 \$100,000. As you went forward, if there was -- if --  
9 this is the caveat, if there was nothing disbursed at  
10 the closing table and we began right away dispersing  
11 with the first draw, being, you know, hard  
12 construction, then draw for draw, yes, the percentage  
13 of the loan advance should match with the percentage  
14 of the home complete.  
15 In this case, and the majority of cases, it  
16 will not run exactly like that because it's just not  
17 the perfect world. And I'll explain by saying, in  
18 this case, as in many, at the closing table, there was  
19 a large chunk taken right off the top of the loan at  
20 the closing table. There was -- you know, we began  
21 with a loan of, as you know, of one million one  
22 twelve. We had a draw at closing of 389,5. And out  
23 of that 389,5, I'm sure you know the builder got a  
24 soft draw cost of 127,5.  
25 Now, the balance of 262, \$262,000, was for the

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1 lot payoff, the balance of the lot payoff.  
2 So, right away, I call it upside down, if you  
3 will, right off the top coming away from the closing  
4 table, because now you -- if -- if you look at it, has  
5 construction begun? No. Yet, we've got 389,5 right  
6 off the top. And so, it throws it out of whack  
7 initially. And that 389,5 equates to almost 35  
8 percent of the actual loan amount. So, it's going to  
9 be out of kilter. And then as construction proceeds  
10 along, it's going to catch up and even out.  
11 Q. And one of the primary reasons it's out of  
12 kilter is that you've got the lot acquisition cost in  
13 there?  
14 A. Correct. Correct.  
15 Q. All right. And I'm not saying there -- there  
16 has to be a perfect matchup, but is there a point in  
17 time at which RBC says, wait, this is too far out of  
18 whack? I mean, who's supposed to catch that?  
19 A. Well, right now we're on an automated system  
20 that we did not have at that time. So, the system  
21 will generate any alerts to that effect. System will  
22 control it.  
23 At this point in time, we were not on the  
24 current system --  
25 Q. Okay.

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1 A. -- that we are now. But we have guidelines as  
2 to -- and it's underwriting guidelines, it's -- it's  
3 not from my group because we don't control that draw  
4 at closing, if you will. Underwriting approves how  
5 much of a draw at closing there can be. That's all  
6 negotiated --  
7 Q. Negotiated --  
8 A. -- and approved prior to when the loan  
9 closes. And we haven't seen the loan at that point in  
10 time.  
11 Q. Okay.  
12 A. But there are guidelines. I -- I will say  
13 there are guidelines on how much can be disbursed, you  
14 know, at the closing table.  
15 Q. Okay. You say now the computer will catch  
16 it. Well, what -- what's the underlying parameter for  
17 that? I mean, what percentage deviation -- at what  
18 percent of deviation does the system send an alert?  
19 A. Well, what the system will do now, each time  
20 we generate a draw, the system we have now will issue  
21 a report with each draw. We will print a report  
22 showing the percent of loan advanced and the percent  
23 of the project complete, so we can -- we can compare  
24 them at each draw.  
25 Q. Okay.

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1 A. This was all done manually at that time.  
2 Q. And then -- that's what I'm trying to get to.  
3 Who was responsible for the manual part of it while  
4 the Carews' loan was being monitored?  
5 A. The residential construction loan coordinator  
6 that was working that draw.  
7 Q. Okay. So, whoever had that draw, that  
8 particular draw at that time, was responsible for  
9 making the judgment call as to whether it was  
10 appropriate?  
11 A. Yes.  
12 Q. Okay.  
13 (Pause.)  
14 Q. Once Hall Builders walked off the job, you've  
15 got a partially built house. Do you understand that  
16 the contention is that Hall Builders essentially stole  
17 money?  
18 A. Yes.  
19 Q. They took money that was supposed to be for  
20 the construction of the home and did not apply it to  
21 the construction of the home, either by way of  
22 suppliers or subcontractors, correct?  
23 A. Yes.  
24 Q. Which left those suppliers and subcontractors  
25 in a position to -- to lien the house, correct?

| Page 106                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 108                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 certainly an additional burden to the borrower to have<br/>2 to go through that.<br/>3 BY MR. FOSMIRE: (RESUMED.)<br/>4 Q. Did RBC object to Pyramid Contractors as the<br/>5 substitute builder?<br/>6 A. No, not to my knowledge.<br/>7 (Pause.)<br/>8 Q. If you would, back up to RBC 36.<br/>9 A. 36?<br/>10 Q. Yes, ma'am.<br/>11 A. Okay.<br/>12 Q. You may want to hold RBC 105 out --<br/>13 A. Hold that. Okay. Okay. Got it.<br/>14 Q. All right. RBC 36 represents the first draw<br/>15 request and inspection after the substitute builder<br/>16 came on the job, correct?<br/>17 A. Correct.<br/>18 Q. And that's the May 5th -- I'm sorry, May 15th<br/>19 inspection?<br/>20 A. Yes.<br/>21 Q. All right. In that inspection,<br/>22 Ms. Halliwanger lists out the various components that<br/>23 are now further along from a completion standpoint,<br/>24 and she puts total for the draw another 11 percent.<br/>25 Do you see that?</p>                                                                                                                                                                                          | <p>1 for as reflected on RBC 36?<br/>2 MR. McGEE: Object to the form.<br/>3 THE WITNESS: It is not on this form.<br/>4 BY MR. FOSMIRE: (RESUMED.)<br/>5 Q. And, therefore, it's not accounted for?<br/>6 A. It's not accounted for on this form. No, it<br/>7 is not.<br/>8 (Pause.)<br/>9 Q. If you would, go to RBC 52, please.<br/>10 A. Okay.<br/>11 Q. Actually, there might be a little more<br/>12 complete sequence altogether if you go to RBC 57.<br/>13 As -- as of this time, in the Residential<br/>14 Con -- Construction Lending Center, you have the --<br/>15 the loan's been originated, the funds are sitting out<br/>16 there, and the project is supposed to be moving<br/>17 forward.<br/>18 The first thing that ya'll -- that calls your<br/>19 attention to the fact that there's a request for a<br/>20 draw is what; a request from the builder?<br/>21 A. Is a -- is a receipt of this. Sometimes our<br/>22 customers send them in themselves, sometimes the<br/>23 builder sends them in.<br/>24 Q. Okay.<br/>25 A. And this comes via email or fax.</p> |
| Page 107                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 109                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>1 A. Yes.<br/>2 Q. And in handwriting on RBC 36, there's -- to<br/>3 the right-hand side of that form, it says 76 percent<br/>4 total.<br/>5 Do you know whose handwriting that is?<br/>6 A. I don't.<br/>7 Q. And 2 percent -- or the additional 2 percent<br/>8 that Gale Chaffin had allotted back in February 2008<br/>9 is not listed on there? Do you agree with that?<br/>10 A. Yes, it is not listed.<br/>11 Q. Okay. It's not added to the 6 percent for<br/>12 that December 18th draw, and neither is the 11 percent<br/>13 that was previously reflected on 2/2/2009, reduced by<br/>14 2 percent, correct?<br/>15 A. Correct, according to this.<br/>16 Q. All right. In your mind that 2 percent<br/>17 deviation, is that a material difference to you?<br/>18 MR. McGEE: Object to the form; calls for a<br/>19 legal conclusion.<br/>20 THE WITNESS: That 2 percent needs to be made<br/>21 up at some point. It should have been made up.<br/>22 BY MR. FOSMIRE: (RESUMED.)<br/>23 Q. It needs to be accounted for, doesn't it?<br/>24 A. It needs to be accounted for, yes.<br/>25 Q. And at this point it is not being accounted</p> | <p>1 Q. Okay. And when you say this, you're holding<br/>2 up RBC 57, correct?<br/>3 A. Yes, sir.<br/>4 Q. And that's a builder's request for a draw, and<br/>5 that's actually an RBC form, right?<br/>6 A. Yes, it is.<br/>7 Q. Does it have to be on that form?<br/>8 A. Yes, it does.<br/>9 Q. So, either the -- when you say the customer,<br/>10 that would be the Carews?<br/>11 A. The Carews.<br/>12 Q. Or the builder sends in the request?<br/>13 A. Correct. The only alternative -- I'm sorry.<br/>14 Q. Go ahead.<br/>15 A. I'm sorry. The only alternative to this would<br/>16 be a -- a pay app, which is a -- a -- I'm sure you're<br/>17 familiar with those forms, and actually Pyramid used<br/>18 the pay apps.<br/>19 Q. Okay.<br/>20 A. So that in lieu of actually using the building<br/>21 request for draw, it serves the same purpose.<br/>22 Q. Okay. The pay app being the AIA form?<br/>23 A. AIA.<br/>24 Q. Okay. So, RBC 57, when this hits your unit,<br/>25 just walk me through the process for the record.</p>                                    |

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1 has been completed.  
2 Q. Does it take two people to approve it?  
3 A. Yes, it is verified. It's approved and  
4 verified in the Commercial Loan Group.  
5 Q. Okay. Then, just so I understand your -- your  
6 format here, at the bottom right of RBC 59, it looks  
7 like a date stamp, September 26th, 2008, DYN. What's  
8 the DYN?  
9 A. I do not know. I don't know if it's initials  
10 or a code, quite honestly. It's done by the  
11 Commercial Loan Group.  
12 (Pause.)  
13 A. It must be a code because it's on each one.  
14 It's on each verified one. So it's a code apparently  
15 they use in their world.  
16 Q. All right. If you would, go to RBC 80.  
17 A. Okay.  
18 Q. And still hold out RBC --  
19 A. 105.  
20 Q. -- 105.  
21 All right. What does RBC 105 look like if I  
22 had that form? And by that, I mean, is that a running  
23 form that Teresa Addy-Haltiwanger is just adding to  
24 each time?  
25 A. Yes.

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1 Q. And then she faxes in the -- the form every  
2 time she adds a new column of information?  
3 A. Correct.  
4 Q. Okay. So, that's what it looked like to me,  
5 because it looks like many of the things stay the same  
6 in her handwriting.  
7 But on RBC 80, they're typewritten components  
8 in there instead of handwriting. Can you tell me --  
9 A. You mean -- you mean the reverse? There are  
10 handwriting versus the typewritten?  
11 Q. Correct.  
12 A. Yes, I see that, too.  
13 Q. Do you -- can you tell me why?  
14 A. I do not know. I do not know. I can ask.  
15 I'm just wondering if she called in a verbal. There  
16 are times an appraiser would call in a verbal from the  
17 field to us so we can fund that same day, and then  
18 she -- you know, when she'd get -- they work, of  
19 course, as you know, in the field most of the time,  
20 spend very little time in their office except evenings  
21 and mornings. So, it could be, and I -- I do not know  
22 -- I do not know, but it could be that she called in  
23 a verbal and we completed that.  
24 Q. But I --  
25 A. And then there should be a hard copy then to

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1 follow that up --  
2 Q. But I don't --  
3 A. -- if that was the case.  
4 Q. Okay. But the first inspection, if you're  
5 looking at RBC 105, all of that form for the  
6 information put in by Ms. Teresa Addy-Haltiwanger is  
7 all handwritten.  
8 A. Uh-huh.  
9 Q. But on the 80, the handwriting has changed to  
10 typewritten entries.  
11 A. Oh, I see what you're saying.  
12 Q. Do you see what I'm saying?  
13 A. Yes, I do. Yes, I do.  
14 Q. Why has that --  
15 A. I do --  
16 Q. -- changed? The percentages aren't changed.  
17 I'm just trying to figure out procedurally what's  
18 going on here.  
19 A. And I'm thinking if -- if that's the case,  
20 then, yes, I'm thinking -- and I hadn't picked up on  
21 that. I'm thinking it -- it is what I said; that it  
22 was a verbal. So, what they did is someone in my  
23 team, one of the residential construction loan  
24 coordinators, I'm guessing here, probably went in and  
25 typed everything and then -- I don't know why. Now

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1 that -- I don't know. I don't know. I don't want to  
2 guess, because I do not know.  
3 (Pause.)  
4 A. And if you notice that 4 and 1 that is  
5 handwritten on RBC 80, the handwritten column under  
6 8/18, I don't believe that's Teresa's writing. I'm  
7 not sure if it's Teresa's writing, but the 4 is  
8 different than her previous 4s.  
9 Q. Yeah, I just -- I'm just trying to figure out  
10 -- I'm not saying there's anything inappropriate  
11 about it --  
12 A. Right.  
13 Q. -- I'm just trying to figure --  
14 A. Right, because it is -- it's the same numbers,  
15 but I'm not sure. The only time we would go in and  
16 type anything would be if a verbal was called in. But  
17 I don't know if that's the case. I don't know.  
18 Q. And the other thing is RBC 80, at the bottom  
19 where you have your totals --  
20 A. Uh-huh.  
21 Q. -- for your overall total line item, there it  
22 looks like it's creating a running total up to the 32  
23 percent.  
24 A. Yes.  
25 Q. Where that doesn't exist on any of the

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1 A. So, Anderson is communicating with Jack on  
2 this same day and then brings it to my attention. And  
3 then Gale's brought into the mix as well, because  
4 Cliff Hall's communicating directly to her.  
5 Q. Okay.  
6 A. So, this draw was not advanced.  
7 Q. All right. So, basically, he's asking for  
8 24,000 to go to Joe Carew to pay the roofer, noting  
9 that roofing material's in the driveway and needs to  
10 be installed.  
11 Do you see agree with that?  
12 A. Yes, I do.  
13 Q. All right. Was there any communication within  
14 RBC after this email about the fact that the roof was  
15 not on and you'd better get the roof on?  
16 A. I don't think there was any communication. I  
17 don't believe there was any communication directly  
18 with Cliff Hall subsequent to this when we -- you  
19 know, when my group was then apprised of the whole  
20 situation what was going on.  
21 Basically, I took over then as the point of  
22 contact, knowing that there were real problems on the  
23 loan. We weren't going to communicate with Cliff  
24 Hall. It was our borrower, the Carews, that we needed  
25 to communicate with.

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1 Q. Okay. And I may have asked the question very  
2 inartfully, but was there any discussion within your  
3 unit about getting a roof on this asset?  
4 A. Not until Dr. Carew brought it to our  
5 attention. When he said -- and I don't recall when  
6 this was. I know it was on a phone call because I  
7 remember him saying, Kathy, there are roofing  
8 materials in the driveway and that roof has to be put  
9 on. We don't know if all of the materials are there.  
10 We've been told some of them are on back order by the  
11 job superintendent, but that roof has to be put on.  
12 Q. Okay.  
13 A. And so, yes, there was conversation; how we  
14 going to get the roof on. And then I was calling John  
15 Flemming saying --  
16 MR. McGEE: Don't -- don't say anything that  
17 you discussed with John.  
18 THE WITNESS: Okay. I'm sorry. I'm sorry.  
19 BY MR. FOSMIRE: (RESUMED.)  
20 Q. Okay.  
21 MR. FOSMIRE: I think she can say what she  
22 said to him.  
23 MR. McGEE: No. That's a communication  
24 between him -- a communication with --  
25 MR. FOSMIRE: John Flemming's an in-house

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1 counsel?  
2 MR. McGEE: Yeah, he's -- he's general  
3 counsel. General counsel.  
4 BY MR. FOSMIRE: (RESUMED.)  
5 Q. Do you agree at February 10, RBC is aware of  
6 the fact that the roof is not on the house?  
7 A. Yes.  
8 Q. Did you think that the roof should be  
9 installed on the house?  
10 A. Yes. When I heard, I -- I agreed the roof  
11 needed to be installed on the house.  
12 Q. Okay. Do you know how long after February  
13 10th it was before the roof was actually installed on  
14 the house?  
15 A. No, I don't recall.  
16 Q. On RBC 106 in red, there's handwriting that  
17 says, Trim guy looking for almost same amount. What's  
18 that about?  
19 A. I don't know.  
20 Q. Do you know whose handwriting that is?  
21 A. That is Anderson's handwriting.  
22 Q. Okay.  
23 A. I don't know if she -- where she got that  
24 information. I don't know where she got that  
25 information.

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1 Q. Okay. But somebody told her that the trim guy  
2 was looking --  
3 A. For \$24,000.  
4 Q. -- for the \$24,000 apparently?  
5 Okay. Did -- did you ever discuss this note  
6 with Anderson?  
7 A. I don't recall discussing this.  
8 Q. All right. All right. Let's jump over to --  
9 let's go to RBC 173.  
10 (Pause.)  
11 Q. RBC 173 is, again, the Construction Loan  
12 Inspection Form, and this is completed to the point of  
13 the seventh inspection of November 6th, 2008.  
14 Do you see that?  
15 A. I do.  
16 Q. All right. And at the bottom of the form  
17 there's some information relating to the pool?  
18 A. Correct.  
19 Q. Do you see that?  
20 A. I do.  
21 Q. Are pool disbursements handled separately?  
22 A. Yes, pool disbursements are handled  
23 separately.  
24 Q. Okay. Are they -- are they -- again, I may  
25 have asked that poorly, but I mean, it's coming out of



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1 A. I do. I don't know why it's got that listed  
2 there.  
3 Q. Where would this form be going Monday  
4 afternoon if the disbursement was February 2, 2009?  
5 A. Well, again, the Centralized Funding desk  
6 closed at 2:00 P.M., so, if she got it in -- if she  
7 got it in Monday afternoon, they had already closed.  
8 She's aware they can't do it until -- they can't  
9 process this raw, if you will, until Monday morning.  
10 It appears that's what she's asking.  
11 Q. Are Centralized -- I guess I should have  
12 looked at the date. Are Centralized Funding Requests  
13 dated for the date that the money should go out, or is  
14 it dated the day that it is submitted?  
15 A. It's the date they process it in the  
16 Commercial Group. It's the date they actually  
17 process. So, I'm trying to read her date below. If  
18 you'll see the approval and the verification below.  
19 Q. Yeah.  
20 A. I can't read that. I don't know if you can.  
21 Q. So, would -- would --  
22 A. February 2nd?  
23 Q. Where? Anderson is submitting it on February  
24 2nd of 2009?  
25 A. Uh-huh.

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1 Q. Would she submit it on Friday with Monday's  
2 date on it? Is that what she would do?  
3 MR. McGEE: Object to the form; calls for  
4 speculation.  
5 THE WITNESS: I don't know. Without looking  
6 at a calendar, I don't know. It appears it was  
7 processed because it was stamp-dated by Commercial,  
8 not by us, this is not our stamp, on February 2nd.  
9 So, perhaps they did it -- they did it the  
10 same day.  
11 BY MR. FOSMIRE: (RESUMED.)  
12 Q. Okay. Did you discuss with Anderson why this  
13 was an urgent disbursal?  
14 A. I don't re -- I don't recall discussing that,  
15 no.  
16 Q. RBC 299. And I think we covered this in the  
17 color version of that arrow on the left, but you don't  
18 know who put the arrow there pointing to the roof line  
19 items on the inspection form?  
20 A. I don't.  
21 Q. All right. I think this helps solve the  
22 earlier funding request issue. RBC 302.  
23 A. Okay. Ah.  
24 Q. Okay. That's dated Jan -- email from Anderson  
25 Griffin to Brittney Martin, January 30th?

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1 A. I see it.  
2 Q. And it talks about the 86,7 -- \$86,700.00 will  
3 post on Monday, correct?  
4 A. Correct.  
5 Q. And then at the top of RBC 302 it says, Order  
6 inspection Monday. And then REV, which I assume means  
7 reverse principal payment?  
8 A. Reverse principal payment.  
9 Q. What -- what's that handwriting mean on top of  
10 RBC 302?  
11 A. Apparently she's telling herself that she's  
12 ordering another inspection on Monday, and she's also  
13 writing a note to herself to reverse a principal  
14 payment.  
15 And I see that on RBC 301, she appears to have  
16 done that. RBC 301.  
17 Would you like me to explain that?  
18 Q. Sure.  
19 A. Okay.  
20 MR. McGEE: Just so -- I'm sorry. I just want  
21 to let you know I looked -- I did look on here. The  
22 30th is a Monday and the 2nd is -- I mean, excuse me,  
23 the 30th is a Friday and the 2nd is a Monday.  
24 THE WITNESS: The 2nd was Monday? Okay.  
25 This is Commercial Request for Change Form.

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1 It's a Commercial Loan Group form. And any time we  
2 were requesting a correction to an account or such, we  
3 would have to submit this form to the -- and fax it  
4 over to the Commercial Loan Group. If they approved  
5 it and authorized it, they would process the request.  
6 This request from Anderson sent to the  
7 Commercial Loan Group, referencing Joe Carew's  
8 construction loan, says under Reason for Change  
9 Request, it says that this payment was applied to  
10 principal instead of to interest. And then she says,  
11 Please reverse the principal payment of \$866.89 that  
12 was posted on 12/31/08 and apply it towards interest.  
13 Apparently, she had checked Dr. Carew's -- and  
14 we do this at each draw that we make, we check his  
15 account on the system. And what would happen is  
16 Dr. Carew would be making payments. This is an  
17 interest-only loan during the construction phase. And  
18 if he made an overpayment, didn't -- paid more than --  
19 than what was actually due --  
20 Q. Right.  
21 A. -- and on occasion that has happened here,  
22 then what would happen is the system would -- this is  
23 an auto-system generated thing on this particular  
24 system that we used to house these loans on; but what  
25 would happen is, if there was an overpayment of any

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1 Q. And you said the difference being if it's a  
2 pay app, the pay app will actually go to the  
3 inspector?  
4 A. Yeah. The first page of the -- I think it's  
5 page 1 --  
6 Q. Of the AIA form?  
7 A. Of the AIM -- A -- I'm sorry, showing the  
8 details. And they can say -- they can tell us, like  
9 if the AIA is saying we're asking for release of a  
10 draw for stored materials because it's all so detailed  
11 and broken down, we know, of course, we're not going  
12 to pay for stored materials. We know to knock that  
13 off. The inspector does as well. And she or he will  
14 mark through that and, you know, knowing what our --  
15 what our policy is about stored materials and so  
16 forth.  
17 Q. Okay.  
18 A. But it, you know, it has to be verified. The  
19 pay app has to be verified. But, typically, our  
20 builder draw requests, Cliff Hall didn't ask for a  
21 certain dollar amount, he would say, please order a  
22 draw. I think on one of his initial ones, if I  
23 recall, he said, sewer and water is complete.  
24 Q. Okay. So, on the draw requests, the amount to  
25 be funded is solely a determination by RBC?

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1 A. Yes.  
2 Q. And you're not overseeing each -- the approval  
3 of each draw request; is that correct?  
4 A. That is correct.  
5 Q. So, you rely on your technicians, the four  
6 people in the unit, to use their judgment as to  
7 whether the draw should issue or not? And I assume if  
8 they have a question about it --  
9 A. They will bring it --  
10 Q. -- they will bring it to you?  
11 A. That is correct.  
12 MR. McGEE: Objection; compound.  
13 BY MR. FOSMIRE: (RESUMED.)  
14 Q. Prior to becoming aware of the problem with  
15 Hall Builders and the Carews' home in February 2009,  
16 did any of your technicians bring any of the pay  
17 requests by Hall Builders to you?  
18 A. No.  
19 Q. So, when Gale Chaffin made her decision to  
20 give the additional 2 percent in December around the  
21 holidays, that did not come to you?  
22 A. It didn't come to me because I was off that  
23 week. And when I came back in, she did tell me that  
24 Cliff Hall was calling her repeatedly.  
25 Q. Was that a little unusual?

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1 A. Yes, it was.  
2 Q. Based on what I've heard, it sounds like Cliff  
3 Hall was desperate?  
4 MR. McGEE: Object to the form; calls for  
5 speculation.  
6 THE WITNESS: I did not speak to him.  
7 BY MR. FOSMIRE: (RESUMED.)  
8 Q. Okay. But she told you he was calling  
9 repeatedly?  
10 A. He was calling repeatedly.  
11 Q. And he was in need of funds?  
12 A. Yes.  
13 Q. Do you think that required RBC to be even more  
14 vigilant in its disbursement process?  
15 MR. McGEE: Object to the form; no  
16 foundation.  
17 THE WITNESS: Yes, I would be alert at a  
18 builder that was calling repeatedly.  
19 (Pause.)  
20 BY MR. FOSMIRE: (RESUMED.)  
21 Q. Other than the letter that I sent to Betsy  
22 Burns, did you have any knowledge of the -- any  
23 separate knowledge of the interior water damage or  
24 mold problems within the home?  
25 A. No, I didn't know anything about the damage

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1 and what the extent of the damage was. I learned  
2 after the fact, and I cannot remember who told me  
3 about several consecutive days of rain that had caused  
4 the interior damage.  
5 (Pause.)  
6 MR. FOSMIRE: It's just about Noon. Why don't  
7 we take a short break and see if lunch is here.  
8 (Whereupon, at 11:57 a.m., a recess was taken  
9 until 12:06 p.m.)  
10 FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFFS  
11 BY MR. FOSMIRE: (RESUMED.)  
12 Q. Ms. Patterson, a few more questions for you  
13 relating to RBC.  
14 Toward the end of the -- just before the last  
15 break we were talking about RBC restored \$86,700 to  
16 the Carews' loan balance, correct?  
17 A. Correct.  
18 Q. Other than that restoration, did RBC give any  
19 additional funds to the Carews to complete the home?  
20 A. No, they have not.  
21 Q. Okay. Did -- did RBC take any affirmative  
22 steps to try to resolve the mechanics liens that were  
23 filed against the property?  
24 A. To my knowledge, no. Legal would be able to  
25 answer that.

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1 there's no -- there's no obligation in the  
2 construction loan agreement that the bank check or do  
3 any kind of background check on the builders; is that  
4 right?  
5 A. That is correct. It is optional.  
6 Q. And the check that was run on Hall Builders  
7 showed nothing -- no -- no adverse information; is  
8 that right?  
9 A. That's correct.  
10 Q. Do you know what, if any, due diligence the  
11 Carews did concerning Hall Builders?  
12 A. No, I do not.  
13 Q. Earlier there were some questions about the  
14 pleadings and discovery. Are you -- you're not  
15 employed by the Legal Department; is that right?  
16 A. That's correct.  
17 Q. And are -- are you the only person at RBC Bank  
18 who's worked with me or my office in the preparing of  
19 the bank's answers and discovery responses?  
20 A. Yes.  
21 Q. Do you know if I've also worked with folks in  
22 Legal?  
23 A. You have worked with folks in Legal. I do  
24 know that.  
25 Q. So, you don't know all of the information that

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1 I may have received from other employees of RBC?  
2 A. That's correct.  
3 Q. And we went over Exhibit 1, which is the  
4 30(b)(6) Deposition Notice today and those  
5 categories. Do you remember those?  
6 A. I do.  
7 Q. And none of those categories pertain to the  
8 bank's legal defenses or positions in this case; is  
9 that right?  
10 A. Right.  
11 Q. And so, you're not speaking for the bank on --  
12 on behalf of the bank as to those issues today; is  
13 that right?  
14 A. That's correct.  
15 Q. And you personally were not involved in  
16 determining which defenses or legal positions would be  
17 taken by the bank?  
18 A. No, I was not.  
19 Q. You have -- in your experience, have you ever  
20 worked for a general contractor or a builder?  
21 A. No, I have not.  
22 Q. And as you -- I think you testified earlier,  
23 RBC is a bank. It lends money. It's not a builder;  
24 is that right?  
25 A. That is correct.

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1 Q. And if you'll look real quick at RBC 14.  
2 A. I'm sorry, what number?  
3 Q. RBC 14.  
4 A. 147.  
5 Q. Yes, ma'am. Is that form similar to those  
6 used by other lenders in construction loans?  
7 A. Yes, it is.  
8 Q. And to your knowledge, does the construction  
9 loan agreements contain any obligation on the part of  
10 the bank to instruct the builder in what order to  
11 construct the home?  
12 A. It does not.  
13 Q. And to your knowledge is that typical of  
14 lenders that are involved in construction loans?  
15 A. Yes.  
16 Q. And you've worked in the current position that  
17 you have now for five years?  
18 A. For five years in this department, yes.  
19 Q. And is it -- Is RBC's -- are the practices and  
20 procedures in regard to Construction Perm loans  
21 consistent with other lenders?  
22 A. Yes.  
23 Q. All draw payments from RBC concerning the  
24 Carews' home were paid directly to Dr. Carew's  
25 account; is that right?

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1 A. That is correct. They went directly into that  
2 dedicated checking account.  
3 Q. And so, no draw payments were paid directly to  
4 Hall Builders by RBC; is that right?  
5 A. That's right.  
6 Q. And so, all payments to Hall Builders after  
7 the February 29, 2008, loan closing were made by  
8 Dr. Carew?  
9 A. That's correct.  
10 Q. And the reason that I say after the closing  
11 was because at closing there were funds paid to the  
12 closing attorney, to the settlement agent?  
13 A. Right. Exactly. To the trust account of the  
14 settlement agent.  
15 Q. Okay. And you discussed those payments  
16 earlier with Mr. Fosmire?  
17 A. Yes.  
18 Q. The 127,500 plus the remainder of the lot  
19 payoff?  
20 A. Yes.  
21 Q. So, if the bank did not pay Hall Builders  
22 directly, Dr. Carew decided when and how much to write  
23 a check for Hall Builders?  
24 A. Yes.  
25 Q. And did Dr. Carew ever tell you that he was on

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1 A. Correct.  
2 Q. And then after the 86,700 was restored, they  
3 used that money again?  
4 A. Yes.  
5 Q. And that money was given from RBC to the  
6 Carews?  
7 A. Correct.  
8 Q. And the Carews gave it to their builder?  
9 A. Correct.  
10 Q. Now, RBC just didn't give that money away to  
11 the Carews, right? I mean, they --  
12 A. That's correct.  
13 Q. Okay. And would -- that would be addressed at  
14 some point, maybe when the loan went from construction  
15 to perm at conversion?  
16 A. Yes. Yes, for a pay app.  
17 Q. And this loan has never been converted to  
18 perm, right?  
19 A. No, it has not.  
20 Q. And there was actually some balance left on  
21 the -- available balance left on the loan; is that  
22 right?  
23 A. That's correct. The Carews never fully drew  
24 on this loan. There was a balance, I don't have it  
25 right in front of me, but around \$20,000, in excess of

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1 \$20,000, there was a remaining balance from which they  
2 did not draw.  
3 Q. And at any time prior to February 10 of 2009,  
4 were you or anyone at the bank, that you're aware of,  
5 did you know that Hall Builders was going to walk off  
6 the job?  
7 A. No, we did not.  
8 Q. And if you had known at some point in time  
9 that the builder was going to walk off the job, would  
10 that have concerned you?  
11 A. Absolutely.  
12 Q. And would you have raised that with the  
13 Carews?  
14 A. Yes, absolutely.  
15 Q. But that never occurred?  
16 A. No, it did not.  
17 Q. Because you never knew?  
18 A. Right.  
19 Q. At any time before February 10, when all this  
20 came to light, the problems with Hall Builders came to  
21 light, had you ever been told by Dr. Carew or anyone  
22 else that there were problems with the competency or  
23 completeness of the Carews' house?  
24 A. Never.  
25 Q. And if you had known that, you would have

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1 certainly raised that with the Carews?  
2 A. Absolutely.  
3 Q. And I understand that a construction monitor  
4 inspector was used in this case. You mentioned  
5 earlier that you've read the construction loan  
6 agreement.  
7 That agreement actually states that the bank  
8 doesn't even have to use one; is that right?  
9 A. That's right.  
10 MR. McGEE: That's all I have. Thank you very  
11 much.  
12 THE WITNESS: Okay.  
13 MR. FOSMIRE: Just a couple of follow-up.  
14 FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFFS  
15 BY MR. FOSMIRE:  
16 Q. Regarding the transmission of the money from  
17 RBC to the Carews' account and then the Carews paying  
18 Hall Builders, Mr. -- Mr. McGee asked you a question  
19 about that, but the house doesn't get built without  
20 the RBC money, correct?  
21 A. Well, that's correct.  
22 Q. I mean -- and you have, meaning RBC, has a  
23 mortgaged asset, correct?  
24 A. Correct.  
25 Q. And the only way the funds get disbursed to

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1 Hall Builders is that a request is made by Hall for  
2 payment, correct?  
3 A. That is correct.  
4 Q. It's the RBC decision as to whether or not to  
5 release funds, construction loan proceeds, correct?  
6 A. I'm sorry?  
7 Q. It's RBC's decision as to whether or not to  
8 release construction loan proceeds?  
9 A. Yes, sir.  
10 Q. The Carews can't make that decision?  
11 A. Well, I disagree with that. The Carews must  
12 make that decision.  
13 We determine the percentage that can be  
14 released from the loan and then put it into their  
15 account. And then it is their responsibility at that  
16 point to pay or not to pay their builder.  
17 Q. If the foundation is the only thing that's in,  
18 and the Carews came to you and said, we want the  
19 entire construction loan balance, would RBC release  
20 it?  
21 A. No. Not under this process, no, we would not.  
22 Q. Okay. Because you have to watch the progress  
23 of the house, meaning you, RBC, has to monitor the  
24 progress of the home?  
25 A. Well, that has been a decision that RBC makes,

## **EXHIBIT 4**

|                                            |   |                                  |
|--------------------------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA                    | ) | IN THE COURT OF COMMON PLEAS     |
|                                            | ) |                                  |
| COUNTY OF LEXINGTON                        | ) | ELEVENTH JUDICIAL CIRCUIT        |
|                                            | ) |                                  |
| Dr. Joseph G. Carew and                    | ) | CIVIL ACTION №: 2010-CP-32-00442 |
| Dr. Karen Carew,                           | ) |                                  |
|                                            | ) |                                  |
| Plaintiffs,                                | ) |                                  |
| vs.                                        | ) | PLAINTIFFS' ANSWERS TO           |
|                                            | ) | DEFENDANT RBC BANK (USA)'S FIRST |
|                                            | ) | SET OF INTERROGATORIES           |
| RBC Centura Bank; RBC Bank as              | ) |                                  |
| successor in interest of RBC Centura Bank; | ) |                                  |
| Clifton W. Hall; Hall Builders, LLC;       | ) |                                  |
| Appraisal Team of Mid Carolina, LLC; and   | ) |                                  |
| Teresa Addy-Haltiwanger,                   | ) |                                  |
|                                            | ) |                                  |
| Defendants.                                | ) |                                  |

COME NOW Plaintiffs Dr. Joseph G. Carew and Dr. Karen Carew ("Plaintiffs") and hereby answer Defendant RBC Bank (USA)'s ("RBC Bank") First Set of Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

#### GENERAL OBJECTIONS

A. These Plaintiffs object to each Interrogatory to the extent each seeks information protected by the attorney-client privilege, work product doctrine, or which were prepared in anticipation of litigation.

