

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price

Case No. 2015-CP-07-02047

Appellant Case No. 2023-000222

RECEIVED

NOV 15 2023

SC Court of Appeals

James R. Brady.....Respondent.

v.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company, LLC,
Lancaster Redevelopment Corp. and
Gary Grossman Appellants.

SECOND AMENDED RECORD ON APPEAL
VOLUME I OF II

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-07-02047

James R. Brady,

PLAINTIFF(S)

Hilton Head Homes at Allenwood, LLC; Village
Square Development Company, LLC; Lancaster
Redevelopment Corp.; and Gary L. Grossman

DEFENDANT(S)

Submitted by: Charles W. Thomson

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant Gary L. Grossman's Motion for Judgment Notwithstanding the Verdict, filed on September 7, 2022 and heard on November 2, 2022, is respectfully DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Beaufort Common Pleas

Case Caption: James R Brady VS Hilton Head Homes At Allenwood Llc ,
defendant, et al
Case Number: 2015CP0702047
Type: Order/Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2023-01-12 11:51:22 page 6 of 6

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP0702047**

James R Brady		Hilton Head Homes At Allenwood Llc Lancaster Redevelopment Corp	Village Square Development Company Llc Gary L Grossman

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:
ORDER INFORMATION

See Verdict Form

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

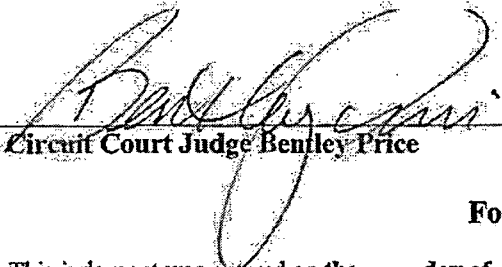
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
James R. Brady	Gary L. Grossman	\$711,027.00

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge Bentley Price

2766

Judge Code

8/30/2022

Date

For Clerk of Court Office Use Only

This judgment was entered on the day of August 2022, and a copy mailed first class or placed in the appropriate attorney's box on the day of August 2022, to attorneys of record or to parties (when appearing pro se) as follows:

Glynn Lindsey Capell PO Box 1559 Bluffton, SC 29910
Charles Whaley Thomson 102 Wappoo Creek Drive, Unit 8
Charleston, SC 29412

George Hamlin O'Kelley III 652 Coleman Blvd., Ste.200 Mt.
Pleasant, SC 29464
Gary L Grossman 2138 Route 522 Selinsgrove, PA 17870

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Cathy Young

Jerri Ann Roseneau - Clerk of Court

Court Reporter: Cathy Young
P.O. Box 4604
Beaufort, SC 29903
clyoung@sccourts.org

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

vs.

Gary L. Grossman,

Defendant.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2015-CP-07-2047

VERDICT FORM

BREACH OF CONTRACT CLAIM AGAINST GARY L. GROSSMAN

1. Do you find, by a preponderance of the evidence, that the Defendant Gary L. Grossman breached a contract with the Plaintiff James R. Brady?

✓ YES: If you answer yes, go to Question No. 2.

 NO: If you answer no, then stop here.

2. Do you find, by a preponderance of the evidence, that the Plaintiff James R. Brady was damaged by this breach?

✓ YES: If you answer yes, go to Question No. 3.

 NO: If you answer no, then stop here.

3. What damages are owed to Plaintiff James R. Brady as a result of the breach?

\$ 711,000.00

CONVERSION CLAIM AGAINST GARY L. GROSSMAN

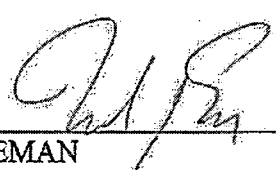
1. Do you find, by a preponderance of the evidence, that the Defendant Gary L. Grossman converted the Plaintiff James R. Brady's personal property, prevented Plaintiff from using the property, and did so without Plaintiff's permission?

 / YES: If you answer yes, go to Question No. 2.

 NO: If you answer no, then stop here.

2. What damages are owed to Plaintiff James R. Brady as a result of this conversion?

\$ 711,027.00


FOREMAN

August 30, 2022.
Beaufort, South Carolina

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE, NOTIFY THE BAILIFF.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 30, 2022

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: James R. Brady v. Hilton Head Homes
Lower Court Case No. 2015CP0702047
Appellate Case No. 2019-000200

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen

CLERK

Enclosure

cc: George Hamlin O'Kelley, III, Esquire
Glynn Lindsey Capell, Esquire
Charles Whaley Thomson, Esquire

ROA 11

2022 APR -1 AM 11:06
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

James R. Brady, Respondent,

v.

Hilton Head Homes at Allenwood, LLC, Village Square
Development Company, LLC, Lancaster Redevelopment
Corp., and Gary L. Grossman, Appellants.

Appellate Case No. 2019-000200

Appeal From Beaufort County
J. Mark Hayes, II, Circuit Court Judge

Unpublished Opinion No. 2022-UP-105
Submitted December 1, 2021 – Filed March 9, 2022

AFFIRMED

George Hamlin O'Kelley, III, of Buist Byars & Taylor,
LLC, of Mt. Pleasant, for Appellants.

Glynn Lindsey Capell, of Bluffton, and Charles Whaley
Thomson, of Charleston, both of Capell Thomson, LLC,
for Respondent.

PER CURIAM: In this civil matter, Hilton Head Homes at Allenwood, LLC,
Village Square Development Company, LLC, Lancaster Redevelopment

2022 APR -1 AM 11:06
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Corporation, and Gary Grossman (collectively, Appellants) challenge the trial court's order granting James Brady's motion for summary judgment regarding Appellants' counterclaims. We affirm.

After viewing the evidence in a light most favorable to Appellants, we find the trial court did not err in granting Brady's motion for summary judgment on Appellants' counterclaims for breach of contract and unjust enrichment as no evidence submitted to this court creates a genuine issue of material fact. *See Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002) ("An appellate court reviews a grant of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP."); *id.* at 361–62, 563 S.E.2d at 333 ("In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party."). Here, the 2004 letter (2004 Agreement) that Appellants wrote Brady constituted their contract and outlined the terms of the agreement between the parties; Appellants did not point to any specific terms within the contract to prove Brady breached the contract, nor did they provide evidence to support an equitable claim of unjust enrichment. Next, through an affidavit, Brady swore that Appellants owe him money for work performed under the 2004 Agreement. The affidavit also stated that the payments Appellants made to him were not loans or advances as they claimed and that all the money he owed to third-party contractors was accounted for. Appellants did not submit any affidavits or other evidence to rebut Brady's affidavit.

Finally, Appellants relied almost exclusively on Ginger Griffith's¹ deposition and a letter she wrote to Brady in 2007 (2007 Letter) to support their counterclaims. In their brief, Appellants make general statements that Griffith's testimony alone is sufficient to overcome a motion for summary judgment without pointing to specific testimony to buttress their claims. If Appellants point to any specific testimony, they point to only Griffith's cross-examination by Appellants' counsel whereby she explains the circumstances surrounding Appellants' failure to pay Brady—the issue of how fees were to be paid, the difficult housing market in 2007, the housing inventory, and foreclosure threats from banks. Nothing Appellants point to in the record provides a scintilla of evidence that supports a finding that Brady breached the contract or was unjustly enriched by payments already made to him. *See Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801,

¹ Griffith was Appellants' treasurer and accountant. Under the 2004 Agreement, Appellants were to perform all accounting and debt management in office, meaning Griffith would be in charge of all accounting pertaining to the projects.

803 (2009) ("[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.").

To the contrary, Griffith's testimony and the 2007 Letter show that Appellants owe Brady \$711,027. Griffith admitted during her deposition that the total amount due to Brady was the \$711,027 listed in the 2007 Letter, that the letter accounted for all debts Brady owed to Appellants for third-party contractors' fees, and that the total figure owed to Brady was based on duties he had already performed under the 2004 Agreement. Griffith explicitly testified that Brady did not owe third-party contractors any money and he did not employ other parties to help construct or sell the homes after the 2007 Letter was written. Because Appellants failed to rebut Brady's affidavit or point to any evidence in the record that supports their counterclaims, we find further inquiry into the facts surrounding Appellants' counterclaims is not required to clarify the application of the law. *See Lanham*, 349 S.C. at 362, 563 S.E.2d at 333 ("Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law."). Thus, we hold the trial court did not err in granting Brady's motion for summary judgment.

CONCLUSION

Based on the foregoing, the trial court's order is

AFFIRMED.²

WILLIAMS, C.J., MCDONALD, J., and LOCKEMY, A.J., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

v.

Hilton Head Homes at Allenwood, LLC;
Village Square Development Company,
LLC; Lancaster Redevelopment Corp.;
and Gary L. Grossman,

Defendants.

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-07-02047

**ORDER GRANTING SUMMARY
JUDGMENT AS TO
COUNTERCLAIMS**

This matter came before the Court on the Plaintiff's motion for summary judgment as to the counterclaims asserted against the Plaintiff by the Defendants. According to SCRCP 56, summary judgment shall be granted when there is no genuine issue as to any material of fact. Once the moving party has come forth with evidence to support its motion, the non-moving party must offer some evidence that a genuine issue of material fact exists as to each element of the claim. It is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.

In ruling on this summary judgment motion, the court has viewed all of the evidence offered to it and viewed that evidence, and the inferences therefrom, in a light most favorable to the non-moving party. Having reviewed all of the evidence and considering the arguments presented, this Court will grant the Plaintiff's motion for summary judgment as to the counterclaims asserted by the defendant.

The defendants rely solely upon the deposition testimony of Ginger Griffith. In their memorandum opposing the motion, the defendants make general references to the Answer and Counterclaim. The Counterclaims seeks damages in the amount of "in excess of \$600,000.00" based on assertions that the plaintiff, generally, failed to perform services he should have, invokes equitable theories against the plaintiff, that plaintiff breached a valid a contract for services he failed to provide, and asserts that the plaintiff should not have relied upon a letter from a Mr. Grossman to support his claim. Again, the defendant submitted only the deposition of Ms. Griffith. The Plaintiff also relied upon the deposition of Ms. Griffith but also submitted the affidavit testimony of the plaintiff, Rod Brady.

The defendants make reference in its memorandum to only pages 7, 37, and 38 to 39, of Ms. Griffith's deposition. The references do not support the assertions made in the counterclaims. Ms. Griffith's testimony was secured as *de bene esse* deposition for use at trial. After being examined by Plaintiff's attorney, her cross examination simply dealt with issue involving the arrangement of how fees were paid, the difficult housing market in 2007, the housing inventory, the banks threatening foreclosures or actual foreclosures, that Mr. Grossman's being a guarantor, the plaintiff not being a guarantor, and that the plaintiff might not have been an employee of Lancaster Redevelopment. Nowhere in her deposition are the issues raised in the counterclaims mentioned. When viewed in a light most favorable to the defendants, her deposition, at best for the defendants, may explain why the Plaintiff was not paid. No affidavit was submitted to counter Mr. Brady's affidavit.

With respect to an issue upon which the non-moving party has the burden of proof, the moving party may meet its initial responsibility of demonstrating that the absent of a genuine issue of material fact by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case. As referenced in *Hedgepath v. AT&T*, 348 S.C. 340, 559 S.E.2d 327) (Ct App. 2001), once the moving party carries its initial burden, the opposing party must, under Rule 56, do more than simply show a metaphysical doubt as to the material facts but must come forward with specific facts showing a genuine issue for trial. The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings.

Based on the documents and arguments presented to this Court and applying the required standard of review, the present motion for summary judgment is granted.

