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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Master-in-Equity

Hon. Shannon M. Phillips, Master-in-Equity

Case No.: 2022-001149

Derrick S. Hester, Debra S. Hester, James H. Nicholls, Emma Viola Nicholls,
James E. Gregg, Jr., Paulette J. Gregg, Michael Ben Coley, Ashley Coley,
Grady L. Barnes, Sr., Julia W. Barnes, Ewen Lennon, and Amy Lennon, ...Respondents.

v.

Mark Razzano and Carre Razzano.....Appellants,

SUPPLEMENTAL RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)

2

COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG)

4 Derrick S. Hester, Debra S. Hester,)
James H. Nicholls, Emma Viola Nicholls,)
5 James E. Gregg, Jr., Paulette J. Gregg,)
Michael Ben Coley, Ashley Coley, Grady)
6 L. Barnes, Sr., Julia W. Barnes, Ewen)
Lennon and Amy Lennon,)

TRANSCRIPT OF RECORD

7

(2018CP42-02247)

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Plaintiffs,

9

v.

Spartanburg, South Carolina

10

Mark Razzano and Carre Razzano,

11

Defendants.

12

13

14 REFERENCE HELD:

FEBRUARY 25, 2020.

15 B E F O R E:

HONORABLE **GORDON G. COOPER**,
MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

16

17

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BY: **K. JAY ANTHONY, ESQUIRE**,
and **KENNETH ANTHONY, ESQUIRE**,
Attorneys for the Plaintiffs.

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19

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KENISON, DUDLEY & CRAWFORD, LLC.
BY: **JOHN T. CRAWFORD, JR., ESQUIRE**,
and **MARK A. BIBLE, JR., ESQUIRE**,
Attorneys for the Defendants.

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Sarah Hollis, Court Reporter

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1 THE COURT: We go on the record in the case of 2018CP42-2247. Derrick S. Hester, et al.,
2 versus Mark Razzano and Carre Razzano. This is the final hearing on this matter. First, let me
3 make sure that you all have your cell phones off. All right, gentlemen are we ready to proceed?
4 Do you want to make an opening statement or do you want to waive that and proceed?
5 MR. ANTHONY: Your Honor, I would probably just waive opening statements based on the
6 Pre-Trial Brief we submitted but I will defer to Defense Counsel.
7 MR. BIBLE: Yes, Your Honor. I am fine with that.
8 THE COURT: All right. Then the Plaintiff, if you are ready to proceed.
9 MR. ANTHONY: The only other pre-trial matter Your Honor is we had spoken and agreed on
10 all of the exhibits. If you are comfortable we would just go ahead and pre-mark and pre-admit
11 the exhibits?
12 THE COURT: That is fine.
13 MR. ANTHONY: That way we don't have to lay a foundation and streamline things a little bit
14 more, if that suits you?
15 THE COURT: That is fine if you gentlemen agree to that?
16 MR. BIBLE: Yes. I don't know what you have Jay?
17 MR. ANTHONY: Yes, the only thing that I have got is the exhibit listed in my pre-trial brief.
18 MR. BIBLE: All right.
19 THE COURT: We can go ahead, if you are agreeable to that, and mark those.
20 MR. ANTHONY: Yes sir. We will go ahead and start marking those.
21 MR. BIBLE: All right. Without objections to those.
22 THE COURT: All right.
23 **MR. ANTHONY INTRODUCES INTO EVIDENCE PHOTOGRAPHS OF THE**
24 **RAZZANO PROPERTY, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 1.**
25 **MR. ANTHONY INTRODUCES INTO EVIDENCE A COPY OF THE RESTRICTIVE**

1 COVENANTS, RECORDED IN BOOK 39-N, PAGE 401, MARKED AS PLAINTIFF'S
2 EXHIBIT NUMBER 2.

3 MR. ANTHONY INTRODUCES INTO EVIDENCE A COPY OF THE PHOTO OF
4 WATER DISTRICT FLAG, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 3.

5 MR. ANTHONY INTRODUCES INTO EVIDENCE A COPY OF THE SCREENSHOT OF
6 SPARTANBURG COUNTY BUILDING PERMIT WEBSITE SHOWING 147
7 WHIPPOORWILL DRIVE, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 4.

8 MR. ANTHONY INTRODUCES INTO EVIDENCE A COPY OF THE DOCUMENTS
9 FROM SPARTANBURG COUNTY BUILDING CODES DEPARTMENT, MARKED AS
10 PLAINTIFF'S EXHIBIT NUMBER 5.

11 MR. ANTHONY INTRODUCES INTO EVIDENCE A COPY OF THE DHEC
12 APPROVAL TO OPERATE AND PERMIT TO CONSTRUCT WASTEWATER
13 SYSTEM, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 6.

14 MR. ANTHONY INTRODUCES INTO EVIDENCE A COPY OF THE ONSITE
15 WASTEWATER SYSTEM APPLICATION AND PERMIT RECEIPT FOR
16 INSTALLATION LAYOUT AND PAID INVOICE, MARKED AS PLAINTIFF'S
17 EXHIBIT NUMBER 7.

18 MR. ANTHONY INTRODUCES INTO EVIDENCE A COPY OF THE SCREENSHOT OF
19 TEXT MESSAGES TO CARRE AND MARK, MARKED AS PLAINTIFF'S EXHIBIT
20 NUMBER 8.

21 MR. ANTHONY INTRODUCES INTO EVIDENCE A COPY OF THE LETTER DATED
22 JUNE 23, 2017, TO MARK AND CARRE RAZZANO FROM K. JAY ANTHONY,
23 MARKED AS PLAINTIFF'S EXHIBIT NUMBER 9.

24 MR. ANTHONY INTRODUCES INTO EVIDENCE A COPY OF THE SCREENSHOTS
25 OF AIRBNB, INC. LISTINGS, (18 SHEETS), MARKED AS PLAINTIFF'S EXHIBIT

1 **NUMBER 10.**

2 THE COURT: All right.

3 MR. BIBLE: That will be ours, the notebook.

4 MR. ANTHONY: I think you gave me a copy?

5 MR. BIBLE: Yes. We have got four (4) copies. We have got one for Your Honor, one for the
6 witness - - -

7 THE COURT: All right.

8 MR. BIBLE: And Your Honor for the purposes of our notebook it is our intent just to mark the
9 notebook as Defendant's Exhibit 1, and everything is organized in there with a tab. So we will
10 refer to Defendant's Exhibit Number 1, Tab Number to identify the paper contents in there.

11 THE COURT: All right.

12 **MR. BIBLE INTRODUCES INTO EVIDENCE A NOTEBOOK ENTITLED, "MARK &**
13 **CARRE RAZZANO TRIAL EXHIBITS," MARKED AS DEFENDANT'S EXHIBIT**
14 **NUMBER 1.**

15 THE COURT: Mr. Anthony are you ready to proceed?

16 MR. ANTHONY: We are, Your Honor.

17 THE COURT: All right.

18 MR. ANTHONY: The Plaintiffs would call Carre Razzano.

19 THE COURT: All right. Carre Razzano take the stand please.

20 **CARRE FROST RAZZANO, BEING DULY**
21 **SWORN, TESTIFIES AS FOLLOWS:**

22 THE COURT: State your full name for the record?

23 A. My name is Carre Frost Razzano.

24 THE COURT: All right. Counsel.

25 MR. ANTHONY: Thank you, Your Honor.

1 **DIRECT EXAMINATION BY MR. ANTHONY.**

2 Q. Good morning, Mrs. Razzano. You and I have met before, of course. You know I am Jay
3 Anthony along with my father, Ken, and we are representing the Plaintiffs in this lawsuit.
4 And I just need to go over some questions with you this morning. You and your husband
5 own a home in the Solitude Bay Community, right?

6 A. Yes sir.

7 Q. It is located at 149 Whippoorwill Drive?

8 A. Yes sir.

9 Q. And you all purchased that home back in 2006, correct?

10 A. Yes sir.

11 Q. Okay. And you used a realtor?

12 A. Yes sir.

13 Q. And as a part of the closing of that house you were made aware that there were restrictive
14 covenants that applied - - -

15 MR. BIBLE: Objection, Your Honor, leading.

16 THE COURT: Re-ask it?

17 MR. ANTHONY: Your Honor, inside the Rules I believe that I am allowed to lead the
18 Defendant - - -

19 THE COURT: Recite the question.

20 MR. ANTHONY: Thank you, Your Honor.

21 Q. Mrs. Razzano as part of the closing on your house you were made aware that the property
22 that you were buying was covered by restrictive covenants, correct?

23 THE COURT: I will allow it.

24 A. Yes sir.

25 Q. All right.

1 MR. ANTHONY: Your Honor, may I approach the witness?
2 THE COURT: Yes.
3 Q. Mrs. Razzano, I hand you what has been marked as Plaintiff's Exhibit 2. Is that a copy of
4 the restrictive covenants that apply to the property?
5 A. Yes, it is.
6 Q. Thank you. And you are an architect, correct?
7 A. Yes sir.
8 Q. All right. And you are very familiar with restrictive covenants?
9 A. I am familiar with them, yes sir.
10 Q. Okay. And you would agree that restrictive covenants enhance the value of property,
11 correct?
12 MR. BIBLE: Objection, Your Honor, leading.
13 THE COURT: I will sustain that. Re-ask the question, Mr. Anthony.
14 MR. ANTHONY: I beg the Court's indulgence to recite the Rules. I think the Rules are clear
15 that I am allowed to lead the Defendant party as part of my case in chief.
16 THE COURT: I understand that counsel and I am saying that I sustain the objection. So rephrase
17 the question.
18 MR. ANTHONY: I understand, Your Honor.
19 Q. Mrs. Razzano do you agree that restrictive covenants enhance the value of property?
20 A. I don't agree or disagree with that sir.
21 Q. Okay. And do you agree that there is a reference in the deed itself to restrictive covenants,
22 correct?
23 MR. BIBLE: Objection, Your Honor, leading again.
24 THE COURT: I will allow it.
25 Q. The question was, you would agree that the deed itself reference the restrictive covenants,

1 correct?

2 A. Yes, I believe it does.

3 Q. And the restrictive covenants provide some assurance about the property around you?

4 A. I don't think I understand the question.

5 Q. Sure. I mean the restrictive covenants provide you as a purchaser with some assurance
6 about how the property around you is going to be used?

7 A. Yes sir.

8 Q. All right. And you and your husband bought a home in this neighborhood that is called
9 Solitude Bay?

10 A. Yes sir.

11 Q. Okay. And that is a small community?

12 A. Yes sir.

13 Q. Only eleven (11) homes?

14 A. I believe so.

15 Q. Okay. And it is located entirely on a dead-end street, right?

16 A. On a public street, yes.

17 Q. And it is a pretty quiet street?

18 A. Yes.

19 Q. Not a lot of traffic?

20 A. Just you know we have a lot of in zone and out zone traffic.

21 Q. Sure.

22 A. Nothing other than that.

23 Q. And you all bought this home to use as your primary residence, right?

24 A. Yes sir.

25 Q. And just your family lived in that home initially?

1 A. Yes sir.

2 Q. Okay. And that is just like everybody else in the neighborhood right?

3 A. I don't know what everybody else does in their home. I don't know who is in their house.

4 Q. Do you know of any other family in the neighborhood not using the home as just a single
5 family residence?

6 A. I know people in the neighborhood that use the house that they own next door to them as a
7 rental property. I don't know if that person has a roommate. I have no idea.

8 Q. Okay. Well I am just asking of your own knowledge. Do you know of anybody else in
9 this neighborhood who uses their home as anything but a single family residence?

10 A. Not to my knowledge.

11 Q. You have got eleven (11) homes out there and we have eleven (11) families?

12 A. I don't know.

13 Q. Well as far as you know?

14 A. As far as I know.

15 Q. All right. And after purchasing your property did you get to know some of the neighbors?

16 A. A couple, yes.

17 Q. Okay. Now between your lot and the Scott's lot there was an empty lot, right?

18 A. Well actually when we moved to the property there was an older gentleman there, I believe
19 his name was Spencer. And he owned the house there. At the time I did not know that it
20 was a house and a lot. All I know is that was Mr. Spencer's property.

21 Q. Okay. Your immediate next door neighbor is Garrett Scott and his wife, correct?

22 A. Currently, yes.

23 Q. Currently. Okay. And once the Scotts moved in there you all had a lot between the two
24 of you?

25 A. We came to understand that at that time, yes.

1 Q. All right. And that was Lot 9, I believe, right?

2 A. Yes.

3 Q. And so the Scotts had an option to purchase Lot 9, right?

4 A. That is what we understood.

5 Q. Okay. And so they came to you at some point and you all agreed that the Scotts would

6 purchase Lot 9 and you all would purchase half of that and you all would essentially split

7 that lot?

8 A. Well actually the discussion was if there was an option to buy it, we would share it. We

9 didn't go over the details about who would buy. It was just we would like to share that

10 lot.

11 Q. Okay. So at some point that came to premonition, right?

12 A. Yes sir.

13 Q. Okay. And so the Scotts purchased that lot, right?

14 A. Yes sir.

15 Q. And then you all purchased half of that lot from them?

16 A. Yes, we did it all at the same time.

17 Q. Okay. So that lot was split in half and your lots were made larger?

18 A. Right. Which is fine according to these documents.

19 Q. All right. I understand. I am just trying to lay some background here. Essentially there

20 is no more Lot 9?

21 A. Correct.

22 Q. And your lot became larger and the Scotts' lot became larger?

23 A. Yes sir.

24 Q. Okay. Well you and your husband wanted to buy that extra half lot to build a garage?

25 A. Yes sir.

1 Q. All right. And you made that clear to the Scotts as well?

2 A. Yes.

3 Q. Okay. And at some point you decided to put a living space above the garage?

4 A. Yes sir.

5 Q. Okay. And you purchased some plans on line I think and then modified them, is that

6 right?

7 A. Yes sir.

8 Q. The plans were for a two-bay garage and you made it into a three (3)?

9 A. Yes sir.

10 Q. And that precipitated a larger living space upstairs, right?

11 A. It did.

12 Q. Okay. And that living space now is about 3250 square feet?

13 A. Yes sir.

14 Q. Okay. And it is 1,350 square foot residential space isn't it?

15 MR. BIBLE: Objection. Leading.

16 THE COURT: I will allow it.

17 A. But the garage with the added living space above is an addition to our home.

18 Q. Okay. My question was though, that living space is a 1,350 square foot residential space

19 isn't it?

20 A. Yes sir.

21 Q. Okay. And it has got two (2) bedrooms and two (2) baths?

22 A. Yes sir.

23 Q. It has got a full kitchen?

24 A. Yes sir.

25 Q. A full refrigerator?

1 A. Yes sir.

2 Q. And stove?

3 A. Yes.

4 Q. A dishwasher?

5 A. Yes sir.

6 Q. It has its own porch, right?

7 A. Yes, it has a porch.

8 Q. And it has its own entrances?

9 A. Yes, it does.

10 Q. And there is even a parking pad next to it, right?

11 A. No. That is not a parking pad. That is a pad for our son's basketball goal.

12 Q. Okay. Somebody can park a car up there though and be right next to the front door?

13 A. Well anybody can park a car any where if they want to. So just because it is concrete

14 doesn't mean that we would let them put their car there.

15 Q. Okay. And you signed a contract with the builder in February of 2018, does that sound

16 right?

17 A. That sounds good.

18 Q. But I know you had to do some groundwork before then in terms of utilities and permits

19 and things like that?

20 A. Yes sir.

21 Q. Okay. All right and this apartment was going to have its own septic system, right?

22 A. It does have it own septic system.

23 Q. It does have it owns septic and it has it own water heater right?

24 A. Yes, it does.

25 Q. It has its own power meter, right?

1 A. No, it is all one bill.

2 Q. Okay. There is not a separate power meter on the structure?

3 A. They might have a monitor on it but it is one bill.

4 Q. All right. It has its own hot water heater?

5 A. Yes.

6 Q. And you all had to put in various applications for the utility work?

7 A. Yes sir.

8 Q. And I imagine you being an architect you were able to do all of that work yourself?

9 A. Getting the permits and stuff like that.

10 Q. Right.

11 A. Really I just met with the building inspector and the contractor took care of all of the

12 permits.

13 Q. Okay. And I am assuming you went down to the Building Codes Department here in

14 Spartanburg with the plans?

15 A. Yes, I did.

16 Q. Okay. And those had to be reviewed and approved?

17 A. Yes sir.

18 Q. All right. I would like to show you Plaintiff's Exhibit 4?

19 A. Yes sir.

20 Q. And I represent to you that it is a screenshot from the Spartanburg Building Codes Permit

21 sites.

22 A. Right.

23 Q. And this shows the reference to the property and the address is 147 Whippoorwill Drive,

24 right?

25 A. Yes sir.

1 Q. All right. And 147 is not your address, right?

2 A. No sir.

3 Q. Your primary residence is 149 Whippoorwill Drive?

4 A. Yes sir.

5 Q. All right. But we have got 147 here and this is in relation to the permit for the garage

6 residence, right?

7 A. This is for the septic.

8 Q. Okay. But that is related to the construction of the garage residence?

9 A. Yes.

10 Q. Okay. And the applied date over here on the right side is April 7, 2017?

11 A. Yes sir.

12 Q. Okay. I would like to show you Plaintiff's Exhibit 5 here. And I don't have the numbers

13 to direct you to a specific page but you can read as much or as little as you would like. If

14 you would turn to the ninth page of that exhibit. Would you please tell me what we are

15 looking at here?

16 A. Those are the applications for the tap from the South Carolina Inman Campobello Water

17 District.

18 Q. Okay. And what is the application date there at the top?

19 A. June 5, 2017.

20 Q. All right. And the service address listed there again is 147 Whippoorwill Drive, right?

21 A. Yes sir.

22 Q. And again that is not the address for your primary residence?

23 A. No sir.

24 Q. All right. And you filled out this portion at the top, correct?

25 A. Yes sir.

1 Q. Okay. Why did you decide to put down 147?

2 A. Okay. So this is - - I will make this story easy.

3 Q. Okay.

4 A. When I went with the building inspector and I showed him the plans and I explained to
5 him that the living space that we were creating would be for our elderly parents, as we
6 were wanting to be able to take care of them. He suggested that we take a different
7 address for 911 purposes. So that upon arrival of the fire department they would know
8 which structure was where they needed to be at first. So upon his recommendation which
9 I thought was for good reasons, health and safety, I said okay. That will be fine. So
10 when I went to do all of the permits I used the 147 address that he had assigned me.

11 Q. All right. So let me break that down. So you took the plans into the building inspector,
12 right?

13 A. Yes.

14 Q. All right. And so the building inspector looked at those plans and after looking at those
15 plans he decided that there ought to be two separate addresses for those two structures?

16 A. No. He asked what our intention for using it was. When he understood that we would
17 have elderly parents living there as a safety suggestion he said we would maybe like to
18 consider having a separate address for 911 purposes. He didn't say you have to change
19 the address of your home. It was more for 911.

20 Q. I guess what I am getting at is, if this is only one structure why would there be any
21 confusion between 911 responders as to where they needed to go?

22 A. He just thought that it would be an added piece of security.

23 Q. He thought that because there were two separate structures, right?

24 A. He just - - -

25 MR. BIBLE: Objection, Your Honor. Leading.

1 THE COURT: I will allow it.

2 A. I think - - well I can't speak for someone else. But I think when people understand a little
3 more what you are doing and they want to - - he is the building inspector. His job is to
4 keep people safe. His job is to review structures and make sure you - - and the number
5 one (1) thing that you look for is how will people be able to exist a facility if there is a fire.
6 So I think just in him being conscientious and wanting to make sure that people are safe.
7 Again his suggestion was for 911, not for it to be a different address per se. Does that
8 make sense.

9 Q. I understand that. It does make sense. His concern was if 911 responders show up they
10 need to know whether to go to structure A or structure B, right?

11 A. No- - -

12 MR. BIBLE: Objection. Speculation, Your Honor.

13 THE COURT: I will allow it.

14 A. No, I don't think that was the intention at all. I think when you show up to a house you
15 can pretty much figure out which part of it is on fire.

16 Q. Okay. But we are not just talking about a fire, right. We are talking about EMS?

17 A. Maybe. But at the time we were talking about a fire.

18 Q. Okay. But you have mentioned elderly parents.

19 A. Yes.

20 Q. So if you have EMS responders showing up for an emergency they need to know do I go to
21 this structure or that structure and the address differentiation would help them make that
22 determination, right?

23 A. Mr. Anthony the conversation that we had was just about a fire.

24 Q. All right. So when you talked a minute ago about filling out the application for water you
25 put the 147?

1 A. Yes.

2 Q. Okay. I show you Plaintiff's Exhibit 3. Can you tell me what that is?

3 A. That is - - I guess that is the flag for the tap pole.

4 Q. Okay. And that has the number 147 written on it?

5 A. Yes sir.

6 Q. Okay. There were a number of documents that had the 147 address on it in reference to
7 this garage residence, correct?

8 A. Yes sir.

9 Q. All right. Your garage residence, what is the status of it today?

10 A. As far as what.

11 Q. Is it complete or is it incomplete?

12 A. It is almost - - well interior wise it is almost complete and exterior wise we have a ways to
13 go. Obviously we have had terrible weather and trying to get it painted and trying to put
14 things up everybody knows we have had difficult weather lately.

15 Q. And it has been under construction now for - - you signed a contract with the builder in
16 February of 2018. So it has been about two (2) years?