B. These Plaintiffs objects to the Interrogatories to the extent that they are phrased in absolute terms. To the extent that the Interrogatories seek "all" documents or information on a particular subject, Plaintiffs, in answering such Interrogatories, will undertake to supply information known to Plaintiffs at the time of answer or located after a reasonable diligent search, and will not undertake any obligation, express or implied, to represent that Plaintiffs' answer includes all documents or information that may exist.

C. Where two or more Interrogatories call for, or arguably call for, production of the same information, document, or category of documents, an objection made in one answer is deemed to be made as to all Interrogatories that seek production of the same information or category of documents.

D. These Plaintiffs reserve the right to supplement and/or amend these answers, as well as production of documents, as information concerning this action is obtained.

E. These Plaintiffs reserve all evidentiary objections to the time of trial and expressly disclaims any intent to admit the relevance of matters inquired into or the information provided in answering these Interrogatories.

F. These Plaintiffs answer to these Interrogatories are made without prejudice to Plaintiffs' right to object to the admission of such answers into evidence or Plaintiffs' right to object to further discovery relating to the same subjects upon any valid ground.

### ANSWERS TO INTERROGATORIES

1. Give the names and addresses of persons known to Plaintiffs or Plaintiffs' counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses, and indicate who has possession of such statements. For each person identified herein, set forth either a summary sufficient to inform the other part of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

#### ANSWER:

- a. Drs. Joseph G. Carew and Karen Carew.  
34 Edens Pont Rd  
Irmo, SC

Drs. Joseph and Karen Carew are expected to testify regarding the construction of their home; the failure of Cliff Hall to complete the construction contract; their subsequent efforts to complete their home and their loan and interaction with RBC representatives. They have made no written or recorded statements.

- b. Clifton W. Hall  
3308 Westbury Drive  
Columbia, SC

Mr. Hall is expected to testify regarding the facts surrounding the construction contract and his failure to complete it. Plaintiffs are unaware of and not in possession of any written or recorded statements.

- c. Dana E. Hall  
3308 Westbury Drive  
Columbia, SC

Ms. Hall is expected to testify regarding the facts surrounding Hall Construction's involvement in the case. Plaintiffs are unaware of and not in possession of any written or recorded statements.

- d. Matt Gilpin  
c/o Hall Construction

3308 Westbury Drive  
Columbia, SC

Mr. Gilpin is a superintendent or project coordinator for Hall Construction. He has knowledge regarding Hall's failure to complete the construction contract and the debts or liens owed to subcontractors at the time Hall quit the project. No written or recorded statement.

e. Teresa Addy Haltiwanger

Ms. Addy-Haltiwanger is expected to testify regarding the facts surrounding her work as an inspector. Plaintiffs are unaware of and not in possession of any written or recorded statements.

f. Randall Roe  
Duraclean  
Post Office Box 7845  
Irmo, SC 29063

Mr. Roe is expected to testify regarding his inspection of Plaintiffs' residence. Please see bates labeled documents (PLAINTIFFS000621-000622).

g. Robbie Burgess  
Burgess Painting  
124 Dogwood Lane  
West Columbia, SC 29170

Mr. Burgess is expected to testify regarding the caulking problem at Plaintiffs' residence at issue. Plaintiffs are unaware of and not in possession of any written or recorded statements.

h. Bobby Alexander  
Pyramid Contracting  
1108-A Lykes Lane  
Irmo, SC

Mr. Alexander is the general contractor who completed the Carews' home after Hall breached the construction contract. He will testify regarding his knowledge of debts and obligations pending when Hall quit the job. He will also testify regarding his repair and completion efforts.

i. Pope Walker  
Rose Talbert Paint Co.  
P.O. Box 2658  
Cayce, SC 29171



Mr. Walker is expected to testify regarding the caulking problem at Plaintiffs' residence at issue. Plaintiffs are unaware of and not in possession of any written or recorded statements.

- j. Bill Stallings  
Sherwin Williams  
Columbia, SC

Mr. Stalling is expected to testify regarding the caulking problem at Plaintiffs' residence at issue. Plaintiffs are unaware of and not in possession of any written or recorded statements.

- k. Kathy Patterson  
RBC Centura Bank  
Manager, Residential Construction Lending Center  
133 S. Franklin Street  
Rocky Mount, NC 27804

Ms. Patterson is expected to testify regarding the facts surrounding this case. Plaintiffs are unaware of and not in possession of any written or recorded statements.

- l. Calvin Hurst  
RBC  
Greenville, SC

Mr. Hurst has knowledge regarding the Carews' business banking relationship with RBC. No written or recorded statement.

- m. Amanda Chartier  
RBC  
Columbia, SC

Ms. Chartier has knowledge regarding the Carew construction loan disbursements. No written or recorded statement.

- n. Other parties to this litigation are also aware of certain aspects of the facts surrounding this matter and may have named witnesses concerning the facts of this case. Plaintiffs reserve the right to call any and all witnesses named by other parties in this matter.

2. Set forth a list of photographs, plats, sketches, video imagery (whether digital, videotape, analog or other format), reports, inspections, contracts, bids, financial records, correspondence, charts, diagrams, or other prepared documents or tangible things in possession of the party that relate to the claims or defenses in the case. Such documents include, but are not limited to: all documents and tangible things identified in the Complaint, any/all documents relied on by Plaintiffs in making allegations against RBC; and/or any other documents or tangible things relating to the claims set forth in Plaintiffs' Complaint or the defenses raised by RBC.

ANSWER: Plaintiffs object to this request and to the production of any items protected by the attorney/client privilege, the doctrine of attorney work product, or prepared in anticipation of litigation. Subject to this objection, and in lieu of listing these items, see Plaintiffs' responses to Defendants' Requests for Production.

3. List the names and addresses of any expert witnesses whom Plaintiffs propose to use as a witness at the trial of the case as well as all subject(s) or area(s) of expertise on which each such witness will be tendered as an expert.

ANSWER: Bobby Alexander  
Pyramid Contracting  
1108-A Lykes Lane  
Irmo, SC 29063

Mr. Alexander is expected to give expert testimony regarding the work plan to complete the residence at issue subsequent to Hall Builders, LLC, construction and failure to complete the residence at issue.

In addition, certain subcontractors or vendors may qualify as experts in their field by way of their training and experience. The potential experts include, but are not limited to, Randall Roe, Robbie Burgess, Pope Walker and Bill Stallings, all of whom are identified in response to Interrogatory No. 1.

4. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the Plaintiffs. Do not provide general allegations of damages as against this Interrogatory seeks a specific amount of any and all damages sought against RBC in the case at bar.

ANSWER:

\$360,775.32 total for house to be completed by Pyramid Contracting;  
\$1,800.00 cash to drywall workers to work weekend and fix water damage repair;  
\$2,000.00 to Paradigm Excavation to help drainage in yard;  
\$2,400.00 for 2 months leasing home at 109 Beckworth Lane; paid to RBC Bank;  
\$2,400.00 loss of income for rental house; and  
\$500.00 for utilities in rental house.

In addition, there remains a potential obligation to certain subcontractors who performed who for Hall Builders on the project. At the time Hall quit the project the exposure was approximately \$115,000.00.

In addition, the Carew's have lost time from their professional practices in order to deal with Hall's failure to complete the home, the obligations created as a result thereof and the efforts to complete the home. They have also suffered intangible damages as a result of the stress created by the collective failure of the defendants.

5. Identify any and all communications or documents evidencing communications between Plaintiffs and Defendant and/or Plaintiffs and any other person or entity relating in any way to claims set forth in the Complaint or defenses raised by RBC.

ANSWER: Please see the documents produced in response to RBC's requests for production which are served herewith

6. Describe with specificity all facts and identify specifically each document or thing you or your counsel contends supports the allegation that RBC disbursed funds in the amounts and on the dates listed in Paragraph 15 of your First Amended Complaint.

ANSWER: The disbursement of funds are documented in the loan draw documents already in RBC's possession. In addition, please see documents produced in response to RBC's

requests for production served herewith.

7. Describe with specificity all facts and identify specifically each document or thing you or your counsel contends supports the allegation that you were "exposed to additional construction costs because RBC Centura had disbursed funds when it should not have done so."

ANSWER: RBC failed to properly monitor the progress of the construction project. RBC disbursed funds to which Hall was not entitled, allowing Hall to draw more funds than the work incurred on the project. Hall then walked away from the project having not paid subcontractors. The Carews incurred additional construction costs to complete the home.

8. Describe with specificity all facts and identify specifically each document or thing you or your counsel contends supports the allegation that RBC made "improper payments" to Cliff Hall and Hall builders.

ANSWER: Please see response to Interrogatory No. 7 above.

9. Describe with specificity all facts and identify specifically each document or thing you or your counsel contends supports the allegation that "RBC's failure to resolve the construction loan issues exposed Plaintiffs to mechanics liens."

ANSWER: RBC was made aware of the fact that the general contractor left the project without paying subcontractors. RBC failed to timely assist the Carews in recovering funds RBC improperly disbursed to Hall.

10. Describe with specificity all facts and identify specifically each document or thing you or our counsel contends supports the allegation that RBC breached its duty to Plaintiffs by "failing to retain a competent inspector."

ANSWER: RBC's inspector failed to recognize the home was improperly

sequenced; failed to require completion of the roof before installing interior components such as wood flooring and sheetrock; and allowed funds to be disbursed when the work was not completed.

11. Describe with specificity all facts and identify specifically each document or thing you or your counsel contends supports the allegation that RBC breached its duty to Plaintiffs by "issuing funds to the general contractor when those funds were not due."

ANSWER: Please see response to Interrogatory No. 10 above.

12. Describe with specificity all facts and identify specifically each document or thing you or your counsel contends supports the allegation that RBC breached its duty to Plaintiffs by "paying for the same draws twice."

ANSWER: RBC paid for two draws for pool work. RBC also released \$86,000.00 in funding when it should not have done so.

13. Describe with specificity all facts and identify specifically each document or thing you or your counsel contends supports the allegation that RBC breached its duty to Plaintiffs by "allowing the general contractor to complete interior portions of the home when the roof and shell of the home were not complete."

ANSWER: The interior of the home including, but not limited to, sheetrock and wood flooring were damaged by rainfall because the roof was not complete. Please see draw documents and photos produced in response to RBC's requests for production.

14. Describe with specificity all facts and identify specifically each document or thing you or your counsel contends supports the allegation that RBC breached its duty to Plaintiffs by "failing to monitor its inspector and the general contractor so as to avoid water intrusion damage to the home."

ANSWER: RBC hired an inspector. Interior components of the home were installed before the roof was completed. Rainfall damaged the interior components. Please see the draw documents and photos produced in response to RBC's requests for production.

15. Describe with specificity all facts and identify specifically each document or thing you or your counsel contends supports the allegation that RBC breached its duty to Plaintiffs by "issuing funds in an amount greater than the actual completion percentage of the home."

ANSWER: At the time Hall quit the project, a higher percentage of the loan had been paid than the percentage by which the house was complete. The draw documents and photos of the home specifically demonstrate this fact.

16. Describe with specificity all facts and identify specifically each document or thing you or your counsel contends supports the allegation that RBC breached its duty to Plaintiffs by "failing to timely assist Plaintiffs when advised that the asset was in peril of not being completed."

ANSWER: RBC made no effort to recover funds improperly taken by Hall. RBC left the Carews in a position of having to pay more for the house to be completed than was originally contracted with Hall.

17. Describe with specificity all facts and identify specifically each document or thing you or your counsel contends supports the allegation that RBC breached its duty to Plaintiffs by "failing to timely respond to Plaintiffs which resulted in liens being placed against the property in question."

ANSWER: Please see response to Interrogatory No. 16 above. RBC made no effort to recover money improperly paid to Hall. Liens were in fact placed against the project.

18. Describe with specificity all facts and identify specifically each document or thing you or your counsel contends supports the allegation that RBC's "negligence, carelessness, recklessness, willfulness, and wantonness" caused numerous parts of the home to be "continually and repeatedly exposed to leaks causing moisture infiltration result in damage, mold, rot, and degradation of the home."

ANSWER: Please see responses to interrogatories numbered 13, 14, and 15. RBC failed to monitor the progress of the construction in relation to funds it was disbursing; the home was improperly sequenced; and, the interior suffered water damage.

19. Describe with specificity all facts and identify specifically each document or thing you or your counsel contends supports the allegation that RBC's "negligence, carelessness, recklessness, willfulness, and wantonness", exposed Plaintiffs "to a greater debt under the construction lending agreement."

ANSWER: Please see the response to Interrogatory No. 16. Because of RBC's failure to properly monitor the sequence and percentage of construction, when Hall quit the project; the Carews had to hire another contractor which cost more than the original construction contract.

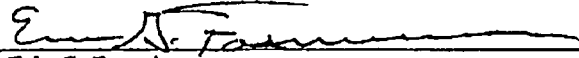
20. Describe with specificity all facts and identify specifically each document or thing you or your counsel contends supports the allegation that RBC's "negligence, carelessness, recklessness, willfulness, and wantonness, Plaintiff had to hire another contractor to complete the home."

ANSWER: Please see the documents produced in response to RBC's requests for production served herewith, which demonstrates that the Carews hired Pyramid Construction to complete the home.

21. Describe with specificity all facts and identify specifically each document or thing you or your counsel contends supports the allegation that RBC breached any provision of their contract with the Plaintiffs, including the specific contract provision you alleged was breached by RBC.

ANSWER: RBC breached the covenants of good faith and fair dealing. RBC breached Section 5 regarding Interim disbursements. In addition, RBC breached sections 6.2; 7; 8 and 10.3. Plaintiffs reserve the right to further supplement this response as discovery progresses.

McANGUS, GOUDELOCK & COURIE, LLC



Eric G. Fosmire  
Post Office Box 12519, Capitol Station  
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Columbia, South Carolina 29211-2519  
(803) 779-2300

ATTORNEYS FOR DR. JOSEPH G. CAREW  
AND DR. KAREN CAREW

Columbia, South Carolina  
July 28, 2010



STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

DR. JOSEPH G. CAREW AND DR.  
KAREN CAREW,

Civil Action No. 2010-CP-32-00442

Plaintiffs,

vs.

**PLAINTIFFS' MEMORANDUM IN  
OPPOSITION TO RBC BANK'S  
MOTION FOR SUMMARY  
JUDGMENT**

RBS CENTURA BANK; RBC BANK AS  
SUCCESSOR IN INTEREST OF RBC  
CENTURA BANK; CLIFTON W. HALL;  
HALL BUILDERS, LLC; APPRAISAL  
TEAM OF MID CAROLINA, LLC; AND  
TERESA ADDY-HALTIWANGER,

Defendants.

The Plaintiffs, Dr. Joseph G. Carew and Dr. Karen Carew ("Carews"), hereby submit this Memorandum of Law in Opposition to RBC Bank's Motion for Summary Judgment. Defendant RBC Bank has moved for summary judgment on the grounds that the agreements signed by the Carews and applicable case law preclude recovery against RBC as a matter of law.

The Carews respond to the Motion for Summary Judgment by stating that:

- The loan agreement between the Carews and RBC Bank is an adhesion contract with only the amount, rate, and length of term negotiated. The remainder of the contract is boilerplate language favoring RBC Bank which the Carews did not have the opportunity to negotiate.
- The Carews have the right to rely on the acts and disbursal decisions of RBC Bank relating to the construction of the Carews' home.
- RBC Bank breached the construction lending agreement by authorizing construction draws that exceeded the actual construction progress of the Carews' home.

- It is unfair and unconscionable and against public policy to have the Carews, through the loan agreement with RBC, pay for the services of an appraiser and not have a right to rely on the conduct of appraiser. Also, since the Carews are paying for a service through the loan agreement, there should be a corresponding duty from RBC Bank back to the Carews.
- The Carews have been harmed by RBC Bank and the appraiser/construction monitor's failure to properly monitor construction. The Carews were further harmed by RBC Bank's failure to hire a competent appraiser/construction monitor.

#### SUMMARY JUDGMENT STANDARD

A trial court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, showed that there is no genuine issue as to any material fact and that the moving party's entitled to judgment as a matter of law." Rule 56 (c), SCRCP; *Tupper v. Dorchester County*, 487 S.E.2d 187 (1997). In determining whether any trial issues of any fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Manning v. Quinn*, 365 S.E.2d 24 (1988). A court considering summary judgment does not make factual determinations or consider the merits of competing testimony. *David v. McLeod Regional Medical Center*, 626 S.E.2d 1 (2006).

"Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Doe Ex Rel. Doe v. Batson*, 548 S.E.2d 854 (2001), citing *Baughman v. AT&T* 410 S.E.2d 537 (1991). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is a dispute as to the conclusion to be drawn from those facts. *Brockbank v. Best Capital*

*Corporation*, 534 S.E.2d 692 (2000). Summary judgment should not be granted until the opposing party has had a full and fair opportunity to complete discovery, and it is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law. *Dawkins v. Fields*, 580 S.E.2d 433 (2003).

#### ARGUMENT

The Carews hired Defendant Clifton W. Hall and Hall Builders, LLC to construct a residence at 34 Edens Point, Irmo, South Carolina. The financing for the purchase of the property and the construction of the Carews home was provided by Co-Defendant, RBC Bank. The Carews entered into a Construction Loan Agreement on February 28, 2008 with RBC Bank financing the lot purchase (\$540,000) and construction contract (\$850,000). RBC Bank, not the Carews, hired Appraisal Team of Mid Carolina, LLC and its appraiser, Teresa Addy-Haltiwanger to inspect the home at various stages of construction before funds would be released to Clifton W. Hall and Hall Builders, LLC.

During the term of the construction, the roof for the home was not complete yet the builder continued to undertake interior finishing work including installing drywall, installing wood flooring, and installing wood trim and cabinets. During the construction, interior components of the home became wet and damaged.

In February 2009, builder Hall Builders ran into financial difficulty. Hall Builders' problems were so severe that he told the Carews he would not be able to complete the home. On February 11, 2009, Hall Builders abandoned the job. Hall Builders took money from construction draws and failed to pay the subcontractors. The Carews allege these defendants failed to properly monitor the construction so as to avoid damage to the home and avoid Hall's failure to complete the home. As a result of defects relating to staging of construction, Hall

Builders abandoning the job; Hall Builders' failure to pay subcontractors; and the requirements to complete the home, the Carews incurred losses of \$583,681.93 above and beyond the loan.

Appraisal Team of Mid Carolina and Teresa Addy-Haltiwanger fall within the definition of "construction monitor", as defined within the construction loan agreement. The services of the construction monitor were paid for by the Carews through the RBC loan agreement. RBC Bank 30(b)(6) representative, Kathy Patterson stated:

- Q. Alright. RBC is relying on the inspector for the information at the site; is that correct?
- A. That is correct; to monitor the progress of construction.
- Q. Okay. And based on what the inspector tells you, you either disburse or don't disburse for a particular draw?
- A. That is correct.

(Ex. 1, Deposition of Kathy Patterson, P. 66, 1.24-P. 67, 1.66).

The construction monitor was neither selected by the Carews nor were the terms of the provisions relating to the construction monitor negotiated in the RBC contract. The language is boilerplate language within the contract yet the Carews are the ones who paid for the services of the construction monitor.

It is unfair and unconscionable for the Carews to pay for the services of the construction monitor with no corresponding duty in return from the monitor. There was an absence of meaningful choice on the Carews' part; and, absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process and the contract at issue. *Carlson v. General Motors Corp.*, 883 F.2d 287 (4th Circuit 1989). A determination as to whether a contract is unconscionable depends on all the facts and circumstances of the particular case. *Holler v. Holler*, 612 S.E.2d 469 (Court of Appeals 2005) and 17A Am. Jur. 2d Contracts § 279 (2004). The RBC construction contract is essentially a take it or leave it contract with only the amount, interest rate, and length of term negotiable. The remaining terms are boilerplate

language drawn in favor of RBC. An adhesion contract is a standard form contract offered on a take it or leave it basis with non-negotiable terms. *Munoz v. Green Tree Financial Corp.*, 542 S.E.2d 360 (2001).

The general rule is that courts will not enforce a contract which is violative of public policy, statutory law or provisions of the South Carolina Constitution. *Carolina Care Plan Inc. v. United Healthcare Services, Inc.*, 606 S.E.2d 752 (2004). In this case it is unconscionable and violative of public policy for the Carews to be charged for a service and then have no corresponding duty provided in return by that service provider, the Appraisal Team of Mid Carolina, Inc. and RBC Bank. The terms are adhesion contract provision and are violative public policy.

RBC Bank retains the right to make the decision of when to release construction proceeds.

- Q. It's RBC's decision as to whether or not to release construction loan proceeds?  
A. Yes sir.

(Ex. 1, Deposition of Kathy Patterson, P. 157, ll.7-9).

...

- Q. Okay. Because you have to watch the progress of house, meaning you, RBC, has to monitor the progress of the home?  
A. Well, that has been a decision that RBC makes, but it is not in the construction loan agreement.  
Q. But you're -- RBC is not going to release the funds if the level of percentage of completion of the house is not appropriate, correct?  
A. Correct.

(Ex. 1, Deposition of Kathy Patterson, P. 157, l. 22 – P. 158, l. 5).

In this case, RBC Bank failed to properly monitor the level of completion of the home and disbursed funds above and beyond the percentage of completion. Doing so allowed Hall

Builders to take money away from the Carew project, not pay subcontractors and abandon the project leaving the Carews with liens to satisfy and a partially constructed home to complete.

The inspections for the critical time period are attached and identified as follows:

- The December 18, 2008 inspection is found at RBC Bates Number 332 (Ex. 2).
- The February 2, 2009 inspection is identified at RBC Bates Number 105 (Ex. 3).

Both inspection documents reflect that interior components of the home were being completed without the roof having been completed. Moving along with the other elements of construction allowed Cliff Hall to draw more funds off of the construction loan. In fact for the December 18, 2008 draw RBC loan coordinator, Gail Chaffin, gave an additional 2% on the loan simply at the request of Cliff Hall. Regarding the transaction Kathy Patterson testified as follows:

- Q. She was basically doing him a favor, right? (Objection by RBC's counsel).
- A. I guess you could say that. I guess you could say that.
- Q. Alright. I mean, well, the appraiser had given the completion percentage at 6% --
- A. At 6, correct.
- Q. And she was adding a little extra money to the pot, so to speak, in giving him an additional amount for the draw by making an independent judgment on her part, adding 2% on miscellaneous cleanup, correct?
- A. Correct.

(Ex. 1, Deposition of Kathy Patterson, P. 88, l. 14 – P. 89, l. 3).

In addition, RBC Bank admitted that the February 2, 2009 draw, which was a draw of \$86,700.00, was given and the funding decision made prior to the inspection occurring. Kathy Patterson testified that the decision is documented wherein the loan representative told Cliff Hall \$86,700.00 will post on Monday, February 2nd but the inspection did not occur until February 2<sup>nd</sup>. (Ex. 1, Deposition of Kathy Patterson, P. 136, l. 8 – P. 137, l. 13). RBC 30(b)(6) representative Kathy Patterson acknowledges the sequence, admitted that is what had occurred,

and admitted RBC made a mistake. Id.

The explanation of completion percentages, RBC Bank's use of those percentages, and the acknowledgement that the permanent roof was still not on the building as of February 2, 2009 is covered by Kathy Patterson in P. 82 through P. 94 of her deposition. (Ex. 1). Ms. Patterson further acknowledges that at the time of the handling of the Carews' loan, monitoring the percentage of loan disbursed, as opposed to the percentage of construction, was done manually. RBC Bank now has an automated system that allows the percentages to be compared at the time of each draw. This safeguard was not in place at the time of the construction of Carews' home. (Deposition of Kathy Patterson, P. 99, l. 15 – P. 101, l. 11).

As a result of RBC Bank's failure to properly monitor construction, the Carews suffered damages above and beyond owing the balance of the loan. The Carews have incurred \$583,681.93 in additional expenses as a result of these failures. (Exhibit 5).

RBC Bank may contend that there is no liability for negligence for the appraiser pursuant to *Robertson v. First Union National Bank*, 565 S.E.2d 309 (Ct. of App. 2002). In *Robertson* the Plaintiff contended that a building he purchased was negligently appraised at the principal loan amount of \$160,000.00 in order for the bank to let the loan. The *Robertson* Plaintiff contends that in a subsequent appraisal five years later the fair market value of the property was only \$80,000.00. *Robertson* is distinguished because the issue in the Carew case is not the reliance on the valuation of the loan, but the conduct of the Bank itself in improperly releasing construction loan proceeds. The *Robertson* court found that the appraiser was employed by the Bank and acting as an agent of the Bank and had no independent duty to the purchaser. If that is the law, then RBC Bank in this case cannot turn around and say that there is no duty owed to the Carews because the appraiser is independent of RBC Bank. RBC Bank attempts to contractually

# EXHIBIT 2



# Construction Loan Form / Inspection 8

|                                      |             |                  |          |                |
|--------------------------------------|-------------|------------------|----------|----------------|
| Borrower/Lent Joseph & Karen Grew    |             |                  |          |                |
| Property Address 34 Ebers Point Road |             |                  |          |                |
| City                                 | Columbia    | County Lexington | State SC | Zip Code 29212 |
| Lender                               | RBC Centura |                  |          |                |

**RBC CENTURA**
**CONSTRUCTION LOAN INSPECTION**
**RESIDENTIAL FORM**

| Item                                                                                                                                                                                                                                                                                       | Unit | Quantity | Unit Price | Amount     | Notes |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|----------|------------|------------|-------|
| <p>1. General</p> <p>2. Foundation</p> <p>3. Framing</p> <p>4. Roofing</p> <p>5. Siding</p> <p>6. Windows &amp; Doors</p> <p>7. HVAC</p> <p>8. Plumbing</p> <p>9. Electrical</p> <p>10. Interior Finishes</p> <p>11. Exterior Finishes</p> <p>12. Landscaping</p> <p>13. Miscellaneous</p> |      |          |            |            |       |
| TOTAL                                                                                                                                                                                                                                                                                      |      |          |            | 117,500.00 |       |

I gave 2% on misc cleanup. Binded \$14,450.00 12-19-08 BSC 300/300%

**NC-SC-GA FORM**

# EXHIBIT 3

# Construction Loan Form / Inspection 9

|                   |                       |           |          |
|-------------------|-----------------------|-----------|----------|
| Borrower(s):      | Joseph & Karen Conroy |           |          |
| Property Address: | 34 Edgers Point Road  |           |          |
| City:             | Columbia              | County:   | Leahurst |
| State:            | SC                    | Zip Code: | 29212    |
| Lender:           | RBC Centura           |           |          |

| RBC CENTURA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                | CONSTRUCTION LOAN INSPECTION |          | RESIDENTIAL FORM |       |      |                |             |          |            |       |               |       |       |   |      |  |            |       |       |   |      |  |            |       |       |   |      |  |           |       |       |   |      |  |                    |       |       |   |      |  |             |       |       |   |      |  |               |      |      |   |      |  |         |       |       |   |      |  |                |      |      |   |      |  |           |       |       |   |      |  |              |               |               |          |             |  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|------------------------------|----------|------------------|-------|------|----------------|-------------|----------|------------|-------|---------------|-------|-------|---|------|--|------------|-------|-------|---|------|--|------------|-------|-------|---|------|--|-----------|-------|-------|---|------|--|--------------------|-------|-------|---|------|--|-------------|-------|-------|---|------|--|---------------|------|------|---|------|--|---------|-------|-------|---|------|--|----------------|------|------|---|------|--|-----------|-------|-------|---|------|--|--------------|---------------|---------------|----------|-------------|--|
| <p>Project Name: _____</p> <p>Property Address: _____</p> <p>City: _____ County: _____ State: _____ Zip: _____</p> <p>Lender: _____</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                |                              |          |                  |       |      |                |             |          |            |       |               |       |       |   |      |  |            |       |       |   |      |  |            |       |       |   |      |  |           |       |       |   |      |  |                    |       |       |   |      |  |             |       |       |   |      |  |               |      |      |   |      |  |         |       |       |   |      |  |                |      |      |   |      |  |           |       |       |   |      |  |              |               |               |          |             |  |
| <p>Value of Contract: \$ _____</p> <p>Amount of Loan: \$ _____</p> <p>Interest Rate: _____</p> <p>Term: _____</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                |                              |          |                  |       |      |                |             |          |            |       |               |       |       |   |      |  |            |       |       |   |      |  |            |       |       |   |      |  |           |       |       |   |      |  |                    |       |       |   |      |  |             |       |       |   |      |  |               |      |      |   |      |  |         |       |       |   |      |  |                |      |      |   |      |  |           |       |       |   |      |  |              |               |               |          |             |  |
| <table border="1"> <thead> <tr> <th>Item</th> <th>Estimated Cost</th> <th>Actual Cost</th> <th>Variance</th> <th>Percentage</th> <th>Notes</th> </tr> </thead> <tbody> <tr><td>1. Foundation</td><td>10000</td><td>10000</td><td>0</td><td>100%</td><td></td></tr> <tr><td>2. Framing</td><td>20000</td><td>20000</td><td>0</td><td>100%</td><td></td></tr> <tr><td>3. Roofing</td><td>15000</td><td>15000</td><td>0</td><td>100%</td><td></td></tr> <tr><td>4. Siding</td><td>12000</td><td>12000</td><td>0</td><td>100%</td><td></td></tr> <tr><td>5. Windows &amp; Doors</td><td>18000</td><td>18000</td><td>0</td><td>100%</td><td></td></tr> <tr><td>6. Plumbing</td><td>10000</td><td>10000</td><td>0</td><td>100%</td><td></td></tr> <tr><td>7. Electrical</td><td>8000</td><td>8000</td><td>0</td><td>100%</td><td></td></tr> <tr><td>8. HVAC</td><td>12000</td><td>12000</td><td>0</td><td>100%</td><td></td></tr> <tr><td>9. Landscaping</td><td>5000</td><td>5000</td><td>0</td><td>100%</td><td></td></tr> <tr><td>10. Other</td><td>10000</td><td>10000</td><td>0</td><td>100%</td><td></td></tr> <tr><td><b>TOTAL</b></td><td><b>100000</b></td><td><b>100000</b></td><td><b>0</b></td><td><b>100%</b></td><td></td></tr> </tbody> </table> |                |                              |          |                  |       | Item | Estimated Cost | Actual Cost | Variance | Percentage | Notes | 1. Foundation | 10000 | 10000 | 0 | 100% |  | 2. Framing | 20000 | 20000 | 0 | 100% |  | 3. Roofing | 15000 | 15000 | 0 | 100% |  | 4. Siding | 12000 | 12000 | 0 | 100% |  | 5. Windows & Doors | 18000 | 18000 | 0 | 100% |  | 6. Plumbing | 10000 | 10000 | 0 | 100% |  | 7. Electrical | 8000 | 8000 | 0 | 100% |  | 8. HVAC | 12000 | 12000 | 0 | 100% |  | 9. Landscaping | 5000 | 5000 | 0 | 100% |  | 10. Other | 10000 | 10000 | 0 | 100% |  | <b>TOTAL</b> | <b>100000</b> | <b>100000</b> | <b>0</b> | <b>100%</b> |  |
| Item                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Estimated Cost | Actual Cost                  | Variance | Percentage       | Notes |      |                |             |          |            |       |               |       |       |   |      |  |            |       |       |   |      |  |            |       |       |   |      |  |           |       |       |   |      |  |                    |       |       |   |      |  |             |       |       |   |      |  |               |      |      |   |      |  |         |       |       |   |      |  |                |      |      |   |      |  |           |       |       |   |      |  |              |               |               |          |             |  |
| 1. Foundation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 10000          | 10000                        | 0        | 100%             |       |      |                |             |          |            |       |               |       |       |   |      |  |            |       |       |   |      |  |            |       |       |   |      |  |           |       |       |   |      |  |                    |       |       |   |      |  |             |       |       |   |      |  |               |      |      |   |      |  |         |       |       |   |      |  |                |      |      |   |      |  |           |       |       |   |      |  |              |               |               |          |             |  |
| 2. Framing                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 20000          | 20000                        | 0        | 100%             |       |      |                |             |          |            |       |               |       |       |   |      |  |            |       |       |   |      |  |            |       |       |   |      |  |           |       |       |   |      |  |                    |       |       |   |      |  |             |       |       |   |      |  |               |      |      |   |      |  |         |       |       |   |      |  |                |      |      |   |      |  |           |       |       |   |      |  |              |               |               |          |             |  |
| 3. Roofing                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 15000          | 15000                        | 0        | 100%             |       |      |                |             |          |            |       |               |       |       |   |      |  |            |       |       |   |      |  |            |       |       |   |      |  |           |       |       |   |      |  |                    |       |       |   |      |  |             |       |       |   |      |  |               |      |      |   |      |  |         |       |       |   |      |  |                |      |      |   |      |  |           |       |       |   |      |  |              |               |               |          |             |  |
| 4. Siding                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 12000          | 12000                        | 0        | 100%             |       |      |                |             |          |            |       |               |       |       |   |      |  |            |       |       |   |      |  |            |       |       |   |      |  |           |       |       |   |      |  |                    |       |       |   |      |  |             |       |       |   |      |  |               |      |      |   |      |  |         |       |       |   |      |  |                |      |      |   |      |  |           |       |       |   |      |  |              |               |               |          |             |  |
| 5. Windows & Doors                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 18000          | 18000                        | 0        | 100%             |       |      |                |             |          |            |       |               |       |       |   |      |  |            |       |       |   |      |  |            |       |       |   |      |  |           |       |       |   |      |  |                    |       |       |   |      |  |             |       |       |   |      |  |               |      |      |   |      |  |         |       |       |   |      |  |                |      |      |   |      |  |           |       |       |   |      |  |              |               |               |          |             |  |
| 6. Plumbing                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 10000          | 10000                        | 0        | 100%             |       |      |                |             |          |            |       |               |       |       |   |      |  |            |       |       |   |      |  |            |       |       |   |      |  |           |       |       |   |      |  |                    |       |       |   |      |  |             |       |       |   |      |  |               |      |      |   |      |  |         |       |       |   |      |  |                |      |      |   |      |  |           |       |       |   |      |  |              |               |               |          |             |  |
| 7. Electrical                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 8000           | 8000                         | 0        | 100%             |       |      |                |             |          |            |       |               |       |       |   |      |  |            |       |       |   |      |  |            |       |       |   |      |  |           |       |       |   |      |  |                    |       |       |   |      |  |             |       |       |   |      |  |               |      |      |   |      |  |         |       |       |   |      |  |                |      |      |   |      |  |           |       |       |   |      |  |              |               |               |          |             |  |
| 8. HVAC                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 12000          | 12000                        | 0        | 100%             |       |      |                |             |          |            |       |               |       |       |   |      |  |            |       |       |   |      |  |            |       |       |   |      |  |           |       |       |   |      |  |                    |       |       |   |      |  |             |       |       |   |      |  |               |      |      |   |      |  |         |       |       |   |      |  |                |      |      |   |      |  |           |       |       |   |      |  |              |               |               |          |             |  |
| 9. Landscaping                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 5000           | 5000                         | 0        | 100%             |       |      |                |             |          |            |       |               |       |       |   |      |  |            |       |       |   |      |  |            |       |       |   |      |  |           |       |       |   |      |  |                    |       |       |   |      |  |             |       |       |   |      |  |               |      |      |   |      |  |         |       |       |   |      |  |                |      |      |   |      |  |           |       |       |   |      |  |              |               |               |          |             |  |
| 10. Other                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 10000          | 10000                        | 0        | 100%             |       |      |                |             |          |            |       |               |       |       |   |      |  |            |       |       |   |      |  |            |       |       |   |      |  |           |       |       |   |      |  |                    |       |       |   |      |  |             |       |       |   |      |  |               |      |      |   |      |  |         |       |       |   |      |  |                |      |      |   |      |  |           |       |       |   |      |  |              |               |               |          |             |  |
| <b>TOTAL</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <b>100000</b>  | <b>100000</b>                | <b>0</b> | <b>100%</b>      |       |      |                |             |          |            |       |               |       |       |   |      |  |            |       |       |   |      |  |            |       |       |   |      |  |           |       |       |   |      |  |                    |       |       |   |      |  |             |       |       |   |      |  |               |      |      |   |      |  |         |       |       |   |      |  |                |      |      |   |      |  |           |       |       |   |      |  |              |               |               |          |             |  |