The Honorable Mark Hayes

ELECTRONIC SIGNATURE ON FOLLOWING PAGE



Beaufort Common Pleas

Case Caption: James R Brady VS Hilton Head Homes At Allenwood Llc ,
defendant, et al
Case Number: 2015CP0702047
Type: Order/Summary Judgment

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2019-03-01 15:01:06 page 3 of 3

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP0702047

James R Brady
PLAINTIFF(S)

Hilton Head Homes At Allenwood Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

See Additional Order Information.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/08/2019 .

Gary L Grossman for Gary L Grossman
Gary L Grossman for Gary L Grossman

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter came before the Court on the Plaintiff's motion for summary judgment as to the counterclaim asserted against the Plaintiff by the Defendants. According to SCRCP 56, summary judgment shall be granted when there is no genuine issue as to any material of fact. Once the moving party has come forth with evidence to support its motion, the non-moving party must offer some evidence that a genuine issue of material fact exists as to each element of the claim. It is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.

In ruling on this summary judgment motion, the court has viewed all of the evidence offered to it and viewed that evidence, and the inferences therefrom, in a light most favorable to the non-moving party. Having reviewed all of the evidence and considering the arguments presented, this Court will grant the Plaintiff's motion for summary judgment as to the counterclaims asserted by the Defendant. Plaintiff's counsel is asked to prepare a formal order granting the motion. The formal Order, once signed and filed with the clerk's office, will be final order of this Court on this motion. This email will be incorporated into a form 4 for filing with the Clerk's office.

The Defendants rely solely upon the deposition testimony of Ginger Griffith. In their memorandum opposing the motion, the Defendants make general references to the Answer and Counterclaim. The Counterclaims seeks damages in an amount "in excess of \$600,000.00" based on assertions that the plaintiff, generally, failed to perform services he should have, invokes equitable theories against the plaintiff, that plaintiff breached a valid a contract for services he failed to provide, and asserts that the plaintiff should not have relied upon a letter from a Mr. Grossman to support his claim. Again, the defendant submitted only the deposition of Ms. Griffith. The Plaintiff also relied upon the deposition of Ms. Griffith but also submitted the affidavit testimony of the plaintiff, Rod Brady.

The Defendants make reference in its memorandum to only pages 7, 37, and 38 to 39, of Ms. Griffith's deposition. The references do not support the assertions made in the counterclaims. Ms. Griffith's testimony was secured as de bene esse deposition for use at trial. After being examined by Plaintiff's attorney, her cross examination simply dealt with issues involving the arrangement of how fees were paid, the difficult housing market in 2007, the housing inventory, the banks threatening foreclosures, actual foreclosures, Mr. Grossman's being a guarantor, the plaintiff not being a guarantor, and the plaintiff's not being an employee of Lancaster Redevelopment. Nowhere in her deposition are the issues raised in the counterclaims mentioned. When viewed in a light most favorable to the defendants, her deposition, at best for the defendants, may explain why the Plaintiff was not paid. No affidavit was submitted to counter Mr. Brady's affidavit.

With respect to an issue upon which the non-moving party has the burden of proof, the moving party may meets its initial responsibility of demonstrating that the absent of a genuine issue of material fact by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case. As referenced in *Hedgepath v. AT&T*, 348 S.C. 340, 559 S.E.2d 327 (Ct App. 2001), once the moving party carries its initial burden, the opposing party must, under Rule 56, do more than simply show a metaphysical doubt as to the material facts but must come forward with specific facts showing a genuine issue for trial. The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings.

Based on the documents and arguments presented to this Court and applying the required standard of review, the present motion for summary judgment is granted.

Again, this email will be incorporated into a form 4 for filing with the Clerk's office and this Court requests a formal order be submitted to the Court for signing.



Beaufort Common Pleas

Case Caption: James R Brady VS Hilton Head Homes At Allenwood Llc ,
defendant, et al
Case Number: 2015CP0702047
Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2019-02-08 11:28:03 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

vs.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company,
LLC, Lancaster Redevelopment Corp., and
Gary L. Grossman,

Defendants.

IN THE COURT OF COMMON PLEAS
C/A NO.: 2015-CP-07-2047

**CONSENT MOTION FOR AN ORDER
OF PROTECTION AND FOR A
STATUS CONFERENCE TO SET A
TRIAL DATE CERTAIN**

Plaintiff James R. Brady and Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman, by and through undersigned counsel, hereby jointly move this Honorable Court for an Order granting protection for Defendants' counsel, G. Hamlin O'Kelley, III, on the grounds that he has long-standing plans to be out of town from February 11, 2019 through February 15, 2019.

Counsel also hereby move for a status conference for a day certain trial in March 2019 or later, in the above-captioned case.

Respectfully submitted,

WE SO MOVE:

s/ Charles W. Thomson, Esq.
THE CAPELL LAW FIRM LLC
Charles W. Thomson, PE, Esq.
The Blake House
321 East Bay Street
Charleston, South Carolina 29401
cthompson@capelllaw.cm
Attorney for Plaintiff

WE CONSENT:

s/ G. Hamlin O'Kelley, III
BUIST BYARS & TAYLOR LLC
G. Hamlin O'Kelley, III
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
Hamlin.okelley@buistbyars.com
Attorney for Defendants

ROA 22

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

vs.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company,
LLC, Lancaster Redevelopment Corp., and
Gary L. Grossman,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2015-CP-07-2047

**CONSENT ORDER OF
CONTINUANCE**

The Plaintiff and the Defendants in this matter hereby consent to a continuance of this case currently scheduled for a motion hearing on Tuesday, September 18, 2018, in Beaufort County, South Carolina.

Both parties request the need for more time due to scheduling conflicts and the mandatory evacuation from Hurricane Florence.

ORDERED that the matter in the above-captioned case scheduled for a motion hearing on Tuesday, September 18, 2018, in Beaufort County, South Carolina is hereby continued, and

IT IS SO ORDERED!

The Honorable Marvin H. Dukes, III
Beaufort County Master in Equity

Beaufort, South Carolina
September _____, 2018

WE SO MOVE AND CONSENT:

BUIST, BYARS & TAYLOR, LLC

s/ G. Hamlin O'Kelley, III
G. Hamlin O'Kelley, III, Esq.
652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
843.856.4488
Hamlin.okelley@buistbyars.com
Attorney for the Defendants

THE CAPELL LAW FIRM, LLC

s/Charles W. Thompson
Charles W. Thompson
321 E. Bay Street
Charleston, SC 29401
843.501.0423
cthompson@capelllaw.com
Attorney for the Plaintiff



Beaufort Common Pleas

Case Caption: James R Brady VS Hilton Head Homes At Allenwood Llc ,
defendant, et al
Case Number: 2015CP0702047
Type: Order/Continuance

It is so Ordered

s/ Perry M Buckner III 2122

Electronically signed on 2018-09-19 09:33:36 page 3 of 3

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-07-02690

2009060153

James R. Brady

Hilton Head Homes at Allenwood LLC et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Megan White

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: After a hearing on May 15, 2015, Plaintiff's Motion to Refer to a Special Referee is denied. Upon the consent of counsel, this case shall be dismissed pursuant to 40(j) and immediately refiled with a new case number.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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

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

Circuit Court Judge

2142
Judge Code6/15/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the 16th day of June, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 23rd day of June, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Glynn Lindsey Capell, Esq

ATTORNEY(S) FOR THE PLAINTIFF(S)

George Hamlin O'Kelly, III
Gary L. Grossman

Gary L. Grossman

ATTORNEY(S) FOR THE DEFENDANT(S)

Dana Gathers Staff
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,
Plaintiff,

v.

Hilton Head Homes at Allenwood,
LLC; Village Square Development
Company, LLC; Lancaster
Redevelopment Corp.; and Gary L.
Grossman,

Defendants.

COURT OF COMMON PLEAS
FOURTEENTH CIRCUIT
C.A. No. 2015-CP-07-02047

**Memorandum in Support of
Plaintiff's Motion for
Prejudgment Interest**

Plaintiff James R. Brady submits this Memorandum in Support of his post-trial Motion for Prejudgment Interest.

S.C. Code § 34-31-20(A) provides:

In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum.

Id. Per this statute section, an award of prejudgment is mandatory if the damages are a sum certain.

South Carolina caselaw expands upon the interpretation of this statute section. As set forth in *Butler Contracting v. Court Street*, 631 S.E.2d 252, 369 S.C. 121 (S.C. 2006):

The law has long allowed prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable, if the sum is certain or capable of being reduced to certainty. *Smith-Hunter Constr. Co. v. Hopson*, 365 S.C. 125, 128, 616 S.E.2d 419, 421 (2005); *Babb v. Rothrock*, 310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993); *Ancrum v. Slone*, 29 S.C.L. (2 Speers) 594 (1844). Stated another way, prejudgment interest is allowed on a claim of liquidated damages; i.e., the sum is certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties. Prejudgment interest is not allowed on an unliquidated claim in the absence of an agreement or statute. *Babb*, 310 S.C. at 350, 426 S.E.2d at 791; *Builders Transport, Inc. v. S.C. Prop. & Cas. Ins.*

Guar. Assn., 307 S.C. 398, 406, 415 S.E.2d 419, 424 (Ct.App.1992); *Wayne Smith Constr. Co. v. Wolman, Duberstein, and Thompson*, 294 S.C. 140, 146-47, 363 S.E.2d 115, 119 (Ct.App.1987).

The fact that the amount due is disputed by the opposing party does not render the claim unliquidated for the purposes of an award of prejudgment interest. The proper test for determining whether prejudgment interest may be awarded is whether the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose. *Smith-Hunter Constr. Co.*, 365 S.C. at 128, 616 S.E.2d at 421; *Babb*, 310 S.C. at 353, 426 S.E.2d at 791; *Wayne Smith Constr. Co.*, 294 S.C. at 146-47, 363 S.E.2d at 119. The right of a party to prejudgment interest is not affected by rights of discount or offset claimed by the opposing party. It is the character of the claim and not the defense to it that determines whether prejudgment interest is allowable. *Lee v. Thermal Engineering Corp.*, 352 S.C. 81, 88-89, 572 S.E.2d 298, 302 (Ct.App.2002); *Southern Welding Works, Inc. v. K & S Constr. Co.*, 286 S.C. 158, 164, 332 S.E.2d 102, 106 (Ct. App.1985)

A judgment debtor is required to pay interest on his debt as compensation for his continued retention and use of the creditor's money beyond the date payment was due. *Sears v. Fowler*, 293 S.C. 43, 45-46, 358 S.E.2d 574, 575 (1987). In South Carolina, prejudgment interest is set by statute at annual rate of 8 percent, although parties are free to agree, within legal limits, on a higher rate of interest. S.C.Code Ann. § 34-31- 20(A) (Supp.2005); *Turner Coleman, Inc. v. Ohio Constr. & Engr., Inc.*, 272 S.C. 289, 292, 251 S.E.2d 738, 740 (1979).

(Emphasis added).

The *Butler Contracting* matter quoted above was a construction contract payment claim, as is the present case. In that matter, the Supreme Court of South Carolina reversed the trial court's order refusing to allow prejudgment interest. The fact that the Defendant in that case asserted a counterclaim seeking an offset did not change the character of the plaintiff's claims being for a sum certain.

Here, Plaintiff Brady's damages were a sum certain. The evidence at trial showed that Grossman admitted that Brady was owed \$711,027 as of September 2007. Brady stipulated to this precise amount of damages and obtained a verdict in that precise amount. Brady's Complaint includes a plea

for prejudgment interest. Also, the September 2007 letter trial exhibit demonstrates that the money was due as of that time. Thus, September 2007 is the latest date that could be chosen as a starting point of when interest began to accrue. *See Dixie Bell, Inc. v. Redd*, 656 S.E.2d 765, 376 S.C. 361 (S.C. App. 2007).