17 A. Yes sir.

18 Q. Okay. I want to show you some photos of the design, if you will bear with my low
19 technology here. Mrs. Razzano, I am just putting up a large version of the photograph
20 that is included in Plaintiff's Exhibit 1. It is one page if you will go to Plaintiff's Exhibit
21 1, in your reference. And I will tell you that this photograph was taken in late December
22 of last year. Is that roughly what the garage residence looks like now?

23 A. Yes. But we did get it pressure washed yesterday.

24 Q. All right. And that structure on the left there, of course, is the garage residence, right?

25 A. Yes sir.

1 Q. Okay. And it is located some distance away from your main house, of course?
2 A. Some but not a lot. In this it looks like it is more of a distance.
3 Q. Okay. This is another photo of it. This is Page 1 of Exhibit 1. And that is the back side
4 of the garage residence right?
5 A. The garage, yes.
6 Q. Okay. Is that basically the lay?
7 A. Yes sir.
8 Q. And this is the porch back here on the back side?
9 A. Yes sir.
10 Q. And there is an entrance here on the left and some stairs that go up to the back door?
11 A. Yes sir.
12 Q. Okay. And this structure, of course, over here is your primary residence?
13 A. Yes sir.
14 Q. And then this photograph which is Page 5 of Exhibit 1. This is a picture of the front door
15 of the garage residence, correct?
16 A. Well there are two entrances to it. So I don't know - - sometimes people refer to the one
17 that it is front or back. But there are two entrances to it.
18 Q. Okay. And this section right here, this is what we were just referring to. The concrete
19 hasn't been poured in this picture but that is where the concrete went, correct?
20 A. Right. And that is not a hundred percent correct. That was just for measuring purposes
21 for the basketball court. It currently now has an additional piece, the structure where the
22 post is, where the goal is. So that is taken.
23 Q. Okay. Lets go back to the photograph which is Page 8. We talked about how these two
24 (2) structures are situated away from each other. They are not connected by anything are
25 they?

1 A. Not yet. But they will be.

2 Q. Okay. And you plan to attach it with a walkway, correct?

3 A. We plan to attach it with a covered trellis, almost like, it looks like a green house piece
4 with glass.

5 MR. ANTHONY: Do you mind if I use this?

6 MR. BIBLE: No. And Jay for that purpose that is Tab 6, the last page.

7 MR. ANTHONY: Thank you.

8 Q. All right. So we are referring to Defendant's Exhibit 1, Tab 6, here. Tell us what this
9 is?

10 A. Sir this is a sketch that I produced that shows how the trellis walkway will connect the
11 main residence to the garage.

12 Q. And this was just provided yesterday, correct? It is a relatively new sketch?

13 A. I don't believe it was yesterday.

14 Q. Okay. That is when I got it from your lawyers.

15 A. All right.

16 Q. So this is the trellis that you are referring to?

17 A. Yes sir.

18 Q. And it looks from the drawing like there are four (4) post, is that right?

19 A. This is a conceptual.

20 Q. Okay.

21 A. At the moment because we are working through the use of the retaining walk and how it
22 will connect to the front door. This is one of those things where you have to use your
23 imagination a little bit.

24 Q. Sure. But this is what you currently intend to construct as the attachment?

25 A. Yes sir. Equipped with glass but you can't tell that it would have a covered glass.

- 1 Q. With glass?
- 2 A. Yes.
- 3 Q. Where would the glass go?
- 4 A. The glass would go along the trellis areas in between the post. And reaches a cowl wall
5 top so that it is more of a plastic that is see through and keeps it covered, keeps it dry.
- 6 Q. So that is going to go on the sides and on the roof.
- 7 A. The cowl wall will go on the top and then parts of glass will go along the walkway.
- 8 Q. You will have to educate me on what is a cowl wall?
- 9 A. A cowl wall is a very translucent piece of plastic that they use in greenhouses and things
10 like that.
- 11 Q. All right. Is that trellis going to be a continuance from the main residence to the garage
12 residence?
- 13 A. Yes.
- 14 Q. So there will be entirely covered walls and an entirely covered roof?
- 15 A. I don't think that the roof will be entirely covered. So the sides is what we are looking at
16 right now. Because in a greenhouse construction you have the ventilation in different
17 areas and things like that. So we are placing with the landscaping and trying to see you
18 know how we can actually do that. Because it is a little bit of a different kind of roof.
- 19 Q. Okay. So what we really have here is a walkway trellis connecting the garage residence to
20 the main residence. Something similar to what you would see at Pine Crest Inn or Corner
21 Lake Inn or something like that?
- 22 A. I don't know. I have never been there.
- 23 Q. You never been to either of those?
- 24 A. No.
- 25 Q. The covenants in this neighborhood specify the minimum residence size in square feet,

1 right?

2 A. Yes sir.

3 Q. And your garage residence exceeds that obviously by thirteen (13) feet?

4 A. Yes.

5 Q. So if you pick that up and put it on an empty lot it would qualify as a residence in this

6 neighborhood to meet those restrictive covenants wouldn't it?

7 A. No, I don't think so.

8 Q. Why?

9 A. Because it is spaced. Well would you buy that as a house?

10 Q. I am not asking if I would buy it.

11 A. Okay.

12 Q. I am asking would it meet the definition?

13 A. Would it meet the definition.

14 Q. Is it more than 900 square feet?

15 A. Yes.

16 Q. Okay.

17 A. I don't think that makes it a house.

18 Q. Well is there anything else in the restrictive covenants that would violate? If this garage

19 residence were sitting on a separate lot and it is more than 900 square feet is there any

20 other restriction or restrictive covenant that says that can't be a residence?

21 A. Not in these covenants but I am sure in lots of other places it would.

22 Q. Such as what?

23 A. I am just saying it is a garage and it is an addition it is not - - I don't think people would

24 buy that as just a house is what I am trying to say.

25 Q. I understand in terms of what people would buy. What I am asking is just from a

1 technical prospective and that is more than 900 square feet, right?

2 A. Yes.

3 Q. It has got bedrooms, bathrooms, and a kitchen. Everything that you need to actually live
4 there, right?

5 A. Yes.

6 Q. You all could live there in that residence just as easily as you could in your main
7 residence, right?

8 A. Okay.

9 Q. If you wanted to you could move in there and you would have everything that you needed?
10 A dishwasher, washer/dryer all of that sort of stuff?

11 A. Mr. Anthony these plans were bought as a garage.

12 Q. I understand but that is not my question.

13 A. Well I can't answer that. I don't feel like I can answer that honestly with the intention
14 that someone would buy that as a house because I wouldn't buy that as a house.

15 Q. What differentiates that garage residence from being a residence versus your main
16 residence?

17 A. Because it has got three (3) cars under it.

18 Q. Is that all?

19 A. To me.

20 Q. Okay. So the garage underneath it is what keeps that from being a residence?

21 A. Yes, it is a garage.

22 Q. Okay. Now even at the very beginning stage of this construction, two (2) of your
23 neighbors objected to the construction didn't they?

24 A. I did not find out that anybody was objecting to us constructing a garage until we got a
25 notice from you.

1 Q. Did anybody raise any objections period, regarding your construction?
2 A. No.
3 Q. Nobody?
4 A. No.
5 Q. Garrett Scott never said anything to you?
6 A. We told Garrett Scott we were building a garage. So why would he?
7 Q. So you are saying that he did not object to it?
8 A. No, that was just - - that was the agreement we had before splitting the lot. He completely
9 understood that we were going to build a garage.
10 Q. All right. So as this construction went on Mr. Scott never came to you all and objected to
11 that construction?
12 A. I don't recall Mr. Scott having a conversation with me about the garage bothering him
13 after we had already agreed that we would be building a garage there.
14 Q. So no he never objected to the construction?
15 A. Not to me.
16 Q. Okay. Do you know that he ever objected to Mark, your husband?
17 A. Mark will have to answer that.
18 Q. You don't know of your own knowledge?
19 A. I do not know.
20 Q. Mark never came to you and told you that he had a conversation with Garrett?
21 A. He has told me that he has had conversations with different people. I don't know. I can't
22 just specifically tell you that. It is like you said, this has been going on for two (2) years.
23 Q. And so the first notice that you all had that any neighbor objected to the construction was
24 the letter that you received from my firm in June of 2017?
25 A. Yes sir.

1 Q. All right. And that was before you all had put a post in the ground, right?

2 A. No, I don't think so.

3 Q. You had signed your contract with your builder for February of 2018?

4 A. When did we get your letter?

5 Q. Well lets look at it. Plaintiff's Exhibit 9?

6 A. This is dated June 23.

7 Q. Of what year?

8 A. Of 2017.

9 Q. Right. And you signed the contract with Stephen Poole in February of 2018?

10 A. Right. But there is preliminary work that goes into it before we signed this contract.

11 Q. Sure.

12 A. So I had already been working with a civil engineer and things like that and marked the

13 property and all of that kind of stuff.

14 Q. Not a post in the ground at that time, right?

15 A. I guess not. I don't know.

16 Q. Well would there be any work done in terms of the actual construction before you signed a

17 contract with the builder?

18 A. Maybe the wall was created.

19 Q. Okay. But at that point you all could have put the breaks on it or you could have altered

20 the drawing, right?

21 A. Well that is not how I remember it. I think we were already well into something before

22 we got this. So that is how I remember it.

23 Q. It has totally been under construction about two (2) years now?

24 A. Yes.

25 Q. In June of 2017, that is well before two (2) years?

1 A. Yes, but June of 2017. I can't remember the dates but I just know that - - I am sorry. I
2 really don't know if there was something done on the property yet or not.

3 Q. All right. You all were aware of the objections well before - - -

4 A. No.

5 Q. Let me finish the question please?

6 A. Yes.

7 Q. You all were aware of the objections well before you constructed this living space, right?

8 A. No sir.

9 Q. No?

10 A. No.

11 Q. So in June of 2017, you all had already constructed the living space?

12 A. No, I am not saying that. I am saying that I was not aware that the neighbors were upset
13 that we were building a garage before I got your letter.

14 Q. Well it is more than a garage, right?

15 A. No it is a garage with some living space above it. Yes, it is an addition to our home.
16 That is what it is.

17 Q. Okay. I am going to ask this question one more time and then I am going to move on.
18 You all were aware of the objections in plenty time to change that living space to a non-
19 living space, correct?

20 MR. BIBLE: Objections, Your Honor. Asked and answered.

21 MR. ANTHONY: I don't believe that it has been answered.

22 THE COURT: I will allow it. I am not going to sustain it.

23 A. Will you say the question again?

24 Q. Yes. This is the last time I am going to ask it. But you all were aware of the objections
25 well before you finished that off as a living space above the garage, correct?

1 A. No sir.

2 Q. All right. Did Garrett Scott have a phone call with you to object to this construction?

3 A. I believe Garrett Scott called me once. I can not remember everything that was said but—

4 Q. Was he making any objections to the construction of the garage residence?

5 A. Again I can't - - he could have called on Saturday when we were out at the lake or

6 something. I don't remember his exact - - I don't remember an exact conversation with

7 him.

8 Q. I don't need to know the exact conversation but what I am trying to get at is in that call

9 was he objecting in any way to the construction of the garage residence?

10 A. I don't remember.

11 Q. Did Mr. Scott ever tell you that you were violating the covenants?

12 A. I don't think he said it to me.

13 Q. Who did he say it to?

14 A. I don't know.

15 Q. And one of your neighbors even text you a copy of the covenants after you all had a

16 conversation, correct?

17 A. Yes.

18 Q. Okay. Did you not take that as some objection to the construction?

19 A. That was not an objection to the construction. That was a conversation I had with Ashley

20 and I explained to her what we were doing. That this was going to be for our parents and

21 that in the meantime yes we would have guest staying there but that was what our

22 intention was. She sent me that e-mail after she decided to spread information, personal

23 information of ours to other people in the neighborhood. That is when people decided

24 that they were upset that we had guest or individuals staying at our house. It was not

25 an objection. She actually apologized to me for spreading our business to neighbors

1 that had no reason to know any personal information about us.

2 Q. This is Plaintiff's Exhibit 8. Is that a copy of the text message that you were just talking
3 about?

4 A. I can't read that.

5 Q. Well I think we can look at some of the other pages and we can tell?

6 A. I can't read that.

7 Q. You can't tell that is a copy of the restrictions - - -

8 A. Okay. This is a copy of that but is there any other email correspondence.

9 Q. Now this is - - -

10 A. This is a copy of the covenant, yes sir.

11 Q. Okay. So she text message you as to forwarding a text message of a copy of the
12 covenants?

13 A. Yes, she did.

14 Q. And that was following the discussion you all had about the work you all were doing?

15 A. Yes sir.

16 Q. All right. And you did not take that as any sort of objection?

17 A. No. She was merely providing me information at that time. This is not an adversary
18 thing. So as I just spoke previously she apologized for her distribution of information that
19 she didn't really need to be doing.

20 Q. Why do you think that she would have been providing you a copy of the covenants right
21 after you all spoke?

22 A. Because it was just the conversation that we had.

23 Q. I want to show you again Plaintiff's Exhibit 2, which is a copy of the restrictive covenants.
24 Section 8 of the covenants restricts owners to one residence per lot, correct?

25 MR. BIBLE: Objection, Your Honor, speculation.

1 THE COURT: I will sustain that.

2 Q. Mrs. Razzano could you read for me the last sentence of Section 8?

3 A. Any person may use one lot and a portion of another lot, or may use two or more lots,
4 placing one residence thereon.

5 Q. All right. So that says placing one residence thereon, correct?

6 A. Yes.

7 Q. Is that a yes?

8 A. Yes sir.

9 Q. All right. Is there any other way to read that other than there is only one residence allowed
10 per lot?

11 MR. BIBLE: Objection, Your Honor, speculation.

12 THE COURT: Be a little bit clearer with your objection?

13 MR. BIBLE: Your Honor, he is asking her to speculate of whether there are any other ways,
14 there could be multiple ways that somebody could interpret the covenants and restrictions, Your
15 Honor.

16 MR. ANTHONY: Your Honor, I am only asking this as to regard to Mrs. Razzano's
17 interpretation?

18 THE COURT: All right. She may respond.

19 Q. Do you need me to repeat it Mrs. Razzano?

20 A. No.

21 Q. Okay.

22 A. It is just one residence.

23 Q. Okay. You would agree that only one residence per lot?

24 A. Yes.

25 Q. Okay. Why is this not a violation of that covenant?

- 1 A. Because it is an addition. It is just like if you had a mother-in-law suite.
- 2 Q. Okay.
- 3 A. Which is exactly what it is.
- 4 Q. But it is a separate structure, right?
- 5 A. Not really. I mean it may not be joined in the way that someone else may want to do it,
6 but it is an attached part of our living residence and that is how it is meant to be used.
- 7 Q. Okay. Have you and your husband discussed putting other structures on the property?
- 8 A. I thought that it would be nice if we had a little space down by the water if we ever built a
9 dock.
- 10 Q. Would that be an enclosed structure?
- 11 A. Oh, I don't know. I talk about all kind of things.
- 12 Q. You feel that you have the right to construct another enclosed structure, right?
- 13 A. Do I have the right. I don't know. I would have to go back through - - I think it has to do
14 more with now we do have a lot of things going on with the Spartanburg Water District, so
15 I wouldn't speculate anything on that.
- 16 Q. Well with regards to just the restrictive covenants, if you wanted to construct a second
17 garage apartment, for example, and you connected it with a walkway and a trellis. You
18 would say that you had the right to do that under these restrictive covenants, correct?
- 19 A. It is not something that I would entertain.
- 20 Q. Okay. Well I want you to entertain it for just this moment. Do you have the right?
- 21 A. If I wanted to connect another piece of building to that one, could I do it. Yes, maybe.
- 22 Q. Okay. You and your husband actually discussed constructing some tiny homes and things
23 like that along the lake, right?
- 24 A. No. We talked - - -
- 25 Q. No?

- 1 A. No. Not tiny homes down the yard, no. We talked about a possible boat house or
2 something like that. And would it be fun if it was a tiny house, yes. My son was 14, well
3 13 and we took him to Bend, Oregon and we got to see a tiny house there. I am an
4 architect. I like to build stuff. We talked about it being a summer project or something
5 like that. So yes, that sounded like fun. Is it enclosed, I don't know. Was it three feet
6 by four feet, I don't know. A tiny house means everything. So it was just talk.
- 7 Q. Okay. But if you wanted to do that, if you all decided to do that then that would be your
8 right as the way you read the covenants, right? As long as you connected it with a
9 walkway and a trellis to the main home?
- 10 A. No, I think a boat house or something I think would be a separate structure. So if that is
11 not the case then that is not the case.
- 12 Q. Are you talking about tiny homes, well lets say a small structure with another living space
13 in it and you connect it with a walkway and a trellis that is okay under the covenants the
14 way you read it, isn't it? There is nothing to stop you all from doing that?
- 15 A. Yes, I suppose.
- 16 Q. Okay. There is nothing to stop you all from building two more of those things, if you
17 wanted?
- 18 A. No. I think there is restrictions on that because if you build a tiny home then you have to
19 have septic. You have to go by the rules of the County and how many bedrooms and
20 bathrooms and you would be adding septic and everything else. So I am really not sure
21 how that would all tie in.
- 22 Q. But you all added septic to this garage didn't you?
- 23 A. Yes, we did.
- 24 Q. Okay. Hot water heater and all of that sort of stuff?
- 25 A. Yes sir.

1 Q. Okay. So I understand this thing with the County Water District or whatever, but in terms
2 of these restrictive covenants, if there is some sort of separate structure with a living space
3 in it, as long as you connect it with a walkway and a trellis, you guys can do that under
4 these restrictive covenants?

5 A. I think that is fine.

6 Q. All right. We have talked a lot about the garage residence. I want to back up and talk
7 about - - -

8 A. Well just for your information.

9 Q. Sure?

10 A. The house at the corner and I don't even know some of these people in this room.

11 Q. All right.

12 A. But there is a garage that is attached by a breeze-way that has a living space above it. Just
13 for context.

14 Q. Okay. Have you been over there and seen that?

15 A. Yes.

16 Q. All right. Who owns that house?

17 A. I don't know who owns it now but at the time Debbie and Mike Romaine owned that
18 property.

19 Q. All right. Lets back up and talk about the Airbnb listings. Before you all began
20 construction on this garage you begin renting homes out, rooms out within your primary
21 residence on the website Airbnb.com?

22 A. Yes sir.

23 Q. Okay. And Airbnb originally was a website called Air Bed and Breakfast.com, right?

24 A. No. I think it has always been Airbnb.

25 Q. Okay. You don't know whether it was shorten to Airbnb at some time?

1 A. I do not.

2 Q. All right. And you rented out rooms in your home for about three (3) years?

3 A. Yes. From 2015.

4 Q. Okay. It stopped only after the Temporary Injunction of November 2018?

5 A. Yes sir.

6 Q. And you have not done so since then?

7 A. No sir.

8 Q. And while you were using Airbnb it was online, right?

9 A. Yes sir.

10 Q. I show you Plaintiff's Exhibit 10. And you can take a minute and look through that, if you

11 would like?

12 A. All right.

13 Q. And these different documents make up Exhibit 10. These are screenshots of the listings,

14 correct?

15 A. Yes sir.

16 Q. And you and your husband created the contents that went into these listings?

17 A. I did.

18 Q. Okay. And there are some photographs, there are some words, and things like that?

19 A. Yes sir.

20 Q. And my first page is described as a private room in a bed and breakfast, right?

21 A. In a bed and breakfast.

22 Q. A private room in a bed and breakfast?

23 A. Yes sir.

24 Q. And there is a nightly rate there, correct?

25 A. Correct.

- 1 Q. If you look at the second page the listing says that it accommodates four (4) guest?
- 2 A. Yes.
- 3 Q. And just below that it says there are two rooms, right?
- 4 A. Yes.
- 5 Q. All right. To be clear these were rooms within your main residence, not the garage
- 6 residence?
- 7 A. Yes sir.
- 8 Q. And these were rooms that you all were renting out while you were still living in the main
- 9 residence?
- 10 A. And we still live in the residence, yes.
- 11 Q. Right. All right, and flipping to the next page, page 3. This list the amenities, right?
- 12 A. Yes sir.
- 13 Q. Some of those amenities include Wifi and the gym, right?
- 14 A. Right.
- 15 Q. And then cable television?
- 16 A. Yes sir.
- 17 Q. And breakfast, right?
- 18 A. Well it says breakfast.
- 19 Q. That is listed there as an amenity, breakfast, correct?
- 20 A. Correct.
- 21 Q. And guest were able to make use of kayaks, long board and paddle boats and the gym?
- 22 A. Yes sir.
- 23 Q. Looking at Page 5 of that document, it is the cancellation policy, right?
- 24 A. Yes.
- 25 Q. And then the reviews?

1 A. Reviews, right.

2 Q. And on the following page there are photographs of the space, right?

3 A. Yes sir.

4 Q. There was no minimum in terms of how many nights somebody would stay with you?

5 A. Not to this, no.

6 Q. And the majority of your bookings were somewhere around one or two nights?

7 A. The majority, yes sir.

8 Q. Okay. And you all provided breakfast, correct?

9 A. I wouldn't call it breakfast. It says breakfast but it is not. It was a couple of yogurt,

10 maybe some power bars and some water or something.