NC-SC-GA FORM

# EXHIBIT 4

XL12 04/19/10 COMMERCIAL LOANS 11.24.09  
NOTE/MAINTENANCE HISTORY INQUIRY

CTL2 001 CTL3 000 CUST 0003135993 NOTE 00000101 DRAW 001 PART 99

| CD      | Q | F | POST     | EFFECTIVE | DESCRIPTION         | TRAN      | AMOUNT     | PRIN |
|---------|---|---|----------|-----------|---------------------|-----------|------------|------|
| BALANCE |   |   |          |           |                     |           |            |      |
| 72      | 0 |   | 04/15/10 | 04/14/10  | REG.PR+INT PAY PRIN | 2600.00   | 1136572.06 |      |
| 84      | 0 |   | 04/15/10 | 04/15/10  | INTEREST ADJUSTMENT | 0.35-     | 1139172.06 |      |
| 72      | 0 |   | 04/06/10 | 04/06/10  | REG.PR+INT PAY PRIN | 2600.00   | 1139172.06 |      |
| 72      | 0 |   | 03/17/10 | 03/17/10  | REG.PR+INT PAY PRIN | 2600.00   | 1141772.06 |      |
| 72      | 0 |   | 03/03/10 | 03/03/10  | REG.PR+INT PAY PRIN | 5200.00   | 1144372.06 |      |
| 72      | 0 |   | 02/03/10 | 02/03/10  | REG.PR+INT PAY PRIN | 5200.00   | 1149572.06 |      |
| 72      | 0 |   | 12/29/09 | 12/29/09  | REG.PR+INT PAY PRIN | 5200.00   | 1154772.06 |      |
| 72      | 0 |   | 11/30/09 | 11/30/09  | REG.PR+INT PAY PRIN | 5200.00   | 1159972.06 |      |
| 84      | 0 |   | 11/24/09 | 11/24/09  | INTEREST ADJUSTMENT | 13957.10- | 1165172.06 |      |
| 72      | 0 |   | 11/02/09 | 11/02/09  | REG.PR+INT PAY PRIN | 5200.00   | 1165172.06 |      |
| 72      | 0 |   | 10/01/09 | 10/01/09  | REG.PR+INT PAY PRIN | 5200.00   | 1170372.06 |      |
| 72      | 0 |   | 09/09/09 | 09/09/09  | REG.PR+INT PAY INT  | 4141.18   | 1175572.06 |      |
| 72      | 0 |   | 09/09/09 | 09/09/09  | REG.PR+INT PAY PRIN | 1058.82   | 1175572.06 |      |
| 61      | 0 | U | 08/12/09 | 02/27/09  | PRIN.PYMT.REV.      | 164.32    | 1176630.88 |      |
| 84      | 0 |   | 08/12/09 | 08/12/09  | INTEREST ADJUSTMENT | 3.69      | 1176466.56 |      |
| 58      | 0 |   | 08/12/09 | 02/27/09  | MISC.INT.PYMT. INT  | 164.32    | 1176466.56 |      |
| 72      | 0 |   | 08/03/09 | 08/03/09  | REG.PR+INT PAY INT  | 5043.40   | 1176466.56 |      |
| 60      | 0 |   | 07/06/09 | 07/06/09  | ADVANCE             | 15068.90  | 1176466.56 |      |
| 72      | 0 |   | 07/02/09 | 07/02/09  | REG.PR+INT PAY INT  | 4524.93   | 1161397.66 |      |
| 60      | 0 |   | 06/18/09 | 06/18/09  | ADVANCE             | 65265.17  | 1161397.66 |      |
| 72      | 0 |   | 05/28/09 | 05/28/09  | REG.PR+INT PAY INT  | 4394.58   | 1096132.49 |      |
| 60      | 0 |   | 05/22/09 | 05/22/09  | ADVANCE             | 53087.35  | 1096132.49 |      |
| 60      | 0 |   | 05/01/09 | 05/01/09  | ADVANCE             | 2000.00   | 1043045.14 |      |
| 72      | 0 |   | 04/29/09 | 04/29/09  | REG.PR+INT PAY INT  | 3989.72   | 1041045.14 |      |
| 60      | 0 |   | 04/29/09 | 04/29/09  | ADVANCE             | 58957.97  | 1041045.14 |      |
| 72      | 0 |   | 04/01/09 | 04/01/09  | REG.PR+INT PAY INT  | 4122.68   | 982087.17  |      |
| 72      | 0 |   | 02/27/09 | 02/27/09  | REG.PR+INT PAY INT  | 2835.68   | 982087.17  |      |
| 72      | 0 |   | 02/27/09 | 02/27/09  | REG.PR+INT PAY PRIN | 164.32    | 982087.17  |      |
| 60      | 0 |   | 02/13/09 | 02/13/09  | ADVANCE             | 6500.00   | 982251.49  |      |
| 60      | 0 |   | 02/13/09 | 02/13/09  | ADVANCE             | 2000.00   | 975751.49  |      |
| 60      | 0 |   | 02/02/09 | 02/02/09  | ADVANCE             | 86700.00  | 973751.49  |      |
| 61      | 0 | U | 02/02/09 | 12/31/08  | PRIN.PYMT.REV.      | 866.89    | 887051.49  |      |

RBC-620

# EXHIBIT 5

**CAREW DAMAGES**

| AMOUNT       | DESCRIPTION                                                                                   |
|--------------|-----------------------------------------------------------------------------------------------|
| \$360,776.32 | Total for house to complete by Pyramid                                                        |
| \$1,800.00   | Cash to drywall men to work weekend and fix water damage repair                               |
| \$2,000.00   | to Paradigm Excavation to help drainage in yard, Paid due to<br>to potential lean on property |
| \$2,400.00   | for 2 months to live in rental house, 109 Beckworth Lane, Paid to RBC Bank                    |
| \$500.00     | for utilities in rental house                                                                 |
| \$2,400.00   | lost income on rental house                                                                   |
| \$826.99     | Total Overages paid by Carews                                                                 |
| \$13,289.70  | Total Change Orders                                                                           |
| \$4,074.00   | Palmetto Builder's Lien                                                                       |
| \$15,257.94  | Stock Building Supply Lien                                                                    |
| \$28,997.61  | American Builders Lien                                                                        |
| \$8,820.00   | Burgess Painting Service                                                                      |
| \$21,684.50  | Mike Howell Flooring                                                                          |
| \$850.00     | Columbia Commerical Cleaners                                                                  |
| \$40,800.00  | Innovative Woodworks                                                                          |
| \$1,400.00   | Miller Pools (re-do cool deck & sealants)                                                     |
| \$1,265.60   | The Tile Center Lien                                                                          |
|              | <u>\$507,142.66</u>                                                                           |
| \$6,715.00   | Owed to George Wood                                                                           |
| \$161.80     | Owed to Grand Rental Station                                                                  |
| \$1,563.00   | Owed to Phillip Coombs Plumbing                                                               |
| \$350.00     | Owed to Sandy Run Exterminating                                                               |
| \$6,137.50   | Owed to Paradime                                                                              |
| \$7,687.50   | Owed to A-1 Exteriors                                                                         |
| \$220.00     | Owed to Jani King                                                                             |
| \$11,760.00  | Owed to Qunitero                                                                              |
| \$2,050.00   | Owed to Snelgrove                                                                             |
| \$17,725.00  | Owed to Brian Cannon                                                                          |
| \$10,225.00  | Owed to Turnkey                                                                               |
| \$64,594.80  | <u>OWED TO SUBS</u>                                                                           |
| \$571,737.46 | <b>GRAND TOTAL</b>                                                                            |

|                    |                                   |           |
|--------------------|-----------------------------------|-----------|
| <b>2011 Checks</b> |                                   |           |
| \$8,096.00         | Ram Jack for 8 Helix Piers        | 3/31/2011 |
| \$3,848.47         | Ashmore concrete for drain system | 4/26/2011 |
| \$11,944.47        | <b>TOTAL</b>                      |           |

**\$583,681.93 GRAND TOTAL**

DIRECT EXAM-BY MR. FOSMIRE

Kathy Patterson

September 9, 2011

Page 7

1 P R O C E E D I N G S

2 Whereupon,

3 KATHY PATTERSON,

4 business address at Rocky Mount, North Carolina, was  
5 called as a witness by counsel for the Plaintiffs, and  
6 having been duly sworn by the Notary Public, was  
7 examined and testified as follows:

8 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

9 BY MR. FOSMIRE:

10 Q. Would you state your name for the record,  
11 please?

12 A. Kathy Patterson.

13 Q. Ms. Patterson, I'm Eric Fosmire. I represent  
14 the Plaintiffs, the Carews, in this lawsuit that's  
15 been brought against RBC and some other entities.

16 We're here this morning to take a deposition  
17 of RBC Bank pursuant to a notice that we issued, and  
18 you've been presented as the person to speak on behalf  
19 of RBC Bank.

20 Do you understand that?

21 A. Yes, I do.

22 Q. Have you ever had your deposition taken  
23 before?

24 A. No, I have not.

25 Q. Okay. A couple of basic rules.



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1           Number one. It's not a test of endurance.  
2       We're going to be here a while, but, hopefully, not  
3       all day, but if you need a break at any time, I try to  
4       watch the clock and take a break around an hour or so,  
5       but if you need a break or you want to go longer to  
6       try and get through, you just let me know. Okay?

7       A.    Okay.

8       Q.    At any point. Just don't -- I don't want you  
9       to be uncomfortable.

10      A.    Thank you.

11      Q.    We've got a fair amount of territory to cover,  
12      but I think we'll -- we'll move through it with some  
13      speed, I hope.

14            The other rule is, once we start the  
15      deposition, if you have a question about my question,  
16      you have to direct it to me, not to your attorney,  
17      because as long as I have you under oath, it's a  
18      conversation between you and I.

19            Billy may object if he sees fit, but any  
20      questions about the question has to be directed to me  
21      to clear it up. Okay?

22      A.    Okay.

23      Q.    And then if -- if at any point you don't  
24      understand my question, please just let me know that  
25      and I'll rephrase it so that we're communicating

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1 clearly.

2 Is that fair?

3 A. I will. Yes, it is.

4 Q. And any reason you cannot be deposed today;  
5 you're feeling well, any particular duress, any  
6 timeline --

7 A. No.

8 Q. -- constraints or anything like that?

9 A. No, I'm fine.

10 Q. Okay. I've marked as Exhibit 1 to the  
11 deposition the 30(b)(6) Deposition Notice.

12 Have you seen that before?

13 A. Yes, sir.

14 (The document referred to was  
15 marked Deposition Exhibit No. 1  
16 for identification.)

17 BY MR. FOSMIRE: (RESUMED.)

18 Q. Okay. Looking at Exhibit 1, there are a  
19 couple of bullet points there that I've identified of  
20 areas that we intend to cover or may cover during the  
21 deposition.

22 The first one is the construction loan between  
23 RBC and Joe and Karen Carew.

24 Do you see that?

25 A. I do.

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1 Q. Are you the person for RBC that can best  
2 answer any questions relating to that topic?

3 A. I believe so.

4 Q. Okay. The second bullet point, RBC's  
5 retention of Appraisal Team of Mid-Carolina.

6 Are you the best person to respond to that  
7 category?

8 A. Yes.

9 Q. All right. Third. All communication between  
10 RBC and Appraisal Team of Mid-Carolina and/or Teresa  
11 Addy-Haltiwanger.

12 Are you the best person to respond to that?

13 A. Yes.

14 Q. All communication between RBC, Hall Builders,  
15 and Cliff Hall.

16 Are you the best person to respond to that?

17 A. Yes.

18 Q. All communication between RBC and Joe and  
19 Karen Carew.

20 Are you the best person to respond to that?

21 A. Yes.

22 Q. RBC's policies and procedures for residential  
23 and construction lending agreements.

24 Are you the best person to respond to that?

25 A. Yes.

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1 Q. And then as to the construction loan itself,  
2 each dispersal of funds pursuant to draw requests or  
3 submittals to RBC.

4 Are you the one to respond to that --

5 A. Yes.

6 Q. -- for this case?

7 All right. You can set that aside.

8 A. Okay.

9 Q. I've marked as Exhibit 2 --

10 MR. MCGEE: And -- I'm sorry, Eric, I just  
11 want to note for the record that she's been -- she's  
12 the person that's been designated by the bank to -- to  
13 answer these questions. There may be somebody that  
14 knows more about one of those topics or not --

15 MR. FOSMIRE: Okay.

16 MR. MCGEE: -- but she's the one that's here  
17 to testify on behalf of the bank.

18 MR. FOSMIRE: All right.

19 BY MR. FOSMIRE: (RESUMED.)

20 Q. If there's an area that we get into that it's  
21 just outside of your knowledge or you go, you know  
22 what, there may be someone better that can -- to cover  
23 that, just tell me.

24 A. Sure.

25 Q. Just let me know who that person might be.

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1 A. I will.

2 Q. Okay. The next bundle of joy I have for you,  
3 we've marked as Exhibit 2.

4 (The document referred to was  
5 marked Deposition Exhibit No. 2  
6 for identification.)

7 BY MR. FOSMIRE: (RESUMED.)

8 Q. These are documents that are Bates marked at  
9 the bottom right, which I hope you're familiar with,  
10 and these are documents that were produced by RBC's  
11 attorneys as the representative documents in these  
12 case responsive -- in this case, responsive to our  
13 discovery requests.

14 I'm going to have a substantial number of  
15 questions regarding these documents. Okay?

16 A. Okay.

17 Q. And when we refer to them, I'll probably not  
18 continue to refer to Exhibit 2, I'll just refer to an  
19 RBC number at the bottom right and it's going to be  
20 sequential 1 through some 600 documents. Okay?

21 A. Okay.

22 Q. All right. I marked as Exhibit 3, something  
23 that was presented to us this morning which doesn't  
24 have a Bates number. And can you explain what Exhibit  
25 3 is?

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1 A. Yes, I can.

2 This is a screen shot of a DDA, which is a  
3 direct deposit account, with RBC. The borrowers on  
4 the account are listed as Joseph G. Carew and Karen J.  
5 Carew.

6 This DDA account is now closed, has since been  
7 closed, but this was the checking account that the  
8 Carews' construction draw funds went into. So, each  
9 time there was a draw release, it went into -- those  
10 funds went into this account.

11 (The document referred to was  
12 marked Deposition Exhibit No. 3  
13 for identification.)

14 BY MR. FOSMIRE: (RESUMED.)

15 Q. Okay. As it relates to this case, that screen  
16 shot, when did you pull it? What's the date?

17 A. Just pulled it yesterday.

18 Q. Okay.

19 A. Just pulled it yesterday.

20 Q. Does that just show us a zero balance on the  
21 account?

22 A. It shows that the loan is -- yes, the zero  
23 balance, the account is closed and the names on the  
24 account.

25 Q. Okay. Okay. Very good. And then --

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1 MR. FOSMIRE: Let's mark these collectively as  
2 Exhibit 4.

3 (The documents referred to were  
4 marked Deposition Exhibit No. 4  
5 for identification.)

6 BY MR. FOSMIRE: (RESUMED.)

7 Q. Another package of documents that was  
8 presented to me this morning, I'm going to mark  
9 collectively as Exhibit 4. I believe I counted it as  
10 30 pages.

11 The first page of the document has a email  
12 printout with the name Nadine Mann on it, and it is  
13 apparently some research information as it relates to  
14 Hall Builders; is that correct?

15 A. That's correct.

16 Q. Can you explain to me what Exhibit 4 is?

17 A. Yes, sir. RBC Bank, at the time this loan was  
18 originated, had a process in place, basically an  
19 abbreviated due diligence process, if you will, where  
20 we ran a -- some searches on the builder that was  
21 going to build a home for our construction loan  
22 customers.

23 Q. Okay.

24 A. And this is from that file that we set up on  
25 Cliff Hall.. Again, very abbreviated. We checked

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1     their licenses, make sure they're -- this builder is  
2     in good standing with the Secretary of State.

3             We checked -- we run a FraudGuard check on the  
4     builder. We checked some supplier references, one  
5     bank reference.

6             We also ran a NACM report, which is an acronym  
7     for National Association of Credit Management.

8             Don't check their personal credit or anything  
9     such as that.

10            But, basically, this is the results of that  
11     process.

12           Q.    Okay. Is that the entire file?

13           A.    Yes, sir, it is.

14           Q.    Okay. How is that kept? Is that a physical  
15     file or is that something electronic that ya'll print  
16     off?

17           A.    No. Back in this day -- it is electronic now,  
18     but back in this day, it was -- it was a hard folder.  
19     And we have a bunch of file cabinets with builder  
20     files at that point in time.

21           Q.    Okay. What I'd like to do is at -- maybe at a  
22     break during the deposition, we'll run copies of it.  
23     Mr. McGee is going to have them Bates numbered and  
24     produced to us, but I'd like to -- so we document what  
25     was produced, we'll give this to the Court Reporter so



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1 she'll have a copy. I'd like to have a copy, and  
2 Mr. McGee can take a copy with him.

3 A. Okay.

4 Q. All right. What I'd like to do is, let's  
5 cover a little bit about yourself so -- I think I  
6 understand who you are and what your role is at the  
7 bank, but I do want to cover that so I know who's  
8 speaking on behalf of RBC.

9 And then what I intend to do is pretty much  
10 work through chronologically and sequentially through  
11 the documents that have been produced by RBC, and I  
12 have some questions for you about those documents --

13 A. Okay.

14 Q. -- just so you have an idea of where -- where  
15 we're going and what we're doing.

16 A. Okay.

17 Q. What is your role at RBC? What's your title?

18 A. I am the Manager of the Residential  
19 Construction Lending Center. We refer to it as the  
20 RCLC.

21 Q. Okay. And is that for all of RBC Bank USA?

22 A. It is, within the six foot -- the six-state  
23 footprint that RBC is in in the Southeast. So, we are  
24 a centralized unit that coordinates the construction  
25 phase of all residential construction loans.

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1 Q. Okay. And you're the manager of that unit?

2 A. Yes.

3 Q. All right. How many people are there in that  
4 unit?

5 A. There are five including myself.

6 Q. Okay. Back at the time of this construction  
7 loan, which I think was originally let in 2008 and  
8 construction began in 2008 and went into 2009, how big  
9 was your unit back then?

10 A. There were four reporting to me at that time.  
11 So, again, same number; different mix of people, but  
12 same number.

13 Q. Okay. And those four people, what -- what  
14 were their roles?

15 A. They're referred to as residential  
16 construction loan coordinators.

17 Q. Okay.

18 A. With the exception of Ms. Nadine Mann.

19 Q. Okay.

20 A. Her role was primarily an administrative  
21 function; filing, copying and -- and coordinating, if  
22 you will, the builder process, researching the  
23 builders.

24 Q. All right. At that time, who did you report  
25 to? Who's your supervisor or boss?

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1       A.    I reported at that time -- had many -- I'm  
2    sorry. I'm thinking here. Who was it at that time?  
3    I don't recall. I don't recall.

4       Q.    Okay. The residential construction lending  
5    center, is that located here in Rocky Mount?

6       A.    It is. It's across the street.

7       Q.    Okay. As far as RBC, how long have you been  
8    with RBC?

9       A.    19 years in November.

10      Q.    Okay. I -- I -- I -- I'm a little bit  
11   familiar with RBC and their history. Were you with  
12   another bank that was assumed by RBC?

13      A.    No, sir. I started with Centura Bank. At the  
14   time I began with the bank almost 19 years ago, it was  
15   a state bank.

16      Q.    Okay.

17      A.    Known as Centura Bank.

18      Q.    How many years do you have in banking total?

19      A.    My tenure at RBC is my only banking  
20   experience, so it's been going on 19 years.

21      Q.    Okay.

22      A.    But not all in this role.

23      Q.    All right. Although you cannot recall  
24   specifically the name of the person you were reporting  
25   to, as far as the construction lending center, what

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1 I'm trying to figure out is, what's the supervisory  
2 chain?

3 You're the manager of that unit?

4 A. Yes.

5 Q. You report to who?

6 A. Oh --

7 Q. Vice President or --

8 A. -- I'm sorry. Yes, Vice President and the  
9 Director of Mortgage Operations.

10 And I apologize. I've had in the five -- five  
11 years since this -- since the inception of this  
12 particular unit, I've probably had six bosses. So,  
13 I'm just trying to get that timeline in my head.

14 But, yes, they would be the Director of  
15 Mortgage Ops.

16 Q. Okay. So -- and then, the Director of  
17 Mortgage Operations reports to who? What's the  
18 chain?

19 A. Well, that has changed over the years. And I  
20 can't tell you who it was back then. I can certainly  
21 look that up and provide it if need be to Billy or to  
22 yourself.

23 Q. Okay. As -- as it relates to your authority  
24 on a construction loan, were there any limits on your  
25 authority?

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1 A. Certainly, yes.

2 Q. Okay. And what did you view your limits to  
3 be?

4 A. If there were any legalities, if -- if there  
5 was a legal question, such as in this particular case,  
6 then I consulted my legal group.

7 Q. Okay.

8 A. If it was requests for an extension, say, of  
9 maturity date on a construction loan, I go to mortgage  
10 credit risk, I go to a risk manager --

11 Q. Okay.

12 A. -- for that. So, yes, many times there  
13 were --

14 Q. All right.

15 A. -- different authorities.

16 Q. As it relates to dollar value of an issue or a  
17 loan, were there any dollar value limits as to what  
18 you were authorized to handle?

19 A. No, because I didn't have any approval  
20 authority. Now, it -- I had no lending authority  
21 per se.

22 Q. All right.

23 A. So, no.

24 Q. So, the lending authority decision is made by  
25 somebody else and then ya'll manage the loan once that

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1 lending authority is granted?

2 A. Correct.

3 Q. So, you could manage a loan for \$180,000 house  
4 or a \$10,000,000 house --

5 A. That's correct.

6 Q. -- depending on what -- what was actually  
7 lent; is that correct?

8 A. That's correct.

9 Q. Okay. I got you.

10 All right. We're in suit in Lexington County,  
11 South Carolina, and I know you are here as a  
12 representative of RBC, but since you may be testifying  
13 at trial, if we go to trial, do you have any  
14 connections to Lexington County, South Carolina, other  
15 than RBC Bank?

16 A. No, sir.

17 Q. Okay. So, no personal family or connections  
18 otherwise there?

19 A. No.

20 Q. For litigation decisions, you said you would  
21 consult with your legal group. If a decision was to  
22 be made regarding, say, settlement of this case, would  
23 you have that authority or would it go to somebody  
24 else?

25 A. It would go to somebody else.

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1 Q. Okay. And who do you think that would go to?

2 A. That would be a combination of Legal and our  
3 Default Management team.

4 Q. Okay. Who is -- who does that constitute now?

5 A. That would be -- the gentleman's name that  
6 runs that team currently is Victor Fox.

7 Q. Okay.

8 A. He's here in Rocky Mount. Richard Ramsey  
9 reports directly to Victor, but it would be those  
10 two. And then probably Legal and someone from Risk  
11 would weigh in as well, I'm sure.

12 Q. All right. In order to prepare for this  
13 deposition today, tell me what you did.

14 A. Reviewed the file. Basically, reviewed the  
15 file.

16 Q. Okay. And is the file something other than  
17 the documents that we have here today?

18 A. No, sir.

19 Q. Okay. Did you look at any deposition  
20 testimony --

21 A. No.

22 Q. -- from any other witness in this case?

23 A. No, I haven't seen anything.

24 Q. Okay. Did you look at any legal pleadings in  
25 this case, either the Complaint or the -- RBC's

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1 Answer?

2 A. Yes, I did.

3 Q. Okay.

4 A. I looked at both of those.

5 Q. All right. Did you look at any of the  
6 discovery documents, any of the interrogatories or  
7 request for production issued or answered by either  
8 side?

9 A. Yes.

10 Q. Okay. Which ones do you recall looking at?

11 A. I looked at the Plaintiffs' and the  
12 Defendants' answers to interrogatories.

13 Q. Okay.

14 A. It was first set, I believe.

15 Q. All right. As far as RBC's answers to  
16 interrogatories, having had the opportunity to look at  
17 the file and having had the opportunity to look at the  
18 actual black and white answers, is there any --  
19 anything missing from -- from your perspective?

20 And I don't mean that in a black hat kind of  
21 way, but is there something that should have been  
22 addressed in there that hasn't been addressed yet that  
23 we need to pick up on forward?

24 A. No, I don't believe so.

25 Q. Okay. Do you think the appropriate witnesses



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1 have been identified for RBC Bank?

2 MR. McGEE: Object to the form. You can  
3 answer.

4 THE WITNESS: Yes. You know, I have the  
5 overall knowledge of construction lending, but I did  
6 not -- I was not a -- working this particular file  
7 until Dr. Carew called to let us know there was an  
8 issue.

9 BY MR. FOSMIRE: (RESUMED.)

10 Q. Okay. Who -- who did have the file from a  
11 monitoring standpoint?

12 A. It was in -- it was in my department.

13 Q. Okay.

14 A. And the draws were done alternately. As a  
15 draw request came in, it would sit in a cue and one of  
16 my loan coordinators, whoever was open, would grab it  
17 out of the cue. So, the same person typically did not  
18 do every draw in a particular file. It was in  
19 rotation.

20 Q. So, your loan coordinators didn't have a  
21 specific file; they would just manage all issue --  
22 incoming issues?

23 A. Correct.

24 Q. And then if a problem arose, you would then  
25 address it or become involved?

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1 A. Yes, sir.

2 Q. Okay. So, if I heard you correctly the first  
3 time, you became involved with regard to the Carews  
4 when Dr. Carew notified you that there was a problem  
5 with Hall Builders?

6 A. Yes.

7 Q. Okay. So, for all of the draws leading up to  
8 that, you had no involvement with Hall Builders?

9 A. No, I did not.

10 Q. Okay. What about -- we'll get to Exhibit 4  
11 and the research on Hall Builders. Did you have  
12 any -- any involvement in the decision to approve  
13 or -- if approve's too strong a word, to accept Hall  
14 Builders as a builder?

15 A. Yes, I did. It is brought to me.

16 Q. Okay. So, the acceptance process of allowing  
17 a builder to build on an RBC loan, you would be  
18 involved in that acceptance or decision --

19 A. Yes.

20 MR. MCGEE: Object to the form.

21 BY MR. FOSMIRE: (RESUMED.)

22 Q. Okay. Since you looked at the RBC's Answer to  
23 the Complaint, there's a bunch of legal defenses in  
24 there and that -- that is really language for the  
25 lawyers to sort out, but just from your perspective,

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1 do you have any evidence to support the legal defense  
2 in there that the Carews are equitably estopped from  
3 bringing this ca -- claim?

4 MR. McGEE: Object to the form; calls for a  
5 legal conclusion.

6 THE WITNESS: No, none that I know of.

7 BY MR. FOSMIRE: (RESUMED.)

8 Q. Do you understand the question?

9 A. Yeah, I do.

10 Q. Okay.

11 A. I do.

12 Q. Do you -- and I'm not asking you to put on  
13 the -- the lawyer hat, but I'm just asking you if you  
14 have any facts just from your knowledge relating to  
15 these defenses?

16 A. No.

17 Q. Do you have any evidence that the Carews  
18 consented to Hall Builders' misconduct?

19 MR. McGEE: Object to the form.

20 You can answer.

21 THE WITNESS: Can you rephrase that question,  
22 please?

23 BY MR. FOSMIRE: (RESUMED.)

24 Q. I'll re-ask it.

25 A. Okay.

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1 Q. I'd like to ask it the way -- and if you can't  
2 answer it just tell me you -- I can't answer it as  
3 given. So, I'm giving you an out. All right?

4 So, but do you have any evidence that the  
5 Carews consented to Hall Builders' misconduct in this  
6 case?

7 A. Not to my knowledge.

8 Q. Okay. Do you have any evidence that the  
9 Carews released RBC as it relates to this case?

10 MR. MCGEE: Object to the form.

11 THE WITNESS: Released RBC?

12 BY MR. FOSMIRE: (RESUMED.)

13 Q. Right.

14 A. In terms of Hall Builders?

15 Q. In terms of the claims in this case.

16 MR. MCGEE: Object to the form; calls for a  
17 legal conclusion.

18 THE WITNESS: Not to my knowledge.

19 BY MR. FOSMIRE: (RESUMED.)

20 Q. Okay. Do you have any knowledge as to how --  
21 as to how the defenses of payment or voluntary payment  
22 applied to this case?

23 MR. MCGEE: Object to the form; calls for  
24 legal conclusion.

25 THE WITNESS: How the construction draw

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1 payments are paid?

2 BY MR. FOSMIRE: (RESUMED.)

3 Q. Well, a defense was asserted by RBC of payment  
4 or voluntary payment, and I'm just asking if you have  
5 any knowledge as to why that's in there?

6 MR. McGEE: Object to the form; calls for a  
7 legal conclusion.

8 THE WITNESS: I can't answer that because I'm  
9 not sure I understand the question.

10 BY MR. FOSMIRE: (RESUMED.)

11 Q. Okay.

12 A. I'm sorry.

13 Q. That's fine.

14 Do you have any evidence that Hall Builders  
15 was an actual agent of the Carews?

16 MR. McGEE: Object to the form; calls for a  
17 legal conclusion.

18 THE WITNESS: No, I don't know.

19 BY MR. FOSMIRE: (RESUMED.)

20 Q. All right. Do you have any evidence that the  
21 Carews ratified or condoned Hall Builders' misconduct  
22 in this case?

23 MR. McGEE: Object to the form; calls for a  
24 legal conclusion, and I'm going to have a standing  
25 objection.

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1 All these -- all of these questions call for  
2 legal conclusions and they're also outside of the  
3 scope of the 30(b)(6) Deposition Notice.

4 So, they're not the bank's -- not testifying  
5 on behalf of the bank for those issues.

6 BY MR. FOSMIRE: (RESUMED.)

7 Q. Go ahead if you can answer the question.

8 A. I don't know.

9 Q. You don't have any knowledge?

10 A. I don't.

11 Q. Okay. Do you have any evidence to support the  
12 claim that the Carews acted with unclean hands in this  
13 case?

14 MR. McGEE: Object to the form; calls for a  
15 legal conclusion beyond the scope of the 30(b)(6)  
16 Notice.

17 THE WITNESS: I don't know.

18 BY MR. FOSMIRE: (RESUMED.)

19 Q. All right. When you became involved in this  
20 case, do you recall approximately what the time frame  
21 was?

22 A. I do, yes, sir. It was February '09.

23 Q. Okay. And -- and why did you become involved?

24 A. I received a phone call from Dr. Carew. He  
25 had apparently asked who was in charge of the

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1 department and was given my name. And so, he called  
2 me directly.

3 Q. Okay. And what did he tell you?

4 A. He said, my builder's in trouble.

5 Q. And what did you do about it?

6 A. I immediately contacted -- I asked -- I asked  
7 him for details. And he told me as much as he knew at  
8 the -- the time. And I immediately called my legal  
9 counsel.

10 Q. Okay. How did you document that conversation  
11 with Dr. Carew?

12 A. I think I have a note to the file. I'm not  
13 sure if I do on that particular conversation, but I  
14 think I had a note to the file.

15 Q. Okay. We'll -- let's go ahead and cover a  
16 little bit about how the file in this case is oriented  
17 and -- and what's in it.