Additionally, the award of prejudgment interest applies to both of Plaintiff's causes of action awarded by the jury, breach of contract and conversion. *See id.*

A calculation of the interest accrued at the statutory rate of 8.75% per annum is attached as Exhibit A to this Memorandum.

CONCLUSION

Plaintiff Brady respectfully requests on order entering a judgment in the amount of \$1,791,190.61 for prejudgment interest only, which is to be added to the judgment of \$711,027, for a total amount of \$2,502,217.61.

Respectfully submitted,

CAPELL THOMSON, LLC

s/ Charles W. Thomson

Glynn L. Capell (16552)

GCapell@CapellThomson.com

Charles W. Thomson (101471)

CThomson@CapellThomson.com

102 Wappoo Creek Dr., Unit 8

Charleston, SC 29412

(843) 501-0423

Attorneys for Plaintiff

October 31, 2022

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,
Plaintiff,

v.

Hilton Head Homes at Allenwood,
LLC; Village Square Development
Company, LLC; Lancaster
Redevelopment Corp.; and Gary L.
Grossman,
Defendants.

COURT OF COMMON PLEAS
FOURTEENTH CIRCUIT

C.A. No. 2015-CP-07-02047

**Plaintiff's Memorandum in
Opposition to Defendant's
Motion for Judgment
Notwithstanding the Verdict**

Plaintiff James R. Brady submits this Memorandum in Opposition to Defendant Gary Grossman's Motion for Judgment Notwithstanding the Verdict Pursuant to Rule 50(b), SCRCP.

LEGAL STANDARD

A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. In deciding a motion for JNOV, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party; if more than one inference can be drawn, the case must be submitted to the jury. *Gastineau v. Murphy*, 331 S.C. 565, 503 S.E.2d 712 (1998). "The court must deny the (JNOV) motion if either the evidence yields more than one reasonable inference or the inferences are in doubt." *V.E. Amick & Associates, LLC v. Palmetto Environmental Group, Inc.*, 394 S.C. 538, 548-49, 716 S.E.2d 295, 300 (Ct. App. 2011).

ARGUMENT

**I. The LLC Operating Agreement and Assignments Do Not
Override the 2/2/04 Letter of Agreement.**

The letter of agreement that constituted the agreement between Grossman and Brady was dated 2/2/04 (Exhibit A). The Assignments that Grossman allege override the 2/2/04 agreement matriculated in July 2004. In 2007, both Ginger Griffith and Gary Grossman admitted that the 2/2/04 letter was what constituted the agreement between the parties. (See Exhibit

B, handwritten notes supplied by counsel for Brady). Both Ginger Griffith and Rod Brady testified to same at trial. The jury's apparent finding that the Exhibit A 2/2/04 letter constituted the Agreement is the only reasonable finding.

As Grossman admits, Mr. Grossman was not a party to the Assignments. He did not sign those Assignments in his individual capacity. Thus, the Assignments cannot override a previous contract to which he was a party.

The LLC Operating Agreement and Assignments constitute separate subject matter than the 2/2/04 agreement wherein Brady was to construct houses. The LLC Operating Agreement and Assignments do not include any of the following terms that Grossman admitted in 2007 were at the heart of the agreement between the parties:

- Construction Management Fees;
- Sales and Marketing Fees;
- Incentive Management Fees; or
- The 500 Basis points to Gary Grossman individually that he accepted in 2007.

Exhibit B to this memorandum further sets out how the 2/2/04 agreement at the heart of this matter is separate from the LLC Operating Agreement and Assignments. The Exhibit demonstrates that Brady did not even sue over the amounts he was due under these separate LLC operating agreements.

Brady is entitled to control his own claims. He decided to sue over the 2/2/04 agreement and not over the LLC agreements. Had Brady sued over the LLC Operating Agreement and Assignments, he would have demanded additional money. Instead, Brady opted to keep his claims simple to facilitate the Court's endeavor to find the truth in this matter.

Grossman's argument that the LLC agreements are relevant constitute an attempt to obscure the truth. He was allowed to admit these documents as trial exhibits and show them to the jury. The jury saw through this and rejected Grossman's argument. The Court should respect the jury's finding.

II. Grossman's Statute of Frauds Argument Fails for Multiple Independent Reasons.

Grossman's Statute of Frauds argument fails for multiple reasons, each of which is sufficient in and of itself to render the defense inapplicable.

A. Statute of frauds is an affirmative defense that must be pled.

The statute of frauds is an affirmative defense that must be pled in the Answer to be considered. Rule 8(c), SCRCP; *Bocook Outdoor Media, Inc. v. Summey Outdoor Advertising, Inc.*, 294 S.C. 169, 363 S.E.2d 390 (S.C. App. 1987) ("[T]he statute of frauds is an affirmative defense," which must be pled).

Here, Grossman did not plead this defense. And of course he did not, because the Defendants countersued Brady for breach of contract in their Answer. (Hence, they are judicially estopped from asserting that the contract is invalid as well, as set forth below). Grossman brought the statute of frauds up for the very first time in this matter in a post-trial motion, i.e. *after* the trial had already been conducted. Per the Rules of Civil Procedure, Grossman cannot assert this defense.

B. Brady satisfies the statute of frauds by showing an agreement in writing that is digitally signed by Grossman, who also subsequently acknowledged the terms.

That statute of frauds primarily protects against oral agreements. Where the terms are in writing and "signed" with a digital signature by the party against whom enforcement is sought, the statute of frauds defense does not apply. The 2/2/04 agreement is in writing and includes Gary Grossman's name in the signature block. The statute of frauds does not require an inked signature.

A writing sufficient to remove an oral agreement from the statute of frauds "must reasonably identify the subject matter of the contract, sufficiently indicate a contract has been made between the parties, and state with reasonable certainty the essential terms of the agreement." *Smith v. McClam*, 289 S.C. 452, 456, 346 S.E.2d 720, 723 (1986).

Here, the 2/2/04 letter satisfies the statute of frauds requirements, even moreso in conjunction with the 2007 writings acknowledging that the 2004 letter constitutes the agreement. The September 13, 2007 letter acknowledges, in great detail, the application of each and every term located within the 2/2/04 letter of agreement. Additionally, Gary Grossman acknowledged the 2/2/04 letter of agreement in a 2007 email that is a trial exhibit in the record. The September 13, 2007 letter also indicates that Grossman accepted money in recognizance of the fact that the 2/2/04 letter of agreement was enforceable (the 500 basis points to Gary Grossman individually).

C. Promissory Estoppel bars Grossman's statute of frauds defense.

The elements of promissory estoppel are: "(1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by the party to whom the promise is made; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise." *Rushing v. McKinney*, 370 S.C. 280, 295, 633 S.E.2d 917, 925 (Ct. App. 2006) (emphasis omitted).

Brady easily establishes all four elements here. The 9/13/07 letter shows there is no ambiguity in any of the terms in the 2/2/04 letter of agreement. Brady devoted nearly three years of his life's work exclusively to the project at the heart of this matter, and was hardly paid for those efforts, despite that Grossman profited from Brady's work. No better example of promissory estoppel exists.

D. Judicial Estoppel bars Grossman's statute of frauds defense.

The concept of judicial estoppel applies here too. The Court applied the doctrine of judicial estoppel against a litigant asserting statute of frauds in *Eadon v. White*, Opinion No. 2008-UP-043 (S.C. App. 2008). In that matter, the party against whom enforcement was sought admitted the existence of

an agreement in the litigation, and thus, was judicially estopped from asserting a statute of frauds defense. *Id.*

Here, Defendants countersued Brady for breach of contract over the agreement in their Answer. They maintained this position all the way through the Court of Appeals wherein Grossman appealed a grant of summary judgment to Brady over those counterclaims. Therefore, Grossman is judicially estopped from asserting that the statute of frauds abrogates the contract, for the first time *after* trial no less.

Grossman's statute of frauds defense fails for the four different reasons stated above. Brady needs to prevail on only one of those arguments to defeat Grossman's statute of frauds defense. Brady prevails on all four.

CONCLUSION

For the reasons set forth above, Plaintiff Brady respectfully requests that this Court enter an Order Denying Defendant's Motion for Judgment Notwithstanding the Verdict.

Respectfully submitted,

CAPELL THOMSON, LLC

s/ Charles W. Thomson

Glynn L. Capell (16552)

GCapell@CapellThomson.com

Charles W. Thomson (101471)

CThomson@CapellThomson.com

102 Wappoo Creek Dr., Unit 8

Charleston, SC 29412

(843) 501-0423

Attorneys for Plaintiff

October 31, 2022
Charleston, South Carolina



GARY L. GROSSMAN
419 COFFEE GOSS ROAD
MARIETTA, PA 17547

February 2, 2004

James R. Brady
29 Otter Hole Road
Bld. #1, Unit #11
Hilton Head Island, SC 29926

Dear Rod,

As you know, I have been in direct negotiations with Chris Gannon to keep us in the single-family lot takedown transaction by agreeing to purchase the 92 townhouse lots in a 3 phase bulk buy.

This past weekend, I convinced Chris to separate these transactions by using Lancaster Redevelopment Corporation as the purchaser of the townhouse lots.

Chris Gannon and I went back and forth all weekend by e-mail, which resulted in the enclosed contracts.

Please make note that the 64 single family lot agreement has Hilton Head Homes LLC not Hilton Head Homes, Inc. as the purchaser.

I do not want any creditor of Hilton Head Homes, Inc. to be able to take hostile action against the Allenwood project (i.e.: subcontractor vendors).

At this point in our business relationship, I am somewhat torn between trying to help you as a friend, and making prudent business decisions on my own behalf.

The two Allenwood transactions require an absolute minimum of \$110,000 in cash equity (probably more) and recourse positions on a minimum of \$3,000,000 in debt.

From a business only standpoint of view, I have a problem putting up all the cash, funding the interest expense by myself and taking all the real risk of recourse on a 50/50 basis.

I also have some concern about the unresolved problem at Cypress Harbour. At some point in time the bank will move through the foreclosure process, seize the assets, sell the asset and most likely come up with a loss.

In which case, I believe there is a high probability the bank will pursue a deficiency action against you. Unless and until this threat is resolved, I do not believe it in my best

interest to be "joined at the hip" on a 3 or 4 year project that involves 3,000,000 plus dollars of debt.

Having said all of this, I value our friendship highly. I want to work through these difficult issues and move on to better times.

I would like to proceed with both transactions in separate limited liability companies wherein, Lancaster Redevelopment Corporation owns 100% of the companies, but engages you and Joy Walker as independent contractors under the following terms and conditions:

- We move the entire Hilton Head Homes operation into the Allenwood model home. This will keep someone on site at all times.
- We do our own sales and marketing through you and Joy Walker and offer a 3% co-broker commission on all products.
- We pay Joy Walker a flat rate of \$2500 per single family home and \$500 per townhouse for her administrative assistance/sales work as and when homes are settled as her sales compensation.
- We pay you a flat fee construction management fee of \$5000 for each single family home and \$1250 per unit for each townhouse, as and when homes are settled as her sales compensation.
- The 3% sales fee should be paid to you or Joy Walker for any sale of single family homes and a flat \$2000 fee for townhouses, either of you write and close, as and when each home settles.
- If we build 24 single family homes and 36 townhouses a year (which is what our contract takedown schedule is) this arrangement provides you with \$174,000 in construction management fees per year.
- If you can sell 50% of this without paying a broker you can earn an additional \$108,000 per year in commission.
- If you elect to hire people to fulfill these roles I want you to pay them out of the fees set forth above!