11 Q. Coffee?

12 A. There is a coffee maker in the room.

13 Q. With coffee cups and supplies?

14 A. Coffee, yes. A Keurig or something.

15 Q. Sure. And you all listed breakfast as an amenity?

16 A. Yes.

17 Q. It wasn't a hot breakfast but it was breakfast, right?

18 A. It is really more snacks. You know, I travel a lot so if you are alluding to a continental

19 breakfast that is not what this would be. I mean it is just some snack and they are

20 welcome to take them or not. We have snacks in there we have grandchildren and my

21 son. We have a small refrigerator upstairs too, in our game room and that has snacks and

22 stuff in it. So it is really just an added courtesy, if you will. If someone is hunger. We

23 don't live really close to a breakfast place or a McDonald's or anything like that.

24 Q. Okay. And I understand all of that. But I am not the one who used the term breakfast.

25 You were the one who used the term breakfast in the amenities, right?

1 A. Well some of those things are provided by Airbnb. I can't say like - - they have a
2 platform. They use certain words. I can't change them. So if I am letting people know
3 that there is you know something waiting for them there so that they don't have to really
4 worry about it or when they get up they will feel comfortable getting up and knowing that
5 they can throw a little something in their stomach before they head out. I think that is a
6 nice thing to do.

7 Q. You made a selection in listing this property such that breakfast was listed as an amenity,
8 right?

9 A. Right.

10 Q. Okay. And then you described it as a bed and breakfast?

11 A. Airbnb, bnb is bed and breakfast, that is implied in their listing but that does not mean that
12 you have to give them breakfast. It does not mean that it is a bed and breakfast. You can
13 rent a sail boat and it says sail boat. You can stay in somebody's tree house. There are
14 all kinds of things that Airbnb allows and it is not just - - -

15 Q. Well I actually went through the website last night and I know that there are places where
16 you can drop down and select what you want to describe your property as, right?

17 A. Yes.

18 Q. You can select bed and breakfast or you can select for something like a sailboat you can
19 select unique event, unique location right?

20 A. Well please try to remember that Airbnb is a rather new company slash platform and at the
21 time that this was done it was 2015. I work for a company that works in high technology
22 and things change and things are upgraded all the time. Every single one of you have a
23 phone. You know you get an upgrade every three (3) weeks. So all I can tell you is at
24 that time it was probably one of the only selections I could make. It is not like I could
25 alter it to say we will leave you a yogurt and a protein bar.

- 1 Q. You made this selection of some sort such that this was listed as a bed and breakfast?
- 2 A. Right.
- 3 Q. Okay. And this stayed up for the three (3) years that you all booked this property?
- 4 A. Yes, until you guys sent that and we took breakfast off the list.
- 5 Q. Okay. And you and your husband referred to the people who were booking rooms as
- 6 customers, right?
- 7 A. No, as guest.
- 8 Q. Do you remember answering that question in your deposition?
- 9 A. I remember answering it both ways sir.
- 10 Q. All right. So you agree with me that in your deposition when I asked you how you
- 11 referred to those booking rooms and you said that you referred to them as customers?
- 12 A. I am saying that I answered it both ways in the deposition.
- 13 Q. You answered that question twice as customers, though, didn't you?
- 14 A. I am not sure.
- 15 Q. All right. When these customers come they have a separate entrance to the property?
- 16 A. They do.
- 17 Q. All right. And you greet them and provide them with a key?
- 18 A. Yes.
- 19 Q. And the customers pay a service fee, right?
- 20 A. The Airbnb platform charges a fee.
- 21 Q. And a cleaning fee?
- 22 A. Yes.
- 23 Q. Fifty & no/100 (\$50.00) dollars?
- 24 A. Yes.
- 25 Q. And that went to you all?

1 A. Yes sir.

2 Q. And you all were the ones who had to clean up after these folks?

3 A. Yes sir.

4 Q. And sometimes you said your son would do some cleaning up, too?

5 A. Empty the trash cans or something.

6 Q. All right. And you all had a policy on cancellations, pets, smoking and that sort of thing?

7 A. Yes sir.

8 Q. All right. When you all perhaps read some reviews on the guest that you didn't know,
9 screening of these folks otherwise, right?

10 A. The Airbnb platform and the reason why we used that one exclusively for our home was
11 because they do make you provide a government issued ID which they check. And they
12 run it through a screening for terrorist and for sex offenders. So if you are trying to be a
13 host or you are trying to use the platform they run that through and if you are flagged you
14 will not be allowed to use the platform.

15 Q. Okay. When did you learn about this screening process?

16 A. We knew about the government issued ID and I also know that Airbnb allows you to rate
17 each other. You have to both provide comments back and you can't see each other's
18 comments until both people have provided a review. So that allows you to - - well say
19 references, lets say if you were going to rent an apartment or something and you needed to
20 check someone's references it gives you a very quick idea about if these people are clean,
21 were they a problem before, do you want to rent to them, that kind of thing.

22 Q. Okay. But when we took your deposition you didn't have any knowledge regarding
23 whether Airbnb did criminal background checks or - - -

24 A. I wasn't sure, yes.

25 Q. Okay. So when did you check on that and find that out?

1 A. I guess it was 2018. Well 2017 or 2018.

2 Q. But it was after your deposition?

3 A. I don't know. I knew that they did an identity check. So the terrorist one was interesting.

4 Q. Okay. Did you know at the time that you were booking these whether they did criminal

5 background checks or sex offender checks?

6 A. That was a conversation. But I did like it because it provides transparency between the

7 host and the guest.

8 Q. You all had quite a few customers in the three (3) years, right?

9 A. Over the three (3) years I would say we had a descent amount, yes.

10 Q. And you were renting for seventy five & no/100 (\$75.00) dollars a night, correct?

11 A. Yes sir.

12 Q. And the total bookings during those three (3) years was close to Six thousand & no/100

13 (\$6,000.00) dollars, right?

14 A. I believe so.

15 Q. So just doing the math there that is going to be quite a few people that were coming

16 through, right?

17 A. Okay.

18 Q. Well I am asking?

19 A. Over three (3) years doing it for three (3) years. What is the number that I have got listed,

20 it is forty or something, over three (3) years I don't think that is a tremendous amount.

21 Q. Well seventy five & no/100 (\$75.00) dollars a night and you get up to Six thousand &

22 no/100 (\$6,000.00) dollars worth of bookings, Five thousand eight hundred twenty nine &

23 no/100 (\$5,829.00) dollars, right?

24 A. That doesn't make it a lot of people. I could charge One hundred twenty five & no/100

25 (\$125.00) dollars a night some times.

1 Q. But you all charged Seventy five a night?

2 A. Yes.

3 Q. Okay. And your customers didn't just stay in the home, right? They would sometimes

4 wander or take walks throughout the neighborhood?

5 A. I am sure they went for walks, yes.

6 Q. Sometimes they would take the kayaks out and that sort of thing.

7 A. Yes sir.

8 Q. Sometimes they paddled down and lounged on the bank, right?

9 A. No.

10 Q. Never?

11 A. I wasn't with them but usually the people that were taking kayaks had little kids or

12 something and would just paddle out in the front and come back. They don't know the

13 area. They are not going to go wandering off. So not generally, no.

14 Q. Did you ever hear complaints from your neighbors that some of the customers paddling

15 down and getting out and hanging out at their property?

16 A. Not until I read your whatever that is.

17 Q. Okay.

18 A. And you are speculating because you are saying that those are my customers. Those are

19 just people. That doesn't mean that they came from my house.

20 Q. Okay. The main residence when it was listed on your bnb you listed it as having - - I see

21 four (4) customers?

22 A. Yes sir.

23 Q. All right. And you testified that if the garage apartment is listed on your bnb you think

24 that would be another four (4) persons asking?

25 A. Sure.

1 Q. And you believe that you have ever right to rent that space to the right residents out on
2 your bnb as well?

3 A. I do.

4 Q. And if you construct another structure you would think that you have the right to rent that
5 as well?

6 A. I have no intention of doing that.

7 Q. Okay. But if you wanted to, you could?

8 A. Yes.

9 Q. So if you were allowed to use the Airbnb or the platform to operate this bed and breakfast
10 you have potentially an eight (8) person capacity at this bed and breakfast don't you?

11 A. Yes.

12 Q. All right. The bed and breakfast in terms of what you all were doing?

13 A. Yes sir.

14 Q. Well what is the difference between what you all were doing in say the Inn on Main Street
15 downtown?

16 A. Oh, it is completely different.

17 Q. How so?

18 A. Because the reason why people come to Airbnb is so they are not in a hotel. They are
19 there to meet people. It is a way to - - hotels aren't placed like in areas that are next to
20 nice little parks or on the lake where people can come. People that come to share our
21 home are people that are traveling from Ohio down to Florida to see their grand-kids and
22 need a place to stop. And then they want it to be nice and quiet and they don't want all
23 the hassle. I travel all the time. Hotels are not really a lot of fun. Okay.

24 Q. Lets talk about that like say the Inn on Main Street here in Spartanburg. What is the
25 difference between what you all were doing and what a bread and breakfast is like?

- 1 A. Well it is my understanding - - well I haven't stayed in a bread and breakfast per se that
2 puratos, or well whoever provides you with breakfast and sometimes lunch or whatever.
3 It is a business, you know, that is how I see it as different.
- 4 Q. And you all were renting or booking rooms on a nightly basis in your home, right?
- 5 A. Yes.
- 6 Q. And offering services. You cleaned the rooms, right?
- 7 A. After they leave. It is not a service necessarily for them.
- 8 Q. All right. Offer them the use of your gym. You offer them the use of the kayaks and all
9 of that sort of thing, right?
- 10 A. Mr. Anthony I offer the use of my gym and those things to our neighbors, too.
- 11 Q. But your neighbors aren't paying you for it, right?
- 12 A. Well the gym is just part of my home. If I have guest they are allowed to use almost
13 anything they want in our home. So that is why I am saying if you want to use the kayaks,
14 great. If you want to take a shower, great. If you want to use my gym, go for it. If you
15 want to go shoot basketball, go ahead. It is my home. You are a guest. You are
16 welcome to almost everything in my home.
- 17 Q. I appreciate that but your guest weren't paying you to be there, right?
- 18 A. I don't see the relevance but that is fine.
- 19 Q. Well I mean that is a big difference isn't it. Those are guest. These are customers.
- 20 A. Those are guest. I see what you are saying, they are guest as well. To me that is the
21 appeal of Airbnb. You are having people in your home. You get to meet very nice
22 people. You get to learn things from them. It is a very different - - that is why it is so
23 popular. It wouldn't be so popular if there weren't better benefits from it than staying in a
24 hotel.
- 25 Q. But if these folks want to stay at your home and they go through the Airbnb website and

1 they get to the payment screen, if they don't enter information on the payment screen they
2 don't get to come stay at your house, right?

3 A. No. Right.

4 Q. Okay. And the only difference that you believe between what you all were doing and the
5 Inn over here on Main Street is that they offer a hot breakfast?

6 A. No. No, I don't think that is the only difference. That is what I am saying. The
7 difference is maybe intangible but again it is friendship, you get to really know why people
8 come sometime. And maybe they are interested in buying a home around the area and
9 they want to see what it is like. They are not going to get that feeling from staying in a
10 hotel. You are going to want to meet people and you want to ask them questions and you
11 want to go to local bars and restaurants and parks or whatever they have. It is definitely
12 different.

13 Q. You understand that Section 2 of the covenants prohibits commercial use of property in
14 Solitude Bay, right?

15 A. I do.

16 Q. All right. Why is this not commercial use of property?

17 A. Because it is residential.

18 Q. But you are taking money and making a profit from it?

19 A. Just because you make money doesn't make it a commercial entity.

20 Q. You were using your property to make money, correct?

21 A. I shared my home. Well lets say if I had a roommate. What would be the difference.
22 Oh, I am not allowed to ask you questions. I am sorry.

23 Q. Mrs. Razzano you all came into this neighborhood knowing that it was a small, quiet
24 neighborhood, right?

25 A. Yes.

1 Q. It is called Solitude Bay?

2 A. Yes, Solitude Bay.

3 Q. And you came there knowing that it had restrictions on it?

4 A. True.

5 Q. And everybody else in this neighborhood abides by those restrictive covenants?

6 A. I don't know. I don't go around and check everybody's stuff.

7 Q. Okay. Who else in this neighborhood is running a bed and breakfast?

8 A. I don't know. I know people have friends at their house.

9 Q. The other people in the neighborhood play by these rules, if you all notice. Is that right?

10 A. No sir, that is not right.

11 Q. Okay, I think those are all of my questions, thank you.

12 THE COURT: Counsel.

13 **CROSS EXAMINATION BY MR. BIBLE.**

14 Q. Mrs. Razzano, I will hand you a notebook that has been marked as Defendant's Exhibit 1.

15 It has a lot of tabs in there and we may go back and forth through some documents in

16 there,. You don't have to specifically look at them right now. So I will ask you just a

17 few background questions. You and Mr. Razzano are from the area, is that correct?

18 A. Yes sir.

19 Q. And you all have a child that currently resides with you?

20 A. Yes we do. We have two (2) children and one (1) still lives at home.

21 Q. All right. Where does the other child live?

22 A. She lives in Woodruff.

23 Q. In Woodruff?

24 A. Yes.

25 Q. Does she occasionally come to visit?

- 1 A. All the time.
- 2 Q. How about her friends. Do they come to visit as well?
- 3 A. Yes, they do.
- 4 Q. Okay. Do they stay with you sometimes when they come to visit?
- 5 A. Yes, they do.
- 6 Q. Even the friends?
- 7 A. Even the friends.
- 8 Q. What is your current employment?
- 9 A. I am an architect with Face book. I build mission critical facilities.
- 10 Q. Since you are an architect are you licensed in South Carolina to perform architectural?
- 11 A. Yes, I am.
- 12 Q. Okay. Is that a general gamete of both residential and commercial architectural?
- 13 A. Yes sir.
- 14 Q. Okay. And as a result of your current employment are you familiar with internet based
- 15 social media platforms and their respective uses?
- 16 A. Yes, I am.
- 17 Q. Okay. Tell me about your education. Starting with - - you graduated high school, I
- 18 assume?
- 19 A. Yes sir.
- 20 Q. All right. Did you go to college?
- 21 A. I did.
- 22 Q. Okay. Where did you go to college?
- 23 A. Cornell University.
- 24 Q. Okay. What did you obtain a degree in at Cornell University?
- 25 A. A professional degree in architectural.

1 Q. Okay. And when was that?
2 A. I graduated in 1993.
3 Q. In 1993?
4 A. Yes sir.
5 Q. Okay. And we just discussed that you have a fully active license in South Carolina
6 architectural, is that correct?
7 A. Yes, it is.
8 Q. Do you have any other professional licenses or certificates?
9 A. Yes. I am also a registered architect in New York.
10 Q. Okay.
11 A. I am also an - - it is called a Leed Associate with Green Leed Associate and I am a
12 member of the American Institute of Architects.
13 Q. All right.
14 A. And up until just a little while ago I was also a member of Engineers without Lawyers.
15 Q. Are there continuing education seminars type of requirement?
16 A. Yes, we have - - -
17 THE COURT: Counsel let me ask you. Where are you going with this?
18 MR. BIBLE: Qualifying her as an expert in the field of architectural as well as design, Your
19 Honor.
20 THE COURT: Was that contemplated in the pretrial because I didn't see that?
21 MR. ANTHONY: No, Your Honor. I don't believe that was responded to in discovery
22 responses in terms of the potential expert witness.
23 MR. BIBLE: She is already a party to the case, Your Honor. And he was well aware of her
24 status as an architect.
25 MR. ANTHONY: I am aware of her status as an architect but in terms of qualifying and offering

1 someone as an expert witness, that is totally a different ball game. And we would certainly want
2 to depose her on that topic as opposed to just a fact witness and they want to designate her as an
3 expert.

4 MR. BIBLE: Your Honor, I would request to call her as an expert because she has the experience
5 to testify with regards to a limited source of attachment and residential construction.

6 THE COURT: Well two (2) things. Is that the subject of proper cross examination of the
7 witness?

8 MR. BIBLE: Yes, Your Honor. He was speaking about how she planned on attaching a separate
9 structure to the main residence.

10 THE COURT: Mr. Anthony?

11 MR. ANTHONY: Your Honor for the reasons I have stated, we still object. She has not been
12 noticed to us as an expert witness. I don't think that calls for expert testimony and I think we are
13 prejudiced by a last minute, at the trial identification, as an expert witness. I would certainly
14 expect an objection from Mr. Bible if we walked in here with an expert today.

15 THE COURT: And her deposition was taken only in her capacity as a party Defendant and a
16 homeowner, is that correct counsel?

17 MR. ANTHONY: That is correct, Your Honor.

18 THE COURT: Counsel I am not going to allow her to be used as an expert. Number one, that
19 she was not listed as an expert nor was she allowed or presented so the testimony could be taken
20 at the deposition in her capacity as an expert or even an attempt to be used as an expert. I am not
21 going to allow her to be - - I will not qualify her.

22 MR. BIBLE: Understood, Your Honor. Thank you.

23 Q. All right, Mrs. Razzano you currently reside at 149 Whippoorwill, is that correct?

24 A. Yes sir.

25 Q. And 149 Whippoorwill at the time that you initially purchased in 2006 was for Lot 8, is

1 that correct?

2 A. Yes sir.

3 Q. Okay. And we understand from your testimony with Mr. Anthony that Lot 8 and 9, they

4 have been combined is that correct?

5 A. Yes sir.

6 Q. Okay. So there was no individual interior lot lines separating those two (2) lots, is that

7 correct?

8 A. That is correct.

9 Q. Okay. So it is all one whole tract of land?

10 A. Yes.

11 Q. That is the way you consider it?

12 A. Yes sir.

13 Q. Okay. And the garage is sitting on a whole tract of land in addition to your house, is that

14 correct?

15 A. Yes sir.

16 Q. Do you consider the garage to be a part of your home?

17 A. Yes, I do.

18 Q. Okay. Do you use it as a part of your home?

19 A. Yes, I do.

20 Q. And the 149 Whippoorwill, in fact the garage and your home share the same address, is

21 that correct?

22 A. Yes sir.

23 Q. Okay. And that is currently your permanent residence?

24 A. Yes sir.

25 Q. Okay. Is Solitude Bay a gated community?

1 A. No sir.

2 Q. So it is located on a private road?

3 A. It is on a public road.

4 Q. Okay. So in other words people can access Solitude Bay publicly, is that correct?

5 A. Yes.

6 Q. Mr. Anthony referred to the restrictive covenants. If you don't mind, flip to Defendant's

7 Exhibit 1, Tab 1? And I would represent that is a photocopy of the restrictive covenants.

8 Are those the restrictive covenants that you are aware of that apply to your property and

9 everybody else's property that lived in Solitude Bay?

10 A. Yes sir.

11 Q. All right. And you would contend that your actions on your property do not violate these

12 covenants, is that correct?

13 A. Yes sir.

14 Q. Do you know of other people that rent homes in the community?

15 A. Yes sir.

16 Q. And you also know of other people that have attached and detached structures associates

17 with their property, is that right?

18 A. Yes sir.

19 Q. When you went through the process of starting construction with things that you have to

20 do in order to build, is there any where in those covenants that require you to go through

21 an approval process with the community?

22 A. No sir.

23 Q. Is there an HOA associated with this community?

24 A. No, there is not.

25 Q. All right. Is there and tell me if you don't understand this word or this phrase. But is

1 there an architectural review committee associated with this community?

2 A. No, there is not.

3 Q. How about architectural review board?

4 A. No sir.

5 Q. So essentially all you had to rely on was the County, is that correct?

6 A. Yes sir.

7 Q. All right. And you did that by going to the County with your plans, is that correct?

8 A. Yes sir.

9 Q. Okay. And a part of your direct testimony was related to how we ended up with 147?

10 A. Yes sir.

11 Q. And that you have indicated was the result of a building inspector saying hey this might be
12 a good idea?

13 A. Yes sir.

14 Q. That is no longer the case though. Your house and the garage is all 149 at this point?

15 A. Yes sir.

16 Q. Correct?

17 A. Yes sir.

18 Q. All right. Lets look at Defendant's Exhibit 1, Tab 7. Please take a look at that first page
19 and tell me what this is?

20 A. This is the receipt for the septic system for the garage.

21 Q. And do you have Tab 7?

22 A. This.

23 Q. Looking at them. I am sorry, I might have this labeled wrong. Okay. You are good. I
24 am sorry.

25 A. Okay.

1 Q. So that is the receipt for the septic?

2 A. Yes sir.

3 Q. And what does that receipt say? Does it have an address associated with it?

4 A. Yes, it says 147.

5 Q. Okay. And to your knowledge how did the septic system or the DHEC obtain an address

6 of 147?

7 A. Because that is what we started with.

8 Q. Okay. That is what you started with?

9 A. Yes.

10 Q. Did you provide that to DHEC?

11 A. Yes.

12 Q. Okay. And that was based on the information that came from the building department?

13 A. Yes.

14 Q. Okay. Flip to the next page?

15 A. All right.

16 Q. And what is this document? I would represent that this would be - - -

17 A. Oh yes. This is the building permit.

18 Q. Okay. And this is the incorrect building permit, is that correct?

19 A. Yes.

20 Q. This is not the actual one that exist today, is that correct?

21 A. Right, right.

22 Q. And flip to the next page, well actually two (2) pages. And what is this document?

23 A. This is the corrected document that reads 149 Whippoorwill.

24 Q. Okay. And will you indicate for the Court what this building permit describes as the

25 scheduled work to be performed on the property?

1 A. The description of the work is the addition of a two (2) bedroom garage apartment to
2 single family house new septic.

3 Q. Okay. And the County didn't take any issue with this, is that correct?

4 A. No.

5 Q. All right. And as we sit here today all of the information that you have tells you that the
6 garage and your home are all at one address?