18 How do you keep your file? Do you keep it by  
19 loan number; do you keep it by customer number?

20 A. Customer name, last name.

21 Q. Okay. So, is that an actual physical file?

22 A. Yes, sir, it was a hard copy file at the time.

23 Q. Okay. And so, that would have the Carews'  
24 name on it for this construction loan?

25 A. Correct. It's basically a shadow file. It's

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1 not the actual mortgage file.

2 Q. Okay.

3 A. That is housed in another location. So, what  
4 we had was a -- a draw file. And we refer to it as  
5 the shadow file as well, with nothing but documents  
6 relating to the construction phase of a loan.

7 Q. Okay. Is that file what has been produced in  
8 this case?

9 A. Yes, sir.

10 Q. And you've looked -- have you looked through  
11 these documents to see that that's what's been  
12 produced as you prepared for the deposition?

13 A. Yes.

14 Q. Okay. You say it's a shadow file, not -- not  
15 the actual file. Where -- where is what I would call  
16 the actual file kept?

17 A. Mortgage file -- I'm -- my department is  
18 actually across the street --

19 Q. Okay.

20 A. -- which is also the Mortgage Ops of Rocky  
21 Mount building as well.

22 Q. Okay.

23 A. So, we have a process of closing and  
24 underwriting team there..

25 Q. All right.



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1       A.   And they are in charge of the actual mortgage  
2   files.

3       Q.   Okay.  So, when a mortgage -- mortgage  
4   application comes out of South Carolina, it comes to  
5   here in Rocky Mount?

6       A.   Correct.

7       Q.   All right.  And -- and are ya'll the servicing  
8   center for all of RBC's operations for residential  
9   mortgage loans?

10      A.   For residential construction loans, my  
11   group --

12      Q.   Okay.

13      A.   -- in particular, all residential construction  
14   loans only.

15      Q.   All right.

16      A.   But it's underwritten, closed, processed by  
17   the Rocky Mount Mortgage Ops team.

18      Q.   Okay.

19      A.   And then we don't come into play typically  
20   until the construction loan actually closes.

21      Q.   All right.  And from a construction lending  
22   standpoint, was there any particular personnel that  
23   you dealt with in the Lexington, Columbia regional  
24   area in South Carolina?

25      A.   I did not, because I was not involved in

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1 this -- this file. I know the loan officer has since  
2 left RBC Bank, and then there was another loan  
3 officer --

4 Q. Okay.

5 A. -- mortgage loan officer, that took over. He  
6 is no longer with RBC Bank either as well. I did not  
7 know either one of those gentlemen.

8 Q. Okay. I -- I had a series of questions along  
9 those lines as far as who -- who was responsible for  
10 the construction lending relationship with the  
11 Carews.

12 A. The mortgage loan officer --

13 Q. Okay.

14 A. -- is charged with the responsibility of  
15 maintaining their customer relationship. They have  
16 the local presence that we do not. They know the  
17 customer. We do not.

18 So, our responsibility basically is a  
19 back-office support during the construction phase.

20 Q. Okay. Do you recall who that construction  
21 loan officer was originally that was dealing with the  
22 Carews?

23 A. Just from my review of the file, because,  
24 again, I wasn't working the file at that time, it was  
25 a gentleman by the name of Jamie Barfield.

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1 Q. Okay. And then you said Jamie left and was  
2 replaced by whom?

3 A. Jack Hanrahan. H-a-n-r-a-h-a-n, I believe.

4 Q. Is all of your communications, as it relates  
5 to the Carews' claim, is that contained in these  
6 materials?

7 A. Yes, sir.

8 Q. Okay. Did ya'll make a search of RBC's  
9 computer database when this request was made to gather  
10 all of the information as it related to the Carews'  
11 Complaint?

12 A. Well, what we did, we didn't have a system  
13 that it was all kept on at that point in time. We had  
14 more -- actually more than one system. Excuse me.  
15 But everything -- there was a hard copy of everything.

16 Q. Okay.

17 A. So, the documentation consisted of the  
18 mortgage collateral file, and then the construction  
19 draw file.

20 Q. Okay. I understand there would be hard copies  
21 of everything as it related to the draws and -- and  
22 the request for the money.

23 What I'm looking for is internally within RBC,  
24 did you write emails to the -- the Legal Department  
25 recapping what happened which are not reflected in

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1 this file?

2 A. I had conversations with Legal to --

3 Q. Okay.

4 A. -- you know, just explain the situation.

5 MR. McGEE: And I just note that our privilege  
6 log does identify some of those.

7 MR. FOSMIRE: I realize that.

8 BY MR. FOSMIRE: (RESUMED.)

9 Q. Did you look over the privilege log? Did you  
10 -- do you know what --

11 A. I don't know what a privilege log is.

12 Q. -- I'm referring to?

13 Okay. No problem.

14 Are all of the communications from either Jack  
15 Barfield -- I'm sorry, Jamie Barfield or Jack Hanrahan  
16 regarding the Carews' loan, are those contained in  
17 this file?

18 A. I don't know if they all are, quite honestly,  
19 because I -- I don't recall seeing anything from Jamie  
20 Barfield on this loan.

21 Q. Okay.

22 A. I don't know when he left the bank in  
23 relationship to this particular loan.

24 Q. Okay.

25 A. I have seen in my review of the file, I saw a

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1 few from Jack; very limited, very limited.

2 Q. Other than talking to Joe Carew on the phone,  
3 did you ever talk with Karen Carew?

4 A. No, I did not.

5 Q. All right. Did you ever meet with either one  
6 face-to-face? Did you ever come to South Carolina to  
7 talk with them about the situation?

8 A. No, sir.

9 Q. Okay. All of your communications were either  
10 dealt with by email or by phone?

11 A. Yes, sir.

12 Q. Have you looked at, for any reason, the  
13 Carews' bank relationship with RBC?

14 By that, I mean, other accounts that they have  
15 or other mortgages that they have with RBC.

16 A. I have not looked at them. I requested that  
17 they be pulled --

18 Q. Okay.

19 A. -- for Legal. I provided them to Legal and to  
20 Risk so they could evaluate. And I think that was in  
21 response to a question you had raised.

22 Q. Okay. This -- this was during -- I'm trying  
23 to -- I just want to be careful with this, because I'm  
24 trying to find out what you did. I can't get into  
25 what the privilege communications were with -- with

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1 legal counsel.

2 A. Okay.

3 Q. So, if -- if we're heading in that area, I  
4 know Billy will object --

5 A. Okay.

6 Q. -- but I'm not intentionally trying to get in  
7 that area. I'm just trying to find the scope of the  
8 communication and -- and what was done about the Carew  
9 relationship. Okay?

10 A. Okay.

11 Q. All right. So, as it relates to the Carews,  
12 do you have any specific knowledge of the dollar  
13 volume of their relationship with RBC?

14 A. No, I have no idea.

15 Q. Do you have any knowledge of whether they have  
16 other checking or savings accounts with RBC?

17 A. I was told that they had other relationships,  
18 and I was asked to pull that account information.  
19 Actually, I did not pull it. I had someone on my team  
20 who's experienced on that system, has more access  
21 capabilities to that system --

22 Q. Okay.

23 A. -- to pull it for me and send it directly to  
24 Legal and Risk.

25 Q. All right. Regarding the system, is the

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1 Carews' information in the system all under their  
2 customer number?

3 A. It's under -- actually, you can look it up by  
4 name. You can do a name lookup.

5 Q. Okay.

6 A. They have more than one customer number if  
7 they have more than one banking relationship. Each  
8 one would have a separate number.

9 Q. Okay.

10 A. Sometimes there is one account number. And  
11 perhaps if they had more than one loan relationship,  
12 it will -- both accounts, perhaps, and I don't know  
13 this to be true in their case, but they may have one  
14 customer number and then a Note 101, a Note 102  
15 identifying the individual loan relationships.

16 Q. Okay. In some of the documentation, there's a  
17 customer number that was listed for the Carews of  
18 3135993. And is that the type of number ya'll used in  
19 your computer software as far as managing accounts?

20 A. Yes, sir, that is a number that was assigned  
21 to them.

22 Q. All right. And then if I -- if I -- if we go  
23 across the street and punch up that number, will we  
24 see everything related to the Carews or will we --

25 A. No.

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1 Q. -- see just whatever that account -- that --  
2 whatever account that number is attached to?

3 A. We'll only see that account. Their -- that is  
4 strictly their -- this construction loan on the Edens  
5 Point property.

6 Q. Is there -- as far as your unit managing a  
7 construction loan, do you have written procedures or  
8 protocols relating to the management of those loans,  
9 checklists you follow, procedures you follow?

10 A. At that time the -- the procedures basically  
11 followed the construction loan agreement. I do have  
12 written procedures in place now. I have a policy and  
13 procedure manual --

14 Q. Okay.

15 A. -- that was not in existence at that time.

16 Q. Okay. When you say that the procedure  
17 basically followed the -- the construction loan, was  
18 there a separate checklist that ya'll had posted that  
19 you -- that you dealt with? It sounds like you were  
20 fairly paper-intensive back then.

21 A. We were paper-intensive.

22 Q. Was there a checklist that's not reflected in  
23 these documents that ya'll utilized?

24 A. No. There was just a -- there was no  
25 checklist per se. What there was back in 2008, I know



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1 everything in the file is here. It's just a record of  
2 the disbursements, if you will.

3 Q. Okay.

4 A. And then the close -- the loan closing  
5 documents.

6 Q. What about on the computer system itself, is  
7 there a -- the way the screens are set up, do those  
8 kind of form a checklist of what you have to go  
9 through in order to continue to monitor the  
10 construction loan or make a disbursement?

11 A. Not at this time there was not.

12 Q. Okay. I assume there is now based on your  
13 response?

14 A. Yes.. We're on a different system.

15 Q. Is it -- was it a proprietary system that you  
16 had back at the time?

17 A. Yes.

18 Q. Okay.

19 A. It was actually a commercial loan system, that  
20 number, 3135993, that you referred to --

21 Q. Right.

22 A. -- was the Carews' construction loan number.  
23 And the loan is originated in the field by a mortgage  
24 loan officer, as you know. It's assigned, it's keyed  
25 into the bank's mortgage loan origination system,

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1    which was a different system back in 2008 than we  
2    currently have.

3            So, they were assigned a mortgage loan  
4    number. Their loan is originally housed on a mortgage  
5    loan system.

6        Q.    Okay.

7        A.    When the construction loan closes, it -- the  
8    package, the closed loan package from the construction  
9    loan, is returned to my area, my department. And then  
10   we break down that package. We do a review of that  
11   package in case anything needs to be corrected,  
12   re-recorded, so forth. And then we are charged with  
13   the responsibility at this point in time of doing new  
14   loan set up. And what I mean by that is the loans  
15   actually resided during the construction phase only.

16            Residential construction also resided on the  
17   commercial loan side of the bank. And that's what  
18   that 3135993 is. So, yes, we had direct access to  
19   that system.

20        Q.    Okay. When you said you have to look through  
21   the file to make sure everything is in order, and I  
22   think you mentioned see if anything needed to be  
23   re-recorded or something like that, how do you know  
24   what you're looking for? Is there a checklist that  
25   you have --

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1       A.    There is a checklist for -- with a post-  
2   closing individual. There's a post-closing individual  
3   charged with that responsibility. So, when a CP, a  
4   construction perm, for instance, comes back, he does  
5   have a checklist.

6       Q.    Okay. I may have missed it. I didn't see  
7   anything like that type of checklist in there. Would  
8   that --

9       A.    That is not in here.

10      Q.    Okay. Where would that be?

11      A.    Because that's not in our file. That's not  
12   housed in our file. That would actually be -- that  
13   should be in the actual -- where would that be? It  
14   should be in the mortgage loan file.

15      Q.    Okay.

16      A.    It should be in the mortgage loan file, I  
17   believe.

18      Q.    All right. Did -- did you have any other -- I  
19   see with regard to Exhibit 4 some research on -- on  
20   Hall Builders.

21            Was this loan the first time that RBC had Hall  
22   Builders on a construction project?

23      A.    I cannot answer that question. I don't know.

24      Q.    Okay. How -- how could we find out that  
25   answer? Is there some database that you have where

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1 you can search how many projects Hall Builders was on,  
2 if any other?

3 A. No, we don't have that.

4 Q. Okay.

5 A. We don't have that database any longer. What  
6 we did was we had a list. And at this point in time,  
7 as we put the builders through this process, we would  
8 put their name, if -- if everything was sufficient and  
9 they provided all the necessary information, and we  
10 were able to do our -- our -- perform our due  
11 diligence, if you will, then that builder's name was  
12 kept on a list at the time.

13 We no longer do that. But they were kept on a  
14 list at that time, and then it had to be updated  
15 yearly.

16 Q. Okay.

17 A. He was -- I don't know if he was ever used by  
18 another borrower.

19 Q. All right. But their -- does that list -- is  
20 there a way to find that list?

21 A. It doesn't exist any longer. I don't believe  
22 we can find that list. It's been taken off the  
23 system. I wouldn't even know where to begin. No.  
24 I'm sure it's gone. We no longer maintain a list like  
25 that.

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1 Q. Okay. Was there any point in time at which  
2 you took Hall Builders off the list?

3 A. As soon as Dr. Carew called me.

4 Q. Okay. So, you struck their name off the  
5 list?

6 A. Yes. And there's a note in here. Yes, I  
7 immediately went over to Nadine Mann and said; take  
8 them off the list. We have -- we have an issue.

9 Q. Okay.

10 A. And he was immediately removed.

11 Q. All right. And you're not certain that they  
12 were on the list before the Carews' construction  
13 project?

14 A. Well, I don't have proof of that now because  
15 we don't have the list.

16 Q. Right.

17 A. But he was -- I know from a letter in this  
18 file that he was, in fact, put on the list of builders  
19 at that time.

20 Q. Okay.

21 A. It's an internal builder list.

22 Q. You mentioned a couple of times as we were  
23 identifying Exhibit 4 that it was kind of an  
24 abbreviated -- abbreviated due diligence.

25 Was there an actual checklist that Nadine or

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1 someone else went through in order to compile this  
2 information?

3 A. There is. And it's in there.

4 Q. That's in here?

5 A. It sure is.

6 Q. Okay. Rather than me, would you go through  
7 Exhibit 4 and just show me what that checklist is?

8 A. Sure.

9 (Pause.)

10 A. It's right here.

11 Q. Okay. So, the second page of this -- I'm  
12 sorry, it's actually three pages in from the exhibit  
13 sticker. We have a document entitled at the top "RBC  
14 Centura Bank." And it has Hall Builders, LLC, on  
15 there. And then the next written in -- and it's a  
16 form, right?

17 A. Correct, it's a form.

18 Q. And this is your -- your checklist that you  
19 used?

20 A. Yes, this was the -- the checklist at that  
21 time.

22 Q. And you're trying to find out what about the  
23 builder?

24 A. Well, no draws were given directly to this  
25 builder. Of course, they all went directly to our

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1 borrowers, the Carews.

2 Q. Okay.

3 A. But knowing that the builder's going to be  
4 managing -- ultimately getting, you know, these funds  
5 and managing these funds to pay subs and -- for the  
6 work completed and so forth, we -- the bank thought it  
7 prudent to perform this process and make sure there  
8 were no known complaints or issues against this  
9 particular builder.

10 Q. Okay. And it kind of got my attention at the  
11 bottom. It says, insufficient information is written  
12 there, and then there's a strike-through, all of which  
13 is handwritten. What's that note about?

14 A. Yes. I -- I looked at it myself when I was  
15 reviewing the file, and you'll see further in here,  
16 there are two or three emails, I believe, from Nadine  
17 Mann who was trying to run these checks to -- I  
18 believe it was actually at the time now Jack  
19 Hanrahan. I think Jamie had already left. And she's  
20 asking for additional information. She didn't have  
21 phone numbers of suppliers, fax numbers of suppliers.  
22 So, she couldn't run those checks, if you will,  
23 because she had insufficient information.

24 She also was not given -- at the time they  
25 submitted the package, if you will, on Hall Builders,

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1 she was not given a copy of the license, which is an  
2 integral part of the check.

3 Q. Okay. You have on the form a heading that  
4 says, Required Docs of Builder --

5 A. Uh-huh.

6 Q. -- and then certain things, Copy of GC License  
7 and some other information. Then you have Credit  
8 Reference Information, lists a couple of creditors or  
9 suppliers.

10 A. Right.

11 Q. And it has dates out here. Are those the  
12 dates that it was checked?

13 A. Yes. It looks like she did a second request.

14 Q. Okay.

15 A. She did a -- one request on this one and got a  
16 good response. On this one she sent it twice; had to  
17 do a second request, and then got a good response.

18 And it appears that this one wasn't followed  
19 up on at all. She had no information, I believe, on  
20 that one.

21 Q. Okay. And then there's a section saying  
22 Credit Reports Obtained and you have a -- a -- a line  
23 item there that says FraudGuard?

24 A. Right.

25 Q. What is FraudGuard?



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1       A.   We run a FraudGuard check.  It's a -- it's  
2       there -- it's there as well.  FraudGuard is a system  
3       in which you can put in a -- you can do it -- check an  
4       individual.  You can check an individual, but you can  
5       also check builders.  And you type in the builder's  
6       name.  Sometimes it requires their tax identification  
7       number.  And it comes back and gives you an alert if  
8       there are any alerts.  It basically checks the list,  
9       checks the name against OFAC and runs several  
10      different checks.  And then it comes back with an  
11      alert.  And there's a -- I believe there's a  
12      FraudGuard response in here if --

13      Q.   Can you show that to me?

14      A.   -- I'm not mistaken.  That's a duplication I  
15      just saw.

16           (Pause.)

17      A.   This is the form, as I'm looking --

18      Q.   Okay.

19      A.   -- Hall Builders -- that Hall Builders  
20      supplies to us that initiates this whole process.

21           (Pause.)

22      A.   Okay.  Basically, you go to this website  
23      Fraudguard.com --

24      Q.   Okay.

25      A.   -- to run these checks.

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1 Q. Does -- do you know if FraudGuard reflects  
2 judgments against a builder? Are those picked up?

3 A. Sometimes they are, but it's not a -- it's not  
4 a sure thing. Sometimes they are.

5 Q. Okay.

6 (Pause.)

7 Q. All right. Help me out with the FraudGuard  
8 nomenclature here on Page 2, at least of this  
9 FraudGuard report.

10 A. Uh-huh.

11 Q. There's a -- it looks like it was run a couple  
12 of times. There's a set of screen shots from 2/1/08  
13 and then 2/8/2008?

14 A. Right. And I'm not an expert on this as -- as  
15 well --

16 Q. Okay.

17 A. -- because I wasn't running the FraudGuard  
18 checks, but I notice -- I noticed here the first  
19 alert, if you will, and this is very, very common.  
20 It's just notifying us that he goes by several  
21 different names --

22 Q. Right.

23 A. -- using his middle initial, using his middle  
24 name, and so forth.

25 Here there was an alert and we investigated.

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1 Nadine -- I asked Nadine to check it. She brought  
2 this to me at the time. And she didn't know what this  
3 meant. I did not know what it meant, but it said  
4 there was -- certain information requested was  
5 contained in the National Fraud -- excuse me, Fraud  
6 Protection Database and may warrant further inquiry by  
7 the client.

8 And it's listing several defendants among of  
9 which is Cliff Hall.

10 Q. Right.

11 A. We don't know if that is the -- one in the  
12 same Cliff Hall or not. You'll see they were all  
13 terminated on the same date, so there were apparently  
14 multiple defendants here in a case; gives the docket  
15 number. And it was a copyright infringement case that  
16 had been dismissed.

17 Q. Okay. And then there's an alert legend with a  
18 bunch of X marks in it. Is that -- what is that?  
19 Here's the -- the builder and these -- these same ones  
20 are checked every time. So, this really here tells us  
21 nothing?

22 A. You can -- you can run a -- a FraudGuard on  
23 these different entities --

24 Q. Okay.

25 A. -- you'll see, and Builder Company is the one

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1 that we run the alert. And it's just saying -- the  
2 checklist is just saying these are the things that  
3 FraudGuard runs. It runs an OFAC. It will run  
4 against the name of the license and such.

5 Q. Okay. The checkmark, looking at Page 2 of the  
6 2 -- 2/8/2008 document where it says, Alert Legend,  
7 the X mark under Builder does not mean there's Fraud  
8 Disc --

9 A. No, sir --

10 Q. -- Disciplinary --

11 A. -- it doesn't.

12 Q. It just means --

13 A. Yes, sir.

14 Q. Sorry. We'll try and talk one at a time.

15 A. I'm sorry.

16 Q. That's my fault. Okay. For the Court  
17 Reporter, we have -- we have to make sure she gets  
18 every question and every answer.

19 So, the Fraud Disciplinary Action means that  
20 that's the category checked?

21 A. Yes, sir.

22 Q. It doesn't mean there was a positive response?

23 A. Correct.

24 Q. Okay.

25 A. That's a duplication there.

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1 Q. Well, it has a different date on it.

2 A. Does it have a -- yeah.

3 Q. This is 2/1/2008.

4 A. Oh, okay.

5 Q. There are two documents from FraudGuard dated  
6 2/1/2008, and then two documents dated 2 -- 2/8/2008.  
7 Actually three from 2/1/2008.

8 (Pause.)

9 Q. And you mentioned checking OFAC. Can you tell  
10 me for the record what that is.

11 A. Oh, we don't check OFAC. Fraud -- Fraud  
12 does.

13 Q. Okay.

14 A. FraudGuard does. OFAC is the government  
15 issued terrorist list.

16 Q. Okay.

17 A. I'm sorry. I don't know what the acro --  
18 acronym is --

19 Q. Okay.

20 A. -- offhand. Office of Foreign Assets -- of  
21 Foreign Assets Control. Something like that.

22 Q. Gotcha. And this research that's reflected in  
23 Exhibit 4, is that basically performed by Nadine Mann  
24 pursuant to the -- the checklist or categories of  
25 things you tell her to check on?

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1           A.    It was.

2           Q.    Okay.  And if there are any questions that  
3   were raised, she would bring them to you --

4           A.    Yes, sir.

5           Q.    -- for follow-up?

6           A.    Correct.

7           Q.    And at the time, in hindsight, I'm virtually  
8   certain there were judgments already existing against  
9   Hall or Hall Builders in 2008 when this was done.

10           If that -- assume that was true, if that was  
11   the case, do you have any explanation why those  
12   weren't caught.

13           MR. McGEE:  Object to the form; calls for  
14   speculation; assumes facts.

15           THE WITNESS:  No, I wouldn't know.

16           BY MR. FOSMIRE:  (RESUMED.)

17           Q.    Okay.

18           A.    This is definitely not an all-inconclusive  
19   process.

20           Q.    Understood.

21           Was Cliff Hall specifically asked in this  
22   process of whether he had any judgments against him?

23           A.    No, sir.

24           Q.    There's a document in Exhibit 4, I believe  
25   it's 12 pages deep into the -- into the exhibit, that

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1 lists his Beacon Score, and it also has a handwritten  
2 note on there that says, Remove From List. Take File  
3 From Approved Cabinet.

4 Is that when the trouble arose?

5 A. That's when the trouble arose, yes.

6 Q. Okay. You wrote that on there and he was  
7 removed?

8 A. Nadine wrote it. I had her pull that file.

9 Q. All right. So -- so, this was his prior  
10 credit check, which was then scribbled on when it was  
11 determined that he was to be removed --

12 A. I don't know. May I --

13 Q. -- correct?

14 A. May I see that? I don't -- let's see.

15 I don't know when that was run. I don't see a  
16 date on it. So, I don't know when that -- that was  
17 run. It looks like it just covers '07.

18 So, I don't know. I'm not sure when that was  
19 run.

20 Q. Other -- other than running that history, is  
21 there -- was there some limit at which a builder would  
22 not be accepted if they had a -- an unacceptable  
23 Beacon Score?

24 A. Typically, we didn't check a Beacon Score as a  
25 matter of routine.

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1 Q. Okay.

2 A. And that's why I'm wondering if perhaps that  
3 was checked when we knew he was in trouble to see  
4 if -- if, you know, if we could find anything against  
5 him, is my thought, because, as a matter of routine,  
6 we did not check a builder's personal credit at all.

7 Q. And this document with the handwriting on it,  
8 Remove From List, Take File From Approved Cabinet, we  
9 know when the handwriting was put on there but we  
10 don't know what -- where -- when the underlying  
11 document was generated, when it was generated?

12 A. That's correct. That's correct. My thought  
13 is that it was February '09, but I cannot confirm  
14 that.

15 Q. Okay.

16 (Pause.)

17 Q. Did you ever speak with Cliff Hall once you  
18 became involved in this file?

19 A. I don't believe I did, no. No, I did not.

20 Q. Do you know if anyone in your unit spoke with  
21 Cliff Hall once you became involved in the file?

22 A. No, not -- once I became involved, I was  
23 pretty much the sole contact at that point.

24 Q. Okay. Based on what Joe Carew told you, what  
25 did you understand was going on?



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1       A.   He told me that the roof -- the Perm Roof was  
2   not on the house; that there were roofing materials  
3   sitting in his driveway that he was assured by the  
4   superintendent, the job superintendent, would be put  
5   on the house but they had not been. And he was very  
6   concerned. And then he told me his builder had  
7   contacted him and advised him that he was in financial  
8   trouble.

9       At that point we didn't know anything  
10   additional. We didn't know the extent of it.

11    Q.   Okay. When did you know that Cliff Hall was  
12   actually, and Hall Builders -- if I use Cliff Hall or  
13   Hall Builders, I'm using them interchangeably.

14    A.   Okay.

15    Q.   Okay. When did you understand that Hall  
16   Builders was actually abandoning the job?

17    A.   I don't recall the date. I would have to look  
18   in, you know, the documentation here, but I know it  
19   was in the month of February '09.

20    Q.   Okay.

21    A.   He called back, I think -- I --

22    Q.   He, meaning who?

23    A.   Dr. Carew. I'm thinking did he call back, or  
24   there may be an email in the file actually where he  
25   alerted us that the project had been abandoned.

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1 Q. Okay. All right.

2 And then once you learned that the project was  
3 abandoned by the builder, what did you do?

4 A. Contacted Legal, once again.

5 Q. Okay.

6 A. And Dr. Carew instructed us not to release any  
7 additional funds at all.

8 Q. For Hall Builders?

9 A. Correct. He -- he just said no more draws, no  
10 more draws. I mean, he, understandably was very  
11 upset.

12 Q. Okay.

13 A. And we said we certainly will not release any  
14 more funds.

15 Q. At that time, when you understood that Hall  
16 Builders was -- had essentially abandoned the job,  
17 and would you -- am I using the right term? How would  
18 you use the -- what would you say that Hall Builders  
19 did?

20 A. I would use that same terminology, I  
21 believe --

22 Q. Okay.

23 A. -- that Dr. Carew did.

24 Q. Basically they just walked away?

25 A. They walked away, as I understood.

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1 Q. All right. Were you ever contacted by any of  
2 Hall Builders' subs --

3 A. No.

4 Q. -- about payment?

5 A. I was not.

6 Q. You never --

7 A. No, sir.

8 Q. Okay. So, you never spoke with any subs?

9 A. No, I didn't.

10 Q. All right. Did you learn that subs had not  
11 been paid on the project?

12 A. I was told that by Dr. Carew that subs had not  
13 been paid.

14 Q. All right.

15 A. And that we had lien filings as well, and  
16 they -- we were copied on those.

17 Q. All right. At the time, once you learned that  
18 Hall Builders had abandoned the job, did you speak  
19 with Teresa Addy-Haltiwanger about her role?

20 A. I did. I called her and asked if she could go  
21 by the property again, and, you know, and she asked  
22 what was going on. And I said, I just got a call  
23 from -- from our borrower, very, very upset, you know,  
24 and the Perm Roof is not on. He's telling me the Perm  
25 Roof is not on.

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1           And she said that she also -- she understood  
2   him being upset because she said upon her last  
3   inspection, she also saw the roofing materials sitting  
4   in the driveway; asked the job superintendent, and he  
5   told her that -- she said why isn't -- why isn't the  
6   Perm Roof on? And he told her, according to her in  
7   this phone conversation, that some materials were  
8   still on backorder and that they were due in any day.  
9   And he assured her that the Perm Roof was going on  
10   within the next day or two.

11       Q.   Okay. Was the roof -- do you know if the roof  
12   status was ever communicated to RBC --

13       A.   It was not.

14       Q.   -- prior -- prior to Hall Builders walking off  
15   the job?

16       A.   No, sir.

17       Q.   Okay. So, the first time the roof status came  
18   to your attention was in a communication you had  
19   directly with Teresa Addy-Haltiwanger after you  
20   realized there was a problem?

21       A.   No, it was with -- from Dr. Carew himself who  
22   told me there was a roof issue.

23       Q.   Okay. All right. Tell me about Teresa  
24   Addy-Haltiwanger or Appraisal Team of Mid-Carolina's  
25   role. What role did they serve for RBC in this case?

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1 A. She provided the original appraisal --

2 Q. Okay.

3 A. -- for this particular property. I'm not  
4 involved in -- in -- in the selection of appraisers at  
5 all. That all happens in the mortgage ops world prior  
6 to when the loan file comes to me. But I can tell you  
7 that process that was in place at the time, if you'd  
8 like.

9 Q. Well, that's what I'm going to get to, is how  
10 were -- was she an approved appraiser; was she on an  
11 approved list with ya'll?

12 A. Yes, she was.

13 Q. Okay. And how do you get on the approved list  
14 with RBC?

15 A. She was required to submit certain  
16 documentation to an individual that managed that  
17 process at the time in our Mortgage Ops team. That  
18 information contained things such as copy of her  
19 license, her resume, and two to three completed  
20 appraisals. And then they were reviewed by our lead  
21 underwriting team.

22 Q. And then if they believed the appraisals and  
23 information submitted was competent, that appraiser  
24 would be put on an approved list?

25 A. Yes. And then the -- there was a board

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1 check -- a check with the appraisal board as well that  
2 this RBC employee checked, to make sure that the  
3 appraiser was in good standing.

4 Q. Okay.

5 A. And they also have daily notifications from  
6 the board, and that still exists today where this  
7 individual still checks the daily notifications to see  
8 if there are any alerts or complaints about a  
9 particular appraiser.

10 Q. See if someone's been suspended or --

11 A. Correct.

12 Q. Okay. If I wanted to get that file on  
13 Appraisal Team of Mid-Carolina or Teresa  
14 Addy-Haltiwanger, what would I ask for?

15 A. The approved appraiser file.

16 Q. Okay.

17 A. And Mid-Carolina.

18 Q. Does it still exist?

19 A. Yes, it does.

20 Q. All right. Is Mid-Carolina still an approved  
21 appraiser for RBC?

22 A. I don't know the answer to that question.

23 Q. All right.

24 A. Our process is -- has changed. We use vendors  
25 now. I don't know if they're approved under that

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1 system.

2 Q. All right. Back at the time, do you know --  
3 or are you aware of any other construction,  
4 residential construction loans on which Teresa  
5 Addy-Haltiwanger was the appraiser?

6 A. No, I'm not aware.

7 Q. How does the appraiser go from being the  
8 original appraiser for the construction loan before  
9 it's let to becoming the -- the monitor during the  
10 construction process? How does that work?

11 A. That is not always the case. Very often it  
12 is, but not always the case.

13 We have two documentation -- two documents, if  
14 you will, two one-page documents, that a mortgage loan  
15 officer, when he originates a residential construction  
16 loan, is required to send to my group. And these two  
17 documents, the completion and the receipt, in my  
18 world, of those two documents is our alert that there  
19 is a new residential construction loan in the pipe.

20 And on one of those forms, referred to as --  
21 and I believe you have a copy of it, referred to as  
22 the construction loan information sheet. It's a --  
23 it's a list of different -- various contacts in the  
24 file; borrower contact, mortgage loan officer contact,  
25 settlement agent contact.

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1           There's also a -- a section where the loan  
2 officer can tell us who the inspector is, if there's a  
3 local inspector. At one time there was a list. We  
4 were new to South Carolina around this time, very new,  
5 relatively, RBC's presence in South Carolina, if you  
6 will. So, we did not have a list of inspectors in  
7 that area as well because we were just moving into  
8 that area.

9           So, the loan officer had an opportunity on  
10 that sheet to name an inspector in that area. And  
11 either they were an appraiser or a licensed general  
12 contractor. And if they left that blank, if they  
13 didn't know an inspector in the -- in the area, and  
14 sometimes they did not, then we -- our first course of  
15 action would be to contact the original appraiser to  
16 see if they would do part of the inspection. Many  
17 would not at the time. Economy was good and they  
18 didn't want to bother doing property inspection, but  
19 many of them did.

20           And so, contact was made with Ms.  
21 Haltiwanger. I'm not sure I'm pronouncing her name  
22 correctly. And asked if she would perform these  
23 inspections and she agreed to perform them.

24           Q. Where is that documentation? So, it came in  
25 originally without an inspector identified?



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1 A. Correct.

2 Q. And then she was contacted and agreed to serve  
3 as the inspector?

4 A. By phone, correct.

5 Q. And who contacted her?

6 A. Gale Chaffin. One of the construction loan  
7 coordinators.

8 Q. Gale is actually in your unit?

9 A. She is. She's still here.  
10 Gale Chaffin.

11 Q. All right. What is the criteria for  
12 inspector? You said they're either an appraiser or a  
13 licensed general contractor?

14 A. Right.

15 Q. Do you have an approval process for inspectors  
16 also?

17 A. There used to be, but, again, it was -- back  
18 at that time our group never made the approval. That  
19 was not part of what my group did. It was a Mortgage  
20 Ops team that managed that process. That team has  
21 since been dissolved and no maintenance of an approved  
22 inspector list at all. But we had Legacy Bank that  
23 RBC had acquired, I believe, throughout South Carolina  
24 as well.