In addition to the sales and construction management fees as described, I would like to pay you an "incentive management fee" of 50% of pre-tax profits after a 1% per month interest on cash investment to Lancaster Redevelopment Corporation and 500 basis points to me individually for my guarantee. However, I am asking that 100% of cash invested by Forest Homes, Lancaster Redevelopment Corporation and/or myself be repaid prior any profit distribution.

I would like all accounting and debt management to take place from my office so I can stay on top of things.

I believe this arrangement fairly balances the scales, makes our initial financing easier, isolates me, and the deals from any trouble that may arise from Cypress Harbour and lowers your personal risk!

I am hopeful you are not in anyway insulted or upset. I simply need to feel totally comfortable because of the level of debt exposure involved with this undertaking.

Please give my concerns and my proposed solution your immediate attention and advise your thoughts. I want to make immediate application to Jeff Heidt at National Bank of Commerce in Savannah.

Very truly yours,

Gary L. Grossman

GLG/sa
HHH/brady 2204



Lancaster Redevelopment Corp.

2138 Route 522

Selinsgrove, PA 17870

570-374-0131 (Fax 570-374-6093)

September 13, 2007

James R. Brady
36 Timber Marsh Lane
Hilton Head, SC 29926-2787

Dear Rod,

Pursuant to your discussion with Mr. Grossman, I am transmitting our analysis of the Allenwood compensation to you under our February 2, 2004 letter of agreement.

As you are aware, there are two separate entities operating at Allenwood. Our analysis isolates compensation by company.

Village Square Development Co. LLC (townhomes)

2005 Income	\$708,890
2006 Income	\$247,495
Total to date	\$956,385

To date there was one distribution:

Paid to you on 4/10/07 \$ 36,000

This distribution was based on cash available at the time of distribution. As you know, our cash is invested in standing inventory.

Under the February 2, 2004 letter of Agreement you are scheduled to be paid a construction management fee of \$1,250 per townhouse unit. According to our records we have built and delivered 26 townhouses to date. I interpret the February 2, 2004 letter of Agreement to make the construction fees payable at the time each unit settles.

It is my understanding that the expenses associated with hiring Nick Grossman and/or Dan Clore for supervisory work on your behalf are to be deducted. Mr. Grossman did advise me that expenses for Dan Clore would not be counted after a certain date, but I do not know what that date was, so I picked 5/31/07 which is when Nick went to Battery Creek.

The markups in blue ink herein explain the 88% / 6% issue and the irrelevance of the LLC Assignment Document.

→ This letter post-dates the LLC Agreements. Yet, look what they say the relevant agreement is →

→ This is the Agreement Brady sued over, not the July 2004 LLC agreement.

The February 2, 2004 letter of Agreement also provides for a \$2,000 per townhouse sales commission to either you or Joy Walker depending on who actually sold the unit. I was subsequently informed that you and Joy agreed to split this commission at \$1,000 each for all sales made by you or her. I made all payments and constructed all commission accounting in accordance with that directive.

The construction management fee on
the 26 sold and settled townhomes totals \$32,500

The commissions on the 26 sold and
Settled townhomes totals \$26,000

Less the commission paid to date (9,415)

Less Nick Grossman salary/benefits/expenses 6/6 to 1/7 (29,845)

Less Dan Clore salary/benefits/expenses 6/6 to 1/7 (30,746)

Less Nick Grossman salary/benefits/expenses 1/1/07-5/31/07 (24,870)

Less Dan Clore salary/benefits/expenses 1/1/07-5/31/07 (25,620)

Current balance as of this date (61,996)

There are construction management fees
Due on 29 additional units @\$1,250 \$36,250

The net balance is a negative (25,746)
For your sales commissions and construction management
Fees for Village Square Development Co. LLC

The net income for tax year 2005 was \$708,890 and \$247,495 in 2006 for a total taxable income of \$956,385. The LRC allocated income on this \$956,385 is 88% or \$841,619.

Under the terms of the February 2, 2004 letter of Agreement, Mr. Grossman was to be paid a priority distribution of 500 basis points for his guarantee. The average debt in 2005 was \$2,970,097 from January 1 until December 31, 2005 which calculates to a pro-rated guarantee fee of \$148,504.85 for 2005.

The average VSD to LLC debt balance for 2006 was \$5,402,733, which calculates to a guarantee fee of \$270,137.

The guarantee fee totals \$418,642 which reduces the LRC allocated pretax profits from \$841,619 to \$422,977.

Your allocated share of 50% would be \$211,488.

To date I have advanced \$128,000.

The balance of the 2005/2006 "incentive management fee" due to you is \$83,488.

Brady's profits were reduced by 50% of $(100 - 88 = 12)$. In other words, by 6%. He was still owed 6% under the separate operating agreement. We did not sue for that portion.

Under the terms of the February 2, 2004 letter of Agreement, 100% of LRC loans or accounts receivables are to be paid as a priority distribution.

Mr. Grossman recently loaned Village Square Development Co. LLC \$124,750 and forest homes has past due receivables of \$173,700.

We must repay the \$173,700 past due receivables as a first priority. Mr. Grossman has indicated his intentions to allow funds to be paid to you ahead of his recent loans.

As to Hilton Head Homes at Allenwood

Your construction management fees on the 44 single family homes sold and settled total	\$220,000
The construction management fees on the 4 remaining single family homes total	\$ 20,000
The expenses associated with Rich Raven	\$(17,941)
The expenses associated with RS Davis	\$(58,611)
The 10% commission on the 44 single family Homes sold and settled to date total	<u>\$192,000</u>
Total earned as of this date	\$355,475
Total paid as of this date	<u>\$335,846</u>
Balance due on contribution fees and commissions	<u>\$ 19,629</u>

Mr. Grossman advises that this amount can be paid from the very next S.F. settlement if Art Long will consent.

The 2005 net taxable income was
 The 2006 net taxable income was
 Total taxable income of
The allocated income on this \$1,612,783 is 88% or

\$1,212,191

400,592

\$1,612,783

\$1,419,249 ←

The average debt balance for 2005 was
 The 500 basis point guarantee fee calculating to

\$1,993,865

→ \$ 99,693 ←

The average debt balance for 2006 was
 The 500 basis point guarantee fee calculating to
 Therefore, net taxable income after the guarantee Fees for 2005/2006 is

\$1,267,311

→ \$ 52,244 ←

\$1,267,312 - (\$1,419,249 - 99,693 - 52,244) = 1,267,312

Your 50% incentive management fee is
 Of this writing, the total amount due to you is

50% \$ 633,656

\$ 711,027

The profits they allege to owe Brady were again, reduce by half of 12%, or 6%. Brady is owed the extra 6% under the separate LLC Assignment. We did not owe over that.

Mr. Grossman directed me to access our ability to fund a \$10,000 a month draw against these funds. Given the carrying costs of the inventory, and past due receivables to Forest Homes from Allenwood, the monthly carrying costs at Cypress Harbor and our massive increase in overhead associated with the new plant, LRC simply cannot fund any additional monthly expenses.

I have attached a summary of the above information. If you have any questions or need any details, please feel free to call me anytime.

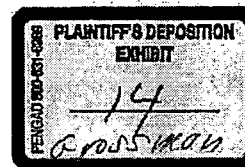
Very truly yours,

Ginger Griffith
Treasurer

Cc: Gary L. Grossman

Rod Brady

From: → Gary Grossman [ggrossman@foresthomes.com]
Sent: Saturday, September 15, 2007 8:01 PM
To: Rod Brady
Cc: Ginger Griffith



Hi Rod,

I finally got a chance to look at Ginger's Sept 13 letter and the worksheets. It looks to me like she has accurately accounted for the various forms of compensation as laid out in our Feb 2, 2004 letter of agreement.

The long and the short of the Allenwood project is that all of our cash is tied up in standing inventory and we can no longer make the interest payments. Until we can get this inventory sold there simply is no cash to fund anything.

I have given our two hour discussion of last Saturday a great deal of thought. I think that you have clearly contributed value to the Battery Creek project, the low country line of homes, and deserve compensation for the time you spent in the capacity of the Forest Homes Business Development Officer. The easiest item to account for is the time you spent from the February Convention which started Feb 5 thru May 8th, which is the date that you stated that this was not working. In general I see that as Feb 1 thru May 15. I know you never actually agreed to this but our number for that job was \$80,000 a year which is 6666 a month times 3.5 months is \$23,000 for that period of time.

I have no real way of assigning the value that you contributed to the low country series (which I happen to think is a lot). I have not been able to figure out the Battery Creek issue yet, but that is only a time issue on my part.

On Monday, I will personally lend LRC \$10,000 so LRC can pay you a \$10,000 payment on the Business Development issue. I will also fund a similar amount next month. You can count on these two payments until we can reach an agreement on everything you are owed.

Please know I feel very badly that we have drifted this far apart. I value your friendship, I acknowledge your valuable contribution to my varied business interests thru the low country and clearly want to continue our business relationship on a fair basis going forward.

As to the franchise issue, I really need to get the business Performa's finished to see how juice is in these deals, and figure out how to bring some outside strategic investors to fund the start up. They way I now see the deal, I think it will be very difficult to get the necessary capital in the deal if your end is not a performance based earn in. I got the very real sense that you are unwilling to proceed on an "earn in" basis. I am very reluctant to have you to continue to spend time on the franchise issue until we can reach some kind of agreement. On the other hand I can not reach an agreement absent the Performa's in final form. Furthermore, I think you deserve to know the expectation and you will have to decide how achievable that expectation may be.

You can count on the \$23,000 at the rate of \$10,000 a month for this month and next. I hope to have sales and settlements at Allenwood by that time, and certainly expect to reach an overall accord on all compensation issues to date with in the next 30 days.

I will arrive HHI sometime WEDNESDAY evening. I have meetings all day Thursday and at this time have nothing scheduled for Friday. We are coming back to Pa on Sat or Sunday.

Gary L. Grossman
 President/C.E.O.
 Lancaster Redevelopment Corporation
 2138 Route 522
 Selinsgrove, Pa 17870
 570 374 0131

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,
Plaintiff,

vs.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company,
LLC, Lancaster Redevelopment Corp., and
Gary L. Grossman,
Defendants.

IN THE COURT OF COMMON PLEAS
C/A NO.: 2015-CP-07-2047

**THE DEFENDANT'S MOTION FOR
JUDGMENT NOT WITHSTANDING
THE VERDICT PURSUANT TO
RULE 50(b) SCRCivP**

TO: *THE HONORABLE BENTLEY PRICE*

YOU WILL PLACE TAKE NOTICE THAT the Defendant Gary L. Grossman, (the "Defendant")¹, hereby move this Court pursuant to Rule 50 of the South Carolina Rules of Civil Procedure for a Judgment Notwithstanding the Verdict and/or Vacation of Judgment to the extent the jury verdict and Judgment found the existence of a contract between the Plaintiff and the Defendant Gary L. Grossman where no contract was signed by Mr. Grossman and the testimony at trial clearly indicated that the only agreements in place between the Plaintiff were between him and the three Defendants which the Plaintiff dismissed at the trial of this case. Mr. Grossman admitted under oath that the three dismissed Defendants would be the parties with which Mr. Brady contracted. The only signed documents entered into the record were the Operating Agreements and Assignments of Interest signed for the entities Hilton Head Homes at Allenwood, LLC and Village Square Development Company, LLC. Those Assignments were signed by Mr. Brady and by Lancaster Redevelopment Corporation and not by Mr. Grossman individually. Pursuant to

¹ The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corporation were dismissed at the beginning of the trial of this matter on August 29, 2022.

Paragraph 9.5 of those Assignments, there was an "Entire Agreement" or merge clause setting forth the entire agreement between the parties, which the jury in this case clearly overlooked, which is an error, where there was no fraud or negligent misrepresentation pled.