7 A. Yes.

8 Q. In fact, if you flip to the next page on that same tab this appears to be an inspection notice,
9 is that right?

10 A. Yes sir.

11 Q. Okay. And this would have been something that the County performed out at your
12 property, is that correct?

13 A. Yes sir.

14 Q. Okay. And the job location and description there by a county inspector says what?

15 A. It says 149.

16 Q. Okay. Lets talk about utilities. The electrical is tied into your residence, is that correct?

17 A. Yes sir.

18 Q. Okay. And we discussed that it has a separate septic system. Why did you have the
19 separate septic system installed?

20 A. When we bought the house originally it was a single story and we added a second story.
21 So according to DHEC and those regulations we had expanded that septic system already
22 so with the addition of the garage apartment I just felt that it would be better not to tax
23 that. Not to dig up our yard again and everything else since we had already cleared the lot
24 and it was just smarter and easier to put a septic system associated just with the garage.

25 Q. Okay. And you said that you did an addition to your home?

- 1 A. Yes sir.
- 2 Q. Tell us what was going on there?
- 3 A. When we bought the house originally it was single story with kind of a mansard roof on it
4 and so at a certain point in time we took the roof off and we added a second floor to the
5 house. So it included extra bedrooms and bathrooms and you have to upgrade your septic
6 system to reflect that.
- 7 Q. Okay. So you did an addition to your home when you first purchased it and you created
8 additional living space, is that correct?
- 9 A. Yes, we did.
- 10 Q. And you treat that as your residence, is that right?
- 11 A. Yes, we do.
- 12 Q. Okay. Do you eat in there?
- 13 A. Yes we do.
- 14 Q. Do you sleep in there?
- 15 A. Yes we do.
- 16 Q. And you have friends over?
- 17 A. Yes.
- 18 Q. You have guest in there?
- 19 A. Yes, we do.
- 20 Q. Okay. All right. So the septic issue you just thought that it was better to not task your
21 current system, correct?
- 22 A. Right.
- 23 Q. How does your home - - what type of water source does your home use?
- 24 A. My home currently uses a well.
- 25 Q. And you don't use any City water or County water or anything like that?

1 A. Not right now. No.

2 Q. Okay. But there is an issue with the water tap being installed for use at the garage, is that
3 correct?

4 A. Apparently, yes.

5 Q. Okay. And why did you go through the process of obtaining a water tap for that space?

6 A. Because there were two wells on the property. So apparently at a previous time one went
7 bad and they dug the second one. So we use that. So I didn't want to task the system. It
8 is like if it is not broke, don't fix it. So it works fine. And so with putting extra water
9 into the garage apartment just thought that it would be smarter to use city water.

10 Q. Okay. And if you don't mind flip to Tab 29 in Defendant's Exhibit 1.

11 A. Right.

12 Q. Are you there?

13 A. Yes.

14 Q. Okay. And this first document appears to be the application for that water tap, is that
15 right?

16 A. Yes sir.

17 Q. Okay. And that was June 10, 2017, is that right?

18 A. Yes.

19 Q. All right. And near the lower portion of that first page it says date tap was made. Is that
20 June 13, 2017? Is that what it says there?

21 A. Lets see.

22 Q. I am sorry. I don't mean to task your eyes?

23 A. Date tap made. Is that the question.

24 Q. Yes?

25 A. Yes, yes.

1 Q. All right. Then there is a receipt from Inman Campobello Water District, is that right?
2 A. Yes sir.
3 Q. And that was dealing with the purchase of the water tap that we are talking about?
4 A. Yes sir.
5 Q. And the next page. This is what appears to be an account, a description from Inman
6 Campobello Water District, is that right?
7 A. Yes sir.
8 Q. Okay. And that address says 149, is that right?
9 A. Yes sir.
10 Q. Okay. Lets go back to that first document. And it says meter number right beside the
11 date tap made?
12 A. Here.
13 Q. It says meter number if you scan to the right?
14 A. Account number.
15 Q. No ma'am. Where you just read the date tap made?
16 A. Yes.
17 Q. The 6-13?
18 A. Yes.
19 Q. If you scan to the right of that you will see meter number?
20 A. Yes sir.
21 Q. Okay. And will you read that meter number for the Court?
22 A. It is 85533486.
23 Q. Okay. And flip to the last page in that – correction, not the last page but the page before
24 And the last in that tab?
25 A. Yes.

1 Q. And that serial number. Does that serial number match up with that meter number?
2 A. Yes it does.
3 Q. Okay. And that is again at the address of 149 Whippoorwill Drive, is that correct?
4 A. Yes sir.
5 Q. Okay. How about any other utilities to operate the garage?
6 A. No.
7 Q. Okay. You have electrical in the front of your house, is that right?
8 A. Yes.
9 Q. So as we set here today to the best of your recollection has every permit or application, has
10 that been cleared up to accurately reflect the garage being at 149 Whippoorwill Drive?
11 A. Yes sir.
12 Q. Okay. And you always intended for that garage to be 149 Whippoorwill Drive, is that
13 correct?
14 A. Yes sir.
15 Q. And you always intended to use this garage and this structure how you deemed appropriate
16 with the use of your property, is that right?
17 A. Yes sir.
18 Q. Okay. Well lets talk about the construction and the attachment portion. We will just use
19 the blow up of Defendant's Exhibit 1, Tab 6, the last page. You can probably see the
20 blow up a heck of a lot better instead of looking at the paper but you are more than
21 welcome to do so.
22 A. All right.
23 Q. This point right over here and I am just going to point to it, that is the easiest. What is
24 this?
25 A. This is a retaining wall.

1 Q. Okay. And why is there a retaining wall there?

2 A. Because the way that the grade sloped to create a flat pad to go to the garage we needed to
3 put a retaining wall there to keep the land back.

4 Q. Okay. Is it fair to say that you were restricted by topographic limitations in this
5 construction?

6 A. Yes.

7 Q. Okay. So is that kind of a reason why the structure is built at the location that it is?

8 A. It is.

9 Q. Okay. And look at the first page of that Tab 6, well it is a little bit disorganized.

10 MR. BIBLE: I apologize Your Honor, to the Court.

11 Q. The second page of that tab?

12 A. All right.

13 Q. And what is that?

14 A. That was the initial intention to connect the house and the garage.

15 Q. Okay. And why will that not work?

16 A. Because as I stated when you start construction you need to check the grades and we had a
17 civil engineer look at it and just did not realize how much that particular piece of property
18 sloped. So we had to kind of change.

19 Q. Okay. And then it might be the next page. It looks like a photograph, is that right?

20 A. Yes.

21 Q. Okay. And that shows the retaining wall that we were just talking about?

22 A. Yes sir.

23 Q. And the grade?

24 A. Right.

25 Q. And then there is on the very first page, I believe you have an original conceptual

1 drawing, is that right?

2 A. Yes sir.

3 Q. Okay. And things have changed or developed over time since your preparation of that
4 drawing to what we see here in Defendant's Exhibit 1, Tab 6?

5 A. Yes sir.

6 Q. Is that right?

7 A. Yes sir.

8 Q. Describe for me why you consider this an attachment?

9 A. Because they touch. They work together. They flow together as a reasonable way to
10 have a garage.

11 Q. And there is going to be a physical attachment by structural members, is that right?

12 A. Yes sir.

13 Q. All right. To your knowledge does the restrictive covenants state anything about how a
14 building is to be attached to another structure?

15 A. It does not.

16 Q. And you mean to use that as an attached accessory to your residence, is that right?

17 A. Yes sir.

18 Q. And you spoke about the in-game use was using the space involved for your elderly
19 parents, you and your husband's elderly parents, is that right?

20 A. Yes sir.

21 Q. Okay. Would anybody else be using that space that is your family?

22 A. Yes, sure. I mean things change. We did have a niece that was contemplating going to
23 Clemson and her father called and asked if maybe we would consider having her here,
24 those kind of things, yes.

25 Q. And to your knowledge looking at the restrictions there is no prohibition on you having

1 family stay with you, is that correct?

2 A. Exactly.

3 Q. All right. And to your knowledge the restrictive covenants don't say anything about the
4 structures within Solitude Bay must be used for single family purposes?

5 A. That is true.

6 Q. Okay.

7 A. I mean just for the Court, so you know. I believe we are also the guardians of my
8 husband's niece and she and our son were supposed to be born about the same time. She
9 was born premature. She has Rett Syndrome. She has never been able to speak. She
10 uses a computer and uses her eyes to talk. And she is in a wheelchair. We are her
11 benefactors. If anything were to happen to her parents we have a space for her and we also
12 realize that you know if its going to work that people need a caretaker. It is set up so that
13 it is accessible one way or another and you know that is another thing that could happen.
14 Just for context.

15 Q. Okay. And along that same line of reasoning you could foster people, foster children at
16 your residence couldn't you?

17 A. We could.

18 Q. And that is temporary and major typical is it not?

19 A. Yes, it is.

20 Q. All right. Lets speak for a moment regarding Airbnb. You testified a few moments ago
21 that you are familiar with social media and platforms and you work for Face book, right?

22 A. Yes.

23 Q. Okay. All right. Mr. Anthony asked you if you referred to them as customers in your
24 deposition. And you indicated you represented initially customers and then you said they
25 are really guest?

1 A. True.

2 Q. Tell me about that? Tell us why you would consider them guest?

3 A. If you were to look at the list and see who actually has stayed at our home, what I can tell
4 you about a couple of the people that have come and stayed with us is that we have
5 become friends. We have people come and stay with us during the Equestrian, the Royal
6 Equestrian event up there in Tryon. And these people were from Austria and the wife was
7 a judge. So you know they would come home and they would tell us all about the events
8 of the day and we would go into the living room and maybe have a glass of wine and she
9 would educate us you know as a judge in what we were looking for because we have been
10 to the Tryon Equestrian Center before. It is really fun. The horses are beautiful. But we
11 really don't know what we are looking at in a competition. So it was very enlightening.
12 These are wonderful people and some are still in touch with us. They offered their home
13 to us in Austria, if we ever got to go there. And they send us Christmas cards and things
14 like that. Another gentleman came and stayed with us from England and you know we
15 made lasagna together. You know, I said would you like to share dinner with us and one
16 night he said well why don't you let me make dinner for you guys.

17 Q. Let me ask you about that?

18 A. Yes.

19 Q. That is not typical in a hotel is it?

20 A. No, it is not.

21 Q. Okay. And you indicated earlier that you may not have stayed in a bed and breakfast per
22 se?

23 A. Yes.

24 Q. Okay. Would you think that is typical and customary of a bed and breakfast to do
25 something like that?

1 A. I don't think so. This is much more personal.

2 Q. So you would say this is a relationship creating exercise?

3 A. Oh yes, definitely. Definitely.

4 Q. Okay. All right. If you don't mind flip to Defendant's Exhibit 1, Tab 13, please?

5 A. Tab 13.

6 Q. Yes ma'am.

7 A. All right.

8 Q. Have you seen this document before?

9 A. I have.

10 Q. Okay. Could you tell the Court what this thing is?

11 A. Okay. So this is a printout of all of the reservations that went through Airbnb of the

12 people that stayed at our home.

13 Q. Okay. And by home you mean 149 Whippoorwill Drive?

14 A. Yes.

15 Q. Is that right?

16 A. Yes.

17 Q. All right. And this is over a three (3) year total, is my understanding correct?

18 A. Yes.

19 Q. Okay. And Mr. Anthony was talking about the amount that you may have received and

20 that was fifty eight twenty nine seventy four and that is located at the bottom of this page?

21 A. Yes.

22 Q. And you obtained this document from Airbnb?

23 A. Yes.

24 Q. This is not something that you created?

25 A. Airbnb did.

1 Q. Now I believe the fourth column over it appears to show a number of nights and then a
2 guest name?

3 A. Yes.

4 Q. Are there any guest on this list that you associate yourself with on a regular basis?

5 A. Yes.

6 Q. Okay. Who are those individuals?

7 A. Well there are quite a few here. Well lets see, Connie Bank.

8 Q. Okay. Tell me about Ms. Bank?

9 A. Connie Bank is also an architect. She works for the consulting firm that we basically uses
10 for some of our designs. She and I were working on a project together in Forest City. So
11 rather than stay in a motel and we are friends, she came and stayed at our house. And she
12 would use the kayak or take a run in a residential area or something like that.

13 Q. Okay. And Ms. Bank was working on a project with you?

14 A. Yes.

15 Q. Okay. I assume that her employment - - does she work for Face book?

16 A. No.

17 Q. Okay. Do you know if her employer was paying her per diem?

18 A. They pay the hotel.

19 Q. So that is why she booked through Airbnb?

20 A. Yes.

21 Q. All right. Tell me the next person?

22 A. Lets see. Well Sterling Draper is my daughter.

23 Q. Okay.

24 A. So she has stayed with us.

25 Q. Okay.

1 A. Colleen Rice we call her our adoptive daughter but she is actually my daughter's best
2 friend.

3 Q. Okay.

4 A. And then Judy Srock is actually my mom.

5 Q. And Ms. Srock did she stay - - was it just her?

6 A. No. My mom and dad.

7 Q. Okay. So it was your mother and father staying with you?

8 A. Yes.

9 Q. Okay. And is there anybody else on here, at least on a regular routine basis?

10 A. Right.

11 Q. That is it?

12 A. Yes.

13 Q. All right. Why would your mother and father book a night with you on Airbnb?

14 A. Their living room and kitchen area got flooded with a leak and so rather than stay in a
15 hotel which you know the insurance company would pay for they came and stayed with us.

16 Q. Okay.

17 A. Of course, you know I didn't really charge them, right.

18 Q. Okay. I don't want to implicate you in any insurance fraud. But nevertheless, the
19 insurance company paid the bill for that, is that right?

20 A. Yes.

21 Q. Okay. Why would your daughter and her best friend book a night with you on Airbnb?

22 A. Those were very early on and I was just looking for feed back. You know, was the bed
23 comfortable. Do you feel - - you know, am I missing something. Do you feel
24 comfortable. Just some feedback on the stay.

25 Q. So you just wanted to make sure that your guest were happy?

1 A. Exactly.

2 Q. No better customer on that than your child?

3 A. Right. Exactly.

4 Q. So what did those individuals do when they stayed with you?

5 A. The different ones.

6 Q. Yes. I mean lets talk about the individuals that you associate yourself with on a regular
7 basis?

8 A. On a regular basis. So my family is here and my husband's family is pretty close. They
9 are in North Carolina. Our family has Sunday dinner together during the winter and fall
10 months, every Sunday we have family dinner. And during the summer time everyone
11 comes to our house for brunch. So when I say family that is friends, old bosses,
12 acquaintances, everyone knows that we have brunch. Everyone knows that we have two
13 big parties a year which is Super Bowl and Fourth of July. And people stay, you know.
14 A lot of this is to keep people from drinking and driving. We want people to feel
15 comfortable. We want them to have the space so they don't feel like they are
16 encumbering us. That is what a lot of this is.

17 Q. Would you say that you and Mr. Razzano have a large family?

18 A. Yes, We have a very large family.

19 Q. You just mentioned that you have parties at your house, at least on occasion?

20 A. Yes.

21 Q. Do you know everybody that attends your parties?

22 A. No.

23 Q. Okay. So there could just be transient people coming to a party at your house?

24 A. Well what happens is you meet nice people and they maybe have been to your party before
25 and then they have someone and they say hey come on and so then you meet them.

1 Q. That is a plus one?

2 A. Yes.

3 Q. And there is no prohibition to having people that you don't know over to your house?

4 A. That is fine. Yes.

5 Q. All right. And when these individuals actually stayed with you at your residence did they

6 use the facility the same way that you used the facility?

7 A. Yes.

8 Q. Okay.

9 A. I have had people in the gym using the gym and then take a shower and then come down

10 to the water, yes.

11 Q. All right. Mr. Anthony asked you a series of questions with regards to like the description

12 of - - what he showed you was screenshots of the Airbnb entry and indicated that was a

13 room within your house at least, right?

14 A. Yes.

15 Q. Okay. Are you in control of every point entry, the wording that is shown up on the

16 Plaintiff's Exhibit Number 10?

17 A. No, not the verbiage in the way it is set out in the ad. There are things I don't have

18 control over there.

19 Q. Could you tell me on that first page of Plaintiff's Exhibit Number 10, whether you

20 indicated that was a private room in the bed and breakfast or not?

21 A. I can't recall specifically. As I stated you are right there where they have pull-downs and

22 things that you can do but there are some things that you can't alter. So this was 2015 and

23 I can't really recall.

24 Q. So you might have been limited by the restraints of the platform?

25 A. May have.

1 Q. All right. Does Airbnb dictate to you - - does it have a disclaimer in there to say hey you
2 are operating this as a business? You are using our platform as a business?

3 A. No, in fact Airbnb represents itself as residential. The platform is for residential.

4 Q. Okay. Do you have any employees that work for the purposes of running your guest
5 operation?

6 A. No, I do not.

7 Q. Okay. And you do the cleaning yourself, you and your son and your husband?

8 A. Yes.

9 Q. Okay. When you have somebody staying with you all?

10 A. Yes.

11 Q. And that is whether they are a guest looking for Airbnb or a friend and guest that sleeps
12 over at a party?

13 A. Yes.

14 Q. Okay. Mr. Anthony was asking about all of these items that were made available when
15 somebody stays at your house regardless of Airbnb or what have you, if I were to come
16 over to your house and sleep and wanted to go fly a kayak.

17 A. Yes.

18 Q. Free of charge. You wouldn't charge me to go and kayak would you?

19 A. No sir.

20 Q. Is that the same for anybody that stays at your house?

21 A. Yes sir.

22 Q. Regardless of whether they are paying or not?

23 A. Yes sir.

24 Q. Okay. Is that the same way that you would use your kayak? Do you go out on the lake in
25 your kayak?

- 1 A. I do.
- 2 Q. Okay. And I would assume that is the same for the gym?
- 3 A. Yes.
- 4 Q. The Wifi isn't on a separate network?
- 5 A. No.
- 6 Q. Okay, So it is the same network that runs throughout the entire house?
- 7 A. Yes, it is.
- 8 Q. Okay. And what was that room before you started to allow guest to sleep in there?
- 9 A. Okay. When we first bought the house those two (2) rooms back there would have been
10 the master bedroom with a bath and the other one was our son's bedroom.
- 11 Q. Okay. So you don't use that as your master bedroom any more, correct?
- 12 A. No, we use upstairs.
- 13 Q. But it was setup as a typical master bedroom would have been when you originally stayed
14 in there?
- 15 A. It is nicer.
- 16 Q. Okay. And it has a bed in there, right?
- 17 A. Yes, it does.
- 18 Q. Okay. And your guest sleep in that bed just like you sleep in your bed at night?
- 19 A. Yes sir.
- 20 Q. Under the same roof, right?
- 21 A. Yes.
- 22 Q. Okay. And while you are in your home, is that right?
- 23 A. While we are in the home.
- 24 Q. You wouldn't want to have unsafe people in your home with you, would you?
- 25 A. No, I would not.

- 1 Q. Okay. And you have a teenage boy that lives with you, right?
- 2 A. Yes, we do.
- 3 Q. You wouldn't want to jeopardize his safety with somebody that you could not trust?
- 4 A. Of course, not.
- 5 Q. Would you consider that those guest's use to be residential?
- 6 A. Yes.
- 7 Q. Regardless of whether they are a paying guest or non-paying guest, they use the house just
8 as you as the owner uses the house, is that right?
- 9 A. Exactly.
- 10 Q. Do you have a business license to do what you are doing there?
- 11 A. I have an LLC but this is not associated with the LLC.
- 12 Q. Does that LLC rent out homes?
- 13 A. I am sorry, what.
- 14 Q. Does that LLC hold or own homes to rent out?
- 15 A. Yes it does.
- 16 Q. Okay. And you created that LLC for the purpose of renting out homes, is that right?
- 17 A. Yes sir.
- 18 Q. That LLC doesn't own 449 Whippoorwill, does it?
- 19 A. That is not included.
- 20 Q. And you treat 449 Whippoorwill as your home?
- 21 A. That is mine, yes.
- 22 Q. Mrs. Razzano the main residence there, the primary structure, the structure that existed
23 when you purchased the property, does it have a hot water heater in it?
- 24 A. It does.
- 25 Q. Does it have a microwave in it?

1 A. Yes.

2 Q. Does it have a refrigerator in it?

3 A. It does.

4 Q. Okay. And it has typical kitchen items?

5 A. Yes, it does.

6 Q. Typical bathroom items?

7 A. Yes.

8 Q. Okay. And you still use that as a residence, right?

9 A. Yes, we do.

10 Q. Okay. And those are all residential uses of your property, right?

11 A. Yes it is.

12 Q. And going back to this photograph or your conceptual drawing, you are indicating that it
13 may be along the sides I guess, a glass enclosure?

14 A. Yes.

15 Q. Can you go into more detail about that, I am having a little bit of a hard time
16 understanding it?

17 A. Okay. The motif, if you will, of the garage has a very nice trellis and you can see the way
18 we put the - - well you can't see it from here but what we have done is we have put the
19 concrete add in for the cars and on the side there is another retaining wall where we left
20 soil, so that we can grow things up and across the trellis. So this part comes in. So we
21 will be adding that motif to the other part, both the front and the back, this side. It
22 yesterday got pressure washed. We are getting ready to paint everything all the same
23 color. We picked out a new pallet on it. So this will come across and we will be adding
24 a trellis to the front and a trellis on the backside and actually a covered piece on the back
25 and then this where you would come out of the house, you will come out and it will be

1 covered and be closer to the porch and then it will come around and it will direct you to
2 the garage, I am sorry, the deck that was added and it has a set of stairs that come down.
3 You can see that in that one drawing.