25 So, if there was a Legacy Bank that had an

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1 established relationship, knew of qualified inspectors  
2 in the area, they would get their resume, basically  
3 review their resume, their work history, references,  
4 and they would ask us if we would accept that  
5 inspector as well, and they would, you know, copy us  
6 on the resume, and so forth and so on. That wasn't  
7 required in this case.

8 Q.. All right. The inspector, is that -- is that  
9 what you call that person's role, the inspector or --

10 A. Yes, sir.

11 Q. -- construction monitor?

12 A. We refer to them as inspector.

13 Q. Okay. And the inspector is working for whom?

14 A. It's an independent. They're not -- I mean,  
15 we employ them as our vendor. It's a vendor  
16 relationship. It's an arm's-length transaction. We  
17 have no relationship with them other than a vendor.

18 Q. But they're paid out of the construction loan  
19 proceeds?

20 A. No, they're actually paid by the customer.  
21 So, Dr. Carew paid for the inspections. When he  
22 closed on the construction loan, there's an estimate  
23 made, on the good faith estimate, of how many  
24 inspections might be needed during the course of  
25 construction. And so, they pay. The customers have

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1 to pay up front. And then, at the end of the day, if  
2 there are more construction inspections than  
3 originally collected for, there's a shortage, and they  
4 will have to pay to cover that.

5 So, their funds that were collected at the  
6 closing are put into an account to pay for the  
7 inspection fees. And then when the inspector sends us  
8 the inspect -- the inspection reports and the  
9 invoices, we take the invoice and we pay it directly  
10 from that same account.

11 Q. Okay. That account is the account that's  
12 funded with the construction loan?

13 A. No.

14 Q. It's not?

15 A. No, it's a separate -- a separate account.  
16 It's part of --

17 Q. It's a separate type of escrow?

18 A. Yes.

19 Q. Ya'll hold it out separately?

20 A. It's a mortgage finance account. It's a whole  
21 different --

22 Q. Okay. Fair enough.

23 A. -- account, yes.

24 Q. All right. RBC is relying on the inspector  
25 for the information at the site; is that correct?

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1 A. That's correct; to monitor the progress of  
2 construction.

3 Q. Okay. And based on what the inspector tells  
4 you, you either disburse or don't disburse for a  
5 particular draw?

6 A. That's correct.

7 Q. All right. Does RBC have any of its own  
8 inspectors that are employees?

9 A. No, sir, not allowed to do that.

10 Q. Okay. And you have no -- no RBC employees  
11 that serve as construction monitors?

12 A. No.

13 Q. All right. The folks that you send out to the  
14 site, you -- you hold out, are vendors independently  
15 retained?

16 A. That is correct, yes, sir. A lot of times  
17 it's better to have the appraiser with -- in our  
18 opinion, we believed it was better to have the  
19 appraiser, when they were able to do them, willing to  
20 do them, because the appraiser had the original plans  
21 and specs.

22 Q. Okay.

23 A. And so, instead of going with a checklist, in  
24 other words, if they were going through a house to  
25 tell you what was complete, an appraiser, unlike

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1 perhaps a, you know, a -- an independent inspector  
2 unfamiliar with the property, an appraiser would go  
3 through the house and say, well, the cabinets are in  
4 but those are oak cabinets and I see they were  
5 supposed to be cherry cabinets, that sort of thing.  
6 You know, they'd know greater detail having those  
7 original plans and specs.

8 Q. Because they -- they know the project?

9 A. Right.

10 Q. Or supposed to?

11 A. Right.

12 Q. All right. Do you know how long Appraisal  
13 Team of Mid-Carolina had been an approved appraiser  
14 with RBC?

15 A. No, sir, I don't.

16 Q. Did you do any research on Appraisal Team of  
17 Mid-Carolina relating to this lawsuit?

18 A. I did not. We asked if there was a -- a --  
19 correct myself. We asked if there was a file. I  
20 asked this -- this woman who was in charge of the --  
21 the approved appraiser process at that time, and --  
22 and she still does have a file, and was able to tell  
23 me that she was an approved appraiser in 2008, and she  
24 does have a file on her.

25 Q. I've seen Gale Chaffin's information in the

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1 material a good bit. But you were telling me that if  
2 a draw request was made, it could be picked up by  
3 anybody, any of the four people within your unit; is  
4 that correct?

5 A. That's correct. Well, at the time, Nadine did  
6 not do any construction draws. So, there would have  
7 been three construction loan coordinators at that  
8 time. The only two that I saw that worked the draws  
9 in -- in this case, were Anderson Griffin, who is  
10 still with us, and Gale Chaffin.

11 Q. Okay. And I meant to say Gale, if I said  
12 Nadine. So, it was Gale or Anderson?

13 A. It was Gale or Anderson, yes, sir.

14 Q. All right. All right.

15 MR. FOSMIRE: Do you want to take a break?  
16 I'm about to start into the -- the documents. It  
17 might be a good time to take a break.

18 THE WITNESS: Sure. I'll take a quick break  
19 then.

20 MR. FOSMIRE: Okay.

21 (Whereupon, at 10:15 a.m., a recess was taken  
22 until 10:24 a.m..)

23 FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFFS

24 BY MR. FOSMIRE: (RESUMED.)

25 Q. Okay. Ms. Patterson, we're back on the record

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1 and you're still under oath.

2 I've presented to you Exhibit 2, which are  
3 roughly 600 Bates numbered documents. And when I  
4 refer to Bates number, I'm talking about the RBC  
5 number at the bottom right of each page. Okay?

6 A. Okay.

7 Q. Right before we went on the record, I asked  
8 you for a parti -- to identify a particular form and  
9 we're now at RBC 293.

10 This is the Construction To Perm Critical  
11 Closing Form; is that correct?

12 A. Yes, sir.

13 Q. All right. And is this a form that comes to  
14 you from the construction origination office?

15 A. Yes. It comes from the mortgage loan officer  
16 directly to my department.

17 Q. All right. And RBC 294, the Construction Loan  
18 Information Sheet, does that come from the originator,  
19 too?

20 A. Yes. Typically these two forms come at the  
21 same time.

22 Q. All right. All right. On RBC 294, the  
23 Construction Loan Information Sheet, the top left of  
24 that sheet, in the form it has MLO Name. That's Jamie  
25 Barfield. Is that the mortgage loan originator?

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1 A. Mortgage loan officer.

2 Q. Officer?

3 A. Yes.

4 Q. Okay. It gives the borrower's information,  
5 correct?

6 A.. Correct.

7 Q. And then the location of the property?

8 A. Right.

9 Q. And then the -- it says, Commercial Loan  
10 System Maturity Date, 8/20/2009, and below that it  
11 says Need 18 months?

12 A. Correct. This is an 18-month construction  
13 term.

14 Q. All right. And then you've got the Borrower  
15 Contact Information, and then below that it has  
16 Inspector Information.

17 And there's no one listed in the inspector  
18 information?

19 A. Correct.

20 Q. All right. So, when this form came in, is  
21 that when someone from your office followed up with  
22 the appraiser to get --

23 A. Not when the form first comes in.

24 Q. Okay.

25 A. When the first draw request comes in, the very



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1 first thing we do is go pull our shadow file.

2 Q. Okay.

3 A. And say, okay, we need to order an  
4 inspection. Who do we order from?

5 And, basically, at that point the only thing  
6 we have in the file are these two documents and then a  
7 copy of the closed construction loan package.

8 Q. Okay. And a draw request --

9 A. And a draw request.

10 Q. -- that just came in?

11 A. Correct.

12 Q. So, that first draw request comes in, ya'll go  
13 pull this file and see that there's no inspector?

14 A. Right.

15 Q. So, is the default method to go to the  
16 appraiser that serv -- that performed the original  
17 appraisal to see if they're available to do it?

18 A. Yes, sir, it is.

19 Q. Okay. And that's what happened in this case,  
20 there wasn't any other special relationship with  
21 Teresa Addy-Haltiwanger or Appraisal Team of  
22 Mid-Carolina?

23 A. That's correct, we didn't know her.

24 Q. They became the construction inspector because  
25 of the fact that they performed the original

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1 appraisal?

2 A. That is correct.

3 Q. All right. And then it has the Builder  
4 Information, and it says, at that time Builder  
5 Approved, and at that time it was checkmarked "No,"  
6 and it says, "Waiting" for approval?

7 A. Right. Correct. It was still in process.

8 Q. In process, is that the process in Exhibit 4?

9 A. Yes, sir.

10 Q. Okay. So, when we're talking about the  
11 Builder Information, Builder Approved, Exhibit 4  
12 represents the approval process?

13 A. That is correct.

14 Q. All right. And I may have asked this to you a  
15 different way, but it -- there -- there are no  
16 other -- are there any lawsuits involving RBC and  
17 Cliff Hall?

18 A. No, not to my knowledge.

19 Q. Okay.

20 A. Not to my knowledge.

21 Q. In your unit, are you aware of any other  
22 lawsuits in which RBC is alleged to have failed to  
23 properly monitor the construction of a house?

24 A. No, not to my knowledge.

25 Q. This is the only one?

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1 A. Yes.

2 Q. Okay. If you'd go back to the beginning of  
3 these documents.

4 If you would go to RBC 14. This is jumping  
5 ahead in the process a bit.

6 This is Construction Form - Inspection, I  
7 believe, Number 10.

8 Do you see that?

9 A. I do.

10 Q. All right. And is -- is this your -- your  
11 form, RBC Centura's form?

12 A. Yes, it is a blanket -- a boilerplate  
13 inspection form, if you will.

14 Q. Okay. You send this or email this to the  
15 inspector?

16 A. Correct.

17 Q. And based on their experience, they know how  
18 to fill out the form?

19 A. That's correct.

20 MR. McGEE: What number is that, Eric?

21 Sorry.

22 MR. FOSMIRE: I'm sorry. RBC 14.

23 BY MR. FOSMIRE: (RESUMED.)

24 Q. As we look at RBC 14, just talking about the  
25 form in general, down the left-hand side of the form

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1 are different phases of construction; is that correct?

2 A. That is correct.

3 Q. All right. And those phases of construction  
4 generally follow how the house is built; is that fair  
5 to say?

6 MR. McGEE: Objection to the form and  
7 foundation.

8 THE WITNESS: For the -- for the most part.

9 BY MR. FOSMIRE: (RESUMED.)

10 Q. I mean, it starts with clearing the lot?

11 A. Uh-huh.

12 Q. Correct?

13 A. Correct.

14 Q. And then it -- then goes to footings and  
15 foundation, slab completion, correct?

16 A. Correct.

17 Q. And then there's a whole list of items that  
18 are in there, and then it ends with final cleanup?

19 A. That's correct.

20 Q. All right. Who determined what the order was  
21 of those items on the list?

22 A. I don't know. That never came from -- from my  
23 group. Those templates were in place before my  
24 employment began with this group.

25 Q. Okay. So, this is the form that RBC accepts

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1 and uses and utilized at the time; is that correct?

2 A. That's correct.

3 Q. Do you still use this form for construction  
4 loans?

5 A. Yes, we do.

6 Q. So, today the form that you send out to  
7 inspectors basically looks the same as this?

8 A. That's correct.

9 Q. All right. Let's go to RBC 119.

10 A. 119?

11 Q. Yes, ma'am.

12 Is yours in color? Does that -- is that in  
13 red? Yeah.

14 A. It does appear to be, yes.

15 Q. All right. RBC 119 is, at the very top of the  
16 page, it shows Anderson Griffin as the person who  
17 printed off this email.

18 Do you agree with that?

19 A. Yes, I do.

20 Q. What do we have here on RBC 119?

21 A. It looks like we have an email, one of two, it  
22 looks like email that begins with Dr. Carew contacting  
23 Jack Hanrahan, Terry Kirven, and I don't know who that  
24 is, Brittney Martin, I don't know who that is, to  
25 those three parties, dated February 10th at 9:07 A.M.,

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1 regarding his construction loan.

2 And his email is directing saying stop all  
3 payments immediately to Hall Builders or anyone  
4 associated with Cliff Hall.

5 Q. Okay. That's the text of the email on  
6 February 10th at 9:07 A.M..

7 Who put all the handwriting on here; is that  
8 your handwriting?

9 A. No, sir, it's Anderson Griffin.

10 Q. Okay. In red on this page it says, Thinks  
11 builder's belly-up. Is that Anderson?

12 A. That's Anderson's professional note, yes.

13 Q. All right. And then below that it has, Subs  
14 calling, no payments received, liens, question mark,  
15 question marks, order title update.

16 Is that again all Anderson Griffin?

17 A. Yes.

18 Q. All right. Did Anderson bring this to your  
19 attention at that point?

20 A. She called Jack first, and that's when she  
21 started making those notes. She said, Jack, what's  
22 going on?

23 And you can see up above Jack saying to  
24 Anderson, you know, I received this email from  
25 Dr. Carew. I will call you shortly.

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1 Q. Okay.

2 A. They did have a conversation and then he  
3 alerted her to the fact that per Dr. Carew subs were  
4 calling saying they hadn't been paid. Liens may be  
5 filed, you know, what should we do? Should we order a  
6 title update, and then, yes, she brought it to me.

7 Q. Okay. And then I assume either that morning  
8 or that day you had a conversation with Dr. Carew?

9 A. Correct.

10 Q. Okay. Did he call you or did you call him; do  
11 you recall?

12 A. He contacted me.

13 Q. Okay. Asking to go to whoever supervised the  
14 unit?

15 A. Yes.

16 Q. And then you told me about that conversation  
17 earlier --

18 A. Yes.

19 Q. -- correct?

20 All right. At that time did he tell you about  
21 any damages that the house was sustaining to the  
22 interior of the home?

23 A. No. At that time I don't believe there was  
24 any damage at that time, if I recall correctly. I  
25 think the -- the roof had not yet been put on when he

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1 called. The roofing materials were still sitting in  
2 the driveway.

3 Q. Okay. And this -- this communication occurred  
4 February 10th of 2009 --

5 A. Yes.

6 Q. -- correct?

7 A. Yes.

8 Q. All right. As I understand it, the -- the  
9 next closest draw request before February 10th of  
10 2009, occurred around February 2nd of 2009.

11 Do you have a recollection of that?

12 A. I don't have a recollection because I didn't  
13 do any of those draws at that time --

14 Q. Okay.

15 A. -- that I can look here.

16 Q. Do you have a printout of the draw request  
17 in -- in sequence?

18 A. Yes, I do.

19 Q. Okay. Can you identify that for me in the  
20 documents? I might can help you with that, but --

21 A. Because they're going to be interspersed, I  
22 think.

23 Q. They are interspersed --

24 A. Throughout here.

25 MR. MCGEE: I'm sorry. This is the -- just



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1 the way that I got them and I --

2 MR. FOSMIRE: No problem.

3 THE WITNESS: That's okay.

4 I was just trying to get a feel for the dates  
5 here.

6 BY MR. FOSMIRE: (RESUMED.)

7 Q. You may want to go to the very end.

8 A. Thank you for saving me the trouble.

9 Q. That's okay. 620.

10 A. 620? Oh, it really is down to the bottom.

11 Okay.

12 Q. Is that the history we're talking about? Does  
13 that show you --

14 A. Oh, is that what you were looking for?

15 Q. Well, you -- you tell me what that is.

16 A. Oh, okay. I was looking for individual draw  
17 requests, the actual -- there is a form called Builder  
18 Request For Draw Form that Cliff Hall would submit  
19 each time he was requesting a draw. That's what I was  
20 looking for, the very first one.

21 Q. I gotcha. What I'm looking for is -- is do  
22 you have a -- a summary of those draws or a table that  
23 shows when those draws were made?

24 A. This would be it.

25 Q. Okay.

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1       A.    This is a note history of his comm -- of his  
2   commercial loan.

3       Q.    Okay.  And I think it actually starts at RBC  
4   619.  Back up one.

5       A.    Okay.

6       Q.    Is that --

7       A.    Yes.

8       Q.    Does that give us the summary of the  
9   information?

10      A.    It does, yes, sir.

11      Q.    Okay.  Based on this information, prior to the  
12   February 10 call from -- or notice from the Carews to  
13   stop all payments, when was the last draw paid to Hall  
14   Builders?

15      A.    It looks like there was an advance made on  
16   February 2nd, RBC Page 620.  These are in  
17   chronological order, of course, and down at the bottom  
18   of that page, February 2nd, '09, there was an advance  
19   made of \$86,700.  I believe that one predated  
20   Dr. Carew's call to us.

21      Q.    So, that 86,7 was the last advance that was  
22   paid to Hall Builders, correct?

23      A.    That's correct.

24           MR. MCGEE:  Eric, what number is this again?

25           MR. FOSMIRE:  620.

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1 BY MR. FOSMIRE: (RESUMED.)

2 Q. So, that's February 2 of 2009?

3 A. Yes.

4 Q. And then the call from the Carews, Joe Carew,  
5 or the notice from Joe Carew, comes February 10th,  
6 eight days later?

7 A. Yes.

8 Q. All right. I'm going to have you flipping  
9 around a little bit.

10 A. It's okay.

11 MR. MCGEE: I'm sorry. What -- 6 -- I was  
12 looking at a different document. On 620 you're asking  
13 about which line?

14 MR. FOSMIRE: Right towards the bottom,  
15 2/2/09, two lines up from the bottom.

16 MR. MCGEE: Okay.

17 MR. FOSMIRE: An advance of 86,7.

18 (Discussion off the record.)

19 BY MR. FOSMIRE: (RESUMED.)

20 Q. Okay. RBC 105, please. All right. Looking  
21 at RBC 105, that is a document that it looks like the  
22 last completed column is the ninth inspection on 2/2,  
23 which I will tell you is 2/2 of 2009.

24 A. All right.

25 Q. Okay. And below column -- the ninth

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1 inspection column of 2/2/2009, there are initials TAH,  
2 which I assume is Teresa Addy-Haltiwanger.

3 A. Yes.

4 Q. And then it has percentage complete --  
5 completion percentages down that column of the  
6 particular line items.

7 Do you see that?

8 A. I do.

9 Q. All right. So, on that line for 2/2 of 2009,  
10 the first completed percentage on that column is -- it  
11 says, 5 percent is complete, and that's of the Stucco  
12 siding, correct?

13 A. Correct.

14 Q. But that 5 percent is a total of 7 percent for  
15 that item, right?

16 A. That is correct, yes, sir.

17 Q. All right. So, for the record, say a jury or  
18 a judge is looking at our transcript, we're not saying  
19 on this form that 5 percent of the siding is  
20 completed, correct?

21 A. That's correct. We're saying a total of 7 is  
22 now completed --.

23 Q. Okay.

24 A. -- with a 5 percent at this date of  
25 inspection.

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1 Q. Okay. And 7 percent Stucco is the percentage  
2 assigned on the form for the entire house, correct?

3 A. That is correct.

4 Q. So, if that line item of 5 percent actually  
5 said 7 percent, it means all of the Stucco or siding  
6 would be on the house?

7 A. Yes.

8 Q. Okay. And then we come down, coming straight  
9 down the column, the next item that we have says 4  
10 percent interior trim and doors, and the total there  
11 is 4 percent, correct?

12 A. Uh-huh. Yes, sir.

13 Q. So, all of the interior trim and doors is  
14 done, correct?

15 A. According to this, yes, sir.

16 Q. All right. And then you keep coming down and  
17 it says, the next item filled in by Ms. Haltiwanger,  
18 it says -- is the line item cabinets and vanities --  
19 vanities, which is 1 percent that she's filled in on  
20 the form. And for the total for the house, that line  
21 item would be 3 percent, correct?

22 A. Yes, sir.

23 Q. So, basically a third of the cabinets and  
24 vanities are in?

25 A. That's correct.

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1 Q. All right. And then you keep coming down and  
2 it says the finished flooring complete, and she has 1  
3 percent there.

4 Do you see that?

5 A. I do.

6 Q. All right. And the total flooring line item  
7 for the house would be 4 percent, and with 1 of the 4  
8 completed, that would be 25 percent of the flooring is  
9 in?

10 A. Correct.

11 Q. Do you see that?

12 A. I do.

13 Q. And then for the inspection, she then totals  
14 the numbers above and she comes up with 11 percent  
15 total for this draw, correct?

16 A. Yes, sir.

17 Q. Which means that the house is now 11 percent  
18 more complete?

19 A. Correct.

20 Q. Correct?

21 A. Correct.

22 Q. All right. Now, if we back up from that 11  
23 percent and we add all of the preceding percentages  
24 before that, that should tell us roughly how much of  
25 the house is complete at that point, correct?

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1 A. Correct.

2 Q. Correct?

3 A. Yes.

4 Q. So, if we take the figure 17 percent, coming  
5 all the way from the left-hand side coming to the  
6 right --

7 A. Uh-huh.

8 Q. -- we would add 17 percent, 8 percent, 7  
9 percent for the third inspection, 5 percent for the  
10 fourth inspection, another 5 percent for the fifth  
11 inspection, 3 percent for the sixth inspection, 3  
12 percent for the seventh inspection, 6 percent for the  
13 eighth inspection, and then 11 percent for the ninth  
14 inspection, correct?

15 A. Right.

16 Q. All right. Now, on RBC 332 --

17 A. Okay.

18 Q. For this --

19 A. A very difficult copy to read.

20 Q. It is a difficult copy, and I may have a  
21 better one. Hang on one second.

22 (Pause.)

23 Q. I may not, but, okay. RBC 332 is the eighth  
24 inspection, which, obviously, is the one that  
25 pre-dates the 2/2 inspection. It looks like this one

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1 was on 12/18, which would have been 12/18 of 2008.

2 And the total percentage on that draw at the  
3 bottom, according to Ms. Addy-Haltiwanger, is 6  
4 percent.

5 A. Correct.

6 Q. Do you see that?

7 A. I do.

8 Q. And then it says, I gave -- in the handwriting  
9 on that form it says, I gave 2 percent on  
10 miscellaneous cleanup and funded \$14,450.00,  
11 12/19/08. And it gives the initials BGC, which I  
12 understand is B. Gale Chaffin?

13 A. Correct. Yes.

14 Q. All right. Why would Gale have given an  
15 additional 2 percent to hand over another 14,450?

16 A. This is what Gale told me. Gale told me that  
17 Cliff Hall himself had called her. This was a week  
18 before Christmas; said he had subs to pay. And she  
19 said -- and he needed a draw. And she said, that's  
20 fine. You can get a draw if you've completed the  
21 work. You know, I need an inspection and I need the  
22 report in.

23 And she said he was in a panic about paying  
24 his subs prior to the holiday, and she was trying to  
25 work with him and gave him 2 percent on miscellaneous



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1 cleanup.

2 Q. Okay.

3 A. And -- and said that she would order an  
4 inspection --

5 Q. All right.

6 A. -- as well.

7 Q. So, basically, she's doing him a favor by  
8 adding 2 percent to what the appraiser said?

9 MR. McGEE: Object to the form. Misstates  
10 testimony.

11 BY MR. FOSMIRE: (RESUMED.)

12 Q. Go ahead.

13 A. Oh, I'm sorry. Yes.

14 Q. She was basically doing him a favor, right?

15 MR. McGEE: Object to form; misstates  
16 testimony.

17 THE WITNESS: I guess you could say that. I  
18 guess you could say that.

19 BY MR. FOSMIRE: (RESUMED.)

20 Q. All right. I mean, well, the appraiser had  
21 given the completion percentage at 6 percent --

22 A. At 6, correct.

23 Q. And she was adding a little extra money to the  
24 pot, so to speak, in giving him an additional amount  
25 for the draw by making an independent judgment on her

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1 part, adding 2 percent on miscellaneous cleanup,  
2 correct?

3 A. Correct.

4 Q. So, she was looking to get a little bit of  
5 additional money to him based on his communication  
6 with her, and in her judgment she gave him 2 percent  
7 on miscellaneous cleanup?

8 A. Right. And told him that 2 percent would be  
9 deducted from the next go-round.

10 Q. Correct.

11 A. The inspection substantiated that.

12 Q. Okay. So -- well, on the next go-round, go  
13 back to -- or if you would, go to RBC 105.

14 On RBC 105 for the 2/2 inspection, the one for  
15 which he was able to get some \$87,000 and change, it  
16 says, 11 percent, and there's not a 2 percent  
17 deduction there, correct?

18 A. Correct.

19 Q. So, he wasn't -- another 2 percent was not  
20 taken back away from him, was it?

21 A. No, it was not here.

22 Q. He was given the full amount of the draw,  
23 correct?

24 A. Correct. It appears so, yes.

25 Q. All right. And on this form RBC 105, it has

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1 plus 2 percent, plus 2 above the 6, correct?

2 A. Correct.

3 Q. All right. Who put that plus 2 back in there?

4 A. I do not know.

5 Q. Okay. Go look at RBC 332. Kind of hold them  
6 side-by-side.

7 A. I should --

8 Q. I'm sorry to do this to you.

9 A. That's okay. That's all right.

10 Q. And I know 332 is not as good a copy, but  
11 someone wrote it in, and just to -- to the naked eye,  
12 it looks different. The plus and the 2 are in a  
13 different spot.

14 A. Uh-huh.

15 Q. Someone is keeping track of it themselves.  
16 Was that Gale just making sure that the 2 percent was  
17 added on top of the 6?

18 A. That was Gale. So she can track that she gave  
19 him that 2 percent.

20 Q. Okay. So, even though it came in for the 2/2,  
21 where she wrote in plus 2 on the 6th, she didn't take  
22 a deduction of the 11 and he was given the full amount  
23 of the requested draw just before he bailed on the  
24 project?

25 A. Yes, it appears so.

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1 Q. All right. Let's stick with RBC 105. On RBC  
2 105 and to the left-hand side, there's a red arrow  
3 that says, Permanent Roof. It's either pointing -- it  
4 looks like it's pointing to the line exactly between  
5 the line item for Roof Framing, Sheath and Felt --

6 A. I see it.

7 Q. -- and Permanent Roof Complete, correct?

8 A. Uh-huh. Yes, I see.

9 Q. All right. This is the way the document was  
10 presented to us and that's why I had it printed in  
11 color, because someone put that red arrow in there.

12 A. Right.

13 Q. Who did that?

14 A. I don't know.

15 Q. Okay. Was someone going back and looking  
16 after the complaint was made about the roof --

17 A. Yes.

18 Q. -- and did --

19 A. I feel certain that, yes.

20 Q. Do you know who that was?

21 A. I do not. It was either Gale or Anderson --

22 Q. All right.

23 A. -- that went back after Dr. Carew was saying  
24 the roof was not on.

25 Q. All right. If you look at that line item,

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1 Permanent Roof Complete, at the February 2, 2009,  
2 inspection, nothing has been entered for the permanent  
3 roof, correct?

4 A. That's correct.

5 Q. So, as of February 2, 2009, the permanent roof  
6 is still not on the building?

7 A. According to this report, correct.

8 Q. All right. Well, you would rely on this  
9 report, right?

10 A. Yes, sir, I would.

11 Q. And ya'll rely on the report to make financial  
12 decisions, correct?

13 A. Yes, we do; to calculate the draw.

14 Q. Right. I mean, you're -- you're dispersing  
15 money based on this report, correct?

16 A. Yes, sir, that's correct, on the total  
17 percentage complete.

18 Q. Does RBC have any guideline or requirement in  
19 place that requires that the permanent roof be on  
20 before all the interior work is being done?

21 MR. McGEE: Object to the form.

22 THE WITNESS: No, sir, because we're bankers.  
23 We're not -- we're not builders.

24 BY MR. FOSMIRE: (RESUMED.)

25 Q. Okay.

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1       A.   That is the responsibility of the -- of the  
2   builder.

3       Q.   All right.

4       A.   To ensure that's done.

5       Q.   Okay.  So, the answer is, there's no  
6   requirement by ya'll that the permanent roof be on for  
7   the interior work to be done?

8       A.   No, there's nothing specific in our  
9   guidelines, no.

10      Q.   Okay.  Do -- do -- does anyone within your  
11   unit -- and are they given any guidelines to look out  
12   for in the sequence of construction to say, hey, this  
13   looks out of the ordinary or this looks inappropriate?

14      MR. MCGEE:  Objection; asked and answered.

15      THE WITNESS:  No, because we're relying on the  
16   builder and the inspector, you know, to alert us if  
17   there are issues or problems.  And again, we're  
18   bankers.  And our job is to calculate the draw amount  
19   and disperse accordingly.

20      BY MR. FOSMIRE:  (RESUMED.)

21      Q.   I understand, but your -- you have a mortgage  
22   on this asset --

23      A.   That's correct.

24      Q.   -- correct?

25      A.   Yes, sir.

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1 Q. And, therefore, you want the full value of the  
2 asset, don't you?

3 A. Yes.

4 Q. All right. Because it's your asset until it's  
5 paid off?

6 A. Of course.

7 Q. So, in looking out to protect the asset, is  
8 there any instruction or training given to your  
9 mortgage -- your construction lending unit that tells  
10 them why -- what to look for in inappropriate  
11 sequencing of construction?

12 MR. McGEE: Objection; asked and answered.

13 THE WITNESS: No, this had never happened  
14 before. We had never had a home improperly sequenced  
15 like this before. So, you know, again, as bankers,  
16 you know, we are relying totally on the inspector to  
17 report the progress of the construction, what's going  
18 on at the site. We are not there. We do not make any  
19 visible inspections. And then the builder, of course,  
20 is the one with the expertise and the knowledge to do  
21 the proper sequencing.

22 BY MR. FOSMIRE: (RESUMED.)

23 Q. Okay. And I'm not trying to be a smart aleck  
24 with you, but as --

25 A. That's okay.

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1 Q. -- the banker, you're not -- you're not  
2 throwing out your common sense out the window?

3 A. No. No, sir.

4 Q. Okay.

5 A. No, sir.

6 Q. Do you think --

7 A. We're relying on the experts to -- to tell  
8 us. We're not building experts. I mean, you know,  
9 that's not our field of expertise.

10 Q. Understood. But you agree that the  
11 information about the sequence of a construction event  
12 is set forth right here on this RBC form?

13 MR. McGEE: Objection. That's two questions  
14 that have been asked and answered.

15 She's answered the question, Eric. Come on.

16 BY MR. FOSMIRE: (RESUMED.)

17 Q. The sequence of the construction information  
18 is set forth right here --

19 A. I'm not a builder --

20 Q. -- on this RBC form?

21 A. You know, I'm not a builder. So, I guess I  
22 would have to ask a builder, showing him this form, is  
23 this the exact sequencing. I'm sure it is very, very  
24 close. I don't know if it's exact or not, but --

25 Q. Okay. On behalf of RBC, do you think it would



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1 be a bad thing to have the roof not yet complete while  
2 the interior drywall is all in, while one-fourth of  
3 the floor is in, while one-third of the cabinets is  
4 in, and while all the trim and interior finishing  
5 woodwork is done?

6 MR. McGEE: Objection.

7 BY MR. FOSMIRE: (RESUMED.)

8 Q. Do you think that would be a bad thing?

9 MR. McGEE: Object to the form.

10 THE WITNESS: I definitely could see where  
11 that would create problems, as it did eventually in  
12 this situation.

13 BY MR. FOSMIRE: (RESUMED.)

14 Q. Okay. And the information indicating that a  
15 permanent roof was not on is right here on this form,  
16 RBC 105?

17 A. Yes.

18 Q. As of February 2, 2009, if you take that  
19 sequence of numbers, plus the 2 percent authorized by  
20 Gale Chaffin, that comes up to 67 percent. And you  
21 can get a calculator out if you'd like --

22 A. I trust you.

23 Q. -- banker doing that --

24 A. I trust you. Okay. Yes.

25 Q. Did you hear any complaint from Dr. Carew that

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1 the house was not 67 percent complete after --

2 A. No.

3 Q. -- the problem arose? Do you ever recall that  
4 issue?

5 A. No. I think the first -- if -- if I recall  
6 correctly, I think the first time I was told that was  
7 in a letter from you addressed, I believe, to Betsy  
8 Burns.

9 Q. Okay.

10 A. He never mentioned that.

11 Q. All right. As of February 2 of 2009, the  
12 total completion reflected on these documents is -- is  
13 67 percent of the house.

14 Do you know what percentage of the loan had  
15 been disbursed at that point in time?

16 A. I don't, without looking at that  
17 documentation.

18 Q. Okay. But we can take the -- the proceeds  
19 already distributed and calculate how much of the  
20 total construction loan had been disbursed?

21 A. Absolutely.

22 Q. Okay. Is it supposed to generally match up?

23 A. In the ideal world, absolutely.

24 Q. Okay.

25 A. Would you like me to explain?

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1 Q. Please.

2 A. Yes. Ideally, if you were to have a project  
3 where the construction loan amount equaled the cost to  
4 build, very rare that you're going to have both of  
5 them match, but on the occasion that you would have  
6 both of them match; for simplicity sake, you have  
7 \$100,000 construction loan and the cost to build is  
8 \$100,000. As you went forward, if there was -- if --  
9 this is the caveat, if there was nothing disbursed at  
10 the closing table and we began right away dispersing  
11 with the first draw, being, you know, hard  
12 construction, then draw for draw, yes, the percentage  
13 of the loan advance should match with the percentage  
14 of the home complete.

15 In this case, and the majority of cases, it  
16 will not run exactly like that because it's just not  
17 the perfect world. And I'll explain by saying, in  
18 this case, as in many, at the closing table, there was  
19 a large chunk taken right off the top of the loan at  
20 the closing table. There was -- you know, we began  
21 with a loan of, as you know, of one million one  
22 twelve. We had a draw at closing of 389,5. And out  
23 of that 389,5, I'm sure you know the builder got a  
24 soft draw cost of 127,5.

25 Now, the balance of 262, \$262,000, was for the

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1 lot payoff, the balance of the lot payoff.

2 So, right away, I call it upside down, if you  
3 will, right off the top coming away from the closing  
4 table, because now you -- if -- if you look at it, has  
5 construction begun? No. Yet, we've got 389,5 right  
6 off the top. And so, it throws it out of whack  
7 initially. And that 389,5 equates to almost 35  
8 percent of the actual loan amount. So, it's going to  
9 be out of kilter. And then as construction proceeds  
10 along, it's going to catch up and even out.