Also, this motion is based upon the jury's verdict for conversion as well with the elements of which were not met as to Mr. Grossman individually as there was no testimony that Mr. Grossman had any care, custody, or control of any non-real estate belonging to the Plaintiff.

Further, this motion is based upon the South Carolina Statute of Frauds, S.C. Code § 32-3-10(5) requiring an agreement to be in writing and signed for any agreement that is not to be performed within the space of one year. Mr. Brady and Mr. Grossman both testified at trial that the work to be done by Mr. Brady in furtherance of the developments on Hilton Head Island could not be performed within the space of one (1) year and no one could produce any signed document from Mr. Grossman so that no action could be brought against him individually. At trial, Mr. Grossman stated and reiterated that the three dismissed corporate entities may have owed Mr. Brady money, but that he, individually, made no agreement with Mr. Brady.

Alternately, the Defendant moves for a new trial in this motion, too, pursuant to Rule 50(b) SCRCivP for the same reasons.

As the Defendant made a Motion for Directed Verdict pursuant to Rule 50(a) SCRCivP at the close of the Plaintiff's case, this Motion may be heard and the Defendants requests that the Court set a time and place for the hearing this matter.

This motion will be based on this notice of motion, all pleadings, papers and records in this action; the evidence presented at trial, and the trial transcripts which have been ordered from the Court Reporters.

Pursuant to Rule 11 SCRCivP, counsel certifies that consultation in this matter would serve no useful purpose.

September 7, 2022
Mt. Pleasant, SC

s/ G. Hamlin O'Kelley, III
BUIST BYARS & TAYLOR LLC
G. Hamlin O'Kelley, III
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
Hamlin.okelley@buistbyars.com
Attorneys for the Defendants

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,
Plaintiff,

v.

Hilton Head Homes at Allenwood,
LLC; Village Square Development
Company, LLC; Lancaster
Redevelopment Corp.; and Gary L.
Grossman,
Defendants.

COURT OF COMMON PLEAS
FOURTEENTH CIRCUIT

C.A. No. 2015-CP-07-02047

**Plaintiff's Motion to Dismiss
Hilton Head Homes at
Allenwood, LLC; Village
Square Development
Company, LLC; and Lancaster
Redevelopment Corp.**

Plaintiff moves, pursuant to Rule 41(a)(2), SCRPC, for an order dismissing his own claims against Defendants Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; and Lancaster Redevelopment Corp. **only**. These Defendants previously filed counterclaims against Plaintiff. While those counterclaims were pending, dismissal under Rule 41(a)(2) would not have been proper. The Court has since dismissed those counterclaims though. The dismissal came from the Honorable J. Mark Hayes' Order Granting Summary Judgment as to Counterclaims. Judge Hayes' order was affirmed by the Court of Appeals in its opinion dated March 9, 2022. The Defendants' window to appeal the Court of Appeals opinion has expired.

No valid reason exists why Plaintiff cannot voluntarily dismiss his claims against those three parties. The Defendants have refused to consent or stipulate to this dismissal anyway. Gary Grossman stated via his attorney that he refused to consent to Plaintiff's dismissal of these Defendants unless the Plaintiff also dismissed Mr. Grossman himself.

If Grossman wants these parties on the verdict form, he should have filed third-party claims against them. This would have been the proper mechanism, as Plaintiff contracted with Mr. Grossman only. Plaintiff never entered into a separate agreement with these corporate entities. Mr. Grossman might have delegated the duty to pay Plaintiff to these corporate Defendants. Those corporate entities might have failed to follow through

with Mr. Grossman's obligations to Plaintiff. But the corporate entities owed their duties to Mr. Grossman, not to Plaintiff. Thus, Mr. Grossman should have filed claims against them himself if he wanted them on the verdict form.

Accordingly, Plaintiff respectfully requests that this Court enter an order granting Plaintiff's dismissal of his own claims against Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; and Lancaster Redevelopment Corp. only, without prejudice. *See* Rule 41(a)(2), SCRCP.

Respectfully submitted,

CAPELL THOMSON, LLC

s/ Charles W. Thomson

Glynn L. Capell (16552)

GCapell@CapellThomson.com

Charles W. Thomson (101471)

CThomson@CapellThomson.com

102 Wappoo Creek Dr., Unit 8

Charleston, SC 29412

(843) 501-0423

Attorneys for Plaintiff

August 30, 2022

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

v.

Hilton Head Homes at Allenwood,
LLC; Village Square Development
Company, LLC; Lancaster
Redevelopment Corp.; and Gary L.
Grossman;

Defendants.

COURT OF COMMON PLEAS
FOURTEENTH CIRCUIT

C.A. No. 2015-CP-07-02047

**Memorandum in Support of
Plaintiff's Motion for
Summary Judgment as to
Defendants' Counterclaims**

To: G. Hamlin O'Kelley, Counsel for Defendants

The Plaintiff, by and through his undersigned attorneys, submit this Memorandum in Support of Plaintiff's Motion for Summary Judgment as to Defendants' Counterclaims.

FACTUAL AND PROCEDURAL BACKGROUND

This litigation is a simple payment claim with a complicated procedural history. Plaintiff entered into a contract with Defendants in 2004. Plaintiff was to provide construction, marketing, and real estate sales services in connection with the development of the Allenwood neighborhood on Hilton Head Island. In exchange, Defendants were to pay Plaintiff for those services and to share the profits made after the residential units were sold to the public. The project continued for approximately three years. Plaintiff oversaw the construction and sale of 103 residential units. As of September 2007, Defendants admitted to owing Plaintiff \$711,027 for profit sharing and for construction, marketing, and sales services. (*See* Affidavit of James Rod Brady and Exhibits A & B thereto, all of which attached as Exhibit 1 to this memo). After that, Defendants failed to pay Plaintiff any of this amount owed, and as a result, Plaintiff stopped working on the project. *Id.*

Plaintiff filed this lawsuit back in 2009, seeking payment of this debt. Despite having clearly admitted liability, Defendants filed counterclaims against Plaintiff. This case stalled for several years while Defendants were

involved with several other federal lawsuits that impeded their ability to pay the claim. Pursuant to Rule 40(j), SCRCP, this case was dismissed and subsequently restored.

Subsequent to the restoration, Plaintiff filed an identical version of this Motion for Summary Judgment as to Counterclaims more than two years ago, on January 5, 2017. The parties then mediated this case later in January 2017, before this motion was ever heard. At mediation, the parties entered into a provisional settlement agreement. As a result of the provisional settlement agreement, Plaintiff requested that the Clerk remove the hearing for this previously-filed Motion for Summary Judgment from the motions hearings roster, under the belief that the parties had reached a settlement. Unfortunately, however, the final settlement agreement was never signed.

After discovering that Defendants would never sign any reasonable iteration of the settlement agreement, Plaintiff filed a Motion for Status Conference, on May 10, 2018. Plaintiff's purpose for requesting the status conference was to obtain a hearing for this previously-filed Motion for Summary Judgment and to place this case back on track for trial. Evidence that Plaintiffs have been requesting a hearing for this motion for quite some time is shown on the body of that motion, attached as Exhibit 2 to this memo. The Honorable Carmen T. Mullen presided over the status conference. Although Plaintiff sought a hearing date for the older version of this motion during the status conference, the parties ultimately agreed to wait until the deposition of Defendants' employee Ginger Griffith took place, after which time Plaintiff was to refile this motion. That deposition took place on December 19–20, 2018. Plaintiff wasted little time afterward and filed this present version of the motion on January 8, 2019.

Subsequent to Plaintiff filing the present version of this Motion for Summary Judgment, this case was placed on the February 11 jury trial roster. Plaintiff respectfully requests that this motion be decided prior to that trial. In over nine years of litigation, Defendants have presented no evidence in support of their counterclaims. Those counterclaims should be

summarily dismissed. The infusion of the counterclaims into the trial would create unnecessary complications and likely confuse the jury.

LEGAL STANDARD

“When a motion for summary judgment is made and supported as provided in this rule, **an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.** If he does not so respond, summary judgment, if appropriate, shall be entered against him.” Rule 56(e), SCRCP (emphasis added). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 597 S.E.2d 181 (Ct.App.2004). “Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct. App. 2005). “Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” *Id.*

ARGUMENT

Defendants’ counterclaims are for breach of contract and unjust enrichment. Both causes of action rest upon two separate factual theories. The evidence in this case does not support either one of those theories.

Defendants’ first factual theory is that the money Defendants paid Plaintiff were mere “loans” and “advances” rather than payments for services rendered and profit-sharing promises. Yes, Defendants did pay Plaintiff money. Per Defendants’ own admission, however, this money was paid to Plaintiff for work that was already performed and for profits that had already been realized. (See Affidavit of James Rod Brady, including exhibits). Defendants never paid any loans or advances to Plaintiff. *Id.* More

importantly, Defendants have not presented a single piece of evidence suggesting any of their payments to Plaintiff was a loan or an advance.

Defendants' second factual theory is that Defendants had to pay third parties for services Plaintiff had contracted to perform. The parties here did contemplate that Plaintiff would need to hire third party contractors to help complete the large volume of work. Plaintiff did do that. And Defendants did pay those third parties. But Defendants already took a full accounting of all money paid for third party contractors, and still determined that they owed Plaintiff \$711,027 after deducting the money paid to third parties. (*See* Affidavit of James Rod Brady and Exhibits).

To recap, Defendants have shown evidence that they *paid* money to Plaintiff and to third parties. But they have shown no evidence whatsoever that Plaintiff *owes* Defendants anything in connection with these payments. To the contrary, Defendants submitted evidence of their own admission that *they* owe Plaintiffs money. *Id.*

Both of Defendants' factual theories of recovery consist of mere allegations. Mere allegations alone cannot defeat a motion for summary judgment. Defendants must support those allegations with some kind of testimony or affidavit. *See* Rule 56, SCRCP (quoted more fully above). Proving that Plaintiff would actually owe Defendants for the amounts that Defendants paid is a necessary element of Defendants' counterclaims. In over nine years of litigation, Defendants have not produced a single piece of evidence supporting their contention that Plaintiff owes them money for the amounts Defendants paid. Instead, Defendants produced evidence that they admitted liability to Plaintiff. (*See* Affidavit of James Rod Brady, Exhibits A & B). These counterclaims are an insult to the integrity of this Court.

CONCLUSION

Plaintiff respectfully requests that this Court issue an order granting Plaintiff's Motion for Summary Judgment as to Defendants' Counterclaims before Monday, February 11, 2019, when the trial of this case is scheduled to begin.

Respectfully submitted,

THE CAPELL LAW FIRM, LLC

s/ Charles W. Thomson

Glynn L. Capell (16552)

GCapell@CapellLaw.com

Charles W. Thomson (101471)

CThomson@CapellLaw.com

321 East Bay St.

Charleston, SC 29401

(843) 501-0423

Attorneys for Plaintiffs

February 4, 2019

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

v.

Hilton Head Homes at Allenwood,
LLC; Village Square Development
Company, LLC; Lancaster
Redevelopment Corp.; and Gary L.
Grossman,

Defendants.

COURT OF COMMON PLEAS
FOURTEENTH CIRCUIT

C.A. No. 2015-CP-07-02047

Affidavit of James Rod Brady



Before me, the undersigned authority, personally appeared James Rod Brady, who, being duly sworn, deposes and states as follows:

1. I am over the age of 18 and give this affidavit based upon my own personal knowledge.

2. I am the Plaintiff in the above-referenced matter.

3. In or around 2004, I contracted with Defendants to construct, market, and sell residences in two separate developments within the Allenwood neighborhood on Hilton Head Island. In addition to being paid for providing these services, I was also promised a share of the profits generated from the sale of the residences.