4 Q. Okay. So once this is constructed if you were to walk outside your home and it be raining
5 outside you would be dry?

6 A. Yes.

7 Q. And you would be dry until you opened the door and entered into the garage, is that
8 correct?

9 A. I hope so. I mean I don't want to get wet.

10 Q. Right. But you intend to enclose it such that you are protected from the elements?

11 A. Yes.

12 Q. At least to a certain extent?

13 A. Yes.

14 Q. Mrs. Razzano, I don't have any further questions on cross examination.

15 THE COURT: Mr. Anthony?

16 MR. ANTHONY: Yes, Your Honor.

17 **REDIRECT EXAMINATION BY MR. ANTHONY.**

18 Q. Mrs. Razzano you and Mr. Bible were just discussing Tab 6, which is first a hand drawing
19 and then you have got a gate house rendering.

20 A. Yes.

21 Q. And I believe that gate house rendering you took off the internet?

22 A. I did.

23 Q. All right. And then we have what is up here, your most recent version?

24 A. Yes.

25 Q. So this is the third version that you have come up with for some sort of attachment I guess

1 between the garage residence and the main residence, right?

2 A. Yes sir.

3 Q. And all we have right now is this drawing, right. Not an architectural drawings or a
4 structural drawings or anything like that?

5 A. Right.

6 Q. I think that you were just describing - - there are some things in there obviously you can't
7 see that you were just having to describe to us, right?

8 A. Yes sir.

9 Q. Nobody could build off of that?

10 A. Well you would be surprised but yes. I think I see where you are going, but I think it is
11 going to be fine.

12 Q. And you could change that again right?

13 A. Yes.

14 Q. Because right now it looks like that, right?

15 A. Well you can't see. You can't see the wall there yet. Can I show you.

16 Q. Sure.

17 MR. ANTHONY: With the Court's permission.

18 THE COURT: All right.

19 A. So as you can see the stairs come down here. You know what, this is old because it is not
20 showing the retaining wall. Okay, so it doesn't show the retaining wall that goes right
21 here. It doesn't show the tap that is over here and it is not showing the deck connection.
22 So I don't know how old that picture is.

23 Q. I mentioned to you that we took it in late December?

24 A. Okay. Yes.

25 Q. Maybe that is a little better view but I recognize you are telling me that some things are

1 present now that weren't before?

2 A. Yes.

3 Q. Well there is nothing in terms of the trellis or anything like that which connects those two
4 structures, there is just a walkway right now?

5 A. Yes, right now because you have to paint it and like I said we just got it pressure washed.
6 It is a phased construction, if you will. I don't expect everybody to be able to see this
7 stuff. I know a lot of people are not visual and maybe that is what is giving people a
8 heartache, I don't know.

9 Q. Okay. But that is the drawing that we were looking at but it had to be changed?

10 A. Yes, it was.

11 Q. Okay. You talked a little bit with Mr. Bible about the building being attached. I would
12 like to direct you back to those restrictive covenants, Plaintiff's Exhibit 2 and I think it is
13 in the binder as well. Looking at Section 6 there.

14 A. All right.

15 Q. Now Section 6 says, I am going to skip some of the irrelevant words here. No garage or
16 other outbuilding shall at any time be used as a residence, temporarily or permanently. Did
17 I read that correctly?

18 A. You read part of it, yes.

19 Q. Yes. I skipped over some of the words, adding only the ones that are important. But I
20 think that you testified earlier when I was questioning you this is a garage, correct?

21 A. It is an addition, yes.

22 Q. All right. But your exact words to me were it is a garage?

23 A. Yes, but you can do a garage addition, right. It is the same.

24 Q. Okay.

25 A. I mean the building permit strictly says it is an addition.

- 1 Q. You told me it is a garage and this restrictive covenant says no garage shall at any time be
2 used as a residence, right?
- 3 A. Again it is not just a garage. According to the building permit it is an addition to the
4 home.
- 5 Q. You don't consider it an outbuilding?
- 6 A. I don't consider it an outbuilding.
- 7 Q. You discussed some changes with the building department in terms of changing the 147
8 Whippoorwill Drive to 149, right?
- 9 A. Yes sir.
- 10 Q. Were those all done after the filing of this lawsuit?
- 11 A. Yes, probably. Because we didn't realize it was such a problem until then.
- 12 Q. All right.
- 13 A. It was never the intention for it to be another house. That is not the intention.
- 14 Q. You mentioned that when you met with the building permit inspector that he had this
15 concern about emergency responders knowing where to go and you thought that was a
16 valid concern, right?
- 17 A. Yes.
- 18 Q. That is a yes?
- 19 A. Yes.
- 20 Q. Okay. So what do you do about that now?
- 21 A. We previously discussed it at this point because it is upsetting the neighborhood because it
22 has got a different number they will just have to figure it out when they get there.
- 23 Q. You discussed some guest that were able to stay and you believe that is different from a
24 bed and breakfast, right?
- 25 A. I have never stayed at a bed and breakfast.

1 Q. Well that is what I was getting at. You testified you hadn't stayed at a bed and breakfast
2 ever so you don't have any idea whether that is the same as a bed and breakfast or not,
3 right?

4 A. No, it is not a motel.

5 Q. Okay. But could it be a bed and breakfast?

6 A. It can't.

7 Q. And these guest that you became friends with they booked through the Airbnb website and
8 so they paid you to be at that home?

9 A. Yes. It is business.

10 Q. Right?

11 A. Right.

12 Q. And once you all sit around and talked, you didn't offer to give them their money back,
13 right?

14 A. Okay. So to be clear. People like Connie Bank and her husband Drew, she booked
15 through Airbnb on business. They have since then come to our house on several
16 occasions. Her and her husband. And have stayed with us and no we did not charge
17 them. They are our friends.

18 Q. But the first time that Connie came and stayed with you, the one that is listed here, she
19 paid you for that stay?

20 A. Yes.

21 Q. All right. There is an insurance coverage through Airbnb, correct?

22 A. Yes.

23 Q. Host protection?

24 A. I am sorry, what.

25 Q. Is there a host protection?

1 A. Yes, there is.

2 Q. Okay. So that is something in addition to your homeowner's insurance, correct?

3 A. Yes.

4 Q. Mrs. Razzano, I would like for you to look with me at Plaintiff's Exhibit Number 1?

5 A. These pictures.

6 Q. The photographs, yes?

7 A. All right.

8 Q. And we are going to look at Page 9 of that, which is the next to the last page of that set of

9 documents. Are you there?

10 A. I believe so.

11 Q. All right. That grey box down there along the wall that is a power meter, right?

12 A. Yes.

13 Q. All right. And then there is a compressor right next to it that is dedicated to that space?

14 A. Yes.

15 Q. Those are not coming off of the house then? That power is not coming off of the house?

16 A. We get one electrical bill.

17 Q. That separate power meter is not coming off of the house?

18 A. I don't know how it is connected.

19 Q. I think that you testified a minute ago about the water. You said that the main residence is

20 on a well and you didn't want to over task that well so you had a separate connection for

21 water with the garage residence, right?

22 A. Yes sir.

23 Q. All right. There is a water tap on the main house though, isn't there?

24 A. Yes sir. That is called Plan B. Like I said if it is not broke, don't fix it. We use well

25 water and it is fine.

1 Q. If that is Plan B, why couldn't your garage residence have run off of that tap?
2 A. I am sure it could have but it just seemed easier. It is closer to the street and straight to the
3 garage.
4 Q. It is just easier?
5 A. Just easier.
6 Q. Those are all of my questions, thank you.
7 THE COURT: Counsel?
8 MR. BIBLE: Just a couple, Your Honor.
9 **RECROSS EXAMINATION BY MR. BIBLE.**
10 Q. Mrs. Razzano if you would flip to Defendant's Exhibit 1, Tab 1?
11 A. This.
12 Q. Yes ma'am, there. Those are the restrictions right?
13 A. Yes sir.
14 Q. Okay. Mr. Anthony just asked you on redirect a couple of questions with regards to
15 Plaintiff's Exhibit 2, Section 6, right?
16 A. Yes sir.
17 Q. And I will read the full statement. It says no trailer, basement, shack, garage, barn or other
18 outbuilding erected on any lot shall, at any time, be used as a residence temporarily or
19 permanently, nor shall any residence of a temporary character be permitted, right?
20 A. Yes sir.
21 Q. Do you believe that the preparer of this document intended to prevent people from actually
22 living inside a garage - - -
23 MR. ANTHONY: Objection, leading.
24 THE COURT: I will sustain that.
25 Q. Do you believe that a garage means the bays where you would park your vehicle?

1 A. Yes, the garage, yes.

2 Q. So you would read this to mean hey you can't live in a bay where you would otherwise
3 park your vehicle, right?

4 A. Exactly.

5 Q. Okay. And the space above the garage is different in nature than that, isn't it?

6 A. Yes it is.

7 Q. You made a comment and I just want to make sure that I understood you correctly. Mrs.
8 Bank when she stayed with you, you said that it is business. That is not your business?

9 A. No, it is her business.

10 Q. Okay.

11 A. She is on a business trip.

12 Q. A business trip for which she got paid to stay somewhere?

13 A. Right.

14 Q. Okay. And you were working on that project together, is that right?

15 A. Yes.

16 Q. So that facilitated that arrangement, right?

17 A. Yes, it did.

18 Q. All right. That is it.

19 THE COURT: Anything further?

20 MR. ANTHONY: Nothing further, Your Honor.

21 THE COURT: All right. You may step down. Thank you. Gentlemen it is twenty till twelve.

22 Mr. Anthony who is your next witness?

23 MR. ANTHONY: My next witness is Mr. Scott. I think we will be relatively brief with him,
24 Your Honor. If it is all the same, I will probably prefer to go ahead in that order, Your Honor.

25 THE COURT: Well lets don't plow.

1 MR. ANTHONY: Understood.

2 THE COURT: Lets move smartly.

3 MR. ANTHONY: Yes sir.

4 THE COURT: All right. Lets do that and then after Mr. Scott we will take a break.

5 MR. ANTHONY: Thank you, Your Honor.

6 THE COURT: All right.

7 MR. BIBLE: Yes, Your Honor.

8 THE COURT: All right. Mr. Scott.

9

GLENN GARRETT SCOTT, BEING DULY

10 **SWORN, TESTIFIES AS FOLLOWS:**

11 **DIRECT EXAMINATION BY MR. ANTHONY.**

12 Q. Good morning, Mr. Scott?

13 A. Good morning.

14 Q. You own a home in Solitude Bay correct?

15 A. I do.

16 Q. What is your address?

17 A. It is 149 Whippoorwill Road.

18 Q. You are 149?

19 A. No, 151, I am sorry.

20 Q. You have been sitting here?

21 A. Just sitting there. I don't remember.

22 Q. And that is what I was getting to next. That is not your primary address?

23 A. No.

24 Q. You all live here in town as your primary address?

25 A. Correct.

1 Q. How long have you lived there? I am sorry, how long have you owned the home at
2 Solitude Bay?

3 A. Approximately ten (10) years.

4 Q. Okay. What kind of neighborhood is Solitude Bay? How would you describe it?

5 A. A residential neighborhood. Quiet, I mean as the name implies.

6 Q. Is it a big neighborhood, a small neighborhood?

7 A. Relatively small.

8 Q. And is the neighborhood do you consider it isolated or close to town or how would you
9 describe that?

10 A. I would describe it as the perfect location for what we wanted.

11 Q. Fair enough. So tell me what did draw you and your wife to that property?

12 A. The quietness. The fact that we were on at the time a double lot which was attractive to
13 us for peace reasons. We wanted a place where we can get away. We live right in the
14 middle of town. We have neighbors on both sides very proximate to our home and like
15 the relative ability to get away and be able to get to the lake very quickly from town.

16 Q. Your home is now adjacent to the Razzano residence. right?

17 A. Correct.

18 Q. Okay. Was there a lot between you before?

19 A. Yes.

20 Q. And how did you come to acquire a portion of that lot?

21 A. When the original seller put the house on the market it was the house with two (2) lots
22 available. In the negotiations we weren't at the time able to afford to buy the whole thing
23 so we optioned the adjacent property, not optioned but had a right of refusal or a meeter B,
24 if you will, on the adjacent lot. And when occasion came for that to be called we
25 exercised our right to purchase the other adjacent lot.

- 1 Q. Did you have some discussions with the Razzano about how that would work?
- 2 A. We did.
- 3 Q. All right. Tell me about that?
- 4 A. We made them aware of the reason that we had that and our desire to maintain buffers and
5 solitude if you will, to make a point. And that in doing so to start that effort we had
6 negotiated a right of refusal which would preclude anyone from building next door to us
7 because the way that it would have worked, you can see the lot lines, you all can pull up an
8 exhibit. You would see that the lots would have been very narrow and it would have been
9 very evasive to us. So we told them that it would be our desire to buy that lot and that if
10 they were interested we would be happy to sell them half of it and split the lot, and
11 combine the other three (3) lots into two (2).
- 12 Q. Okay?
- 13 A. Which is where we ended up.
- 14 Q. Okay. And did you have any discussion with the Razzanos, did they tell you about what
15 they intended their use of that property to be?
- 16 A. Yes, they did. And if you look the way the property line is oriented you can see that it
17 kind of played a little bit to that. They needed more frontage on Whippoorwill where as
18 our desire was to protect our access on the lake and our visual aspects of the lot, if you will
19 for our deck. They did tell me that it was their intent to build a garage on that site and I
20 had no reason to believe that would be a problem.
- 21 Q. Okay. They told you that they were going to build a garage on that site?
- 22 A. They did and then in subsequent conversations they said that they may build something to
23 their earlier point that relatives or in-laws or the like could be staying in on occasion.
- 24 Q. And you then saw them begin construction, right?
- 25 A. I did. Yes.

1 Q. Did that become a concern of your at some point?

2 A. The first sign of concern I guess where I kind of opposed or asked questions about what
3 was going on was the clearing of the lot, which I understood was fine for the garage but
4 then when I saw the septic tank location go in because I wasn't sure what the flag was and
5 I asked what the flag was because I thought maybe if it were a corner for another structure
6 it would have been even more you know in our face, if you will, so I asked the questions
7 relative to the septic tank service is how I really found out what was going on.

8 Q. Who did you have those discussions with?

9 A. Mark definitely and I can't remember if I talked to Carre or not. We talked a number of
10 times on the phone and I can't remember if that was one of the times on the phone or not.
11 We had fairly fluent conversations.

12 Q. All right.

13 A. I would say.

14 Q. All right. So you mentioned the septic tank and then as things progressed did other things
15 concern you?

16 A. Just as I became aware of what was going on next door with some of the ongoing activities
17 and then the desire to use this as a secondary and rental unit. I am fairly certain that I did
18 express my concern over that and that to me was in violation of what at a minimum we
19 had discussed at our agreement as owners that was going to come out of these lots, but
20 certainly in my estimation about violation some what of the restrictions.

21 Q. All right. So at some point you had a conversation with the Razzanos that you believed
22 they had violated the restrictive covenants?

23 A. If I didn't say that it violated the restriction covenants per se, I said that I didn't believe
24 what was going on was right.

25 Q. Okay.

1 A. Or in keeping with that. I remember writing up on my power board to do it.
2 Q. How many conversations do you think that you had on that topic?
3 A. More than one but less than six.
4 Q. Okay.
5 A. I mean I am not sure exactly. It was two and a half years ago.
6 Q. Did you speak with Carre Razzano at some point?
7 A. I did talk to Carre at Mark's request one time. It was a you will have to talk to Carre
8 about that and I did talk to Carre.
9 Q. What was that conversation like?
10 A. As all conversations, very cordial with the Razzanos. That is not the problem. It was you
11 know we believe that we can do this and I believe you can't, that type conversation.
12 And it does conform because of the connectivity. I think it was that occurrence of, in my
13 mind, of an overture to say it does conform.
14 Q. All right. Well were you objecting to the construction?
15 A. I was not objecting to the garage and was not aware really to the extent of the commercial
16 activity. So I really couldn't object to that but I did object to the use of it for any non-
17 conforming use and I kept going back to what the restrictions say and how it is setup.
18 How the neighborhood was setup.
19 Q. What stage of the construction do you think that was when you were having those
20 conversations?
21 A. Apparently before vertical construction because the genus was on the septic tank permit.
22 Q. Okay.
23 A. And the water tap at the top.
24 Q. All right. And I want to talk about the rental issue in a minute but lets focus on the garage
25 itself. Have you seen the property recently?

1 A. Within the month.

2 Q. Okay. And we have up here one of the photos from Plaintiff's Exhibit Number 1.

3 A. All right.

4 Q. And for the record I believe it is Page 8 of Plaintiff's Exhibit 1.

5 A. This page.

6 Q. Yes. I have got it laying up here so you can flip to it.

7 A. Oh, okay.

8 Q. Is this roughly what it looks like today? The most recently when you seen it?

9 A. My view is from the other side so my view looking at it from that side would have been

10 from my car.

11 Q. Okay.

12 A. So I had no reason to believe that wouldn't be exactly how it looks.

13 Q. All right.

14 A. It looks on that respect exactly like it would.

15 Q. All right. I don't know if you can see this if you have been in the courtroom but I am

16 showing you a rendering here, this is Tab 6 of Defendant's Exhibit 1. And I believe that

17 you heard Mrs. Razzano testifying about this, correct?

18 A. Yes.

19 Q. That is a yes?

20 A. Yes, I am sorry.

21 Q. That is all right. And so you heard her testify about this being the way that they are going

22 to connect the main residence to the garage residence?

23 A. Yes.

24 Q. All right. Now I would like to show you Plaintiff's Exhibit 2. Can you please tell me

25 what that is?

1 A. Yes. It is a copy of the restrictive covenants.

2 Q. All right. Let me direct you to section 8 of that. All right. According to that how many
3 residences are allowed on one lot?

4 A. One (1) residence.

5 Q. Okay. And were you present for Mrs. Razzano's testimony where she described the two
6 bedrooms and two baths, all of the things that go within that garage residence?

7 A. I came in mid-stride. So if you could remind me of the testimony maybe I can.

8 Q. All right. I will represent to you the testimony that has been that garage residence is two
9 (2) bedroom and two (2) baths with a full kitchen, dishwasher, stove, refrigerator,
10 washer/dryer. It has its own septic tank. It has its own power meter. It has its own water
11 tap. Do you believe that situation there could bother the restrictive covenant what we just
12 spoke about?

13 A. With those improvements on it I don't see how it could as it would be seemingly able to be
14 occupied completely partial of any other residence.

15 Q. Okay. You view that as two (2) residences?

16 A. In the event of that question, yes.

17 Q. All right. Does this trellis rendering here, does that solve that problem for you?

18 A. I am not an architect or an engineer so you know to the extent there is structural, I can't
19 say that it would. I would certainly think that it was not enable to the two in the initial
20 construction so that would make me in the lay mind a little speculative of their
21 connectivity but can they connect it.

22 Q. All right. Lets look at Section 6 of the covenants there, the two, Plaintiff's Exhibit 2?

23 A. Okay.

24 Q. And this section deals with the garage and outbuilding being used as a residence. Do you
25 believe that garage residence complies with that section of the covenants?

1 A. If it is going to be used as a residence I don't believe that it conforms, no.

2 Q. All right. Lets talk a little bit about what you are referred to earlier in terms of the rental
3 on Airbnb. Did you become aware at some point that the Razzanos were renting rooms in
4 their home out on the Airbnb website?

5 A. I did.

6 Q. All right. Have you seen the listings for that?

7 A. And either I saw it on line or saw some of the pictures reference.

8 Q. Okay.

9 A. Not like I went out looking for it.

10 Q. Okay. I show you Plaintiff's Exhibit 10?

11 A. All right.

12 Q. I represent to you that seems to show that listed as a private bed and breakfast, listed that it
13 could have up to four (4) guest and it list various policies and amenities and provides a
14 nightly rate with no minimum night restrictions?

15 A. Yes.

16 Q. What does that look like to you?

17 A. I mean certainly it is something offered in exchange for consideration.

18 Q. All right. I show you again Plaintiff's Exhibit 2, and I direct you to Section 2 of that?

19 A. All right.

20 Q. Do you believe that complies with Section 2?

21 A. In the veins of receiving benefits for dollars offered, no. I think that would constitute
22 certainly not industrial but certainly commerce.

23 Q. All right. Mr. Scott those are all my questions. Thank you. At this time please answer
24 any that Mr. Bible has.

25 A. Okay.

1 **CROSS EXAMINATION BY MR. CRAWFORD.**

2 Q. Good morning, Mr. Scott.

3 A. Good morning.

4 Q. And it is still morning for a little bit?

5 A. Yes.

6 Q. And I will try to make this brief as we can. But we have got a couple of questions that we
7 just need to clear up. My name is John Crawford along with Mark Bible we represent the
8 Defendants Mark and Carre Razzano.

9 A. Okay.

10 Q. And you have gone through a little bit of testimony today and I want to get some
11 background just some understanding.

12 A. Okay.

13 Q. I think that you said that you had lived or owned property in Solitude Bay for about ten
14 (10) years, is that correct?

15 A. That is right.

16 Q. And let me talk about that property for a second. In that white notebook there, that is
17 Defendant's Exhibit 1, would you go to Tab 14?

18 A. All right.

19 Q. I want you to look at that second page. And that second page I represent to you is a GIS
20 mapping of the property contained in Solitude Bay as well as property not contained in
21 Solitude Bay. Can you identify the location of your lot on that imagery?