11 Q. And one of the primary reasons it's out of  
12 kilter is that you've got the lot acquisition cost in  
13 there?

14 A. Correct. Correct.

15 Q. All right. And I'm not saying there -- there  
16 has to be a perfect matchup, but is there a point in  
17 time at which RBC says, wait, this is too far out of  
18 whack? I mean, who's supposed to catch that?

19 A. Well, right now we're on an automated system  
20 that we did not have at that time. So, the system  
21 will generate any alerts to that effect. System will  
22 control it.

23 At this point in time, we were not on the  
24 current system --

25 Q. Okay.

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1       A.    -- that we are now. But we have guidelines as  
2   to -- and it's underwriting guidelines, it's -- it's  
3   not from my group because we don't control that draw  
4   at closing, if you will. Underwriting approves how  
5   much of a draw at closing there can be. That's all  
6   negotiated --

7       Q.    Negotiated --

8       A.    -- and approved prior to when the loan  
9   closes. And we haven't seen the loan at that point in  
10  time.

11      Q.    Okay.

12      A.    But there are guidelines. I -- I will say  
13  there are guidelines on how much can be disbursed, you  
14  know, at the closing table.

15      Q.    Okay. You say now the computer will catch  
16  it. Well, what -- what's the underlying parameter for  
17  that? I mean, what percentage deviation -- at what  
18  percent of deviation does the system send an alert?

19      A.    Well, what the system will do now, each time  
20  we generate a draw, the system we have now will issue  
21  a report with each draw. We will print a report  
22  showing the percent of loan advanced and the percent  
23  of the project complete, so we can -- we can compare  
24  them at each draw.

25      Q.    Okay.

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1 A. This was all done manually at that time.

2 Q. And then -- that's what I'm trying to get to.  
3 Who was responsible for the manual part of it while  
4 the Carews' loan was being monitored?

5 A. The residential construction loan coordinator  
6 that was working that draw.

7 Q. Okay. So, whoever had that draw, that  
8 particular draw at that time, was responsible for  
9 making the judgment call as to whether it was  
10 appropriate?

11 A. Yes.

12 Q. Okay.

13 (Pause.)

14 Q. Once Hall Builders walked off the job, you've  
15 got a partially built house. Do you understand that  
16 the contention is that Hall Builders essentially stole  
17 money?

18 A. Yes.

19 Q. They took money that was supposed to be for  
20 the construction of the home and did not apply it to  
21 the construction of the home, either by way of  
22 suppliers or subcontractors, correct?

23 A. Yes.

24 Q. Which left those suppliers and subcontractors  
25 in a position to -- to lien the house, correct?

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1 A. Correct. Yes.

2 Q. All right. Did RBC report Hall Builders for  
3 its misconduct?

4 A. That is not my job. Legal would have to  
5 address that.

6 Q. Okay. I'm just asking.

7 A. I truly do not know.

8 Q. You do not know?

9 A. I do not know.

10 Q. Okay. So, it didn't come up in any of your  
11 conversations about this issue?

12 A. No.

13 MR. McGEE: And again --

14 BY MR. FOSMIRE: (RESUMED.)

15 Q. In non-privileged conversations?

16 A. No.

17 MR. McGEE: You can answer him as the --  
18 except as to any discussions that you had with  
19 in-house counsel; other than that you can answer.

20 THE WITNESS: That was not discussed. I,  
21 basically, when this loan got in trouble, did a  
22 hand-off, if you will.

23 BY MR. FOSMIRE: (RESUMED.)

24 Q. Okay.

25 A. I still remained semi point of contact, but,

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1 basically, then it was John Flemming of our legal  
2 group.

3 Q. Okay. I mean, do you agree that Hall Builders  
4 basically stole this money?

5 MR. McGEE: Object to the form. Go ahead and  
6 answer.

7 THE WITNESS: In my opinion?

8 BY MR. FOSMIRE: (RESUMED.)

9 Q. Yes.

10 A. Yes.

11 Q. Okay. And you're not aware of any effort to  
12 pursue -- by RBC to pursue Hall Builders criminally?

13 A. Not to my knowledge.

14 Q. Do you agree that the Carews were left in a  
15 position of having to get another contractor to finish  
16 the house?

17 A. Yes. They had to find a way to get that house  
18 finished, either sub the work out themselves or hire  
19 another general contractor.

20 Q. Okay. What if they didn't do that? What  
21 would RBC have done?

22 A. I can't speak to that, because it is a  
23 what-if. I would assume they would turn the loan over  
24 to a team that we have, referred to as our Loss  
25 Mitigation Team. And I would do a hand-off to them,



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1 do a referral to that team, and they would work the  
2 loan. They would become the point of contact with the  
3 customer and try to seek some resolution, because it  
4 is our collateral and it is our asset, as you said.

5 You know, we were just as shocked as -- I  
6 can't compare it to Dr. Carew, that would be unfair,  
7 but very, very upset in our own right that this had  
8 happened.

9 Q. All right. And your Loss Mitigation Team,  
10 given that we don't know what would have happened  
11 because of -- the Carews did get another contractor.

12 A. Right.

13 Q. But they would be in a position of either  
14 shutting the project down, finishing it themselves,  
15 getting another contractor to come in; if the Carews  
16 just walked away from it, you may have had remedies  
17 against the Carews, but they would be faced with the  
18 decisions of what to do with the home, correct?

19 A. That is correct.

20 MR. McGEE: Objection.

21 BY MR. FOSMIRE: (RESUMED.)

22 Q. Whatever -- whatever those decisions may be?

23 MR. McGEE: Objection; compound. Calls for  
24 speculation and outside of the scope of the 30(b)(6).

25 BY MR. FOSMIRE: (RESUMED.)

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1 Q. All right. Did you go through Pyramid  
2 Contractors, the substitute contractor for the Carews?

3 A. I don't know. I don't recall. I could  
4 certainly check, but I don't recall.

5 Q. At the point in time that Pyramid Contracting  
6 took over the construction of the home, was there  
7 enough money left in the loan to complete the home?

8 A. No, not according to the letter that you had  
9 sent, and I believe Pyramid had sent a proposal, and,  
10 no, there was not enough on the loan to finish the  
11 house.

12 Q. Do you agree that having to bring in another  
13 contractor to finish the home -- in bringing in  
14 another contractor to finish the home, would you lose  
15 whatever efficiencies the original contractor already  
16 had on site?

17 A. Yes.

18 MR. McGEE: Object to the form; beyond the  
19 scope of 30(b)(6); no foundation.

20 BY MR. FOSMIRE: (RESUMED.)

21 Q. Do you agree it's an inefficient process to  
22 have to get a substitute contractor?

23 MR. McGEE: Same objections.

24 THE WITNESS: I don't know that it's within my  
25 scope to define that as inefficient, but it is

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1 certainly an additional burden to the borrower to have  
2 to go through that.

3 BY MR. FOSMIRE: (RESUMED.)

4 Q. Did RBC object to Pyramid Contractors as the  
5 substitute builder?

6 A. No, not to my knowledge.

7 (Pause.)

8 Q. If you would, back up to RBC 36.

9 A. 36?

10 Q. Yes, ma'am.

11 A. Okay.

12 Q. You may want to hold RBC 105 out --

13 A. Hold that. Okay. Okay. Got it.

14 Q. All right. RBC 36 represents the first draw  
15 request and inspection after the substitute builder  
16 came on the job, correct?

17 A. Correct.

18 Q. And that's the May 5th -- I'm sorry, May 15th  
19 inspection?

20 A. Yes.

21 Q. All right. In that inspection,  
22 Ms. Haltiwanger lists out the various components that  
23 are now further along from a completion standpoint,  
24 and she puts total for the draw another 11 percent.

25 Do you see that?

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1 A. Yes.

2 Q. And in handwriting on RBC 36, there's -- to  
3 the right-hand side of that form, it says 76 percent  
4 total.

5 Do you know whose handwriting that is?

6 A. I don't.

7 Q. And 2 percent -- or the additional 2 percent  
8 that Gale Chaffin had allotted back in February 2008  
9 is not listed on there? Do you agree with that?

10 A. Yes, it is not listed.

11 Q. Okay. It's not added to the 6 percent for  
12 that December 18th draw, and neither is the 11 percent  
13 that was previously reflected on 2/2/2009, reduced by  
14 2 percent, correct?

15 A. Correct, according to this.

16 Q. All right. In your mind that 2 percent  
17 deviation, is that a material difference to you?

18 MR. McGEE: Object to the form; calls for a  
19 legal conclusion.

20 THE WITNESS: That 2 percent needs to be made  
21 up at some point. It should have been made up.

22 BY MR. FOSMIRE: (RESUMED.)

23 Q. It needs to be accounted for, doesn't it?

24 A. It needs to be accounted for, yes.

25 Q. And at this point it is not being accounted

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1 for as reflected on RBC 36?

2 MR. McGEE: Object to the form.

3 THE WITNESS: It is not on this form.

4 BY MR. FOSMIRE: (RESUMED.)

5 Q. And, therefore, it's not accounted for?

6 A. It's not accounted for on this form. No, it  
7 is not.

8 (Pause.)

9 Q. If you would, go to RBC 52, please.

10 A. Okay.

11 Q. Actually, there might be a little more  
12 complete sequence altogether if you go to RBC 57.

13 As -- as of this time, in the Residential  
14 Con -- Construction Lending Center, you have the --  
15 the loan's been originated, the funds are sitting out  
16 there, and the project is supposed to be moving  
17 forward.

18 The first thing that ya'll -- that calls your  
19 attention to the fact that there's a request for a  
20 draw is what; a request from the builder?

21 A. Is a -- is a receipt of this. Sometimes our  
22 customers send them in themselves, sometimes the  
23 builder sends them in.

24 Q. Okay.

25 A. And this comes via email or fax.

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1        Q.    Okay. And when you say this, you're holding  
2        up RBC 57, correct?

3        A.    Yes, sir.

4        Q.    And that's a builder's request for a draw, and  
5        that's actually an RBC form, right?

6        A.    Yes, it is.

7        Q.    Does it have to be on that form?

8        A.    Yes, it does.

9        Q.    So, either the -- when you say the customer,  
10       that would be the Carews?

11       A.    The Carews.

12       Q.    Or the builder sends in the request?

13       A.    Correct.. The only alternative -- I'm sorry.

14       Q.    Go ahead.

15       A.    I'm sorry. The only alternative to this would  
16       be a -- a pay app, which is a -- a -- I'm sure you're  
17       familiar with those forms, and actually Pyramid used  
18       the pay apps.

19       Q.    Okay.

20       A.    So that in lieu of actually using the building  
21       request for draw, it serves the same purpose.

22       Q.    Okay. The pay app being the AIA form?

23       A.    AIA.

24       Q.    Okay. So, RBC 57, when this hits your unit,  
25       just walk me through the process for the record.

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1       A.    Sure.  This is received, this form 57 is  
2       received in my department via email or fax.  And it is  
3       put into a cue and one of our construction --  
4       residential construction loan coordinators will pull  
5       it off the email or fax; go to our file cabinet, pull  
6       the draw file, match it up, go back to their desk, and  
7       they will check the file to see who is doing the  
8       progress inspections.  And they will generate an email  
9       to that inspector requesting a new inspection based  
10      upon this draw request.

11      Q.    Okay.

12      A.    And then once --

13      Q.    Let me stop you.

14      A.    Okay.

15      Q.    So, RBC 57 came in.  If you back up one form  
16      to RBC 56.  RBC 57 was dated 9/3/08.  And then while  
17      it doesn't appear to have a date on -- 9/3 at the  
18      bottom left, on RBC 56, that's an email from Gale  
19      Chaffin, it looks like, to Teresa Addy-Haltiwanger  
20      requesting an inspection on September 5th.

21      A.    Yes, sir.

22      Q.    Okay.  And -- and that's what you're talking  
23      about, communication goes to the inspector?

24      A.    Yes, sir.  You'll see it's both on the same  
25      day that -- it appears that the Builder Request For

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1 Draw came in via fax, RBC form 57, came in on fax on  
2 September 3rd of 2008. And on that same day,  
3 September 3rd, 2008, Gale Chaffin contacted the  
4 inspector and ordered an inspection.

5 Q. Okay. And then when is RBC 59 generated?

6 A. Okay. What happens is, we -- we have what we  
7 called an inspection drawer file cabinet designated  
8 for those files for which we've ordered inspections.  
9 So, they're outstanding inspections. They sit in a  
10 separate cabinet in date order, according to the date  
11 that we ordered that inspection. And they're checked  
12 daily.

13 Typically, it just really depends on the  
14 inspector and his or her schedule, but, typically, an  
15 inspection would come back within one to three  
16 business days. And so, the file sitting in that  
17 cabinet, when the inspection is received via email or  
18 fax, then we go pull the file out of that drawer to  
19 match it up. And at this point everything was being  
20 manually done, manually calculated. And so, the draw  
21 would have been calculated. And then, based on that  
22 calculation, you recall that I said this loan was  
23 residing on the commercial loan system during  
24 construction, that was a place-hold system only. We  
25 would fill out this commercial department, if you



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1 will, the commercial loan department form, referred to  
2 on RBC 59, as Centralized Funding Request Form.

3 So, each time we would receive the inspection  
4 report, calculate the draw, we would request that  
5 funds be released to Dr. and Mrs. Carews' accounts via  
6 this form. We, my group, has no authority to release  
7 funds. We never touch the funds. They're done by  
8 another group.

9 Q. Okay. So, you're the verifying component.  
10 And then if the verification is appropriate, or ya'll  
11 determine that the funds should be released, that  
12 request for funding goes to who?

13 A. To the Commercial Loan Group. It was actually  
14 called a Centralized Funding desk, if you will, of the  
15 commercial loan area.

16 Q. Okay. So, what we see on RBC 59 is a request,  
17 Centralized Funding Request for \$72,250.00 submitted  
18 by Gale Chaffin. And she's dated it 9/26/08, correct?

19 A. Yes, sir.

20 Q. So, at that point in time, she has verified,  
21 pursuant to RBC requirements, that the funds should be  
22 disbursed, correct?

23 A. Correct.

24 Q. All right. An inspection has taken place.  
25 Back up. A request for a draw has been made. An

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1 inspection has taken place. It's been verified by  
2 Gale Chaffin. So, she's requesting that the funds be  
3 disbursed?

4 A. Correct.

5 Q. And the form RBC 59, how is that sent to the  
6 Centralized Funding Department?

7 A. Faxed. Via fax. And then we get a  
8 confirmation.

9 Q. Okay. So, that's faxed over, and then below  
10 it there's an approval. It looks like David  
11 somebody?

12 A. Yes, what -- what happened -- actually, that's  
13 Y. Davis, I believe is who --

14 Q. Okay.

15 A. -- Davis; just known them over the years and  
16 got to know their -- their scribble. But, yes, that's  
17 their process, they being the Commercial Loan Group,  
18 upon receipt of a Centralized Fund Request Form,  
19 because they're coming in from all different areas of  
20 the bank; they go into a cue in the commercial loan  
21 world, if you will. And that person does their own  
22 verification steps, whatever they may be, and then  
23 they go ahead and generate and process that, the  
24 release of that draw. They have to fill out the  
25 bottom of this and fax that back to us to alert us it

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1 has been completed.

2 Q. Does it take two people to approve it?

3 A. Yes, it is verified. It's approved and  
4 verified in the Commercial Loan Group.

5 Q. Okay. Then, just so I understand your -- your  
6 format here, at the bottom right of RBC 59, it looks  
7 like a date stamp, September 26th, 2008, DYN. What's  
8 the DYN?

9 A. I do not know. I don't know if it's initials  
10 or a code, quite honestly. It's done by the  
11 Commercial Loan Group.

12 (Pause.)

13 A. It must be a code because it's on each one.  
14 It's on each verified one. So it's a code apparently  
15 they use in their world.

16 Q. All right. If you would, go to RBC 80.

17 A. Okay.

18 Q. And still hold out RBC --

19 A. 105.

20 Q. -- 105.

21 All right. What does RBC 105 look like if I  
22 had that form? And by that, I mean, is that a running  
23 form that Teresa Addy-Haltiwanger is just adding to  
24 each time?

25 A. Yes.

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1           Q.   And then she faxes in the -- the form every  
2   time she adds a new column of information?

3           A.   Correct.

4           Q.   Okay.  So, that's what it looked like to me,  
5   because it looks like many of the things stay the same  
6   in her handwriting.

7                   But on RBC 80, they're typewritten components  
8   in there instead of handwriting.  Can you tell me --

9           A.   You mean -- you mean the reverse?  There are  
10   handwriting versus the typewritten?

11          Q.   Correct.

12          A.   Yes, I see that, too.

13          Q.   Do you -- can you tell me why?

14          A.   I do not know.  I do not know.  I can ask.  
15   I'm just wondering if she called in a verbal.  There  
16   are times an appraiser would call in a verbal from the  
17   field to us so we can fund that same day, and then  
18   she -- you know, when she'd get -- they work, of  
19   course, as you know, in the field most of the time,  
20   spend very little time in their office except evenings  
21   and mornings.  So, it could be, and I -- I do not know  
22   -- I do not know, but it could be that she called in  
23   a verbal and we completed that.

24          Q.   But I --

25          A.   And then there should be a hard copy then to

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1 follow that up --

2 Q. But I don't --

3 A. -- if that was the case.

4 Q. Okay. But the first inspection, if you're  
5 looking at RBC 105, all of that form for the  
6 information put in by Ms. Teresa Addy-Haltiwanger is  
7 all handwritten.

8 A. Uh-huh.

9 Q. But on the 80, the handwriting has changed to  
10 typewritten entries.

11 A. Oh, I see what you're saying.

12 Q. Do you see what I'm saying?

13 A. Yes, I do. Yes, I do.

14 Q. Why has that --

15 A. I do --

16 Q. -- changed? The percentages aren't changed.  
17 I'm just trying to figure out procedurally what's  
18 going on here.

19 A. And I'm thinking if -- if that's the case,  
20 then, yes, I'm thinking -- and I hadn't picked up on  
21 that. I'm thinking it -- it is what I said; that it  
22 was a verbal. So, what they did is someone in my  
23 team, one of the residential construction loan  
24 coordinators, I'm guessing here, probably went in and  
25 typed everything and then -- I don't know why. Now

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1 that -- I don't know. I don't know. I don't want to  
2 guess, because I do not know.

3 (Pause.)

4 A. And if you notice that 4 and 1 that is  
5 handwritten on RBC 80, the handwritten column under  
6 8/18, I don't believe that's Teresa's writing. I'm  
7 not sure if it's Teresa's writing, but the 4 is  
8 different than her previous 4s.

9 Q. Yeah, I just -- I'm just trying to figure out  
10 -- I'm not saying there's anything inappropriate  
11 about it --

12 A. Right.

13 Q. -- I'm just trying to figure --

14 A. Right, because it is -- it's the same numbers,  
15 but I'm not sure. The only time we would go in and  
16 type anything would be if a verbal was called in. But  
17 I don't know if that's the case. I don't know.

18 Q. And the other thing is RBC 80, at the bottom  
19 where you have your totals --

20 A. Uh-huh.

21 Q. -- for your overall total line item, there it  
22 looks like it's creating a running total up to the 32  
23 percent.

24 A. Yes.

25 Q. Where that doesn't exist on any of the

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1 others.

2 A. So, that's our system. Our system. And a lot  
3 of inspectors that have certain types of software, and  
4 Teresa apparently didn't have it, when they go in to  
5 this template, they -- if -- if they have this  
6 software in place, what can happen -- and it's not our  
7 software at all, but what can happen is when they --  
8 now, she handwrote; that's why her -- hers didn't keep  
9 running totals at the bottom. But if they go in into  
10 the software and generate the percentages complete, it  
11 will auto-calculate the percentage at the bottom.

12 Now, ours does that as well, and many, many of  
13 our inspectors do that. So, the running total will  
14 automatically fill as soon as the inspector does the  
15 current percentage complete.

16 In her case, Teresa's -- it appears she was  
17 doing all of hers manual.

18 Q. Okay. But when that form is coming in from  
19 Teresa, is she faxing it, emailing it? I'm just  
20 physically trying to understand what it is.

21 A. Yeah, I am too. Let's see.

22 She emailed it. She emailed it, because we  
23 have email communications that I know I reviewed in  
24 this file. She would say, Gale or Anderson, attached  
25 is the construction report.

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1           So, yes, she would email it.

2           Q.   So, that comes in. And then is someone within  
3   the unit then taking her handwritten information and  
4   typing it into a form?

5           A.   They -- we do now into the system we have. At  
6   the time, no. That was it.

7           Q.   Okay. So, but why is someone generating RBC  
8   80 then, an internal form with a running total?

9           A.   I can't answer that. I don't know why that  
10   was done here.

11          Q.   At the time of the Carews' loan, should a form  
12   similar to RBC 80 have been generated each time Teresa  
13   sent in her inspection report?

14          A.   No. It wasn't required to generate anything  
15   like that.

16          Q.   Okay. And were these forms received -- on a  
17   couple of the forms, I see at the top it says,  
18   rclc@rbc.com. Is that a centralized --

19          A.   It's a centralized email box.

20          Q.   -- receipt email box?

21          A.   Yes, it is.

22          Q.   Who is responsible for picking that up?

23          A.   My group. Each day there is someone  
24   designated to watch that box. We usually alternate by  
25   week. So that box is monitored throughout every



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1 business day from open to close. We ask that nothing  
2 like this come to our individual email boxes, because  
3 perhaps one of us is out sick that day and it goes  
4 unattended.

5 Q. Okay. Go to RBC 133. All right. RBC 133?

6 A. Yes.

7 Q. Just picking back up on that fact that it's a  
8 typewritten in form, is -- is that -- again, I ask  
9 you, is that being generated because that's a  
10 different date, and is that being generated each time?

11 A. No.

12 Q. Okay.

13 A. No.

14 Q. Any explanation other than wondering why it's  
15 in there for RBC 133?

16 A. I'm sorry, I don't have an explanation.

17 Q. Okay. All right. If you would, go to RBC  
18 106.

19 A. Okay.

20 Q. This is an email, and I'll tell you it's from  
21 Cliff Hall's email address and it's signed Cliff.  
22 That's later in the morning after Joe Carew sent his  
23 stop pay email. Okay.

24 If you look at RBC 119, which was the stop pay  
25 email.

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1           A.    Uh-huh.

2           Q.    Joe's first email to Jack Hanrahan is around  
3    9:00 in the morning, and Jack shortly thereafter  
4    forwards it to Anderson Griffin --

5           A.    Uh-huh.

6           Q.    -- at 9:51?

7           A.    Correct.

8           Q.    And then we go to RBC 106. That's an email  
9    from Cliff Hall to Gale Chaffin at 11:30 that  
10   morning. And the email speaks for itself, but Cliff  
11   is emailing Gale. I'll give you a minute to read the  
12   paragraph.

13               (Pause.)

14          Q.    Are you familiar with this email?

15          A.    I am --

16          Q.    You've seen it before?

17          A.    Yes.

18          Q.    Okay. He -- Cliff emails Gale and says,  
19   There's several payment issues that Joe and I are  
20   trying to work through on this project.

21               Has Gale given you any further explanation  
22   or -- or --

23          A.    No, but, you know, Gale is sitting in one side  
24   of the office, Anderson in another.

25          Q.    Right.

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1       A.    So, Anderson is communicating with Jack on  
2    this same day and then brings it to my attention.  And  
3    then Gale's brought into the mix as well, because  
4    Cliff Hall's communicating directly to her.

5       Q.    Okay.

6       A.    So, this draw was not advanced.

7       Q.    All right.  So, basically, he's asking for  
8    24,000 to go to Joe Carew to pay the roofer, noting  
9    that roofing material's in the driveway and needs to  
10   be installed.

11           Do you see agree with that?

12       A.    Yes, I do.

13       Q.    All right.  Was there any communication within  
14   RBC after this email about the fact that the roof was  
15   not on and you'd better get the roof on?

16       A.    I don't think there was any communication.  I  
17   don't believe there was any communication directly  
18   with Cliff Hall subsequent to this when we -- you  
19   know, when my group was then apprised of the whole  
20   situation what was going on.

21           Basically, I took over then as the point of  
22   contact, knowing that there were real problems on the  
23   loan.  We weren't going to communicate with Cliff  
24   Hall.  It was our borrower, the Carews, that we needed  
25   to communicate with.

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1 Q. Okay. And I may have asked the question very  
2 inartfully, but was there any discussion within your  
3 unit about getting a roof on this asset?

4 A. Not until Dr. Carew brought it to our  
5 attention. When he said -- and I don't recall when  
6 this was. I know it was on a phone call because I  
7 remember him saying, Kathy, there are roofing  
8 materials in the driveway and that roof has to be put  
9 on. We don't know if all of the materials are there.  
10 We've been told some of them are on back order by the  
11 job superintendent, but that roof has to be put on.

12 Q. Okay.

13 A. And so, yes, there was conversation; how we  
14 going to get the roof on. And then I was calling John  
15 Flemming saying --

16 MR. MCGEE: Don't -- don't say anything that  
17 you discussed with John.

18 THE WITNESS: Okay. I'm sorry. I'm sorry.

19 BY MR. FOSMIRE: (RESUMED.)

20 Q. Okay.

21 MR. FOSMIRE: I think she can say what she  
22 said to him.

23 MR. MCGEE: No. That's a communication  
24 between him -- a communication with --

25 MR. FOSMIRE: John Flemming's an in-house

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1 counsel?

2 MR. MCGEE: Yeah, he's -- he's general  
3 counsel. General counsel.

4 BY MR. FOSMIRE: (RESUMED.)

5 Q. Do you agree at February 10, RBC is aware of  
6 the fact that the roof is not on the house?

7 A. Yes.

8 Q. Did you think that the roof should be  
9 installed on the house?

10 A. Yes. When I heard, I -- I agreed the roof  
11 needed to be installed on the house.

12 Q. Okay. Do you know how long after February  
13 10th it was before the roof was actually installed on  
14 the house?

15 A. No, I don't recall.

16 Q. On RBC 106 in red, there's handwriting that  
17 says, Trim guy looking for almost same amount. What's  
18 that about?

19 A. I don't know.

20 Q. Do you know whose handwriting that is?

21 A. That is Anderson's handwriting.

22 Q. Okay.

23 A. I don't know if she -- where she got that  
24 information. I don't know where she got that  
25 information.

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1 Q. Okay. But somebody told her that the trim guy  
2 was looking --

3 A. For \$24,000.

4 Q. -- for the \$24,000 apparently?

5 Okay. Did -- did you ever discuss this note  
6 with Anderson?

7 A. I don't recall discussing this.

8 Q. All right. All right. Let's jump over to --  
9 let's go to RBC 173.

10 (Pause.)

11 Q. RBC 173 is, again, the Construction Loan  
12 Inspection Form, and this is completed to the point of  
13 the seventh inspection of November 6th, 2008.

14 Do you see that?

15 A. I do.

16 Q. All right. And at the bottom of the form  
17 there's some information relating to the pool?

18 A. Correct.

19 Q. Do you see that?

20 A. I do.

21 Q. Are pool disbursements handled separately?

22 A. Yes, pool disbursements are handled  
23 separately.

24 Q. Okay. Are they -- are they -- again, I may  
25 have asked that poorly, but I mean, it's coming out of

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1 the same loan balance, correct?

2 A. That is correct.

3 Q. But the inspection process of the pool is  
4 handled separately from the house?

5 A. Yes.

6 Q. All right. There's handwriting down the  
7 right-hand side of RBC 173. The first note says, 48  
8 percent house total. Next item says 50K for pool.  
9 Next item below that says 65 percent on pool.

10 For each of those items, do you know who wrote  
11 that and what they're denoting?

12 A. I don't know who wrote it. It had to be one  
13 of the residential construction loan coordinators.  
14 They're saying -- the way I would interpret this would  
15 be that they're saying, first of all, in the margin,  
16 that the house is a total at this point in time of 48  
17 percent completed; that the pool cost is 50,000; and  
18 that the pool is complete to 65 percent. That would  
19 be my interpretation.

20 I'd have to verify it by checking those  
21 numbers.

22 Q. If that be correct, then should 65 percent of  
23 50,000 designated for the pool be disbursed?

24 A. Yes. If -- if -- it depends on how much had  
25 been previously disbursed for the pool. But, yes, if

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1 nothing had been disbursed for the pool at this point  
2 and it was 65 percent verified complete by the  
3 inspector, then, yes, 65 percent of the cost of the  
4 pool would be due.

5 Q. Okay.. There's another name I came -- I came  
6 across; Ernestine Battle. Did she have anything to do  
7 with this?

8 A. I don't recall seeing her name in this file.  
9 She was an employee, of course, for some time. She's  
10 no longer with the bank.

11 Q. Okay.

12 A. But she was a construction loan coordinator as  
13 well.

14 Q. All right. In preparing for today's  
15 deposition, did you speak with Gale or Anderson --

16 A. No.

17 Q. -- about any facts relating to this case?

18 A. I did not. I had previously. We had gone  
19 through the file, you know, previously when this all  
20 first came about.

21 Q. Right.

22 A. It's been some time since I've done that. And  
23 we sat down trying to determine the sequence of  
24 events.

25 Q. All right. If you would, go to RBC 296,



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1 please.

2 A. Okay.

3 Q. All right. This is a Centralized Funding  
4 Request Form. The submission date is dated 2/2/09.

5 Do you see that?

6 A. I do.

7 Q. And I assume that's submitted by Anderson  
8 Griffin?

9 A. Yes, sir.

10 Q. All right. This is for the last disbursement  
11 before Hall Builders walked off the job. This was the  
12 \$86,700 disbursement, correct?

13 A. Yes.

14 Q. At the top of the form it says, For Monday.  
15 Urgent. Do you see that?

16 A. I do.

17 Q. Is that Anderson Griffin's handwriting?

18 A. It is.

19 Q. Okay. What was urgent about this  
20 disbursement?

21 A. I don't know. She obviously sent that over on  
22 a Friday week -- on a Friday night. It was too late.  
23 Their funding department closes at 2:00. So she was  
24 asking them to do it first thing Monday morning for  
25 whatever reason.

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1 Q. How do you know it was sent on a Friday?

2 A. I'm -- well, I don't. I'm guessing because  
3 she's saying have a good weekend. This is for  
4 Monday. So, I guess I would have to look at the  
5 calendar to verify, but my guess from her saying that  
6 is that she's sending it over on a Friday evening.

7 Q. Okay. Look at the top of the form.

8 A. Okay.

9 Q. It says February 2, 2009, Monday, 4:24 P.M..  
10 Maybe the fax machine is --

11 A. But that's a part of a fax. If you'll see,  
12 that's Page 6 of -- of another fax. So, I don't  
13 believe that that's a transmission on Anderson's  
14 form. See what I'm saying? That's --

15 Q. Okay.

16 A. I don't know what this is part of, but it's  
17 Page 6 of -- of something that came across a fax. I  
18 don't think that's our outgoing fax stamp.

19 Q. Okay.

20 A. Is my thought.

21 Q. Okay. Obviously, it was sent February 2,  
22 2009, and the -- RBC 296 is just kind of sitting on  
23 its own between 295 and 297, because there's not a six  
24 or more page fax sequence.

25 Do you see that?

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1       A.    I do.  I don't know why it's got that listed  
2       there.

3       Q.    Where would this form be going Monday  
4       afternoon if the disbursement was February 2, 2009?

5       A.    Well, again, the Centralized Funding desk  
6       closed at 2:00 P.M., so, if she got it in -- if she  
7       got it in Monday afternoon, they had already closed.  
8       She's aware they can't do it until -- they can't  
9       process this raw, if you will, until Monday morning.  
10      It appears that's what she's asking.

11      Q.    Are Centralized -- I guess I should have  
12      looked at the date.  Are Centralized Funding Requests  
13      dated for the date that the money should go out, or is  
14      it dated the day that it is submitted?

15      A.    It's the date they process it in the  
16      Commercial Group.  It's the date they actually  
17      process.  So, I'm trying to read her date below.  If  
18      you'll see the approval and the verification below.

19      Q.    Yeah.

20      A.    I can't read that.  I don't know if you can.

21      Q.    So, would -- would --

22      A.    February 2nd?

23      Q.    Where?  Anderson is submitting it on February  
24      2nd of 2009?

25      A.    Uh-huh.

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1 Q. Would she submit it on Friday with Monday's  
2 date on it? Is that what she would do?

3 MR. MCGEE: Object to the form; calls for  
4 speculation.

5 THE WITNESS: I don't know. Without looking  
6 at a calendar, I don't know. It appears it was  
7 processed because it was stamp-dated by Commercial,  
8 not by us, this is not our stamp, on February 2nd.

9 So, perhaps they did it -- they did it the  
10 same day.

11 BY MR. FOSMIRE: (RESUMED.)

12 Q. Okay. Did you discuss with Anderson why this  
13 was an urgent disbursal?

14 A. I don't re -- I don't recall discussing that,  
15 no.

16 Q. RBC 299. And I think we covered this in the  
17 color version of that arrow on the left, but you don't  
18 know who put the arrow there pointing to the roof line  
19 items on the inspection form?

20 A. I don't.

21 Q. All right. I think this helps solve the  
22 earlier funding request issue. RBC 302.

23 A. Okay. Ah.

24 Q. Okay. That's dated Jan -- email from Anderson  
25 Griffin to Brittney Martin, January 30th?

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1 A. I see it.

2 Q. And it talks about the 86,7 -- \$86,700.00 will  
3 post on Monday, correct?

4 A. Correct.

5 Q. And then at the top of RBC 302 it says, Order  
6 inspection Monday. And then REV, which I assume means  
7 reverse principal payment?

8 A. Reverse principal payment.

9 Q. What -- what's that handwriting mean on top of  
10 RBC 302?

11 A. Apparently she's telling herself that she's  
12 ordering another inspection on Monday, and she's also  
13 writing a note to herself to reverse a principal  
14 payment.

15 And I see that on RBC 301, she appears to have  
16 done that. RBC 301.

17 Would you like me to explain that?

18 Q. Sure.

19 A. Okay.

20 MR. MCGEE: Just so -- I'm sorry. I just want  
21 to let you know I looked -- I did look on here. The  
22 30th is a Monday and the 2nd is -- I mean, excuse me,  
23 the 30th is a Friday and the 2nd is a Monday.