4. As of September 2007, I had overseen the construction of a total of 103 residential units in these two developments. I also participated in the marketing and sales of those units.

**AS TO DEFENDANTS' THEORY THAT AMOUNTS
THEY PAID ME WERE "LOANS" OR "ADVANCES"**

5. Ginger Griffith is an employee and staff accountant and treasurer of Defendants.

6. Ms. Griffith sent me a letter dated September 13, 2007. This letter is attached as Exhibit A to this Affidavit.

7. The September 13, 2007 letter demonstrates four separate amounts that, added together, represent the total amount that Defendants alleged to have paid me as of that date. Adding those four numbers together,

Defendants allege they had paid me a total of \$509,261.00 for services performed and profit sharing from the two developments.

8. All of these payments were made in connection with residential units that had already been completed and sold, not for future work or expenses.

9. After receiving Ms. Griffith's letter in September 2007, I retained an accountant, T. Gardiner Brower, to check behind the Defendants' numbers. Mr. Brower has since passed away.

10. I made a good faith effort to transmit to Mr. Brower any and all documents that would evidence any payment that Defendants made to me.

11. From the materials I gave him, Mr. Brower determined that Defendants had paid me a total of \$453,411.00—an amount slightly less than the \$509,261.00 that Defendants alleged to have paid me.

12. Whatever amount Defendants paid me for my services and profit sharing, the amounts paid were for work that was already complete. My construction work was complete. The houses had been sold. The single-purpose developer LLCs who owned the residential units had sold the units and made a profit, even after paying all accounts payable. None of the payments that Defendants made to me could be classified as a "loan" or an "advance."

13. I understand that Defendants alleged in this lawsuit that the amounts they paid to me constituted "loans" or "advances." This is patently not true, and Defendants' allegations in that regard constitute the utmost bad faith conduct. Defendants acknowledged at the time they made the payments that the payments were for services and profits already earned and realized. Defendants' September 13, 2007 letter corroborates the fact that these payments were not loans or advances. Ginger Griffith's testimony in this matter does as well. Ms. Griffith's testimony is attached as Exhibit B to this Affidavit.

14. If Gary L. Grossman or Lancaster Redevelopment Corp. made any "loans" or "advances" on this project, those loans or advances were not made to me. The two single-purpose developer LLC Defendants—Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC—took out loans to cover construction costs. I recall that those loans came from banks. Regardless, these two single-purpose entities had sold their

residential units, repaid all money loaned to them for construction costs, and had made a profit even after paying all accounts payable. This is my recollection, and it is also corroborated by the testimony of Ginger Griffith.

**AS TO DEFENDANTS' THEORY THAT I OWE THEM
FOR MONEY THEY PAID TO THIRD PARTIES**

15. Under the 2004 agreement, I was entitled to engage other contractors to assist me in constructing the residences at the two subject developments. I did end engage several contractors to assist me: Nick Grossman, Dan Clore, Rich Raven, and R.S. Davis.

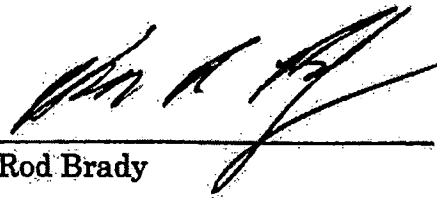
16. I understand that Defendants alleged in this lawsuit that I still owe Defendants money for the reimbursement of Defendants' payments to these contractors. As demonstrated below, this is not true.

17. The September 13, 2007 letter accounts for all payments I owed Defendants for those four contractors. I did not engage these contractors subsequent to when that letter was drafted. The testimony of Ginger Griffith, attached as Exhibit B, corroborates that there are no amounts that I owe Defendants for the services of these contractors that have not already been reimbursed and accounted for.

18. Even after accounting for the \$509,261.00 Defendants allege to have paid to me, and accounting for all amounts Defendants paid to the four contractors who helped me construct the subject residences, Defendants still admitted in the September 13, 2007 letter that the total unpaid amount due to me was a total of \$711,027.00.

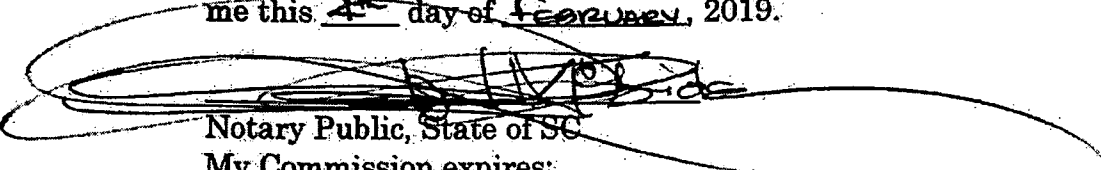
19. After that time, I never received another payment from Defendants for work completed and sold. As a result of Defendants breach of their agreement to pay me, I stopped working at the subject developments. Thus, it is not possible that I would have incurred additional expenses for which Defendants would be entitled to reimbursement after September 2007. It shocks the conscience that Defendants would allege that I owe them money.

The affiant says nothing further.

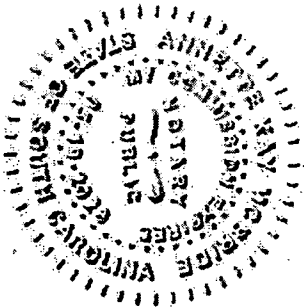


James Rod Brady

SWORN TO AND SUBSCRIBED before
me this 4th day of February, 2019.


Notary Public, State of SC
My Commission expires: _____

ANNETTE KAY MCBRIDE
Notary Public-State of South Carolina
My Commission Expires
May 19, 2026





Lancaster Redevelopment Corp.

2138 Route 522

Selinsgrove, PA 17870

570-374-0131 (Fax 570-374-6093)

September 13, 2007

James R. Brady
36 Timber Marsh Lane
Hilton Head, SC 29926-2787

Dear Rod,

Pursuant to your discussion with Mr. Grossman, I am transmitting our analysis of the Allenwood compensation to you under our February 2, 2004 letter of agreement.

As you are aware, there are two separate entities operating at Allenwood. Our analysis isolates compensation by company.

Village Square Development Co. LLC (townhomes)

2005 Income	\$708,890
2006 Income	<u>\$247,495</u>
Total to date	\$956,385

To date there was one distribution

Paid to you on 4/10/07 \$ 36,000

This distribution was based on cash available at the time of distribution. As you know, our cash is invested in standing inventory.

Under the February 2, 2004 letter of Agreement you are scheduled to be paid a construction management fee of \$1,250 per townhouse unit. According to our records we have built and delivered 26 townhouses to date. I interpret the February 2, 2004 letter of Agreement to make the construction fees payable at the time each unit settles.

It is my understanding that the expenses associated with hiring Nick Grossman and/or Dan Clore for supervisory work on your behalf are to be deducted. Mr. Grossman did advise me that expenses for Dan Clore would not be counted after a certain date, but I do not know what that date was, so I picked 5/31/07 which is when Nick went to Battery Creek.

The February 2, 2004 letter of Agreement also provides for a \$2,000 per townhouse sales commission to either you or Joy Walker depending on who actually sold the unit. I was subsequently informed that you and Joy agreed to split this commission at \$1,000 each for all sales made by you or her. I made all payments and constructed all commission accounting in accordance with that directive.

The construction management fee on the 26 sold and settled townhomes totals	\$32,500

The commissions on the 26 sold and Settled townhomes totals	\$26,000

<u>(Less the commission paid to date</u>	<u>(9,415)</u>
<u>(Less Nick Grossman salary/benefits/expenses 6/6 to 1/7)</u>	<u>(29,845)</u>
<u>(Less Dan Clore salary/benefits/expenses 6/6 to 1/7)</u>	<u>(30,746)</u>
<u>(Less Nick Grossman salary/benefits/expenses 1/1/07-5/31/07)</u>	<u>(24,870)</u>
<u>(Less Dan Clore salary/benefits/expenses 1/1/07-5/31/07)</u>	<u>(25,620)</u>

Current balance as of this date	(61,996)

There are construction management fees Due on 29 additional units @\$1,250	\$36,250

The net balance is a negative	(25,746)
For your sales commissions and construction management Fees for Village Square Development Co. LLC	

The net income for tax year 2005 was \$708,890 and \$247,495 in 2006 for a total taxable income of \$956,385. The LRC allocated income on this \$956,385 is 88% or \$841,619.

Under the terms of the February 2, 2004 letter of Agreement, Mr. Grossman was to be paid a priority distribution of 500 basis points for his guarantee. The average debt in 2005 was \$2,970,097 from January 1 until December 31, 2005 which calculates to a pro-rated guarantee fee of \$148,504.85 for 2005.

The average VSD to LLC debt balance for 2006 was \$5,402,733, which calculates to a guarantee fee of \$270,137.

The guarantee fee totals \$418,642 which reduces the LRC allocated pretax profits from \$841,619 to \$422,977.

Your allocated share of 50% would be \$211,488.

To date I have advanced \$128,000.

The balance of the 2005/2006 "incentive management fee" due to you is \$83,488.

Under the terms of the February 2, 2004 letter of Agreement, 100% of LRC loans or accounts receivables are to be paid as a priority distribution.

Mr. Grossman recently loaned Village Square Development Co. LLC \$124,750 and forest homes has past due receivables of \$173,700.

We must repay the \$173,700 past due receivables as a first priority. Mr. Grossman has indicated his intentions to allow funds to be paid to you ahead of his recent loans.

As to Hilton Head Homes at Allenwood

Your construction management fees on the 44 single family homes sold and settled total	\$220,000

The construction management fees on the 4 remaining single family homes total	\$ 20,000

<u>The expenses associated with Rich Raven</u>	<u>\$(17,941)</u>

<u>The expenses associated with RS Davis</u>	<u>\$(58,611)</u>

The 10% commission on the 44 single family Homes sold and settled to date total	<u>\$192,000</u>

Total earned as of this date	\$355,475

<u>Total paid as of this date</u>	<u>\$335,846</u>

Balance due on contribution fees and commissions	\$ 19,629

Mr. Grossman advises that this amount can be paid from the very next S.F. settlement if Art Long will consent.

The 2005 net taxable income was	\$1,212,191

The 2006 net taxable income was	<u>400,592</u>

Total taxable income of	\$1,612,783

The allocated income on this \$1,612,783 is 88% or	\$1,419,249

The average debt balance for 2005 was	\$1,993,865

The 500 basis point guarantee fee calculating to	\$ 99,693

The average debt balance for 2006 was	\$1,267,311

The 500 basis point guarantee fee calculating to	\$ 52,244

Therefore, net taxable income after the guarantee Fees for 2005/2006 is	\$1,267,312

Your 50% incentive management fee is	\$ 633,656

<u>Of this writing, the total amount due to you is</u>	<u>\$ 711,027</u>

Mr. Grossman directed me to access our ability to fund a \$10,000 a month draw against these funds. Given the carrying costs of the inventory, and past due receivables to Forest Homes from Allenwood, the monthly carrying costs at Cypress Harbor and our massive increase in overhead associated with the new plant, LRC simply cannot fund any additional monthly expenses.

I have attached a summary of the above information. If you have any questions or need any details, please feel free to call me anytime.

Very truly yours,

Ginger Griffith
Treasurer

Cc: Gary L. Grossman

EXHIBIT B

Excerpts from the Depositions of Ginger Griffith,
staff accountant for Defendants

1 the last paragraph I'm asking about here it starts with
2 "This distribution was based." That group of
3 paragraphs seems pretty straightforward to me. Do you
4 have any additional context or any reason that part
5 wouldn't be clear?