22 A. I can.

23 Q. Okay. And would you mark that for us?

24 A. Physically mark it or just point to it.

25 Q. Yes sir. Just go ahead and mark it. That will be great.

- 1 A. Okay.
- 2 Q. All right. And then could you tell us where and so if I am looking in at the document that
3 I just presented to you there are parts that are shaded in yellow and then there are parts that
4 look like they are just a satellite imagery.
- 5 A. All right.
- 6 Q. Except all red outlined on there. You have marked what I would consider to be the third
7 lot in. Is that accurate on the parts that are shaded?
- 8 A. As shown here, yes. One, two, three.
- 9 Q. Okay. And that is where your home is. And in fact for clarification, why don't you just
10 put a one (1) where you say your lot is contained. Okay, and that is the third lot. And
11 then the Razzano's lot is where?
- 12 A. I don't know when this was generated. Does this show - - is this the split lots or is this the
13 combined lots because the Razzano's lot if this is the new one it is right next door. If it is
14 not there is a lot between us.
- 15 Q. And that is a fair question. I will represent to you that is a current GIS mapping and it
16 represents the current lots as they stand today?
- 17 A. Then it is this one.
- 18 Q. That one?
- 19 A. Yes.
- 20 Q. And all of those other properties and so if I come off the main highway which apparently
21 looks to be Walnut Hill Road, is that correct? Walnut Hill Road is the main highway that
22 feeds into Whippoorwill?
- 23 A. Yes.
- 24 Q. And that is a public highway, correct?
- 25 A. Yes, a public road. A county road.

1 Q. Okay. Road?

2 A. Presumably. The county or state, I am not sure. But yes it is the main access to and
3 from.

4 Q. It is not private?

5 A. No.

6 Q. And that is the same with Whippoorwill Road. That is a public road as well, correct?

7 A. Sure, yes.

8 Q. And Whippoorwill Road, that dead-end road is the road into Solitude Bay, correct?

9 A. That is correct.

10 Q. And as I leave Walnut Hill Road and turn onto Whippoorwill at least all of the property to,
11 as I am coming in, all of the property to my right is not part of Solitude Bay, correct?

12 A. That is correct.

13 Q. And then the property on the left until you get up to the shaded area is not a part of
14 Solitude Bay, correct?

15 A. As I understand what Solitude Bay is, yes.

16 Q. And that is a good point. The Solitude Bay is your understanding that Solitude Bay is that
17 property that is protected by the restrictive covenants?

18 A. The property identified as Solitude Bay has those restrictive covenants on it, yes.

19 Q. And that is what makes it Solitude Bay, correct. I mean that is what sets it apart from the
20 property that is owned by Forty Oakes, correct?

21 A. I would think that would be one of the things that makes it unique. And two, it is not
22 Solitude Bay because it has restrictions.

23 Q. Sure. And that is a valid point. But the property by Forty Oaks which is the property that
24 we have identified there is not within the restrictive covenants for Solitude Bay is it?

25 A. I don't know. I don't have a legal description of it. I don't know if Forty Oaks is subject

1 to that or not. I wouldn't presume that it is but I don't know for a fact that it is or not. I
2 see other land over here off of Emerald Drive that has the same indicator as color as
3 Solitude Bay and I don't know that it is the same either.

4 Q. Sure.

5 A. So it is kind of nebulous in my mind.

6 Q. Do you understand that property, the Forty Oaks property is subject to the covenants?
7 Just yes or no. Do you understand that to be the case or not?

8 A. Do I understand that Forty Oaks is subject to those covenants.

9 Q. Correct?

10 A. I don't have knowledge that it is.

11 Q. You don't know?

12 A. No.

13 Q. Okay. And we have indicated that Whippoorwill Road is a public road and so therefore,
14 it could be traveled by anyone, correct?

15 A. Yes.

16 Q. In fact, Solitude Bay if we look at it is not within a gated community is it?

17 A. No.

18 Q. Okay. And the homeowners who live in Solitude Bay they don't control who can drive up
19 and down that road on Whippoorwill can they?

20 A. No.

21 Q. Okay. Those restrictive covenants do they provide for an HOA for Solitude Bay? A
22 homeowners association?

23 A. Not by my recollection, they do not, no.

24 Q. In fact, you all don't have a homeowners association in Solitude Bay do you?

25 A. No.

1 Q. Do you have an architectural review board or committee?

2 A. No.

3 Q. In fact, there is no entity that is designated by the homeowners for submission of plans or

4 other improvements in Solitude Bay is there?

5 A. Exact body, no.

6 Q. In fact, looking at that covenant which is Plaintiff's Exhibit 2, do you see any requirement

7 that plans be submitted to any homeowners prior to construction?

8 A. To any homeowners.

9 Q. Homeowners, yes sir?

10 A. Again I have to inspect it now.

11 Q. Take your time?

12 A. No.

13 Q. Do not. Okay. Are you familiar with restrictive covenants?

14 A. Am I - - -

15 Q. Do you have some familiarity with restrictive covenants?

16 A. Yes.

17 Q. Besides the ones here that are the subject of this lawsuit?

18 A. Yes.

19 Q. Would you say that these are your typical restrictive covenants or are you used to seeing

20 them with a lot more depth and detail in relation to covenants?

21 A. I mean I think restrictive covenants are probably designed to do a million of things. So

22 they are all over the place.

23 Q. You certainly have seen one with a lot more detail than these, would that be accurate?

24 A. Well yes.

25 Q. Okay. Would you agree that those restrictive covenants do not restrict the size of a

1 family?

2 A. No, they do not.

3 Q. And you talked about the quietness and the whole idea of being quiet and making sure that

4 the lot between you and the Razzanos and someone building there.

5 A. Right.

6 Q. One of the issues for your purchase was because you understood the family that moved in

7 may have children that would be noisy and that impede your solitude, is that accurate?

8 A. Well anything that would have happened between us on that lot would have impeded our

9 solitude.

10 Q. And that is a good point. You can't control what other folks do on their lots that would

11 actually impede your solitude can you?

12 A. No.

13 Q. And I think in your deposition you indicate that the Razzanos have a large amount of

14 friends?

15 A. Sure, I said that. Yes.

16 Q. Its true. And in fact you said, that they throw parties?

17 A. Yes.

18 Q. And there are a lot of folks that come in I imagine and that is something that you can't

19 control in your solitude correct? And you don't have a problem with that either do you?

20 A. I don't think that I said I did, no.

21 Q. It was a question. I didn't ask you what you said. I just said do you have a problem with

22 that?

23 A. I have not complained about that, no.

24 Q. Okay. And in fact, you talked about your agreement - - -

25 A. I don't always like it but I haven't complained about it.

1 Q. That is a completely different thing?

2 A. Yes.

3 Q. You wouldn't have a basis in the covenants to complain about it, would you?

4 A. Only to the point that it would rise to obnoxious or offensive or becoming a nuisance.

5 Q. Have you ever felt that way or have you ever expressed that concern with them?

6 A. Only as to the activity relative to the house.

7 Q. Not to their parties or the folks that they have had there?

8 A. No.

9 Q. Okay. As far as the agreement that you had with the Razzanos when you purchased the
10 lot you understood and I think you said that you wanted the bottom part to make sure, you
11 wanted to protect your lake access?

12 A. Yes.

13 Q. And they widen the top part so that they could have a pad for construction?

14 A. Sure.

15 Q. So you understood that there was going to be a garage that was going to be constructed
16 there, correct?

17 A. Yes.

18 Q. And at some point you also understood that they were also going to have an in-law suite, is
19 that correct?

20 A. That is correct.

21 Q. And you didn't have a problem with either one of those activities in general, did you?

22 A. Everything I always caveat with as long as it adheres to the restrictions.

23 Q. Okay. And do you think just having an in-law suite over a garage would adhere to the
24 restrictions?

25 A. To the point that it is not used for commercial and industrial or for activities precluded in

1 here, no. I don't have a problem with it, no.

2 Q. And there has been a lot of discussion about the connectivity between what we see here as
3 the garage residence addition to the primary residence. And I think you may have alluded
4 to it, that you are not an architect, are you?

5 A. No.

6 Q. You don't have a background in engineering?

7 A. No.

8 Q. And do you have experience where you have seen additions to homes which are essentially
9 a wing off of the home, the primary residence?

10 A. Can you say - - I am sorry, I didn't understand.

11 Q. Have you ever seen additions to homes which are essentially a wing upon the home? A
12 wing off of the primary residence, have you ever seen that type of construction before?

13 A. Yes.

14 Q. Okay. And depending on what goes in that wing would you think that it would be
15 uncommon to have hot water heaters?

16 A. By definition my understanding of what was going in - - well I mean I don't understand
17 your question. You have got to help me out with it.

18 Q. Okay. That is fine. And what I am trying to figure out is - - well let me ask it a different
19 way. In your mind what type of connectivity would need to occur that you would feel like
20 this garage apartment is essentially no more than a wing on that primary residence?

21 A. I would have expected physical connectivity with heated and cool space, perhaps. Well
22 certainly common address or response by authorities having jurisdiction. And I would also
23 certainly expect that, yes I mean, you kind of know it when you see it. And that in my
24 opinion does not appear to be a connected structure.

25 Q. But you agree that there is connectivity of attachments? That as is the rendering here and

1 I understand the rendering here versus what is actually in place, but there are membranes,
2 building membranes that will connect those two structures, correct?

3 A. Say it again. Structure membranes - - -

4 Q. That there are building materials, membranes that will attach based on this rendering that
5 will attach those two structures?

6 A. Sure. I mean you can look at the pavement and see they connect.

7 Q. You can see it. And you also understood that or did you and I am not sure what part of
8 the testimony you came in for Mrs. Razzano but she also testified that it was going to be
9 an enclosure in that connectivity, did you hear that?

10 A. I heard that but I don't see anything there that indicates an enclosure.

11 Q. Sure. And she did say that is a rendering and she did at some point in the testimony I will
12 represent to you that she said that there would be glass on the front walls that connect
13 between those post and then there would be a translucent structure membrane on the actual
14 roof itself?

15 A. A covered walkway.

16 Q. Well it is actually going to be an enclosed walkway.

17 A. Okay.

18 Q. A covered walkway would just be the top?

19 A. Okay. An enclosed walkway, okay.

20 Q. Yes sir.

21 A. I didn't hear all of that.

22 Q. Okay. Would that help with your estimation on whether this is an attachment?

23 A. Not really.

24 Q. And really the issue is that there is no actual body at Solitude Bay that can make that
25 distinction or make that determination on whether this is a proper attachment because no

1 one has to submit plans during construction, isn't that accurate?

2 A. No one has to submit plans to any representatives of Solitude Bay for construction.

3 Q. Okay. And I was just thinking about the things that protect your solitude. Remember we
4 were talking about the character of the neighborhood. There is nothing in those covenants
5 that would stop someone from building a ten (10) bedroom lake house, would they?

6 A. No.

7 Q. And fill that lake house with all of their families and friends, correct? Would that
8 increase the traffic in Solitude Bay?

9 A. It could.

10 Q. Would it increase the amount of people who are walking around and using the lake?

11 A. Perhaps.

12 Q. And you understood that went you bought with those covenants that was always
13 something that could occur, correct?

14 A. Sure.

15 Q. Okay. In fact, if we talk about the covenants and lets stay on that. There is no
16 prohibition on how many homes someone can own out there is there?

17 A. Prohibition on ownership.

18 Q. Yes?

19 A. Not that I see in there, no.

20 Q. One person could own five (5) homes of the twelve (12) out there, correct?

21 A. I can't imagine why someone couldn't own more than one (1) house out there, no.

22 Q. Well in fact you do have neighbors that own more than one house out there already
23 though, don't you?

24 A. You tell me. I guess. Again I don't live there, I mean so - - -

25 Q. And that is a fair statement. That is a fair statement. I know that you said that to you

1 commerce determines commercial and therefore an exchange of funds would make it
2 commercial, is that correct?

3 A. That is an interpretation. Your interpretation of what I had to say. Yes.

4 Q. Okay. So if anyone accepted money out there for the use of their property would that be
5 commercial?

6 A. In my mind there is a fairly strong distinction between long term residences versus nightly
7 turn over or a shorter term turn over. I do believe that there is a differential in long term
8 leasing and so that would be my clarification of that, yes.

9 Q. And so to you it is the length of the stay that would determine whether it is commercial or
10 not?

11 A. No. It is more as to who is in it and is it a stand along single family rent versus someone
12 who is in the house having ongoing activities while they are in the house at the same time.
13 So that is commerce beyond occupancy. So I don't think in my mind that you can share
14 prime occupancy and rent rooms out and comply but I do think you can rent for the long
15 term to single families regardless of their size and how much traffic they create and how
16 many times they come across the road.

17 Q. So in your mind a roommate would never be allowed at Solitude Bay?

18 A. A roommate.

19 Q. Someone who is using the home and have roommate, if there were two folks, and in fact, I
20 will represent to you that I understand that the Coleys may not have been married at the
21 time that they first purchased their home?

22 A. Yes.

23 Q. Would that make their use illegal because they weren't a family?

24 A. No. It would if they charged them rent for it.

25 Q. Well you don't know how they paid for the rental- - -

1 A. Right. So I mean how can you ask me in that same vein if I think something is legal or
2 not when you are not giving me the whole story to apply to legality.

3 Q. I understand that. That is a fair question. So if you understood that they were sharing the
4 rent when they were renting that home would that make that use illegal?

5 A. If they were sharing the rent cohabiting as a couple, you know, no more illegal than
6 sharing a grocery bill.

7 Q. And I guess the problem that I am having with your understanding or your interpretation of
8 commercial versus rental versus what is allowed in the covenants is that the covenants
9 don't speak specifically to how you can rent your property out there does it?

10 A. It does not as to specifically how you can rent your property out there, no I don't see
11 anything in the restrictive covenants that says how you can do it.

12 Q. It doesn't say what determines the length of a rent does it?

13 A. No.

14 Q. It doesn't say that you can rent a room versus the entire structure does it?

15 A. No it doesn't.

16 Q. And in fact but for the one statement in that covenant that says tenant there is nothing that
17 really says anything about rental as it relates to that covenant is there? And I will direct
18 the one - - -

19 A. Where does it say tenant.

20 Q. Just a second. Number five (5)?

21 A. Number five (5). Sir can you repeat the question.

22 Q. I said but for the fact of that one reference to the word tenant this document doesn't say
23 anything about how you would rent your property at Solitude Bay does it?

24 A. No, but the tenancy I would think it is interesting that it adds and its tenants there.

25 Q. Well that is a good point because that almost sounds like they were assuming and its

1 tenants meaning it would be a situation where it could be a homeowner and a tenant at the
2 same time?

3 A. Well that is your interpretation. Mine would be more as to longevity of the tenancy, his
4 tenant not his co-tenant. It wouldn't say - - I think as to your point it would say co-tenant
5 there.

6 Q. But to my point that would also be a reasonable interpretation? Would you agree that
7 both of those could be reasonable interpretations reading that document?

8 A. I think there are a million of interpretations in this document.

9 Q. And is part of that because that document is somewhat ambiguous as it relates to rental?

10 A. Is it somewhat ambiguous as it relates to rental.

11 Q. To rentals, yes?

12 A. I think it leaves room for lots of interpretations.

13 Q. Thank you sir.

14 THE COURT: Counsel how much more do you have? We said we were going to move through
15 this but if you are going to continue we are going to stop here.

16 MR. CRAWFORD: Okay. And I understand that, Your Honor. I think that I can wrap it up in
17 the next ten (10) minutes or exactly by twelve thirty.

18 THE COURT: Well you have got five (5) minutes.

19 MR. CRAWFORD: Then I had rather go ahead and take a break.

20 THE COURT: All right. We are going to take a break and come back at 2:00 o'clock. All right
21 counsel. I know when you say ten - - -

22 MR. CRAWFORD: Ten what it really means.

23 THE COURT: You mean 20.

24 MR. CRAWFORD: I understand. No problem.

25 THE COURT: So lets stop it now.

1 MR. CRAWFORD: Thank you, Your Honor.

2 THE COURT: And the courtroom will be locked if you folks want to leave your documents.

3 Nobody will bother them.

4 MR. ANTHONY: Thank you, Your Honor.

5 MR. CRAWFORD: Thank you, Your Honor.

6 THE COURT: Back at two o'clock.

7 MR. ANTHONY: Yes sir.

8 (OFF THE RECORD)

9 (Break)

10 BACK ON THE RECORD.

11 THE COURT: All right. We are back on the record then in Case number 2018CP42-2247. Mr.

12 Crawford you were examining Mr. Scott. Mr. Scott if you would take the stand and remember

13 you are still under oath.

14 A. Yes sir.

15 MR. CRAWFORD: Your Honor, if it please the Court, we will go ahead and begin.

16 THE COURT: All right.

17 **CROSS EXAMINATION BY MR. CRAWFORD CONTINUED.**

18 Q. Mr. Scott this is one of those surprising times when I really only did have about five (5)
19 more minutes but I had a chance to go through it and take a look at these things. So just
20 a few more follow-up questions. The covenants which are Plaintiff's Exhibit Number 2,
21 those were drafted in 1972 by Mr. Compton. Have you ever had the opportunity to meet
22 Mr. Compton?

23 A. I don't know. Not that I remember, no.

24 Q. Not that you remember?

25 A. Right.

1 Q. And you don't have any actual knowledge of what Mr. Compton meant or intended in each
2 of these restrictions, do you?

3 A. Knowledge.

4 Q. Actual acknowledge?

5 A. Actual, no actual knowledge. No sir.

6 Q. All right. And I know that you said something about it would help with your estimation
7 on whether that was a one (1) residence versus a separate building would be the address of
8 the property. Do you understand that this is all the address of the garage residence and the
9 primary residence is all one structure with the one (1) address of 149 Whippoorwill?

10 A. I don't know that.

11 Q. You don't know that one way or the other?

12 A. No.

13 Q. Okay. Would you agree that the County would require a separate address if they
14 determined it to be two (2) separate residences?

15 A. Ask it again.

16 Q. The County?

17 A. Okay.

18 Q. Would you agree that the County would require separate addresses if they determined it to
19 be two (2) different residences?

20 MR. ANTHONY: Your Honor, I object to that. There is no way Mr. Garrett has that knowledge
21 of what the County will do.

22 THE COURT: I will sustain that.

23 Q. I ask you Mr. Scott do you contend that the Razzanos' use of their property has caused the
24 Solitude Bay to be unsafe? For the Community to be unsafe?

25 A. I think that the Community would have to decide whether they are unsafe or not. I can't

1 speak for the Community.

2 Q. How about you?

3 A. Can I speak for me. Has this made it unsafe.

4 Q. Yes sir?

5 A. I don't have an answer to that.

6 Q. Do you have any specific instances of their use that has made the Community unsafe?

7 A. Again I don't know that this is necessarily fair. It is my opinion on what is safe and

8 unsafe. I could say that the whistle ball game that they play is a very unsafe game because

9 someone could turn their ankle because it is on a hill but I don't think that is what you are

10 getting at so I don't really understand your question.

11 Q. And that is a good point. And the only question is really, it is a yes or no question. Do

12 you think that any of their uses as it relates to this lawsuit, their use of the property as it

13 relates to this lawsuit, do you have any instances of it making the community unsafe?

14 A. Can you define unsafe. I am not trying to dump your question. I am just trying to

15 understand where you are going on this because to me unsafe can go down several paths

16 and unsafe can have different connotations. So I am trying to really get where you are

17 going with this.

18 Q. Sure. Are there any instances where you take your definition of unsafe, whatever that

19 may be to you, can you tell me of any instance that in your mind would make their use

20 unsafe?

21 A. In my mind.

22 Q. Yes sir?

23 A. Yes. There would be an instance of financially unsafe. That I think that this action could

24 have a financial impact as to the value of my lot and some others around me So I don't

25 think that is safe.

1 Q. Okay?

2 A. And then as to physical, you know, I think there is a certain degree of responsibility for a
3 user out there so whether or not anything that they are doing from a physical standpoint is
4 unsafe, I don't think that I am qualified to answer that. I am not a building inspector or an
5 engineer or an architect.

6 Q. Okay. All right. And I know that you said that your address the 151 Whippoorwill is not
7 your primary address. It is a second home for you?

8 A. Yes.

9 Q. As far as how you use that home when you are at that home. You use that property to
10 sleep, is that right?

11 A. Yes.

12 Q. Among other things?

13 A. Yes.

14 Q. You use it to bath?

15 A. I have, yes.

16 Q. To dress?

17 A. Yes.

18 Q. To eat?

19 A. Yes.

20 Q. To relax?

21 A. Yes.

22 Q. And would you agree that all of those actions are residential use of that property?

23 A. Yes.

24 Q. Okay.

25 MR. CRAWFORD: That is all I have, Your Honor.

1 THE COURT: Anything further of Mr. Scott?

2 MR. ANTHONY: I do have just a few questions.

3 THE COURT: All right.

4 **REDIRECT EXAMINATION BY MR. ANTHONY.**

5 Q. Mr. Scott, I have a couple of questions for you. I will take it sort of in the reverse order
6 here. Mr. Crawford was just asking you about different ways you use your residence
7 when you are there. Have you ever rented one of your rooms out to somebody on a
8 nightly rate while you are at the home?

9 A. No.

10 Q. Have you ever brought somebody breakfast as part of a service or clean their room for
11 some charge in your home?

12 A. No.

13 Q. You wouldn't consider those things to be residential would you?

14 A. Not in the definition that I answer to, no.

15 Q. Before lunch Mr. Crawford had asked you about what the restrictive covenants, Plaintiff's
16 Exhibit 2 say about renters. Let me ask you in terms of renting rooms out by the night in
17 a home that you are residing in for a nightly rate and providing services would you
18 consider that commercial?