24 THE WITNESS: The 2nd was Monday? Okay.

25 This is Commercial Request for Change Form.

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1 It's a Commercial Loan Group form. And any time we  
2 were requesting a correction to an account or such, we  
3 would have to submit this form to the -- and fax it  
4 over to the Commercial Loan Group. If they approved  
5 it and authorized it, they would process the request.

6 This request from Anderson sent to the  
7 Commercial Loan Group, referencing Joe Carew's  
8 construction loan, says under Reason for Change  
9 Request, it says that this payment was applied to  
10 principal instead of to interest. And then she says,  
11 Please reverse the principal payment of \$866.89 that  
12 was posted on 12/31/08 and apply it towards interest.

13 Apparently, she had checked Dr. Carew's -- and  
14 we do this at each draw that we make, we check his  
15 account on the system. And what would happen is  
16 Dr. Carew would be making payments. This is an  
17 interest-only loan during the construction phase. And  
18 if he made an overpayment, didn't -- paid more than --  
19 than what was actually due --

20 Q. Right.

21 A. -- and on occasion that has happened here,  
22 then what would happen is the system would -- this is  
23 an auto-system generated thing on this particular  
24 system that we used to house these loans on; but what  
25 would happen is, if there was an overpayment of any

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1 sort, that overpayment would be applied not to  
2 interest but to principal.

3 Q. To principal?

4 A. Right. And so, when we caught those, as we  
5 reviewed the account, we would have to send this over  
6 and say that everything on this thing is supposed to  
7 be going to interest only. And they would verify and  
8 reverse it for us.

9 Q. Okay. And referring to RBC 302, you said you  
10 weren't sure who Brittney Martin is?

11 A. I don't know who Brittney Martin is.

12 Q. The sequence on RBC 302 apparently started  
13 with an email from Cliff to Brittney Martin, and it  
14 gave a report as far as percentage of completion.

15 Do you see that?

16 A. I do.

17 Q. Okay. Are ya'll disbursing based on  
18 Mr. Hall's representation of completion?

19 A. No, we cannot fund based on anyone's  
20 representation other than our inspector.

21 Q. Okay. I mean, do -- there -- do you know if  
22 there is a corresponding inspection at January 30th?

23 A. I don't know. I'll have to look. I know this  
24 is the draw that we restored. I can tell you I know  
25 it from the amount, we restored this draw of 86,7 to

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1 the loan; put it back on the loan and made it  
2 available. It was disbursed --

3 Q. Okay.

4 A. -- to the Carews, and then we put 86,7 back on  
5 the loan.

6 Q. All right. It would seem that the -- the  
7 closest inspection would be the 2/2/2009 inspection to  
8 this January 30th email, correct?

9 A. Uh-huh. Uh-huh. Yes.

10 MR. MCGEE: You have to say yes. You have to  
11 say "yes" or "no."

12 THE WITNESS: Yes. I'm sorry.

13 BY MR. FOSMIRE: (RESUMED.)

14 Q. All right.

15 A. Shaking my head. I apologize.

16 Q. The reason I ask that is that Mr. Hall's  
17 representation is not what shows up on Teresa  
18 Addy-Haltiwanger's report for the 2/2 inspection. For  
19 example, he puts cabinets and vanities, all 3 percent  
20 is done, but she has just 1 percent there.

21 Do you see that?

22 A. Well, can you tell me which document you're  
23 looking at for hers, because mine is not very legible  
24 here.

25 Q. You can -- I actually pulled the best copy



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1 off --

2 A. Okay.

3 Q. -- another document. Go back to -- I think  
4 105 was fairly legible.

5 A. 105. Okay. Oh, turned right to it.

6 Okay. Let's see.

7 Yes, I see that.

8 Q. Okay. So, what's the relevant -- let me ask  
9 you this; what's the relevance of any of Mr. Hall's  
10 representation of the percentage of completion?

11 A. It should be irrelevant.

12 Q. Okay. The reason I ask that is that he gives  
13 these representations in this sequence at 519, and  
14 then Anderson at 526, is saying the 86,7 will post  
15 Monday, 2/2.

16 Do you see that?

17 A. I do.

18 Q. But the inspection doesn't occur until 2/2.  
19 So, it appears to me that a decision was made to go  
20 ahead and fund 86,7 prior to the -- prior to the  
21 inspection having taken place.

22 Do you see that?

23 A. I do.

24 Q. Is that, in fact, what occurred?

25 A. It appears that is what occurred, which is why

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1 we restored the draw to the loan, and we had it  
2 adjusted back to 2/2/09.

3 Q. Okay. When you say you restored that 86,7  
4 back to the loan balance, did RBC make a mistake in  
5 disbursing the 86,7, \$86,700.00, on February 2 --

6 MR. McGEE: Object. Object to the form; calls  
7 for a legal conclusion.

8 THE WITNESS: Can I answer?

9 BY MR. FOSMIRE: (RESUMED.)

10 Q. Yes.

11 A. Yes.

12 Q. RBC made a mistake?

13 A. Yes.

14 (Pause.)

15 Q. Is the inspector told what the amount of the  
16 prospective draw is at the time they're asked to go  
17 make the inspection?

18 A. No. No. The -- the only exception to that  
19 would be if there's a pay app, because we don't have a  
20 draw request form, per se. So, they verify -- they  
21 have to verify the pay app, if you will, because that  
22 details, you know, what is done. But, typically, it  
23 does not matter what the builder says is done, what  
24 the builder wants. It is the results as returned by  
25 the inspector that all draws should be based on.

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1 Q. And you said the difference being if it's a  
2 pay app, the pay app will actually go to the  
3 inspector?

4 A. Yeah. The first page of the -- I think it's  
5 page 1 --

6 Q. Of the AIA form?

7 A. Of the AIM -- A -- I'm sorry, showing the  
8 details. And they can say -- they can tell us, like  
9 if the AIA is saying we're asking for release of a  
10 draw for stored materials because it's all so detailed  
11 and broken down, we know, of course, we're not going  
12 to pay for stored materials. We know to knock that  
13 off. The inspector does as well. And she or he will  
14 mark through that and, you know, knowing what our --  
15 what our policy is about stored materials and so  
16 forth.

17 Q. Okay.

18 A. But it, you know, it has to be verified. The  
19 pay app has to be verified. But, typically, our  
20 builder draw requests, Cliff Hall didn't ask for a  
21 certain dollar amount, he would say, please order a  
22 draw. I think on one of his initial ones, if I  
23 recall, he said, sewer and water is complete.

24 Q. Okay. So, on the draw requests, the amount to  
25 be funded is solely a determination by RBC?

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1 A. Yes.

2 Q. And you're not overseeing each -- the approval  
3 of each draw request; is that correct?

4 A. That is correct.

5 Q. So, you rely on your technicians, the four  
6 people in the unit, to use their judgment as to  
7 whether the draw should issue or not? And I assume if  
8 they have a question about it --

9 A. They will bring it --

10 Q. -- they will bring it to you?

11 A. That is correct.

12 MR. MCGEE: Objection; compound.

13 BY MR. FOSMIRE: (RESUMED.)

14 Q. Prior to becoming aware of the problem with  
15 Hall Builders and the Carews' home in February 2009,  
16 did any of your technicians bring any of the pay  
17 requests by Hall Builders to you?

18 A. No.

19 Q. So, when Gale Chaffin made her decision to  
20 give the additional 2 percent in December around the  
21 holidays, that did not come to you?

22 A. It didn't come to me because I was off that  
23 week. And when I came back in, she did tell me that  
24 Cliff Hall was calling her repeatedly.

25 Q. Was that a little unusual?

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1 A. Yes, it was.

2 Q. Based on what I've heard, it sounds like Cliff  
3 Hall was desperate?

4 MR. McGEE: Object to the form; calls for  
5 speculation.

6 THE WITNESS: I did not speak to him.

7 BY MR. FOSMIRE: (RESUMED.)

8 Q. Okay. But she told you he was calling  
9 repeatedly?

10 A. He was calling repeatedly.

11 Q. And he was in need of funds?

12 A. Yes.

13 Q. Do you think that required RBC to be even more  
14 vigilant in its disbursal process?

15 MR. McGEE: Object to the form; no  
16 foundation.

17 THE WITNESS: Yes, I would be alert at a  
18 builder that was calling repeatedly.

19 (Pause.)

20 BY MR. FOSMIRE: (RESUMED..)

21 Q. Other than the letter that I sent to Betsy  
22 Burns, did you have any knowledge of the -- any  
23 separate knowledge of the interior water damage or  
24 mold problems within the home?

25 A. No, I didn't know anything about the damage

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1 and what the extent of the damage was. I learned  
2 after the fact, and I cannot remember who told me  
3 about several consecutive days of rain that had caused  
4 the interior damage.

5 (Pause.)

6 MR. FOSMIRE: It's just about Noon. Why don't  
7 we take a short break and see if lunch is here.

8 (Whereupon, at 11:57 a.m., a recess was taken  
9 until 12:06 p.m..)

10 FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFFS

11 BY MR. FOSMIRE: (RESUMED.)

12 Q. Ms. Patterson, a few more questions for you  
13 relating to RBC.

14 Toward the end of the -- just before the last  
15 break we were talking about RBC restored \$86,700 to  
16 the Carews' loan balance, correct?

17 A. Correct.

18 Q. Other than that restoration, did RBC give any  
19 additional funds to the Carews to complete the home?

20 A. No, they have not.

21 Q. Okay. Did -- did RBC take any affirmative  
22 steps to try to resolve the mechanics liens that were  
23 filed against the property?

24 A. To my knowledge, no. Legal would be able to  
25 answer that.

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1 Q. Okay.

2 A. I know title updates were -- were ordered.

3 Q. Okay. The mechanics liens would impair your  
4 asset, correct?

5 A. Correct.

6 Q. Do you have an understanding of what the total  
7 value of those liens were other than what I wrote to  
8 Betsy Burns?

9 A. No. I mean, that information is in here, but  
10 I don't recollect without looking at it what that  
11 total was.

12 Q. Okay. But it's in the title update request --

13 A. It's in the title update, yes.

14 Q. -- the file?

15 A. It is.

16 (Pause.)

17 Q. Other than knowing that there is a  
18 construction loan agreement, have you reviewed the  
19 agreement in this case?

20 A. I have.

21 Q. Okay. Are the Carews current with their loan  
22 with RBC?

23 A. Yes, they are.

24 Q. Did you check that before the deposition?

25 A. I did.

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1 Q. Did you check any of the other loans that the  
2 Carews have other than the one on the Edens Point  
3 home?

4 A. No, sir, I did not.

5 Q. So, the only loan balance that you checked  
6 for -- to make sure that it was current, was the  
7 balance on the Edens Point home?

8 A. That is correct.

9 Q. Going back to RBC 302, that's the email  
10 sequence with Anderson Griffin.

11 A. Yes.

12 Q. Have you talked any further with Anderson  
13 about that sequence and why she represented that the  
14 86,7 will be posted on Monday?

15 A. I haven't talked to her in preparation for  
16 this deposition about it, because we had previous  
17 conversations. She knows that this was done in  
18 error. She is aware that this was done in error.

19 Q. Okay.

20 A. So, we did discuss it. We did review it some  
21 time ago.

22 Q. Was there repro -- any disciplinary action  
23 taken?

24 A. Yes, she was written up.

25 Q. She was?



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1 A. Yes. Uh-huh.

2 Q. Other than writing her up for personnel  
3 purposes, was there any financial penalty to her?

4 A. There was not a financial pen -- penalty, no,  
5 but what I did was monitor her ongoing for three  
6 months by reviewing, making sure she had a very clear  
7 understanding of the process and reviewing her  
8 subsequent draws.

9 Q. Okay. Once you became aware of the Hall  
10 problem and the fact that Pyramid Contracting became  
11 the -- the substitute builder, did you more closely  
12 look at the Pyramid payouts?

13 A. Absolutely. Absolutely. I preferred the pay  
14 apps as Pyramid submitted them because they are so  
15 de -- detailed, down to the -- down to the penny.

16 Q. And I assume you were looking at it because of  
17 the dispute that existed and required supervisory  
18 attention, correct?

19 A. That's correct.

20 Q. All right. Was there anything inappropriate  
21 with the Pyramid pay apps?

22 A. Not that I saw, no.

23 Q. Did they appear to be in order?

24 A. Yes, they did.

25 Q. And did you disburse construction loan

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1 proceeds as a result of the Pyramid pay apps?

2 A. I did, yes.

3 MR. FOSMIRE: Ms. Patterson, that's all I  
4 have. Thank you.

5 THE WITNESS: Okay. All right. Thank you

6 MR. FOSMIRE: You going to have some  
7 questions?

8 MR. MCGEE: Yeah, I'm going to have just a  
9 few.

10 (Pause.)

11 EXAMINATION BY COUNSEL FOR THE DEFENDANTS

12 BY MR. MCGEE:

13 Q. Ms. Patterson, who picked the builder for the  
14 Carews' home?

15 A. Dr. and Mrs. Carew.

16 Q. And did the bank have a contract with the  
17 builder?

18 A. No, they did not.

19 Q. Did the Carews have a contract with the  
20 builder?

21 A. Yes, they did.

22 Q. Did RBC play any role in selecting Hall  
23 Builders for the Carews' project?

24 A. No, sir.

25 Q. And in the construction loan agreement,

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1     there's no -- there's no obligation in the  
2     construction loan agreement that the bank check or do  
3     any kind of background check on the builders; is that  
4     right?

5         A.     That is correct. It is optional.

6         Q.     And the check that was run on Hall Builders  
7     showed nothing -- no -- no adverse information; is  
8     that right?

9         A.     That's correct.

10        Q.     Do you know what, if any, due diligence the  
11     Carews did concerning Hall Builders?

12        A.     No, I do not.

13        Q.     Earlier there were some questions about the  
14     pleadings and discovery. Are you -- you're not  
15     employed by the Legal Department; is that right?

16        A.     That's correct.

17        Q.     And are -- are you the only person at RBC Bank  
18     who's worked with me or my office in the preparing of  
19     the bank's answers and discovery responses?

20        A.     Yes.

21        Q.     Do you know if I've also worked with folks in  
22     Legal?

23        A.     You have worked with folks in Legal. I do  
24     know that.

25        Q.     So, you don't know all of the information that

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1 I may have received from other employees of RBC?

2 A. That's correct.

3 Q. And we went over Exhibit 1, which is the  
4 30(b)(6) Deposition Notice today and those  
5 categories. Do you remember those?

6 A. I do.

7 Q. And none of those categories pertain to the  
8 bank's legal defenses or positions in this case; is  
9 that right?

10 A. Right.

11 Q. And so, you're not speaking for the bank on --  
12 on behalf of the bank as to those issues today; is  
13 that right?

14 A. That's correct.

15 Q. And you personally were not involved in  
16 determining which defenses or legal positions would be  
17 taken by the bank?

18 A. No, I was not.

19 Q. You have -- in your experience, have you ever  
20 worked for a general contractor or a builder?

21 A. No, I have not.

22 Q. And as you -- I think you testified earlier,  
23 RBC is a bank. It lends money. It's not a builder;  
24 is that right?

25 A. That is correct.

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1 Q. And if you'll look real quick at RBC 14.

2 A. I'm sorry, what number?

3 Q. RBC 14.

4 A. 14?

5 Q. Yes, ma'am. Is that form similar to those  
6 used by other lenders in construction loans?

7 A. Yes, it is.

8 Q. And to your knowledge, does the construction  
9 loan agreements contain any obligation on the part of  
10 the bank to instruct the builder in what order to  
11 construct the home?

12 A. It does not.

13 Q. And to your knowledge is that typical of  
14 lenders that are involved in construction loans?

15 A. Yes.

16 Q. And you've worked in the current position that  
17 you have now for five years?

18 A. For five years in this department, yes.

19 Q. And is it -- is RBC's -- are the practices and  
20 procedures in regard to Construction Perm loans  
21 consistent with other lenders?

22 A. Yes.

23 Q. All draw payments from RBC concerning the  
24 Carews' home were paid directly to Dr. Carew's  
25 account; is that right?

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1       A.   That is correct.  They went directly into that  
2       dedicated checking account.

3       Q.   And so, no draw payments were paid directly to  
4       Hall Builders by RBC; is that right?

5       A.   That's right.

6       Q.   And so, all payments to Hall Builders after  
7       the February 29, 2008, loan closing were made by  
8       Dr. Carew?

9       A.   That's correct.

10      Q.   And the reason that I say after the closing  
11      was because at closing there were funds paid to the  
12      closing attorney, to the settlement agent?

13      A.   Right.  Exactly.  To the trust account of the  
14      settlement agent.

15      Q.   Okay.  And you discussed those payments  
16      earlier with Mr. Fosmire?

17      A.   Yes.

18      Q.   The 127,500 plus the remainder of the lot  
19      payoff?

20      A.   Yes.

21      Q.   So, if the bank did not pay Hall Builders  
22      directly, Dr. Carew decided when and how much to write  
23      a check for Hall Builders?

24      A.   Yes.

25      Q.   And did Dr. Carew ever tell you that he was on

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1 site or that he was monitoring the construction?

2 A. He did tell me when he contacted me. He said,  
3 I've -- I asked if he was monitoring. He said, yes,  
4 I'm there almost weekly, sometimes more.

5 Q. And before February, I guess it -- it seems to  
6 be February 10th; is that the day that -- that the --  
7 problem date that we're calling it?

8 A. Yes.

9 Q. Before that time, had Dr. Carew ever contacted  
10 you or anybody, to your knowledge, that you work with  
11 and said that he had problems with the construction?

12 A. No.

13 Q. If you would, look at RBC 105, please.

14 You were asked some questions about the -- the  
15 last line where it says, plus 2 --

16 A. Yes.

17 Q. -- miscellaneous, final cleanup?

18 A. Yes.

19 Q. How much is allotted for a total -- for that  
20 category?

21 A. 3 percent.

22 Q. Okay. And so, 2 percent was given for  
23 miscellaneous for the cleanup?

24 A. That's correct.

25 Q. And so, if this project -- if Hall Builders

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1 had not walked off the project and -- and this project  
2 went to completion, would he have been paid -- how  
3 much more would he have been paid for final cleanup?

4 A. Just 1 percent.

5 Q. That never came to pass --

6 A. Never happened.

7 Q. -- because he walked off the job?

8 A. Yes.

9 (Pause.)

10 Q. You may have addressed this, but insofar as  
11 the construction loan form, the inspection form,  
12 that's at 105 that -- that we were discussing, do you  
13 know for certain whether the items as listed are in  
14 exact order of how they are to be constructed?

15 A. I do not know because I'm not a builder.

16 Q. And you explained earlier that the percentage  
17 of completion as calculated by the inspector typically  
18 is not identical to the percentage of the proceeds  
19 disbursed?

20 A. Correct.

21 Q. And in this case, for example, there were a  
22 substantial amount of proceeds that were disbursed at  
23 closing in February of 2008?

24 A. Right.

25 Q. And -- so, at the -- at the closing February



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1 29 of 2008, the Carews signed off on those initial  
2 disbursements?

3 A. Yes, they were aware. They signed the HUD  
4 settlement statement and it was spelled out exactly  
5 what was being released.

6 Q. And so, on that date, at least, the Carews  
7 knew that the 127,500 soft cost, initial cost,  
8 start-up cost for the builder, plus the -- I can't  
9 remember how much it was --

10 A. 262.

11 Q. 262,000 for the lot payoff, they knew that of  
12 their 1.1 million dollar loan that those funds were  
13 being disbursed that day?

14 A. Yes, they did.

15 Q. And so, they knew that no construction had  
16 begun that day?

17 A. That's correct.

18 Q. And so, at that point they knew that there --  
19 that the level of completion compared with the level  
20 of disbursement was not equal?

21 A. Right.

22 Q. Did they ever complain about that to you?

23 A. No, sir.

24 Q. Now, at some point the bank credited the  
25 \$86,700 draw that was paid. Mr. Hall stated that

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1 there was -- that that -- it was a 12 percent draw; is  
2 that right?

3 A. That's correct.

4 Q. And the -- the next business day, on February  
5 2 of 2009, there was an inspection done; is that  
6 right?

7 A. Yes.

8 Q. And that showed that there was 11 percent --

9 A. 11 percent.

10 Q. So, we're talking about a 1 percent  
11 difference?

12 A. Correct.

13 Q. And at some point the bank credited back, or I  
14 don't know how you -- you term it, the \$86,700 to the  
15 account?

16 A. Yes, it was restored to the available balance  
17 so they could draw from it again.

18 Q. Okay.

19 A. Which they did.

20 Q. Okay. And -- and -- but those funds, the  
21 86,700, was never paid directly to Hall Builders  
22 initially?

23 A. No. No, it was paid to the Carews.

24 Q. Okay. And they paid that money to their  
25 builder?

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1 A. Correct.

2 Q. And then after the 86,700 was restored, they  
3 used that money again?

4 A. Yes.

5 Q. And that money was given from RBC to the  
6 Carews?

7 A. Correct.

8 Q. And the Carews gave it to their builder?

9 A. Correct.

10 Q. Now, RBC just didn't give that money away to  
11 the Carews, right? I mean, they --

12 A. That's correct.

13 Q. Okay. And would -- that would be addressed at  
14 some point, maybe when the loan went from construction  
15 to perm at conversion?

16 A. Yes. Yes, for a pay app.

17 Q. And this loan has never been converted to  
18 perm, right?

19 A. No, it has not.

20 Q. And there was actually some balance left on  
21 the -- available balance left on the loan; is that  
22 right?

23 A. That's correct. The Carews never fully drew  
24 on this loan. There was a balance, I don't have it  
25 right in front of me, but around \$20,000, in excess of

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1 \$20,000, there was a remaining balance from which they  
2 did not draw.

3 Q. And at any time prior to February 10 of 2009,  
4 were you or anyone at the bank, that you're aware of,  
5 did you know that Hall Builders was going to walk off  
6 the job?

7 A. No, we did not.

8 Q. And if you had known at some point in time  
9 that the builder was going to walk off the job, would  
10 that have concerned you?

11 A. Absolutely.

12 Q. And would you have raised that with the  
13 Carews?

14 A. Yes, absolutely.

15 Q. But that never occurred?

16 A. No, it did not.

17 Q. Because you never knew?

18 A. Right.

19 Q. At any time before February 10, when all this  
20 came to light, the problems with Hall Builders came to  
21 light, had you ever been told by Dr. Carew or anyone  
22 else that there were problems with the competency or  
23 completeness of the Carews' house?

24 A. Never.

25 Q. And if you had known that, you would have

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1 certainly raised that with the Carews?

2 A. Absolutely.

3 Q. And I understand that a construction monitor  
4 inspector was used in this case. You mentioned  
5 earlier that you've read the construction loan  
6 agreement.

7 That agreement actually states that the bank  
8 doesn't even have to use one; is that right?

9 A. That's right.

10 MR. MCGEE: That's all I have. Thank you very  
11 much.

12 THE WITNESS: Okay.

13 MR. FOSMIRE: Just a couple of follow-up.

14 FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFFS

15 BY MR. FOSMIRE:

16 Q. Regarding the transmission of the money from  
17 RBC to the Carews' account and then the Carews paying  
18 Hall Builders, Mr. -- Mr. McGee asked you a question  
19 about that, but the house doesn't get built without  
20 the RBC money, correct?

21 A. Well, that's correct.

22 Q. I mean -- and you have, meaning RBC, has a  
23 mortgaged asset, correct?

24 A. Correct.

25 Q. And the only way the funds get disbursed to

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1 Hall Builders is that a request is made by Hall for  
2 payment, correct?

3 A. That is correct.

4 Q. It's the RBC decision as to whether or not to  
5 release funds, construction loan proceeds, correct?

6 A. I'm sorry?

7 Q. It's RBC's decision as to whether or not to  
8 release construction loan proceeds?

9 A. Yes, sir.

10 Q. The Carews can't make that decision?

11 A. Well, I disagree with that. The Carews must  
12 make that decision.

13 We determine the percentage that can be  
14 released from the loan and then put it into their  
15 account. And then it is their responsibility at that  
16 point to pay or not to pay their builder.

17 Q. If the foundation is the only thing that's in,  
18 and the Carews came to you and said, we want the  
19 entire construction loan balance, would RBC release  
20 it?

21 A. No. Not under this process, no, we would not.

22 Q. Okay. Because you have to watch the progress  
23 of the house, meaning you, RBC, has to monitor the  
24 progress of the home?

25 A. Well, that has been a decision that RBC makes,

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1 but it's not in the construction loan agreement.

2 Q. But you're -- RBC is not going to release the  
3 funds if the level of percentage of completion of the  
4 house is not appropriate, correct?

5 A. Correct.

6 MR. FOSMIRE: All right. That's all I have.  
7 Thank you.

8 THE WITNESS: You're welcome.

9 MR. McGEE: Nothing further.

10 THE WITNESS: Okay.

11 (Discussion off the record.)

12 (Whereupon, at 12:26 p.m., the taking of the  
13 instant deposition ceased.

14

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A. WILLIAM ROBERTS, JR. & ASSOCIATES 800-743-DEPO  
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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE CIVIL COURT

DR. JOSEPH G. CAREW, ET AL, )  
Plaintiffs, )  
-vs- )  
R.B.C. CENTURA BANK, ET AL, )  
Defendants. )

TRANSCRIPT OF RECORD  
10-CP-32-00422

April 9, 2012  
Lexington, South Carolina

B E F O R E:

HONORABLE R. KNOX MCMAHON, Judge.

A P P E A R A N C E S:

ERIC G. FOSMIRE, Esquire  
Attorney for the Plaintiffs

THOMAS W. MCGEE, III, Esquire  
Attorney for the Defendant R.B.C.

L. COCONUT PANTSARI, R.P.R.  
Circuit Court Reporter



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**INDEX OF WITNESSES**

(Court Reporter's Note: There was no direct or cross examination of any witnesses).

**INDEX OF EXHIBITS**

(Court Reporter's Note: No exhibits were marked or received into evidence).

1           (The following proceedings are reported on  
2 April 9, 2012.)

3           THE COURT: This is 10-CP-32-00442, Carew  
4 versus R.B.C. Centura Bank. Mr. Fosmire, Mr. McGee.

5           MR. McGEE: Yes, Your Honor.

6           THE COURT: Mr. McGee, this is your motion?

7           MR. McGEE: Yes, it is, Your Honor.

8           THE COURT: All right.

9           MR. McGEE: May it please the Court.

10          THE COURT: Yes, sir.

11          MR. McGEE: Your Honor, Billy McGee on behalf  
12 of defendant R.B.C. Centura Bank. As I noted in my  
13 memorandum filed late last week, R.B.C. is know known as  
14 P.M.C. Bank as a result of a merger that occurred in  
15 March of this year.

16          THE COURT: What does that stand for?

17          MR. McGEE: I think it's Pittsburg something  
18 or another.

19          THE COURT: R.B.C. was Royal Bank of Canada?

20          MR. McGEE: Correct. It's very difficult to  
21 keep up with all the names of these banks these days.  
22 Your Honor, I have got an additional copy of my  
23 memorandum if Your Honor needs one -- I don't know if  
24 you have one or not -- that I might refer to.

25          THE COURT: This (indicating)?

1 MR. McGEE: Yes, Your Honor.

2 THE COURT: All right. Yes, sir.

3 MR. McGEE: Your Honor, this case is about a  
4 dispute over the construction of a \$1.4 million home on  
5 Lake Murray filed by the plaintiffs. The plaintiffs are  
6 both chiropractors in Lexington County. The plaintiffs  
7 have sued their lender, who at the time was R.B.C., as  
8 well as their contractor, Clifton Hall and Hall  
9 Builders.

10 They also sued the appraiser that was retained  
11 by R.B.C., who was Mid Carolina Appraisal, and Teresa  
12 Addy-Haltiwanger. The appraiser, Judge, filed a motion  
13 for summary judgment that Your Honor granted previously.

14 A copy of your order granting that motion for  
15 summary judgment to the appraiser is attached to my  
16 memorandum as Exhibit 1. Importantly, Judge, that order  
17 dismissing all of the claims against the appraiser has  
18 not been appealed, and therefore all the findings of  
19 facts and conclusions of law contained in your order are  
20 now the law of the case.

21 In short, Judge, we believe that the  
22 negligence and the breach of contract claims asserted by  
23 the plaintiffs against the bank can be disposed of based  
24 on the law of the case doctrine in accordance with the  
25 terms of your dismissal of the claims against the

1 appraiser in this matter.

2 The facts of this case are largely not in  
3 dispute, Judge. R.B.C. was the lender. The plaintiffs  
4 signed the construction loan agreement, which is  
5 attached as Exhibit 2 to my memorandum.

6 Mr. Carew, Dr. Carew -- I will call them  
7 Mr. and Ms. Carew. They both go by doctor. Mr. Carew  
8 testified that he did not read the construction loan  
9 agreement before he signed it.

10 Regardless, Judge Dr. Carew, Mr. Carew, is  
11 obviously a well-educated man, has a construction of  
12 \$1.4 million home at Lake Murray. He had a full and  
13 fair opportunity to read it, and therefore South  
14 Carolina law requires that he is bound by the terms of  
15 the agreement that he had an obligation or at least an  
16 opportunity to read.

17 The Carews picked or selected their builder,  
18 Hall Builders. The bank had no agreement whatsoever  
19 with the builder. The builder unfortunately left the  
20 job before it was completed and said that the business  
21 had gone under. They could not complete the  
22 construction of the house.

23 At that point, Judge, there was some damage  
24 that occurred to the interior of the home. It is  
25 alleged that the permanent roof was not completed on the

1 home prior to installing the floors and some cabinets,  
2 and therefore the elements caused some damage to the  
3 interior of the home.

4 The Carews ultimately went to another builder  
5 who completed the house from there. They also had to  
6 put some of their own money into the house because at  
7 the time when Hall Builders left, the percentage of  
8 completion of the home was not equal to or less than the  
9 amount of loan proceeds that were remaining with R.B.C.

10 The findings of fact that Your Honor made in  
11 the prior summary judgment motion are cited by me on  
12 page 3 of our memorandum. Importantly, the construction  
13 loan agreement addresses a lot of these issues, Judge.

14 In essence the Carews' breach of contract and  
15 negligence claim is as follows: The bank did not hire a  
16 competent appraiser. The appraiser ultimately did  
17 construction progress reports and then would send them  
18 into the bank. The bank would review them and based on  
19 those reports would issue payments for the draws that  
20 were requested by the builder.

21 In this case I think a very key point to  
22 remember, Judge, is that the bank did not release those  
23 directly to the builder. In this case the bank released  
24 them directly into the Carews' account. The Carews then  
25 would write a check to the builder.

1           However, as Your Honor noted in your prior  
2 order, there is nothing to prevent the bank from simply  
3 cutting a check for the full amount of loan proceeds and  
4 giving it to the builder at the very first part of this  
5 loan.

6           That's exactly what is stated in the  
7 construction loan agreement that the bank can, on its  
8 option, pay directly to the builder. However, the  
9 Carews are the ones that ultimately wrote the checks to  
10 the builder in this case. So that's one part of the  
11 plaintiff's argument.

12           The second part is that the bank did not  
13 release funds at the appropriate time so that the  
14 percentage of completion was not equal to the amount of  
15 proceeds that were disbursed by the bank.

16           Therefore, the bank had released 85 percent of  
17 the funds. The house was only 67 percent completed.  
18 They are asserting liability for those claims as well.  
19 So we have a negligence claim, a breach of duty claim,  
20 as well as a breach of contract claim under the  
21 construction loan agreement.

22           However, Judge, for the reasons set forth in  
23 my memo, both of them must fail. First of all, Your  
24 Honor, I will discuss the negligence claim. In Your  
25 Honor's July 27, 2001 [sic] order, Your Honor held that,

1 quote, "Without question the language in the  
2 construction loan agreement makes it abundantly clear  
3 that R.B.C. had no duty to even conduct inspections  
4 during the construction of the plaintiff's home.

5 In fact, R.B.C. could have, if it so desired  
6 relied entirely on the payment application submitted by  
7 the builder. The inspections were for the sole and  
8 exclusive benefit of R.B.C."

9 That mirrors the language contained in the  
10 construction loan agreement. Not only that, Judge, you  
11 have got the prior -- you have got the law of the case  
12 argument because Your Honor has already held that R.B.C.  
13 had no duty to conduct these inspections pursuant to the  
14 loan agreement. You have the loan agreement terms and  
15 conditions themselves.

16 But also the South Carolina Supreme Court has  
17 addressed this issue, citing to the case of Roundtree  
18 Villas Association versus 4701 Kings Court on page 7 of  
19 my memorandum in which the Supreme Court held that the  
20 builder of a house, who in this case was the Carews, is  
21 entitled to make his own contract with the construction  
22 company.

23 In like fashion a lending institution -- here  
24 R.B.R. -- is entitled to make its own contract with one  
25 who is building the house. Traditionally lenders, in

1 making a construction loan, make periodic inspections to  
2 assure that the construction loans advancements are  
3 being applied appropriately.

4 This is fundamentally for the protection of  
5 the lending institution and does not impose upon the  
6 lending institution a duty to see that the builder is  
7 getting the job free of defects, but the lender and  
8 borrower have a common interest in seeing that the  
9 construction company builds a building free of defects,  
10 but absent a contract the builder has no common law duty  
11 to protect the lender, and the lender has no common law  
12 duty to protect the builder.

13 Therefore, Judge, we have got your prior order  
14 on these issues that is the law of the case. We have  
15 got the construction loan agreement which is absolutely  
16 clear in its terms that there is no duty. In fact, the  
17 plaintiffs acknowledge that there is no duty and that  
18 they have no right to rely on any of the construction  
19 inspections by R.B.C.'s appraiser.

20 Then we have got the South Carolina Supreme  
21 Court saying there is no common law duty either. It's  
22 frankly more than belt and suspenders right there,  
23 Judge.