6 A. No.

7 Q. Next paragraph under that, it starts "Under
8 the February 2, 2004 letter of agreement." In the
9 middle of that paragraph, it says "I interpret February
10 2, 2004 letter." The "I" there, I assume that's you?

11 A. Yes.

12 Q. And all that says is "I interpret the
13 February 2, 2004 letter of agreement to construction
14 fees payable at the time each unit settles." I
15 interrupt that, and correct me if I'm wrong here, all
16 the fees, the earned fees that are laid out in this
17 letter forthcoming, we're talking about units here that
18 were all completed and sold, right?

19 A. Correct.

20 Q. All right. The next paragraph talks about
the expenses associated with hiring Nick Grossman and
Dan Clore are to be deducted. You are accounting
for -- it looks like, Nick Grossman and Dan Clore did
work on some of these units.
But you are accounting for the fees paid to

them in your calculations in this letter, right?
A. If they were paid any fees. I believe that
they were only paid their salary, not any additional
fees.
Q. Okay. On page 2 there's a group of -- I
hate to jump out of order here, but it's relevant to
the last paragraph. You see "Less the commission paid
to date," and then there's about four different items?
A. Yes.
Q. So it says "Salary, benefits and expenses
for Nick Grossman and Dan Clore," right?
A. Right.

13 Q. And I don't know if you have a calculator
14 handy, but I added up those four numbers. And it looks
15 like \$111,081 is being deducted from the amount that
16 you are calculating that Rod is owed?

17 A. Yes.

Q. Back to the last paragraph on the first
page, any -- would there have been anything owed to
Nick Grossman or Dan Clore for work performed on these
town homes that were already completed and sold that
would not had been taken account for in this letter?
A. I don't believe so.
24 Q. Top photograph on the next page, I know this
25 is tedious, but just any reason that it doesn't clearly

1 state what it says? Is there any additional context or
2 anything we need to understand that paragraph?

3 A. No.

4 Q. For the record, we don't have to get that
5 detailed tomorrow. This is my one chance to flesh out
6 everything there is to know about this letter. The
7 paragraph after that, you start to lay out some
8 numbers. We already went over this:

"The construction management fee on the 26
sold and settled town homes," we're talking about units
that are already closed out here, right?
A. Right.
Q. There wouldn't have been any reason for Nick
or Dan to have to go back out to these units to your
knowledge?
A. Not to my knowledge.

17 Q. Okay. We added up the total monies paid to
18 Nick and Dan for the services. This is my words, not
19 yours. But I added them up myself. Those four numbers
20 added to \$111,081. That number exceeds what Rod is
21 even being paid for his construction management fees,
22 right?

23 A. It exceeds, is that what you said?

24 Q. Correct.

25 A. Yes.

1 Q. On the rest of this page, same question: Is
2 there -- I mean, we can read it and see what the letter
3 says. But is there any assistance you can offer or
4 additional context that would clarify what's being said
5 in there or just the letter says what it says?

6 A. I believe it says what it says. There's a
7 lot of numbers to take in.

8 Q. The bottom, it says that "The balance of
9 2005/2006 incentive management fee," what does
10 incentive management fee mean to you here? What
11 services is it for?

12 A. To me, it means Rod managing the whole
13 property and the construction of the units. He would
14 be offered a fee.

15 Q. The same process on the next page, it starts
16 with "Under the terms," and all the way down to
17 "Balance due on contribution fees and commissions," is
18 there anything in there that needs clarification or
19 just the letter says what it says?

20 A. The letter says what it says.

21 Q. Okay. Below that it says "Mr. Grossman
22 advises that this amount can be paid from the very next
23 S.F. settlement if Art Long will consent." Do you know
24 if that balance was ever paid to Mr. Brady?

25 A. I don't know without looking into further

1 A. Yes.
 2 Q. Okay. Let's go back and summarize that more
 3 distinctly in a second. But first, look at the next
 4 page, top paragraph of, I believe, that's the third
 5 page of the letter -- fourth page. I'm sorry. It
 6 says, "Mr. Grossman directed me to access our ability,"
 7 right?
 8 A. Yes.
 9 Q. Do you see that paragraph? And what's going
 10 on here is that, if I can distinctly paraphrase that,
 11 that paragraph is, yes, Mr. Brady, you're owed money,
 12 the \$711,000 and change, but Lancaster Redevelopment
 13 Corporation is having financial troubles. And we can't
 14 -- we don't have the funds to pay it all to you right
 15 now. So what we are going to do is pay you \$10,000 a
 16 month.
 17 Is that essentially what that paragraph is
 18 saying?
 19 A. Yes.
 20 Q. And you don't recall one way or the other
 21 whether any of those monthly payments were made to Rod
 22 after September of 2007?
 23 A. I don't recall, no.
 24 Q. Okay. So Rod was already owed the money,
 25 right? He'd already earned it, right?

1 A. Yes.
 2 Q. And the purpose of getting on this payment
 3 plan was because Lancaster Redevelopment Corporation
 4 had financial issues, right?
 5 A. Yes.
 6 Q. And the purpose of those financial -- or the
 7 source of those financial issues were projects other
 8 than the two at issue here, correct?
 9 A. One of the issues was past due receivables
 10 from the Allenwood project.
 11 Q. Would those past due receivables, would
 12 those have been accounted for when you calculated the
 13 net income of that LLC?
 14 A. Yes.
 15 Q. Okay. So we've already accounted for those
 16 past due receivables within the number owed to Rod,
 17 right?
 18 A. Yes.
 19 Q. Okay. And then the other reason listed, it
 20 says, it seems as if the Lancaster Redevelopment
 21 Corporation is having problems with carrying costs of
 22 Cypress Harbor. That project had nothing to do with
 23 Village Square Development, right?
 24 A. No.
 25 Q. And it had nothing to do with the Allenwood

1 project, right?
 2 A. No.
 3 Q. And it had nothing to do with Rod Brady,
 4 right?
 5 A. I don't believe so. I personally don't
 6 remember the Cypress Harbor project.
 7 Q. Right. And it doesn't appear to be relevant
 8 to this case, I don't think, other than the fact that
 9 it seems to be the source of why Lancaster
 10 Redevelopment Corporation was having trouble paying Mr.
 11 Brady. And this was written in the letter by you,
 12 right?
 13 A. Yes.
 14 Q. And you just don't remember all the complete
 15 details of -- behind that -- those problems, right?
 16 A. Correct.
 17 Q. And it also mentions a "massive increase in
 18 overhead associated with the new plant." That didn't
 19 have anything to do with Rod Brady, right?
 20 A. No.
 21 Q. Okay. So to recap, the sales have been
 22 final, right, of the properties built on these two
 23 neighborhoods, right?
 24 A. Yes.
 25 Q. And the LLC's, that money from the

1 purchasers of the homes, right?
 2 A. Yes.
 3 Q. And there was a profit after that, right?
 4 A. Yes.
 5 Q. Okay. Lancaster Redevelopment's portion of
 6 that profit got accounted for, right?
 7 A. Right.
 8 Q. And Mr. Grossman's individual profits from
 9 those transactions got accounted for, right?
 10 A. Yes.
 11 Q. And after all that, Mr. Brady was still owed
 12 a big chunk of money out of those profits, right?
 13 A. Right.
 14 Q. For work that has already been earned,
 15 right?
 16 A. Right.
 17 Q. We're not projecting future profits here,
 18 right?
 19 A. Correct.
 20 Q. Okay. And Mr. Brady was not paid that money
 21 because Lancaster Redevelopment Corporation had
 22 problems on other projects that had nothing to do with
 23 Rod Brady, right?
 24 A. Some of the problems had nothing to do with
 25 Allenwood.

1 Q Okay. Okay. All right. So and let's
 2 summarize the specific numbers really quickly. So the
 3 total was 711,024 -- or 27 -- I'm sorry. Right?
 4 A Yes.
 5 Q And of that 633,656, that was owed to Rod as
 6 an incentive management fee or basically a profit
 7 sharing from the Allenwood project, right?
 8 A Right.
 9 Q Already earned, correct?
 10 A Correct.
 11 Q Homes already sold, right?
 12 A Right.
 13 Q LLCs are already paid by the home
 14 purchasers, right?
 15 A Yes.
 16 Q And the LLCs made a profit, right?
 17 A Yes.
 18 Q Okay. And then there is an amount 19,629
 19 owed to Rod as a construction management fee at
 20 Allenwood. And that money was already earned, right?
 21 A Right.
 22 Q And the construction was already completed
 23 at those homes, too, correct?
 24 A Correct.
 25 Q All right. And the 83,488 portion was owed

1 to Rod as his incentive management fee for the Village
 2 Square Development project, right?
 3 A Yes.
 4 Q And just like in Allenwood, those fees are
 5 already earned, right?
 6 A Yes.
 7 Q And the homes are already sold?
 8 A Yes.
 9 Q Okay. And to be fair, Rod owed Lancaster
 10 Redevelopment Corporation, or whoever the contracting
 11 parties were, \$25,746. And that was for the difference
 12 between his construction management fees and the money
 13 he owed for the help he retained to assist him with
 14 that construction, right, at the Village Square
 15 Development project, right?
 16 A Correct.
 17 Q Okay. But the number that he owed to other
 18 people was put into the total, right?
 19 A Yes.
 20 Q And that total, again, that was owed to Rod
 21 was \$711,027 as of September 13, 2007?
 22 A Right.
 23 Q And the amount accounted for for his help
 24 totalled between Nick Grossman, Dan Clore, Rich Raven
 25 and RS Davis we've accounted for \$187,633 between the

1 four of them if you add up all the individual numbers.
 2 Does that sound about right to you?
 3 A Yes, it does.
 4 Q Yeah. I'm not asking you to do math on the
 5 spot. But that's the numbers that I came up with
 6 anyhow. That number also took into account that
 7 Mr. Grossman was getting consideration in exchange for
 8 a personal guarantee. And he had -- we had accounted
 9 for \$300,441.85 to be owed to him, right?
 10 A Yes.
 11 Q Already accounted for within the number owed
 12 to Rod?
 13 A Yes -- owed to Gary.
 14 Q Okay. Yeah, so, essentially just to drive
 15 the point home one last time, you concluded on
 16 September 13, 2007 that the contracting parties owed
 17 Rod \$711,027, right?
 18 A Yes.
 19 Q And you didn't just throw that letter
 20 together, right?
 21 A No.
 22 Q And you're a professional in the accounting
 23 business, right?
 24 A Right.
 25 Q And you made a good faith effort to get

1 these numbers right, didn't you?
 2 A Yes.
 3 Q And you haven't discovered any errors in
 4 here now since the time you wrote that letter?
 5 A No.
 6 Q Okay. And you do not have any evidence
 7 showing that Lancaster Redevelopment Corporation, Gary
 8 Grossman or any other affiliated entity paid any money
 9 to Rod subsequent to this September 13, 2007?
 10 A I don't know if anything has been paid to
 11 Rod or not.
 12 Q Right. But the question is, you don't have
 13 any evidence showing it, right?
 14 A Right.
 15 MR. THOMSON: Okay. Those are all the
 16 questions I have. Mr. O'Kelley, if would like to
 17 interview Ms. Griffith, you have may take that
 18 opportunity now.
 19 MR. O'KELLEY: I thought this is a
 20 deposition, not an interview.
 21 MR. THOMSON: It's a de bene esse deposition
 22 for purpose for use at trial.
 23 * * * * *
 24 EXAMINATION
 25 BY MR. O'KELLEY:

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

vs.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company,
LLC, Lancaster Redevelopment Corp., and
Gary L. Grossman,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2015-CP-07-2047

**THE DEFENDANTS MEMORANDUM
IN OPPOSITION TO THE
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

TO: CHARLES W. THOMPSON, ESQ.