19 A. Yes.

20 Q. And if the Razzanos are allowed to operate an eight (8) person bed and breakfast
21 establishment on the property adjacent to yours, would you consider that to be in violation
22 of the covenants?

23 A. Say it again Jay, I am sorry.

24 Q. If the Razzanos are allowed following this case to operate an eight (8) person bed and
25 breakfast on their property, adjacent to yours, would you consider that to be in violation of

1 the covenants?

2 A. Yes.

3 Q. All right.

4 MR. ANTHONY: Those are all of my questions, thank you, Your Honor.

5 THE COURT: Counsel anything further?

6 MR. CRAWFORD: No, Your Honor.

7 THE COURT: All right. You may step down Mr. Scott. Do you need Mr. Scott any further?

8 MR. ANTHONY: I do not, Your Honor.

9 THE COURT: Counsel?

10 MR. CRAWFORD: I do not, Your Honor.

11 THE COURT: Mr. Scott you may be excused, if you so desire.

12 A. Okay.

13 THE COURT: Mr. Anthony.

14 MR. ANTHONY: Yes, Your Honor. The Plaintiffs would call Ewen Lennon.

15 **EWEN HAMILTON LENNON, BEING DULY**

16 **SWORN, TESTIFIES AS FOLLOWS:**

17 THE COURT: State your full name for the record?

18 A. Ewen Hamilton Lennon.

19 THE COURT: And how do you spell your first name?

20 A. E-w-e-n.

21 THE COURT: All right. Thank you. Mr. Anthony, you may proceed.

22 MR. ANTHONY: Thank you, Your Honor.

23 **DIRECT EXAMINATION BY MR. ANTHONY.**

24 Q. Ewen, you just introduced yourself, of course. Could you tell us a little bit about yourself.

25 What do you do for a living?

1 A. I am a commercial airline pilot.

2 Q. All right. What other jobs have you had in the past?

3 A. I was an officer in the military.

4 Q. Okay. You serve now as a commercial airline pilot?

5 A. That is correct. I retired honorably after 24 years in the Air Forces Reserve.

6 Q. Okay. Thank you. Where do you live in Solitude Bay?

7 A. I live at 141 Whippoorwill Drive.

8 Q. Is that the property that Mrs. Razzano was referring to earlier with the detached garage?

9 A. I do believe that she has been referring to that as the point, that is correct.

10 Q. You haven't lived there very long have you?

11 A. No, I have not. I have only lived there about two (2) years.

12 Q. Okay. You moved in when?

13 A. I purchased the property March 22, 2018 and we moved in approximately June 1, 2018.

14 Q. Who lived with you at your home?

15 A. My wife and two (2) small children.

16 Q. And how old are your children?

17 A. My children are nine and eight. Two (2) girls.

18 Q. Two (2) girls, okay. You have been here for a lot of the testimony and I don't want to

19 retread old ground but describe for me briefly what Solitude Bay is like? What the

20 neighborhood is like?

21 A. We chose to live where we live because of the atmosphere of Solitude Bay. And the

22 characteristics of the neighborhood about it being down a dead-end street. There is only

23 ten (10) additional neighbors. We looked for a year and a half at properties. And were

24 very meticulous on where we choose to live. Twenty (20) years ago my wife was a victim

25 of a crime that included at gun point so she is very, very meticulous about where she lives.

1 And she wants to be safe. That has come up in the past on two (2) other properties that
2 we have purchased. We take a long time and do our homework to make sure where we
3 live is safe and we feel very comfortable there. And Solitude Bay fulfilled every one of
4 those because it is down a dead-end street. There is only ten (10) other neighbors. You
5 get to know each other and even though other people could drive down the street it is still
6 a dead-end street and we just feel very safe there. We do. And that is the reason that we
7 purchased the property.

8 Q. Sort of jumping off of that, I imagine your job as a airline pilot requires a lot of travel?

9 A. That is correct.

10 Q. Okay. How long are you typically gone?

11 A. I am usually gone three to four days at a time. Usually three (3) nights and sometimes
12 four (4) nights and sometimes two (2) nights.

13 Q. Okay.

14 A. Every week is different and every month is different. I am usually gone away from home
15 between 16 and 22 days a month. So I am away from family and home.

16 Q. When you are gone are your wife and your children there alone?

17 A. That is correct, they are alone.

18 Q. Okay. And you are aware, of course, that the Razzanos booked rooms within their home
19 on the website Airbnb.com, right?

20 A. I was not aware of that until after I purchased the property. But I am aware now.

21 Q. So you understand, of course, that there was an injunction that we have referenced on
22 November 20, 2018?

23 A. Yes.

24 Q. Did you see a difference between before that injunction and after that injunction in terms
25 of the neighborhood?

1 A. Yes. We have a water slider diving board on our dock. So we spend a lot of time outside
2 in the summer because my kids are kids and they love to be in the water. The first
3 summer we moved in there in June there was as lot more activity in the neighborhood than
4 there was after the injunction. So I am comparing last summer, the summer of 2018 to
5 this past summer of 2019, and there was a significant reduction in the amount of traffic
6 and the amount of people. The amount of people on the lake that appeared to be
7 transients to the Razzanos' residence. I have noticed a significant decrease since the
8 injunction.

9 Q. And you were here, of course, sitting in the courtroom during Mrs. Razzano's testimony,
10 correct?

11 A. Yes.

12 Q. All right. And have you also seen the screenshots from the Airbnb listings?

13 A. Yes.

14 Q. Okay. I have handed you Plaintiff's Exhibit 2 and can you tell us what that is?

15 A. These are the restrictions and covenants of Solitude Bay.

16 Q. All right. Now I want to talk to you about a few different sections and lets start with
17 Section 2?

18 A. Okay.

19 Q. And I will just ask you, do you believe that the bed and breakfast operation that was
20 described by Mrs. Razzano was in compliance with the covenants?

21 A. No, I do not.

22 Q. All right. Why?

23 A. Because it says right here no lot shall be used for commercial or industrial uses or
24 purposes.

25 Q. And why do you believe what they described is a commercial use?

1 A. Because they are using their residence as a place of business.

2 Q. And what makes you say that?

3 A. Because they are renting out rooms in exchange for money. So they are renting out rooms
4 for an exchange of service for breakfast or whatever they want to call it. Cleaning fees, a
5 place for someone to rest. I consider all of that. They are using their home, their
6 residence as a business.

7 Q. Let me talk to you about the garage residence. You obviously are aware of that
8 construction, correct?

9 A. It is hard not to see it. Yes, I am aware of it.

10 Q. Have you seen it recently?

11 A. Yes.

12 Q. All right. I am putting back up here a larger version of Plaintiff's Exhibit 1, and I believe
13 this is Page 9 of that exhibit. I am sorry, Page 8 of Exhibit Number 1. All right. Is this
14 similar to how the garage residence looks today?

15 A. Yes.

16 Q. I would like to direct you back to the covenants that we were looking at, Plaintiff's Exhibit
17 Number 2. Lets look now at Section 8?

18 A. Okay.

19 Q. All right. And you have heard me ask some of these questions but how many - -
20 according to that section how many residences are allowed on one (1) lot?

21 A. According to this one (1).

22 Q. Okay. Based on that do you believe that this garage residence is in compliance with the
23 covenants?

24 A. No.

25 Q. Okay. Tell me why?

1 A. I have a detached garage. It is almost fifteen hundred (1500) square feet. It is no where
2 near attached to my house. So I have a detached garage and I use it to store lawn
3 equipment, cars, tools and that kind of stuff. And upstairs above my detached garage is
4 all storage. No one lives there.

5 Q. All right.

6 A. This separate residence here or this separate garage they are calling it is going to be, it is a
7 separate residence to me. It is not attached to the main house and it is not in compliance
8 with these restrictions to me that are very clear.

9 Q. And you have also got a garage attached to your house, correct?

10 A. That is correct.

11 Q. All right.

12 A. I have got two (2) garages. I have one (1) that is attached to my house with roof lines and
13 walls, attached. The same roof line. And then I have got the detached garage which is
14 about eighty feet away or something like that.

15 Q. And I think Mrs. Razzano was referring to this in her testimony but there is space above
16 your garage, too, right?

17 A. That is correct. I think realtors call it a frog. A finished room above a garage. So yes
18 there is a frog, a finished room above our garage and that is the attached garage.

19 Q. All right. Is that space attached to your primary residence?

20 A. It is by walls and roof line.

21 Q. Do you have to go outside of the heated space to get to that?

22 A. No, I do not.

23 Q. Okay. It is the same roof line?

24 A. Well there are multiple roof lines but they are all attached, every bit of it. There is no
25 doubt that it was constructed attached to the house.

1 Q. Would you ever put some kind of living space above your detached garage?

2 A. No.

3 Q. Why not?

4 A. Well it is clearly in violation of the restrictions that I and everyone else in this
5 neighborhood has agreed upon.

6 Q. What is it that you are asking the Court to do, you and your co-Plaintiffs in this case?

7 A. I am not asking the Court to get them to tear that down. I am not. I give them the benefit
8 of the doubt, I do. But I expect them to go by the covenants that everyone else in the
9 neighborhood has. Make it a garage like mine. It is detached, then that is fine. Make it
10 unfinished upstairs. They can use it for storage or whatever they want, you know. With
11 me being gone that is number one. Number two with me being gone, I mean it will be ten
12 (10) years before my children are out of my house. Ten years, of those ten years, I will be
13 gone six years. I am gone sixty percent of the time or more, I will be away from home.
14 We are genuinely concerned, you know, with people coming in and out of this
15 neighborhood because this is not the neighborhood and the house that I purchased and this
16 is not what I was wanting. So to answer your question, what do I want the Court to do. I
17 want them to treat that detached garage just like I treat mine and I want them to quit using
18 their personal residence as a place of business. That is what I want.

19 Q. All right. Those are all of my questions, thank you.

20 A. Okay.

21 Q. Please answer any that the defense has.

22 THE COURT: Gentlemen.

23 **CROSS EXAMINATION BY MR. BIBLE.**

24 Q. Mr. Lennon, we introduced ourselves earlier but my name is Mike Bible and I represent
25 Mark and Carre Razzano in this matter. You indicated that Whippoorwill Road is a

1 public road, correct?

2 A. That is correct.

3 Q. Okay. And that is a public road that can be traveled at large, is that correct?

4 A. It is accessible to the public, yes.

5 Q. And Solitude Bay doesn't have any gates to prevent access from the public traveling down

6 Whippoorwill into the area that is known as Solitude Bay?

7 A. No.

8 Q. Okay. You indicated earlier that you travel a lot. And this is by virtue of your job, is that

9 correct?

10 A. Yes.

11 Q. And you make the choice to be employed with that employer that causes you to travel all

12 the time, is that correct?

13 A. Yes.

14 Q. Okay. In other words, you could make other arrangements to be home more often

15 couldn't you?

16 A. Not based on the career path that I chose over thirty (30) years ago. I could not.

17 Q. Precisely, you said chose?

18 A. That is correct, chose. Everyone chooses their career.

19 Q. The homeowners can't control who drive down Walnut Hill onto Whippoorwill Drive, is

20 that correct?

21 A. That is correct.

22 Q. There is a binder beside you sir and it is referred to as Defendant's Exhibit Number 1.

23 And I will refer you to Tab Number 1 within that binder. I believe these are the covenants

24 and restrictions that apply to Solitude Bay community, isn't that correct?

25 A. That is correct.

1 Q. Okay. If you would sir please refer to Tab 14 in that same binder?

2 A. All right.

3 Q. Now if you look at the eighth page into that tab. I think that might have been it that you

4 flipped pass sir?

5 A. This here.

6 Q. Yes sir. That is it. That photograph you will see on the right hand side, the link side of

7 that GIS imagery. There are two parcels of property, one I will represent to the north and

8 one to the south that have bold red lines around the outside of them. Do you see those?

9 A. Yes. One to the very north and one to the very south, yes.

10 Q. All right. And are those lots, the very north one, is that the entry to Solitude Bay? Is that

11 the lot that first starts Solitude Bay if you will?

12 A. That is the first sign of any residence down that street.

13 Q. Okay. And the most southern lot that is represented by a thick red line. Is that the last lot

14 that is within Solitude Bay?

15 A. It appears so, yes.

16 Q. Okay. So the northern most lot that we are referring to in this imagery and that is shaded

17 in a tan color so you can't see the earth beneath it. But just north of that you see actual

18 earth imagery. Do you know if that property is included in Solitude Bay?

19 A. I do not know.

20 Q. And if that property is not a part of Solitude Bay it wouldn't be subject to the Solitude Bay

21 restrictions isn't that correct?

22 A. I am sure if it is a part of Solitude Bay.

23 Q. But if it wasn't a part of Solitude Bay it would not be subject to the Solitude Bay

24 restrictions isn't that correct?

25 A. If it was not a part of Solitude Bay it would not be part of the restrictions, no.

1 Q. Okay. And if it is not a part of the restrictions to Solitude Bay wouldn't you agree that
2 none of the use restrictions that are contained in the Solitude Bay restrictions would apply
3 to that property?

4 A. Could you ask the question again please?

5 Q. Yes sir. If the property to the north of the last lot in Solitude Bay or the first lot,
6 whichever you want to refer to it as, if that property is not subject to the Solitude Bay
7 restrictions isn't it true that the owners of that property would be able to use their property
8 how they deem fit unless some other restrictions apply to it?

9 A. Yes.

10 Q. Okay. And if no other restrictions apply to it couldn't the owner of that property just
11 build a lot of homes out there?

12 A. I can't speculate what someone would do.

13 Q. Is it possible that other homes eventually get constructed on that property in the future?

14 A. I can not predict that. Right now there are cows all on it.

15 Q. So is it not possible in your opinion?

16 A. I don't know the answer to that because I don't know the owner of the property or what
17 their plans are to do with it.

18 Q. All right. Does Solitude Bay have an HOA?

19 A. No.

20 Q. Does it have an architectural review committee or an architectural review board?

21 A. No.

22 Q. Are you familiar with architectural review boards or committees?

23 A. The first I heard of it was today.

24 Q. Okay.

25 A. That is a, no.

1 Q. Okay. Is there any group within the community that is responsible for the oversight of
2 construction within Solitude Bay?

3 A. No.

4 Q. Would you defer to the County building inspectors and building department for that?

5 A. I would.

6 Q. And you would agree that the covenants and restrictions for Solitude Bay, the ones that
7 you have before you, do not restrict the size of the family is that correct?

8 A. It does not. They are pretty clear.

9 Q. You would agree that they do set a minimum square foot requirement is that correct?

10 A. Yes, I do read that.

11 Q. And you would agree that the covenants don't provide that all lots are to be used for single
12 family purposes?

13 A. It just talks about being one residence per lot. That is what it talks about.

14 Q. I will ask the question again.

15 A. Please do so.

16 Q. The covenants do not provide that all lots are to be used for single family purposes, is that
17 correct?

18 A. Not that I read, no.

19 Q. All right.

20 THE COURT: Counsel lets be clear on what you are asking.

21 MR. BIBLE: Yes sir.

22 THE COURT: Because I am not clear.

23 MR. BIBLE: Okay.

24 THE COURT: What is the question that you are asking? In other words, if I had a family.

25 MR. BIBLE: Yes, Your Honor.

1 THE COURT: That maybe was made up of my parents, grandparents and everything else and I
2 wanted them to move in with me that constitutes more than a single family but they would be in
3 the residence.

4 MR. BIBLE: Yes, Your Honor.

5 THE COURT: Now what is the question that you are asking him and I am not clear as far as
6 what you are asking as far as that. Do you mean, are you retracing ground as far as one residence
7 per lot or when you say single family - - -

8 MR. BIBLE: I am talking about the use, Your Honor.

9 THE COURT: Okay. So when you say single family what does it mean? What does that
10 question mean?

11 MR. BIBLE: Okay. Right, Your Honor.

12 Q. So for the intention purposes of that question, a single family being similar to your wife,
13 yourself and your children and immediate blood family. Do the restrictions in any way
14 limit the use to a single family use such as how you use your property?

15 A. It just refers to the single residence. One residence per lot. It does not restrict me and say
16 how many family members I can have in my house, it does not.

17 Q. In fact, it doesn't restrict who you can have in your house does it in any way?

18 A. It says residence.

19 Q. It says residence but not resident. Isn't that correct?

20 A. It does not tell me who I can and I can not have in my house.

21 Q. All right. Thank you; In fact, someone could build a ten (10) bedroom lake house and
22 fill it with family and friends and it not be in violation of the covenants, isn't that right?

23 A. That is correct.

24 Q. And even though that wouldn't be in violation of the covenants, could that have an impact
25 on the serene character of the community?

1 |A. I wouldn't have moved there if there was ten families living on one lot. I wouldn't have
2 moved there unless it was nice and quiet without a lot of traffic.

3 Q. Okay.

4 A. I wouldn't have moved there because of my wife feelings - - -

5 Q. I understand that. And I appreciate that. However, you did move there knowing that it
6 was a public road that led into Solitude Bay right?

7 A. Yes.

8 Q. Okay. And you knew that it wasn't a gated community, correct?

9 A. That is correct. I also did not know that there were people using it as an Airbnb at the time
10 either.

11 Q. Are you aware of any restriction within the body of those covenants that would prohibit
12 somebody from renting their property within Solitude Bay?

13 A. No, not as a single family home, no.

14 Q. Okay. There we get back to the single family issue. I will ask again does any where in
15 that set of restrictions does it refer any way to single family?

16 A. No.

17 Q. I assume that you did not know Mr. Compton, the preparer of those restrictions, is that
18 right?

19 A. No, I did not.

20 Q. So you don't have any actual knowledge of what Mr. Compton contemplated when
21 preparing these restrictions did you?

22 A. No.

23 Q. Would it be fair to say that if Mr. Compton intended to preclude or prohibit renting of
24 homes he could have expressly done so in those restrictions?

25 A. I can not answer for him.

1 Q. Did Mr. Compton in the restrictions that you have before you preclude or prohibit renting
2 of homes in those restrictions?
3 A. No.
4 Q. How old are you Mr. Lennon?
5 A. I am fifty (50) years old.
6 Q. Okay. Would you say that boarding houses and bed and breakfast have been around in
7 the United States for a good period of time?
8 A. What was your first - - you said, I didn't understand one of the words you said.
9 Q. I said boarding houses?
10 A. Boarding,
11 Q. Yes sir.
12 A. Okay. Please ask the question again.
13 Q. Okay. Would you agree that boarding houses and bed and breakfast have been around in
14 the United States for a good period of time?
15 A. Yes.
16 Q. In other words, back in the seventies would bed and breakfast have been a new concept?
17 A. No.
18 Q. And no where in that documents, the restrictions does it say bed and breakfast are
19 prohibited. Isn't that correct?
20 A. That is correct. It does not specifically say bed and breakfast.
21 Q. But when talking with Mr. Anthony you attributed it to a commercial use, isn't that right?
22 A. That is correct.
23 Q. Wouldn't you agree that commercial use has more than one definition behind it?
24 A. It could be, yes.
25 Q. Okay. You testified on direct examination with Mr. Anthony with regards to how you

1 believe the garage is a separate residence on the Razzano property isn't that correct?

2 A. It is a separate residence.

3 Q. Okay. Would that be your opinion?

4 A. Yes.

5 Q. Wouldn't you agree that someone else may have another opinion?

6 A. Everybody has opinions.

7 Q. All right. And the restrictions that you have in front of you they don't provide any details

8 of how structures or buildings are to be constructed within Solitude Bay, do they?

9 A. They do not.

10 Q. Do they detail how structures or buildings are to be attached?

11 A. It does not.

12 Q. Okay.

13 A. But it does say attached.

14 Q. In what specific paragraph are you referring to? I just want to understand where you are

15 talking about? Is it number 7, sir?

16 A. I am still reading. Bear with me.

17 Q. Okay. Take your time.

18 A. Yes, it is number 7.

19 Q. Okay. And number 7 is talking about a square footage minimum requirement isn't that

20 correct?

21 A. That is correct and attached garages.

22 Q. Is it fair to say that at the time that these covenants were prepared the person preparing

23 then could have specified how he wanted each house to look within the community?

24 A. He did not specify.

25 Q. But he could have at the time of preparing these?

1 A. That is possible, yes.

2 Q. You understand that the garage has a physical address of 149 Whippoolwill, is that
3 correct?

4 A. Which garage.

5 Q. The garage at the Razzano residence?

6 A. Thank you for clarifying it.

7 Q. Yes sir?

8 A. Yes. My understanding is now it has been changed to 149.

9 Q. You would agree that the County would require a separate address designation if the
10 garage was a separate residence isn't that correct?

11 MR. ANTHONY: Objection, Your Honor. I don't believe that Mr. Lennon is qualified to speak
12 to what the County would require.

13 THE COURT: I will sustain that.

14 Q. Would it be reasonable for the County to require - - -

15 MR. ANTHONY: I object.

16 THE COURT: I sustain that as well.

17 Q. Go to Tab Number 7, Mr. Lennon in Defendant's Exhibit Number 1. Flip to the next
18 page?

19 A. All right.

20 Q. This page. What is that, the third page in?

21 A. It appears so, yes. Well it is the fourth page.

22 Q. The fourth page. And I represent that this is a Spartanburg County Building permit. And
23 it has in here an address where it says location at the top of the top left page, do you see
24 that?