24 Next, in addition to the fact that there is no  
25 duty and no right to rely on the part of the plaintiffs,



1 Judge, there is a release contained in the construction  
2 loan agreement that also bars the plaintiff's negligent  
3 claim against R.B.C.

4 I discussed this in Section (B) on page 8 of  
5 my memorandum. Section 8.4 of the construction loan  
6 agreement states that, "The plaintiffs agree that  
7 R.B.C.'s failure or the construction monitor's failure,  
8 one, to discover defects in the improvements, including  
9 errors or omissions in designed workmanship, materials,  
10 supplies, fixtures, parts, products, or equipment due to  
11 non-compliance with the construction documents or due to  
12 any defects in any of the foregoing will not make either  
13 you or the construction monitor liable to me."

14 Therefore, even if Your Honor's law of the  
15 case, Your Honor's prior order didn't bar it, if the  
16 construction loan agreement expressly held it, South  
17 Carolina common law did not bar it, the plaintiffs have  
18 waived and released any claim against the bank in this  
19 case, Judge. Again, this matter was addressed in your  
20 prior order too.

21 Lastly, Judge, there are a few allegations in  
22 plaintiff's amended complaint against the bank that  
23 don't relate directly to inspection reports that fail  
24 under the reasons we have just discussed.

25 In Paragraph 51 of the amended complaint, the

1 plaintiffs identify eight instances in which R.B.C. was  
2 allegedly negligent. Five of them relate to the  
3 inspection reports, which are barred and should be  
4 dismissed based on what I discussed so far. The three  
5 remaining allegation must also be dismissed.

6 First, the plaintiffs address that R.B.C. was  
7 negligent, quote, "By paying the same construction draws  
8 twice," end quote. However, the only evidence before  
9 the Court is that this occurred one time and that R.B.C.  
10 released the funds directly to the plaintiffs.

11 Again, Judge, the plaintiffs are the ones that  
12 wrote the checks to the builder. If the plaintiffs  
13 chose to write a check to the builder for the same thing  
14 on two separate occasions, they are responsible for  
15 that, not the bank. The bank simply put money into  
16 their account.

17 Second, the one time this occurred -- and  
18 there is only evidence this occurred one time as to a  
19 pool draw disbursement -- that R.B.C. agreed to restore  
20 that second credit to the plaintiffs so that they would  
21 be able to draw against it for future draws.

22 Your Honor, Exhibit 3 to my memo is the  
23 deposition transcript of the bank's 30(b)(6). Her name  
24 is Kathy Robertson. At page 148, line 23, to 149, line  
25 9, she noted that there was a draw that was paid twice,

1 that the funds were put in the plaintiff's bank account  
2 twice; however, this was corrected by the bank applying  
3 and restoring that credit later on. So the plaintiffs  
4 cannot show any damages in that instance, and certainly  
5 the bank corrected that complaint.

6 The second of the three additional allegations  
7 of negligence, the plaintiffs allege R.B.C. was  
8 negligent, quote, "By failing to timely assist the  
9 plaintiffs when advised that the asset was in peril of  
10 not being completed," end quote.

11 However, Judge, the plaintiffs have not  
12 established that there was any contractual or legal duty  
13 for R.B.C. to help the plaintiffs to enforce their  
14 construction contract against the builder that they  
15 alone chose to hire and that they alone only had a  
16 contract with.

17 In other words, Judge, at one point there was  
18 some liens from some subs that the contractor did not  
19 pay. There was some liens that were attached. The  
20 plaintiffs obviously came and told the bank that the  
21 builder had walked off the job and that there were some  
22 liens on the property.

23 The plaintiffs asked the bank to try to fix  
24 the situation, and the bank said, "You have the contract  
25 with the builder. We can't enforce anything against the

1 builder. We don't have an agreement with them. We have  
2 no authority to go against the builder. Tell him to  
3 correct these problems or dismiss these liens."

4           There is no allegation of any legal duty, any  
5 statutory due, or any common law duty that the bank --  
6 that was owed by the bank to the plaintiffs in this  
7 case.

8           Also, Judge, I want to raise one thing I  
9 should have earlier. To the extent that the plaintiffs  
10 themselves are saying that the bank owed a duty as a  
11 construction lender to them as borrowers in this case,  
12 they would need to establish the industry standard and  
13 that the bank also deviated from that industry standard.

14           We submit, Your Honor, that that needs to be  
15 done by an expert. That has not been established. The  
16 duty has not been established, nor has the breach been  
17 established by an expert; therefore, all the negligence  
18 claims are barred as a matter of law.

19           Let me conclude, as far as our negligence  
20 summary judgment is concerned, with the third and final  
21 allegation that the plaintiffs make against the bank and  
22 that R.B.C. was negligent, quote, "By failing to timely  
23 respond to plaintiffs which resulted in liens being  
24 placed against the property in question imperilling the  
25 asset," end quote.

1           Again, there is no such duty owed to the  
2 plaintiffs, either in common law or under the  
3 construction loan agreement. Again, the plaintiffs are  
4 saying, "Look, we told you that our builder walked off  
5 the job, and we were having some difficulties in  
6 completing the construction. You guys didn't step in  
7 and help us fix the situation earlier. Therefore, liens  
8 were applied on the house."

9           Again, there is no common law duty, no  
10 contractual duty, no statutory duty owed by the bank to  
11 the plaintiffs to fix their problem with their builder  
12 with whom they had a contract with. The bank didn't  
13 have a contract with the builder. He owed us no duty.

14           In sum, Judge, the negligence claim fails  
15 because there is no duty owed by R.B.C. to the  
16 plaintiffs. Moreover, the terms of the construction  
17 loan agreement release R.B.C. from any such claims.  
18 Under the law of the case, the terms of the construction  
19 loan agreement, and South Carolina common law, the  
20 negligence claim must be dismissed.

21           Second, Judge, there is a breach of the  
22 construction loan agreement, a breach of contract claim,  
23 by the plaintiffs against R.B.C. in this case. In the  
24 interrogatories I asked the plaintiffs to identify the  
25 specific sections of the construction loan agreement

1 that R.B.C. is alleged to have breached.

2 The plaintiffs identified -- and their answers  
3 to my interrogatories are attached as Exhibit 4 -- they  
4 identified Section 5, Section 6.2, 7, 8, and 10.3.  
5 However, these claims are wholly unsupported by the  
6 agreement itself, and there is no evidence properly  
7 before this Court that any such breach of those  
8 provisions has occurred.

9 First, Section 5 states in part, quote, "All  
10 of the conditions in the following paragraphs of the  
11 section must be satisfied or completed to your -- that's  
12 R.B.C.'s -- satisfaction before you are obligated to  
13 make any disbursements."

14 Then it goes onto provide some events that  
15 must occur for the conditions to be met in R.B.C.'s  
16 satisfaction. It does not say to anybody else. Then  
17 that the section, Section 5.5 provides, quote, "In  
18 R.B.C.'s opinion the construction improvements must have  
19 been proceeding and will continue to proceed in  
20 accordance with the agreement," and it goes on to list  
21 some other things.

22 In other words, Judge, Section 5 of the  
23 construction loan agreement gives R.B.C. full discretion  
24 in deciding when it releases loans proceeds to the  
25 plaintiffs for payment to their builder.

1           In fact, it's the law of this case that R.B.C.  
2 could have simply paid the loan proceeds directly to the  
3 builder if it wanted to, and it did not have an  
4 obligation to conduct any inspections whatsoever.

5           So, again, not only does the law of the case  
6 but the construction loan agreement, Section 5 and 5.5,  
7 expressly allow R.B.C. full discretion to pay out the  
8 draw disbursements as it deems fit.

9           Again, in this case it would only disburse it  
10 to the Carews' account. So ultimately they would have  
11 the ability to stop any payments if they didn't believe  
12 it was occurring properly. They are out on the site.  
13 They are seeing what is going on. They are the ones  
14 that actually have to write the checks.

15           Section 6.2 requires the project to be  
16 completed and lien releases submitted to R.B.C. That is  
17 one of the allegations -- one of the sections -- that  
18 the plaintiffs allege was breached.

19           However, Section 6.2 has no obligation on the  
20 part of R.B.C. in this section. It simply requires the  
21 project to be completed and the lien releases be  
22 submitted to the bank. There is no breach there.

23           The third section alleged to have been  
24 breached is Section 7. That section relates to the  
25 disbursement amounts and procedure for draw requests.

1 Again, the law of the case in Section 7.4 expressly  
2 provides that R.B.C. could have paid all of the loan  
3 proceeds directly to the contractor, quote -- and this  
4 is what the plaintiffs agreed to -- "Without my prior  
5 approval and without prior notice to the plaintiffs."

6 In other words, while Mr. Carew said he didn't  
7 read the construction loan agreement, he does not  
8 dispute that he signed and initialed every page. By  
9 doing that, he expressly agreed that the bank could  
10 makes disbursements, quote, "Without my prior approval  
11 and without prior notice to me."

12 Section 7.2 also states that R.B.C. will  
13 determine the amount to be disbursed under each draw  
14 request. Once R.B.C. determines the amount to disburse,  
15 if the amount is less than the amount requested in the  
16 draw request, it will be amended to reflect the  
17 adjustments, and plaintiffs agree to execute the amended  
18 draw requests.

19 Again, the express language of Section 7.4 and  
20 7.2 state that it is the bank's decision on how much it  
21 will release in response to a draw request into the  
22 Carews' account. Then if they have got a problem with  
23 it, they don't cut the check until they are happy with  
24 it.

25 In short by signing the agreement, even though



1 he didn't read it, the Carews agreed that R.B.C. -- not  
2 the plaintiffs, not the contractor or anybody else --  
3 would have the authority to decide which amounts would  
4 be paid in response to draw requests. There is no  
5 evidence or support for any alleged breach of this  
6 section of the construction loan agreement properly  
7 before the Court.

8 Thirdly, Section 8 relates to the inspection  
9 of construction and is fully discussed in our  
10 memorandum, and that relates to the inspections done by  
11 the appraiser who was dismissed from the case.

12 I discussed that fully in the negligence  
13 discussion earlier on, Judge, and it's addressed in my  
14 memo. I won't belabor the point or repeat it, unless  
15 Your Honor has questions about it.

16 THE COURT: No, sir.

17 MR. McGEE: Lastly, Section 10.3 is the last  
18 section that the plaintiffs allege was breached by R.B.C.  
19 Section 10.3 governs the management of the collateral by  
20 R.B.C.

21 The plaintiffs allege we have breached that  
22 provision; however, that section states that, quote,  
23 "R.B.C. will have the right but not the obligation to  
24 take possession, preserve, or protect the collateral  
25 under certain circumstances."

1           As with all the other allegations of R.B.C.  
2 breaching the agreement, there is no evidence to support  
3 plaintiff's claim. Of course, this language says that  
4 R.B.C. has the right but not the obligation.

5           It's our decision whether or not we want to  
6 seize the project and continue completion of  
7 construction to protect the collateral, the bank's  
8 collateral. We didn't choose to do that in this case.

9           The Carews, who are financially able, retained  
10 another contractor to complete the project, and the  
11 project was ultimately completed to their liking. So  
12 that was not necessary in this case, and the bank had no  
13 obligation to do it.

14           Therefore, Judge, in summary as to the breach  
15 of contract claim, all of the sections that the bank  
16 allegedly breached actually demonstrate that the bank  
17 did not breach them and had the contractual -- and has  
18 the support of the contract in its favor, and the breach  
19 of contract claim must be dismissed as a matter of law.

20           I don't want to get -- and I received a copy  
21 of the memorandum in opposition today, Judge. What I  
22 will do is sit down, and I may have some response,  
23 depending on the Court's question and the plaintiff's  
24 argument if you wouldn't mind, Judge.

25           THE COURT: Thank you. Thank you very much.

1 Mr. Fosmire.

2 MR. FOSMIRE: Judge, did you get a copy of our  
3 memo? Both memos were filed Friday, their memo and our  
4 memo. Ours didn't get hand delivered to Billy until  
5 this morning. I apologize to him for that. That's a  
6 copy of ours with all the exhibits. May it please the  
7 Court.

8 THE COURT: Yes, sir.

9 MR. FOSMIRE: Judge, in this case you did  
10 grant summary judgment to the appraiser, the appraisal  
11 team, and their individual appraiser. But the  
12 difference between what happened at that summary  
13 judgment hearing and what we have got in this hearing is  
14 that we have got a contract with R.B.C. Bank.

15 We did not have a contract with the appraiser,  
16 who was hired by R.B.C. but paid for by the Carews out  
17 of the construction proceeds. Based on some existing  
18 case law, you granted summary judgment in their favor,  
19 and we didn't appeal from that.

20 The fact that that is the law of the case I  
21 don't believe adversely affects us in this summary  
22 judgment hearing. If what Mr. McGee is arguing is  
23 correct and R.B.C. has this unfettered discretion under  
24 the construction lending agreement, then they could  
25 release the whole \$1.4 million to the builder.

1           The builder could walk away with that, not  
2 build the house, and we would have no recourse against  
3 R.B.C. That's what he is arguing. Because on the one  
4 hand he says, "It's their obligation to pay. We give  
5 them the money. We have got nothing to do with it after  
6 we send the money to the Carews' account."

7           The construction lending agreement says that  
8 we are obligated to go ahead and pay the contractor.  
9 Then on the other hand they say, "Well, we could just  
10 give the money to the contractor under the lending  
11 agreement if we wanted to because the lending agreement  
12 allows us to do that."

13           They can't have it both ways. No matter how  
14 they handle that, if they handle it unreasonably, then  
15 there should be some recourse for that. What we have  
16 demonstrated in our memo are some of those unreasonable  
17 facts in addition to what is pled in the complaint.

18           You will see, Judge, really kind of the driver  
19 of what happens, happens at the end of 2008, going into  
20 2009. At the end of 2008, when we took their 30(b)(6)  
21 representative's deposition, she admitted that loan  
22 proceeds were disbursed as a result of a mid  
23 December 2008 draw attempt by the builder.

24           This is what is important. The builder is  
25 communicating directly with R.B.C. to say, "I need

1 money." In fact, he asks for more money from R.B.C.  
2 beyond the construction stages of the house because it's  
3 Christmastime. He's got to pay his subcontractors and  
4 its Christmastime.

5 So documented in the loan documents, the loan  
6 administrator gives an additional 2 percent of our money  
7 to the contractor to say, "Okay. We will give you an  
8 extra 2 percent here in December because its  
9 Christmastime."

10 That was their decision, and the house wasn't  
11 even at that stage of completion yet. What you will see  
12 in our exhibits at Exhibit 5 are two -- I'm sorry --  
13 Exhibit 3 in our memo are two fairly key inspection  
14 documents that show the various stages of completion of  
15 the house.

16 What is important in that is that in red,  
17 which is their marking in red, at R.B.C. Bates  
18 Number 105, all this interior work is going on in the  
19 house. The roof is not even complete.

20 They are hiring the inspector because they  
21 have the mortgage asset. They are hiring the inspector  
22 to go out there and check on it. What is happening is  
23 the builder is pushing all the subs that he can because  
24 he is getting money from R.B.C.

25 He is not paying the subs. He is stringing

1 them along to say, "I will be able to pay you," but  
2 unbeknownst to us, he was in some financial distress  
3 because of other problems that he has and he has taken  
4 all the money.

5 He took \$14,000 in the December draw. Then on  
6 February 2nd he communicates directly with R.B.C. again,  
7 and R.B.C. authorizes another \$87,000 to be drawn.  
8 That's February 2nd of 2009.

9 Now, they do that before there is even an  
10 inspection that occurs. So the builder has talked  
11 directly with R.B.C. and says, "I'm at a stage where I  
12 need \$87,600." R.B.C. says okay. They then go, "Oh, by  
13 the way, we should send the inspector out there."

14 They have already decided to release the  
15 funds, and that whole process is documented in the  
16 documents we have attached and by admission of their  
17 30(b)(6) representative. She says it was a mistake to  
18 do so.

19 So he can point to it saying that we don't  
20 have any evidence of a breach. Well, it's right there.  
21 Their own representative admits that it was a mistake.  
22 They shouldn't have done it that way.

23 Here they go. They released \$87,000 of our  
24 loan money on February 2nd of 2009. Then on  
25 February 11th the builder comes to the Carews and says,

1 "You know what? I'm in a lot of financial distress. I  
2 can't finish this house."

3 THE COURT: When was this?

4 MR. FOSMIRE: February 11th.

5 THE COURT: Nine days later?

6 MR. FOSMIRE: Nine days later. After he just  
7 took \$87,000 and he hadn't been paying the subs since  
8 December. He didn't use the Christmas money for the  
9 subs, and he walks away from the job.

10 He says, "Good luck to you. I'm sorry. I'm  
11 in financial distress," and then he walks off the job.  
12 It ended up costing -- not just the \$1.4 million loan --  
13 but another half a million dollars to the Carews because  
14 they had to pay existing workers on the job to keep it  
15 from getting liens.

16 They had to get another contractor in, and  
17 there is a huge start-up cost in bringing in another  
18 contractor. Then they have got the obligation to  
19 complete the asset.

20 The bank is sitting back going, "Well, y'all  
21 are people of means. Y'all work this out yourself.  
22 Good luck to you. You owe \$1.4 million under the loan  
23 agreement."

24 They were able to draw some of the remaining  
25 monies that existed under the loan to pay the

1 replacement contractor, and then they had another half  
2 million dollars in obligations.

3 It's not just for the construction defects  
4 that existed -- and I realize the Roundtree Villas case  
5 is a little problematic to us from a defect prospective  
6 because that does stand for the proposition that the  
7 lender is not vouching for the construction, that the  
8 home is constructed or the structure is constructed  
9 without defects.

10 THE COURT: Say that again, Mr. Fosmire, a  
11 little slower.

12 MR. FOSMIRE: I'm sorry. I didn't say that  
13 very well. Roundtree Villas says that the bank is not  
14 vouching that the project constructed is without  
15 defects. That's why they were trying to be sued.

16 We are not suing R.B.C. Bank for the fact of  
17 the defects -- although they did have a hand in it  
18 because of their negligent inspection of the premises by  
19 allowing all this construction to go forward without a  
20 roof being completed -- we are pursuing them for their  
21 own conduct.

22 It's not just for the defects themselves but  
23 for their own conduct which they admitted was in error,  
24 by giving out money without even having the inspection  
25 completed and by really doing the builder a favor -- I



1 got the 30(b)(6) representative to say that -- that they  
2 were kind of doing the builder a favor back in December  
3 of 2008.

4           So under the terms of the construction lending  
5 agreement, there has to be an element of good faith and  
6 reasonableness in their conduct, and it doesn't exist in  
7 this case. It has substantially harmed our client in  
8 breach of that contract.

9           As it relates to the funding decision, you  
10 have got this approval that occurs before -- an approval  
11 of loan amount that occurs before there is even an  
12 inspection which occurs, which we documented at page 6  
13 of our memo, and have the entirety of the 30(b)(6)  
14 representative's deposition attached to that.

15           There is also the case which I thought R.B.C.  
16 might rely on which was used by the appraiser which  
17 became the law of the case, which is the Robertson  
18 decision out of Charleston.

19           That case had to do with the purchaser of the  
20 property suing the appraiser because the bank  
21 negligently retained the appraiser and colluded with the  
22 appraiser to give a value of the property that met the  
23 amount that the bank was trying to loan.

24           Then the owner found out a couple of years  
25 later that the property really wasn't worth about half

1 of what the loan amount was, and they said they were  
2 upside-down and sued the bank for that.

3 In that case the question was the valuation of  
4 the property as to why the appraiser was being sued.  
5 Here that's not the case. We are not disputing the  
6 valuation of the property.

7 What we are saying is what the negligent  
8 conduct was was the bank's own conduct in failing to  
9 recognize that this house was being rushed along by the  
10 builder, and he was completing interior components  
11 without finishing the roof.

12 Now, when I asked the 30(b)(6) representative  
13 about that, she says, "Well, we track all of our  
14 construction out of a lending unit up in North Carolina.  
15 At that time we would eyeball it or really just did it  
16 out of our own internal knowledge of looking at the  
17 progress of the house and disbursing the funds.

18 Since the date of this debacle with the  
19 Carews, we have gone to a software program which now  
20 catches those types of disbursements to make sure that the  
21 home is progressing percentage wise in some cleaner  
22 ratio to the amount of money that we are disbursing. We  
23 are not going to disburse 80 percent of the loan  
24 proceeds and have a house that is only 20 percent  
25 completed. That's out of whack."

1           That's what was happening in this case with  
2 the vast quantity of the loan that they were disbursing,  
3 which we are obligated to go ahead and give to the  
4 contractor because otherwise he is going to lien the  
5 project.

6           So the Carews are in a kind of catch-22. So  
7 for them to say that -- basically what R.B.C. is saying  
8 is, "Our only obligation in this case is to lend the  
9 money." Then after that, if you listen to their  
10 argument, they say they have no further obligation.

11           They don't have an obligation to make sure the  
12 asset is not impaired. It's their mortgaged asset.  
13 That was our obligation. They are claiming that they  
14 have no obligation to try and resolve those difficulties  
15 that were run into with regard to the builder.

16           We respectfully submit when you talk about a  
17 contractual arrangement where you have got good faith  
18 and fair dealing as a component of that contract, they  
19 have failed in those obligations in the way they have  
20 conducted themselves in this case because they have  
21 admitted under the facts of this case, they were in  
22 error and they made a mistake.

23           We did argue in response to the summary  
24 judgment, Judge, that Mr. McGee is right. My client  
25 testified he didn't read the contract. I think there

1 are lots of lawyers out there who don't even read every  
2 single word of a construction lending agreement or a  
3 home purchase when they purchase a home.

4 I'm not saying that as an excuse for my  
5 clients, the Carews. I only bring that up to say that  
6 really the only thing negotiated in this transaction is  
7 the amount being loaned, the interest rate for it, and  
8 how long it's going to take to pay.

9 Beyond that, none of the other terms are  
10 negotiable. It's all boilerplate. It's all one sided.  
11 Essentially what we have argued, as a kind of a  
12 drop-back position, is that the contract really becomes  
13 an adhesion contract to the Carews in that there is no  
14 equal bargaining power under these circumstances and  
15 that it is absolutely a one-sided contract with all the  
16 terms in favor of R.B.C. Bank.

17 For them to claim that they have a waiver in  
18 that agreement, given their conduct in this case, we  
19 respectfully submit would be a violation of public  
20 policy. You can't contract away your negligence before  
21 it occurs, we respectfully submit, given what they did  
22 in this case.

23 Judge, the rest of the factual backup relating  
24 to the amount of damages suffered, the timing of the  
25 disbursements, and the inspection -- kind of the two key

1 inspection documents -- are included in as exhibits to  
2 our memoranda in opposition, along with the deposition  
3 testimony of their 30(b)(6) representative. We would  
4 stand on that, Judge.

5 THE COURT: Thank you.

6 MR. McGEE: Briefly, Judge.

7 THE COURT: Yes, sir.

8 MR. McGEE: I think we might be getting kind  
9 of far afield here. The fact of the case is this. The  
10 plaintiffs were on site. They visited it frequently, as  
11 testified by Mr. Carew.

12 The builder took money that the Carews wrote  
13 him in a check. He took that money and instead of  
14 putting it into the project, he spent it on other  
15 things. He is clearly the bad actor in this case.

16 However, what the Carews are trying to do now  
17 is they are asking this Court to ignore the construction  
18 loan agreement that they signed and to make a radical  
19 change in South Carolina law as it applies to lenders.

20 In other words, Mr. Fosmire is saying this  
21 agreement, which our 30(b)(6) witness has testified, is  
22 typical of construction loan agreements, the  
23 construction loan sector of banking is unconscionable  
24 and should be ignored or should be refused -- that Your  
25 Honor should refuse to enforce it.

1           That would essentially nullify every  
2 construction loan agreement in the State of South  
3 Carolina because these terms as testified -- the only  
4 evidence in the record -- is that they are typical of  
5 other lenders.

6           Again, one of the problems is that Mr. Fosmire  
7 and the plaintiffs have not had an expert come in and  
8 say, "The bank owes this duty for this reason, and I am  
9 also testifying that the bank fell below the duty in  
10 this industry."

11           That's not before the Court. The only  
12 testimony is the testimony that I have cited in my  
13 memorandum in which our 30(b)(6) says that their  
14 policies and procedures are typical of those other  
15 lenders in the construction industry, and therefore  
16 there is nothing to oppose that.

17           Your Honor, the bank could pay the contractor  
18 directly. Mr. Carew agreed to that term. He didn't  
19 read the construction loan agreement. The fact that he  
20 finds that to be objectionable at this point in the game  
21 is simply his own fault.

22           If he didn't like the terms of the agreement  
23 he could not have -- he could have said, "I'm not going  
24 to sign it." That's his decision to make. As far as  
25 whether it's a contract of adhesion or it's

1 unconscionable and can't be enforced, Your Honor ruled  
2 on that directly in your prior order.

3 In fact, at page -- the top of page 7, Your  
4 Honor found plaintiff's counsel -- strike that. At the  
5 bottom of page 6 -- ah, the bottom of page 8. "Assuming  
6 this Court were to find the construction loan agreement  
7 was an adhesion contract, this Court would not find the  
8 terms to be unconscionable to render the contract  
9 unenforceable." That is the law of the case. The  
10 contract is not unconscionable. There is no more  
11 debating that issue. The Court has decided that.

12 Further, on the top of page 9, Your Honor  
13 said, "Notwithstanding plaintiff's counsel's argument, I  
14 find that the construction loan agreement is not and was  
15 not an adhesion contract." That issue is no longer in  
16 dispute and is the law of this case. So those arguments  
17 must fail.

18 Mr. Fosmire is right. The bank could have  
19 paid the contractor the full amount requested directly  
20 at the very beginning of the project. If the Carews --  
21 he could have paid him directly, but the bank didn't.  
22 What the bank did was deposit it into the Carews'  
23 account.

24 They are the ones that wrote the checks to  
25 their builder. If they said, "You know what? The roof

1 is not on this house yet. I've got some concerns that  
2 you guys are putting in the hardwood floors. I'm not  
3 going to cut you a check until you assure me that's  
4 fixed." They could have done that.

5 They didn't do that. They didn't protect  
6 their own interest. The agreement allows for the Carews  
7 to retain their own inspector if they want. They chose  
8 not to do that. Mr. Carew admitted that in his  
9 deposition.

10 The bank did deposit an extra 2 percent of  
11 miscellaneous work at Christmastime for the payment of  
12 subs. Again, 3 percent of the job was for  
13 miscellaneous. The bank deposited 2 percent of that at  
14 Christmas at the request of the builder.

15 It could have simply cut a check to the  
16 builder for that amount and sent it to them directly if  
17 it wanted to; however, the bank deposited that in the  
18 Carews' account. The Carews then turned and wrote a  
19 check to the builder and handed that check to him.

20 The only testimony about that is that the bank  
21 said, "Well, there is 3 percent miscellaneous." So that  
22 would be made up down the line. He wasn't going to get  
23 another 3 percent. He was only to get 1 percent.

24 That is certainly admissible or permitted  
25 under the terms of the construction loan agreement and



1 Your Honor's order, the law of the case, that R.B.C. had  
2 the right to pay any amounts due directly to the  
3 builder.

4 As to the additional 87 or the duplicative  
5 87,600 pool draw, again, that was made to the Carews.  
6 They didn't have to pay it. They could have said, "Wait  
7 a second. We have already paid this draw once before.  
8 We are not going to pay it to him again. I'm not going  
9 to write the check and go out to the job site and hand  
10 it to my builder."

11 What did they do? He wrote the check,  
12 Mr. Carew did, and went out to the job site and handed  
13 it to the builder. Mr. Carew went back later on and  
14 complained to the bank and the bank restored that  
15 credit.

16 So the complaint that the bank paid two draws  
17 at once rings a little hollow when the bank restored  
18 that, and there is absolutely no damage at this point in  
19 time to the Carews because the bank went back and  
20 restored that credit to them.

21 Also, I don't believe that the testimony from  
22 the 30(b)(6) ever said that it was an error in adding  
23 the 2 percent of the miscellaneous proceeds. I think  
24 she said that it was her independent decision to do so.

25 Again, Your Honor ruled previously that the

1 bank could issue payments directly to the builder, and  
2 it's certainly set forth in the construction loan  
3 agreement.

4           Lastly, the fact that R.B.C. has a different  
5 procedure now is not only irrelevant, it's wholly  
6 inadmissible under the rules of evidence. Of course,  
7 South Carolina case law says that in considering summary  
8 judgment, admissible evidence should only be considered.  
9 This would be a subsequent remedial measure.

10           Of course, this loan occurred a long time ago.  
11 Now we are in 2012. I can't remember when this was.  
12 This was in 2007 or thereabouts, 2008. We have got four  
13 or five years down the road. R.B.C. has been acquired  
14 twice.

15           That is irrelevant anyway, Judge, even if it  
16 was admissible because the only evidence in this case is  
17 that R.B.C.'s policies and procedures were typical of  
18 the construction industry at the time. That's the  
19 testimony from the 30(b)(6).

20           Its policy and procedures, as well as its  
21 forms, were typical to other lenders, and therefore  
22 absent any expert testimony by the plaintiffs, they have  
23 failed to establish any duty and breach of duty under  
24 the standard in the construction loan industry.

25           Therefore, Judge, based on Your Honor's prior

1 order, the law of the case, the negligence claim and the  
2 breach of the construction loan agreement fail as a  
3 matter of law.

4           Moreover, the specific terms of the  
5 construction loan agreement themselves absolves R.B.C.  
6 of any liability because the plaintiffs not only  
7 recognize that R.B.C. had ultimate decision making  
8 authority as to the draws paid out, but that it also --  
9 the plaintiffs also agree -- that they were not relying  
10 on R.B.C.'s hired appraiser construction monitor.

11           Dismissal for those claims, Judge is,  
12 supported not only by your order, by the construction  
13 loan agreement, but also by the South Carolina Supreme  
14 Court decision cited. We would respectfully ask that  
15 Your Honor grant our motion for summary judgment as to  
16 both claims and dismiss this case with prejudice. Thank  
17 you, Your Honor.

18           MR. FOSMIRE: Judge, if I may respond on one  
19 issue with regard to an expert.

20           THE COURT: Certainly.

21           MR. FOSMIRE: We didn't believe it was  
22 necessary to retain an expert as to the duty when they  
23 themselves admitted they breached that duty and made a  
24 mistake.

25           At least in two separate points in her

1 deposition, as I have indicated in our memo, she admits  
2 it was a mistake as to their conduct and also as to that  
3 disbursal, the December disbursal where --

4 THE COURT: The Christmas disbursal?

5 MR. FOSMIRE: Yes, sir. One second. I just  
6 went beyond it. Hang on one second, please, Judge. At  
7 page 140 of Kathy Patterson's deposition, starting at  
8 139, which is attached, we were talking about Gail  
9 Chaffin, which is the R.B.C. employee.

10 "So when Gail Chaffin made her decision to  
11 give the additional 2 percent in December around the  
12 holidays, that did not come to you?" Ms. Patterson  
13 responded that she was out of the office.

14 My question, "Was that a little unusual?"

15 Answer: "Yes, it was."

16 Question: "Based on what I have heard, it  
17 sounds like Cliff Hall was desperate."

18 Answer: "I did not speak to him."

19 "Okay. But she told you he was calling  
20 repeatedly?"

21 Answer: "He was calling repeatedly."

22 He is talking directly to them.

23 Question: "And he was in need of funds?"

24 Answer: "Yes."

25 Question: "Do you think that required R.B.C.

1 to be even more vigilant in its disbursal process?"

2 Answer: "Yes, I would be alert at a builder  
3 that was calling repeatedly."

4 Even though they did that, they went ahead and  
5 released the additional 2 percent, and then they  
6 released the 87,600 in February and admitted that that  
7 was a mistake.

8 THE COURT: That went to the Carews' account?

9 MR. FOSMIRE: It did, but they are required to  
10 go ahead and give that to the builder. The Carews --  
11 essentially they are getting out of it by claiming the  
12 Carews have some real additional discretion, but they  
13 don't.

14 The Carews' account is just a transit. That  
15 money goes to the Carews' account, and it goes on to the  
16 builder. There is really not discretion that's involved  
17 at that point because they have already decided that the  
18 money should be released.

19 THE COURT: What if, Mr. Fosmire, the Carews  
20 say, "Wait a minute." What if they call the bank? What  
21 prohibits them -- I haven't read all the memos  
22 obviously -- but what prohibits them from not responding  
23 to the red flags?

24 MR. FOSMIRE: They didn't realize -- we don't  
25 see all the construction lending, the draw requests.

1 All we know is that monies were deposited that should go  
2 on to Cliff Hall.

3 He doesn't give the request to us. He is  
4 communicating directly with them. The time we raised  
5 the red flag is when he came -- we didn't know he was in  
6 financial difficulty, and we are not builders. The  
7 Carews are not builders. The Carews are not lenders.

8 The people with the institutional knowledge  
9 are sitting over there. So when they heard and  
10 understood -- when Cliff came forward and said, "I have  
11 got financial difficulty. I am walking off the job,"  
12 that was the red flag. They raised the red flag and  
13 guess what happened? Nothing. R.B.C. didn't do  
14 anything further.

15 THE COURT: So your position is really that  
16 R.B.C. -- or at least I am hearing it. You certainly  
17 elucidate it much better than I would -- that R.B.C.  
18 because of the concern of the builder calling  
19 chronically or so much, and then two months later  
20 getting 87,000 and not having any inspection -- although  
21 there is no privity of contract between inspectors and  
22 Carews -- that they should have put the breaks on. And  
23 by failing to put on the brakes, that damaged the  
24 Carews?

25 MR. FOSMIRE: Yes, sir.

1 THE COURT: Further?

2 MR. FOSMIRE: Yes, sir.

3 THE COURT: All right. I will take it under  
4 advisement. Just send me proposed orders. Fifteen  
5 days?

6 MR. FOSMIRE: Yes, sir.

7 MR. McGEE: Yes, sir.

8 THE COURT: Thank you.

9 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

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## C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Civil Court for Lexington County, South Carolina on the 9th day of April, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 29, 2012

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Court Reporter