25 A. I do.

1 Q. Okay. And what is that address?

2 A. The address says 149 Whippoorwill Drive.

3 Q. Okay. And the Razzano's residence address, correct?

4 A. That is correct.

5 Q. Okay. Do you know what utilities the Razzano's have installed between their residence
6 and the garage?

7 A. No, I do not.

8 Q. All right. You would agree that the covenants do not define what commercial use is,
9 would that be correct?

10 A. It just talks about commercial use. It talks about it will not be used for commercial use.

11 Q. And that is just one sentence in these covenants isn't that correct?

12 A. Let me look to see.

13 Q. All right.

14 A. That is correct. It is one sentence.

15 Q. And you would agree that there is nothing in the covenants that makes the distinction
16 between long term and short term rentals of property within the community, isn't that
17 correct?

18 A. That is correct.

19 Q. In fact, you would agree that the rental property is permitted in the covenants isn't that
20 correct?

21 A. That is correct.

22 Q. Okay. Do you know if anybody else in the community has rented their property?

23 A. I do believe that the Hesters have a rental property.

24 Q. Do you know if that property is held in the Hesters' name or not?

25 A. I do not know the answer to that.

1 Q. And it is true that renters and tenants need not be owners of property within Solitude Bay,
2 is that correct?

3 A. That is correct.

4 Q. Okay. And therefore, there would be no need for a renter or a tenant to intend to remain
5 in the subdivision in perpetuity isn't that correct?

6 A. That is correct.

7 Q. Therefore, temporary in nature isn't that right?

8 A. That is subjective on what temporary is.

9 Q. Understood. There is no requirement that the covenants set forth that makes an owner
10 receive consent of other owners in the community before they rent out their property, is
11 that right?

12 A. That is correct.

13 Q. Okay. How about the number of people that an owner can rent to. The covenants don't
14 say anything about that does it?

15 A. No, it does not.

16 Q. Okay. And the covenants do not dictate what must be contained in anyone's rental
17 agreement do they?

18 A. I don't know the answer to that. I will have to reread those to see. It talks about rental
19 agreements. I don't think it does.

20 Q. Okay. We will take it as you don't think it does?

21 A. I don't think it does.

22 Q. Is it possible for you to tell from physical appearance or observations only whether
23 someone is a paying guest or a friend of a community resident?

24 A. No.

25 Q. Lets see. If you don't mind sir flip to Tab Number 16 in Defendant's Exhibit 1. Mr.

1 Anthony asked you some questions with regards to whether you noticed an increase or
2 decrease in traffic so on and so forth since the Court during the hearing issued a
3 preliminary injunction. Do you recall that line of questions?

4 A. I do.

5 Q. Okay. Please if you don't mind sir, flip to your response to question number 9 in these
6 interrogatory responses and 9C would be your response?

7 A. All right.

8 Q. Take a moment to read 9C just for yourself so you will understand the questions that I am
9 getting ready to ask?

10 A. All right.

11 Q. Are you prepared. Do you understand what is written here as your response to this
12 interrogatory, is that correct?

13 A. That is correct.

14 Q. Okay. And you contend that you saw a man and a women out on the water at least on one
15 occasion and it appears that they were traveling via a kayak is that right?

16 A. Well that is not what paragraph C says here. If you are asking me I want to make sure that
17 I am reading the correct one.

18 Q. Yes sir. I am sorry.

19 A. This right here does not say anything about kayak.

20 Q. You are on this one. I am sorry.

21 A. On 9C. Let me read this. Thank you very much.

22 Q. I am sorry. Have you read it?

23 A. I have. Go ahead.

24 Q. Thank you. I was just asking in that response you or your wife indicate that you saw on
25 one occasion a couple I believe via kayaks in the water, is that correct?

1 A. That is correct.

2 Q. They had kayaks off there to the Lennon's property and paddled around the property,
3 isn't that right?

4 A. They stopped in a cove, now this is my wife which is hearsay. She will be more than
5 happy to come here and testify. So I was not there I was gone on a trip.

6 Q. All right.

7 A. But those exact circumstance here my wife witnessed every bit of it. So for me it is
8 hearsay. I don't know if you want my hearsay testimony. I don't want to waste the
9 Court's time.

10 Q. No sir. I just want to confirm whether you saw this or not?

11 A. I did not.

12 Q. Okay. So you wouldn't be able to testify one way or another whether the people that were
13 observed in this paragraph were friends of the Razzanos, guest of the Razzanos, paying
14 guest? Well you wouldn't know them from Adam isn't that correct?

15 A. No, but I am able to determine in the second part of the paragraph when I saw them two
16 weeks later they paddled by my dog and went to the Razzanos residence and pulled their
17 kayaks up on the grass. My wife was sitting on the porch with me, excuse me, on the
18 dock with me and said that is the two people that were being intimate in the cove over
19 there two weeks ago but that is hearsay. And that is just common what my wife told me
20 at the time which was two weeks later.

21 Q. Okay. So these were people that had been in the community for a while isn't that right?

22 A. I don't know the answer to that. They were there more than once.

23 Q. Okay. But this is about two weeks apart is what you said?

24 A. Two weeks apart, that is correct.

25 Q. And you don't know if they are paying guest or not?

- 1 A. I can not determine that.
- 2 Q. All right.
- 3 A. I just know they went to the Razzanos' residence.
- 4 Q. Understood. Are you certain about the people's age that you reference in that paragraph?
- 5 A. That was a guess based on hearsay and my wife and then I saw them two weeks later and
- 6 they appeared to be in their late twenties or mid thirties, that is a guess. I am not an age
- 7 guesser.
- 8 Q. Understood. So they could be younger than twenty?
- 9 A. They appeared to be in their late twenties or early thirties.
- 10 Q. But you don't know?
- 11 A. No, I do not.
- 12 Q. You would agree that at least some of the families in Solitude Bay have guest and friends
- 13 over, isn't that right?
- 14 A. Yes.
- 15 Q. Okay. And having guest and non-residents attend a party, for example, would not be in
- 16 violation of the restrictions isn't that right?
- 17 A. No, it is not.
- 18 Q. Okay. Understanding your travel and you not being at your home very often but when
- 19 you are at your home you do sleep in your house isn't that correct?
- 20 A. I do.
- 21 Q. And you bath in that house isn't that correct?
- 22 A. I do.
- 23 Q. And you dress in that house? Put your clothes on?
- 24 A. I do.
- 25 Q. And you eat there right?

1 A. I do.

2 Q. And occasionally, maybe even relax?

3 A. Occasionally.

4 Q. You enjoy the lake during the summer months, maybe?

5 A. That is why we moved there, yes.

6 Q. Do you consider all of those activities residential uses?

7 A. I do.

8 Q. And you can't tell us one specific incident where the Razzanos rental of their home or
9 Airbnb or otherwise has caused any change in the character of the community can you?

10 A. It has changed the character of the community.

11 Q. Any specific incidents?

12 A. Just the volume of people that are in the community now.

13 Q. Okay.

14 A. I have noticed a significant difference between 2018 and the summer of 2019. There is
15 far less traffic.

16 Q. And do you know if all of the traffic that was in the community before you noticed the
17 decrease were associated with the Razzanos?

18 A. No, I do not.

19 Q. Okay. So other than that where you don't know if all of the traffic was associated with
20 the Razzanos, do you have any other specific incidents?

21 A. No.

22 Q. Okay.

23 MR. BIBLE: No further questions, Your Honor.

24 THE COURT: Mr. Anthony.

25 MR. ANTHONY: Briefly, Your Honor.

1 **REDIRECT EXAMINATION BY MR. ANTHONY.**

2 Q. Mr. Lennon, I have just a few questions for you. Mr. Bible was asking you about the fact
3 that there are no restrictions on rental in the covenants. Do you remember talking about
4 that?

5 A. I do.

6 Q. Okay. If someone rents as part of a business would you consider that to be prohibited by
7 the covenants?

8 A. Yes.

9 Q. Mr. Bible asked you about the bed and breakfast not being specifically referenced in the
10 covenants and he said bed and breakfast existed back in the seventies and if the drafter of
11 these had intended to exclude them he could have specifically called them out, do you
12 remember that?

13 A. Yes.

14 Q. All right. Did auto body shops exist back in the seventies?

15 A. Yes.

16 Q. If the drafter of these restrictions intended to have an auto body shop in your neighborhood
17 could he have specifically called that out?

18 A. Yes.

19 Q. Okay. The fact that the restrictions don't say no auto body shop means that is not a
20 commercial use?

21 A. Repeat the question please.

22 Q. Do you think the fact that the covenants don't say no auto body shops means that is not a
23 commercial use?

24 A. I think it is a commercial use.

25 Q. You were just having a discussion regarding 9C of the interrogatories. And I just want to

1 clarify that instance that you all were discussing. Did that occur during the time that the
2 Razzanos were renting the rooms in their home out on Airbnb?

3 A. Yes.

4 Q. And you discussed the bed and breakfast and I think there was some discussion about that
5 if in your opinion a bed and breakfast was a commercial use. Is a bed and breakfast
6 business a commercial use, is that a fact?

7 A. Yes.

8 Q. Those are all of my questions. Thank you.

9 THE COURT: Mr. Bible.

10 MR. BIBLE: Yes, Your Honor.

11 **RECROSS EXAMINATION BY MR. BIBLE.**

12 Q. Mr. Anthony asked a good hypothetical about an auto body shop. Do you recall that line
13 of questioning?

14 A. I do.

15 Q. Okay. You would agree that the use of a home is much difference than the use of an auto
16 body shop isn't that correct?

17 A. No.

18 Q. It is not much different?

19 A. I am saying that if you are using a home for a business, for commercial means, it is the
20 same as an auto body shop in my opinion and that is how I read the restrictions.

21 Q. Okay. Would you agree that the activities carried on at an auto body shop would be
22 different than at a home?

23 A. Repeat the question please?

24 Q. Would you agree that the activities that are carried on at an auto body shop are different
25 than what they are at a home?

1 A. In terms of what. How the business is run.
2 Q. How about sleeping in a bed?
3 A. What about it.
4 Q. Is it normal or customary to sleep in a bed in an auto body shop?
5 A. Of course, not.
6 Q. Okay.
7 A. You are more than welcome to ask me the question again. The previous question.
8 Q. Isn't it true that the use of an auto body shop is different than the use of a residence?
9 A. As long as the residence isn't used as a business.
10 Q. All right.
11 MR. BIBLE: No further questions, Your Honor.
12 THE COURT: Mr. Anthony anything?
13 MR. ANTHONY: Nothing further, Your Honor.
14 THE COURT: You may step down sir.
15 A. Thank you, Your Honor. Thank you for hearing me.
16 THE COURT: Any further testimony needed from Mr. Lennon?
17 MR. ANTHONY: No, Your Honor.
18 THE COURT: Counsel.
19 MR. BIBLE: No, Your Honor.
20 THE COURT: Then Mr. Lennon you may be excused if you so desire.
21 A. Thank you, Your Honor.
22 MR. ANTHONY: Your Honor, at this point the Plaintiffs rest.
23 THE COURT: All right. Is the Defense ready?
24 MR. BIBLE: Yes, Your Honor.
25 THE COURT: Or do you want to take a break here for about five (5) minutes?

1 MR. CRAWFORD: That would be great, Your Honor.

2 THE COURT: Lets take a break and we will start up at ten after. I will give you more than five
3 minutes.

4 MR. CRAWFORD: Thank you, Your Honor.

5 (OFF THE RECORD)

6 BACK ON THE RECORD.

7 THE COURT: We are back on the record in Case Number 2018CP42-2247. The Plaintiff has
8 rested its case. Counsel, Mr. Bible.

9 MR. BIBLE: Yes, Your Honor. By virtue of the Plaintiffs resting I would move at this time for
10 a directed verdict, Your Honor, based on the inferences that can be drawn from the testimony that
11 we received and the evidence that has been entered into the record. The only way that this case
12 could be ruled upon is that the covenants are ambiguous and require multiple interpretations and
13 in accordance with the law in the State of South Carolina multiple cases indicate that ambiguous
14 covenants must be construed in favor of the free use of the property for which the Plaintiffs would
15 not be the prevailing party in this case.

16 THE COURT: Mr. Anthony.

17 MR. ANTHONY: Your Honor, the Plaintiffs actually would also make a motion for a directed
18 verdict and we would, of course, oppose the Defendant's motion. But to speak to Mr. Bible's
19 motion, I don't think that there is any in the reviewing of the standard any ambiguous here
20 particularly on these facts with regards to our motion. I think that we are in a position as I said in
21 my pretrial brief where we essentially agree on the facts in this case and I think that everything has
22 been laid out at this point, particularly with Mrs. Razzano's testimony. I don't know if the
23 Defense will be offering any additional evidence but we don't believe there is any way that it
24 changes the underlying facts. So I believe there is nothing but a question of law for the Court in
25 terms of the evidence presented being applied to the covenants and being applied to the law. And

1 so we would also make that motion.

2 THE COURT: Counsel.

3 MR. BIBLE: Your Honor, I would contend while Mr. Anthony is correct that a lot of issues are
4 not in dispute between the parties, however, I would leave it to the Court to decide whether I can
5 present the Defendant's side of the case and whether that information or whether the evidence that
6 will be entered at that time and testimony would have any weight to the Court's making a decision
7 in this case.

8 THE COURT: All right. Have a seat counsel. Let me make the following findings; and based
9 on both parties' motions for directed verdict. The findings are that this case is here pursuant to
10 the Order of Reference dated January 3, 2020. There is no question, from the pleadings that the
11 restrictions dated June 7, 1972 apply to all of the lots in Solitude Bay and Solitude Bay is in the
12 plat. Since Mr. J. G. Landrum Compton nor Lillie W. Compton are here
13 to offer their instructions as to what the intent was in the restrictions nor was there anyone here
14 who had actual knowledge or association with the Comptons to determine what their intent was as
15 far as the restrictions and the parties could not agree as to what the intent was, then it is up to me
16 to make the findings as to what the intent is. There is no question as far as the restrictions that
17 there is no restriction as far as a homeowner renting his or her property based on the mention of
18 the tenants making sure they remove their garbage. So that one reference as pointed out, I think it
19 was Mr. Bible, does allow for rentals and I don't think that was ever an issue. So getting down to
20 the actual issues, and that is the garage or that additional construction according to my
21 interpretation is an outbuilding and based on that the outbuilding can not be used as a residence
22 temporarily or permanently. So having said that, going back to the temporary injunction that was
23 granted by Judge Hayes previously, I will rule in a direct verdict in favor of the Plaintiffs. And
24 that will make the temporary injunction permanent and also include within the framework of that
25 injunction the fact that as long as the garage/whatever it said in the permit remains unattached that

1 area or that building can not be used as a residence temporarily or permanently. I will retain
2 jurisdiction in the event that somehow there is a joinder of the two (2) structures to rule on
3 whether they now are joined and no longer or it no longer has the status of an outbuilding. So my
4 ruling is based on the fact that there is no trailer, basement, shack, garage, barn or other
5 outbuilding erected. So my interpretation is, that the garage or any of those other buildings are
6 outbuilding and this is an outbuilding. So I will grant the directed verdict on those grounds for
7 the Plaintiff and denying the motion for directed verdict for the Defendants. Mr. Anthony, if you
8 will, prepare the order.

9 MR. ANTHONY: Your Honor, I am glad to prepare the order. The only other issue is the
10 commercial use aspect.

11 THE COURT: The temporary injunction did address that.

12 MR. ANTHONY: It did, yes sir.

13 THE COURT: And I am adopting the temporary injunction and converting that to permanent
14 with those exact definitions and provisions that are in that but including in that where the property
15 at this point there is a drawing that indicates an intent. But I have got to rule on what is there at
16 the present time.

17 MR. ANTHONY: Sure. Thank you, Your Honor.

18 THE COURT: So that is the way that I want it worded. That applies both to this which I have
19 ruled it is an outbuilding at this point but if it becomes or changes status then it may at some time
20 become capable of being used as a residence but not at this point.

21 MR. ANTHONY: I understand.

22 THE COURT: That is the reason for the reservation of jurisdiction for ruling on that issue.

23 MR. ANTHONY: Yes sir, thank you.

24 THE COURT: So when you have a draft if you will provide a copy to Mr. Bible and Mr.
25 Crawford.

1 MR. ANTHONY: I will do so.

2 THE COURT: Yes sir.

3 MR. CRAWFORD: Your Honor, I just want to be clear. The motion for a temporary injunction
4 related to the construction of the garage and it also gave limited information related to the use of
5 that property of the primary residence. The Court did not go as far as to rule that it was
6 commercial use and, in fact, there was a lot of debate back and forth with that with counsel and
7 the understanding was is that there is no bearing or no value, precedential value, otherwise to a
8 restraining order or the language in the order itself. And, therefore, we do not believe that issue
9 was thoroughly before the Court as it relates to the use of that property of Airbnb and the more
10 prominent issue here is does an Airbnb user, does an Airbnb in fact convert it to a bed and
11 breakfast and therefore make it commercial.

12 THE COURT: I am adopting the language that is in the temporary injunction. I don't know
13 whether I was clear but I am adopting all of that information that was there and I am also
14 including not to adopt the information that was actually the second part but my adopting or my
15 interpretation that this is an outbuilding and an outbuilding can not be used for temporary or
16 permanent residency. So that is my definition of it. So I am not adopting the second part of the
17 order so to speak but I am including in the total permanent injunction that provision, if that makes
18 any sense. I know it didn't clear up your statement.

19 MR. ANTHONY: I can follow. Thank you, Your Honor.

20 THE COURT: Counsel you still have a question in your mind?

21 MR. CRAWFORD: And I just wanted to make sure, I understand, and I apologize for sitting
22 down.

23 THE COURT: That is fine.

24 MR. CRAWFORD: I just want to make sure that I understand that the Court is also ruling that
25 the use of the primary residence on Airbnb is a commercial use.

1 THE COURT: Yes. The total property. When I say not only - - well the use of any of that
2 property under that Airbnb is commercial use. I think that language is in there, but it applies both
3 to what I am talking about now the garage outbuilding and the residence. So it applies as do the
4 restrictions. The restrictions in my interpretation are that it is a commercial use, so Airbnb can
5 not be used, it is a commercial use.

6 MR. CRAWFORD: All right.

7 THE COURT: Does that clarify it?

8 MR. ANTHONY: Yes sir.

9 THE COURT: I don't know if I am getting any clearer?

10 MR. CRAWFORD: That clarifies it for me, at least, Your Honor. At least, what the ruling is.

11 THE COURT: Right. The definition applies to the whole thing. So an Airbnb even if they
12 joined the properties together and it no longer has the whatever of an outbuilding it still can not be
13 used as an Airbnb because that is commercial use. It can be rented as any normal rental and I
14 think that is what I had previously said, as far as your - - well I think either you or Mr. Bible
15 brought out. I think it was you.

16 MR. CRAWFORD: Yes sir.

17 THE COURT: That the word tenant is to me a key word that says well they can rent out this
18 property but they can not do an Airbnb on it because that is a commercial use.

19 MR. CRAWFORD: Thank you.

20 THE COURT: And you gentlemen as well of the job that you have all done in this case, I know
21 that you will be able to figure out what I just said.

22 MR. ANTHONY: Thank you.

23 THE COURT: If not, we will come back and I will clarify the ruling but I do want to make it
24 clear that if this changes I retain jurisdiction in this case to consider whether the garage/
25 apartment/outbuilding has now changed character and is now no longer an outbuilding. It is part

1 of the structure and joined together but it is all still subject to the restrictions and as to the
2 restrictions I am relying on Judge Hayes for his findings and I am finding the same thing, that the
3 Airbnb is commercial use. And that is not allowed pursuant to the restrictions.

4 MR. ANTHONY: Thank you, Your Honor.

5 THE COURT: So if you gentlemen will work on the order and if you have any trouble with it, I
6 will be glad to help you out with it but I know you can do what needs to be done. All right.

7 MR. CRAWFORD: Thank you, Your Honor.

8 MR. ANTHONY: Thank you, Your Honor.

9 MR. BIBLE: Thank you, Your Honor.

10 ----- END OF HEARING -----

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1 STATE OF SOUTH CAROLINA

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COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

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CERTIFICATE

6

7 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County of
8 Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and accurate
9 Transcript of Hearing of the proceedings had at the hearing of the captioned case, before the
10 Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South Carolina, on the
11 25th day of February, 2020.

12 I do further certify that I am neither of kin, counsel nor interest to any party hereto.

13

14


Sarah Hollis

15

16

Court Reporter

17

18

19 **SWORN** to before me this

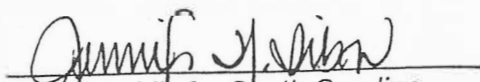
20 17th day of March, 2020.

21 Spartanburg, South Carolina.

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Notary Public for South Carolina
My Commission expires: January 2, 2025

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Jul 26 2023

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Master-in-Equity

Hon. Shannon M. Phillips, Master-in-Equity

Case No.: 2022-001149

Derrick S. Hester, Debra S. Hester, James H. Nicholls, Emma Viola Nicholls,
James E. Gregg, Jr., Paulette J. Gregg, Michael Ben Coley, Ashley Coley,
Grady L. Barnes, Sr., Julia W. Barnes, Ewen Lennon, and Amy Lennon, ...Respondents.

v.

Mark Razzano and Carre Razzano.....Appellants,

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCAR, and Court Order dated June 15, 2023, the undersigned hereby certifies that the Record on Appeal filed February 27, 2023 together with this Supplemental Record on Appeal contains all material proposed to be included by Appellants and Respondents and not any other material.

/s/Mark A. Bible Jr.

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