The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman, by and through undersigned counsel, submit this Memorandum in Opposition to Plaintiff's Motion for Summary Judgment.

STANDARD OF REVIEW

Under Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005); *South Carolina Electric and Gas Co. v. Town of Awendaw*, 359 S.C. 29, 596 S.E.2d 482 (2004). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the nonmoving party. *See Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Lt. J.A. Fleming, Jr. v. Boykin Rose and James Caulder*, 350 S.C. 488, 567 S.E.2d 857 (2002). The Court in South Carolina has long recognized that summary judgment is a "...drastic remedy" that must be carefully invoked as to not improperly deprive any person of a trial of the disputed facts in a case.

Frank Joe Baughman, et al. v. American Telephone and Telegraph Co., et al., 306 S.C. 101, 410 S.E.2d 537 (1991).

FACTS AND ARGUMENT

This matter comes before the Court upon the motion of the Plaintiff that there are no triable issue of facts in this matter regarding the Defendants Counterclaim as set forth in their motion. A copy of the Defendants' Answer and Counterclaim is attached hereto as Exhibit "A". Granting summary judgment in this matter would not be appropriate.

The Defendants Hilton Head Homes at Allenwood, LLC, and Village Square Development Company, LLC, are limited liability companies organized and existing pursuant to the laws of the State of South Carolina, which formerly developed two neighborhoods on Hilton Head. (*Id.*)

The Defendant Lancaster Redevelopment Corporation is a corporation organized and existing pursuant to the laws of the State of Pennsylvania and authorized to conduct business in South Carolina, and the Defendant Gary L. Grossman is a citizen and resident of the State of Pennsylvania.

Pursuant to the terms and conditions of an agreement with Lancaster Redevelopment Corporation, the Plaintiff was to have provided services to Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation in connection with the construction, sales, and marketing of a certain development in Beaufort County, South Carolina. The Plaintiff was given sums as loans and as advances for work that should have been performed by the Plaintiff, which work as not performed by the Plaintiff, prior to any distributions being made or prior to any commissions or payments being given to the Plaintiff. *Id.*

The Plaintiff often informed the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation that he could not cover the workload required of him in order to receive commissions and other compensation.

While he was to have been furthering the business of Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation, the Plaintiff failed to perform work required of him and third parties had to be employed to complete the work the Plaintiff was going to allegedly complete. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation made numerous payments to the Plaintiff in spite of his inability to perform as promised and as relied upon by Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation.

Because of his failure to perform, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation seek to recover all payments made to the Plaintiff in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars. *Id.*

Ginger Griffith, who worked as the treasurer for Lancaster Redevelopment Corporation gave her deposition in this matter on December 20, 2018. (Depo., p. 7). A copy of her deposition transcript is attached hereto as Exhibit "B" and incorporated by reference herein.

Ms. Griffith testified that as of September of 2007, the housing market was falling apart and there was standing inventory that could not be sold (Depo. p. 37). There were foreclosures against the Defendants around this time. (Depo. p. 38). There could be no payments to Mr. Brady accordingly.

Ms. Griffith testified that Mr. Brody was advanced sums during his employment by Hilton Head Homes and by Village Square against fees earned. *Id.* He was never an employee of Lancaster Redevelopment Corporation. *Id.* at 38-39. These advances were never repaid to the Defendants. Any incentive management fees were to be paid after the initial debts from Lancaster Redevelopment or Mr. Grossman were repaid. (Depo., p. 37)

The Plaintiff's conclusory statements that the amounts claimed by the Defendants are not loans are advances are just that: his opinion. This is the ultimate issue of fact. Were these payments loans, as the Defendants contend, or were these payments due?

The Defendants have acknowledged that due to the larger economic problems, there could be no payments made to Mr. Brady.

In correspondence to Mr. Brady of September 13, 2007, Ms. Griffith wrote

Given the carrying costs of the inventory, and past due receivables to Forest Homes from Allenwood, the monthly carrying costs at Cypress Harbor and our massive increase in overhead associated with the new plant, LRC [Lancaster Redevelopment Corporation] simply cannot fund any additional monthly expenses.

(Letter of 9/13/2007, Ex. "A" to Brady Affidavit)

There were numerous advances made include "monthly expenses" as set forth in the letter which the Defendants contend are indeed loans and advances made, for which Mr. Brady is now responsible for reimbursing the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation. A difference of opinion as to what those matters are called does not warrant the granting of judgment as a matter of law as to these Defendant's counterclaims.

The Defendants would respectfully request that this Court deny the Plaintiff's motion accordingly and allow the matter to proceed to trial instead of invoking a drastic, appealable remedy. The Plaintiff seems greatly concerned about any future delay. Should the Court grant the

Plaintiff's motion, there will have to be an appeal, which the Defendants hope will not be necessary.

Respectfully submitted,

Feb. 4, 2019
Mt. Pleasant, SC

s/ G. Hamlin O'Kelley, III
BUIST BYARS & TAYLOR LLC
G. Hamlin O'Kelley, III
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
Hamlin.okelley@bustbyars.com
Attorneys for the Defendants

EXHIBIT "A"

ELECTRONICALLY FILED - 2019 Feb 04 12:17 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2015-CP-07-2047

James R. Brady,

Plaintiff,

vs.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company,
LLC, Lancaster Redevelopment Corp., and
Gary L. Grossman,

Defendants.

**SUMMONS
FOR THE DEFENDANTS' ANSWER
AND COUNTERCLAIM**

2015 SEP 14 PM 3:33
JERAMIAH ROSEMEAD
BEAUFORT COUNTY S
CLERK OF COURT

TO: *THE ABOVE-NAMED PLAINTIFF*

YOU ARE HEREBY SUMMONED and required to reply to the Defendants' Answer and Counterclaim in this action a copy of which is herewith served upon you, and to serve a copy of your Reply upon the undersigned attorneys at 652 Coleman Boulevard, Suite 200, Mt. Pleasant, South Carolina 29464, within thirty (30) days from service hereof, exclusive of the day of such service; and, if you fail to reply to the Answer and Counterclaim within the time aforesaid, judgment by default will be rendered against you, and the Defendants in this action will apply to the Court for the relief demanded.

Mt. Pleasant, SC

September 1, 2015

G. Hamlin O'Kelley, III
SC Bar No. 15419

Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, South Carolina 29464
(843) 856-4488
Hamlin.okelley@buistbyars.com

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CASE NO. 2015-CP-07-2047

James R. Brady,

Plaintiff,

vs.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company,
LLC, Lancaster Redevelopment Corp.
and Gary L. Grossman,

Defendants.

**ANSWER AND COUNTERCLAIM OF THE
DEFENDANTS**
 2015 SEP 14 PM 3:33
 CLERK OF COURT
 BEAUFORT COUNTY, S.C.
TO: GLYNN L. CAPELL, ESQ.
CHARLES W. THOMPSON, ESQ.

The Defendant(S) Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp. and Gary L. Grossman (the "Defendants") by and through their undersigned counsel, answering the Complaint of the Plaintiff James R. Brady and setting forth their Counterclaims against James R. Brady allege and state as follows:

1. Each and every allegation of the Plaintiff's Complaint not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Defendants deny same and demand strict proof thereof.

2. The Defendants admit Paragraph 1 of the Plaintiff's Complaint.

3. The Defendants admit the allegations of Paragraphs 2, 3, and 4 of the Plaintiff's Complaint.

4. The Defendants admit only so much of Paragraph 5 of the Plaintiff's Complaint that alleges the Defendant Gary L. Grossman is a resident of the State of Pennsylvania. The Defendants deny the remaining allegations of said Paragraph and would allege and show that he never conducted business in Beaufort County regarding this matter in his individual capacity.

5. The Defendants are not required to answer the allegations contained in Paragraph 6 of the Plaintiff's Complaint as said allegations constitute legal conclusions.

6. The Defendants deny the allegations of Paragraphs 7, 8, and 9 and demand strict proof thereof.

7. The Defendants are without sufficient information to form a belief as to the allegations of Paragraph 10 of the Plaintiff's Complaint, and, therefore, denies same and demands strict proof thereof.

8. In answering Paragraph 11 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 7 above as though repeated herein verbatim.

9. The Defendants admit only so much of Paragraph 12 of the Plaintiff's Complaint that alleges the Plaintiff at one time worked for the Defendant Hilton Head Homes at Allenwood, LLC. The Defendants deny the remaining allegations of Paragraph 8 of the Plaintiff's Complaint and demand strict proof thereof.

10. The Defendants deny the allegations of Paragraphs 13, 14, and 15 of the Plaintiff's Complaint and demand strict proof thereof.

11. In answering Paragraph 16 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 10 above as though repeated herein verbatim.

12. The Defendants deny the allegations of Paragraphs 17, 18, 19, 20, and 21 of the Plaintiff's Complaint and demand strict proof thereof.

13. In answering Paragraph 22 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 10 above as though repeated herein verbatim.

14. The Defendants deny the allegations of Paragraphs 23, 24, 25, and 26 of the Plaintiff's Complaint and demand strict proof thereof.

FOR A FURTHER ANSWER
AND BY WAY OF AN AFFIRMATION DEFENSE AND
MOTION TO DISMISS

15. The Defendants would allege and show that the Plaintiff's Complaint fails to state facts sufficient upon which relief can be granted, and, as such, the Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) SCRPC.

FOR A FURTHER ANSWER
AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE

16. The Defendants would allege and show that the Plaintiff's own inequitable actions, including non-performance of the duties of his job, act as a complete bar to recover, and, as such, the Plaintiff's Complaint should be dismissed.

FOR A FURTHER ANSWER
AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE

17. The Defendants would allege and show that the Plaintiff's Complaint is barred by the doctrines of waiver, estoppel, and laches as the Plaintiff failed to act when he should have acted in protecting any interest he may have had regarding these claims, if any, and none of which are admitted, as set forth in his Complaint.

FOR A FURTHER ANSWER
AND BY WAY OF A FOURTH AFFIRMATIVE DEFENSE

18. The Defendants would allege and show that the Plaintiff knew or should have known that no fees, compensation, remuneration, or payment of any kind would be paid to him for work not performed by him and that he would only be paid for work in furtherance of the business of Hilton Head Homes at Allenwood, LLC.

FOR A FURTHER ANSWER
AND BY WAY OF A FIFTH AFFIRMATIVE DEFENSE

19. The Defendants would allege and show that the Plaintiff had no reliance upon Gary L. Grossman as any employer and bases his entire baseless case on one letter from Mr. Grossman knowing that he was to further the business of Hilton Head Homes at Allenwood, LLC, and not that of Mr. Grossman, individually.

FOR A FURTHER ANSWER
AND BY WAY OF A SIXTH AFFIRMATIVE DEFENSE
AND BY WAY OF A COUNTERCLAIM

20. The Defendants repeat and reallege Paragraphs 1 through 19 above as though repeated herein verbatim.

21. The Defendants Hilton Head Homes at Allenwood, LLC, and Village Square Development Company, LLC, are limited liability companies organized and existing pursuant to the laws of the State of South Carolina.

22. The Defendant Lancaster Redevelopment Corporation is a corporation organized and existing pursuant to the laws of the State of Pennsylvania and authorized to conduct business in South Carolina.

23. The Defendant Gary L. Grossman is a citizen and resident of the State of Pennsylvania.

24. The Plaintiff James R. Brady is a resident of Beaufort County, South Carolina.

25. Pursuant to the terms and conditions of an agreement with Lancaster Redevelopment Corporation, the Plaintiff was to have provided services to Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation in connection with the construction, sales, and marketing of a certain development in Beaufort County, South Carolina.

26. The Plaintiff was given sums as loans and as advances for work that should have been performed by the Plaintiff, which work was not performed by the Plaintiff, prior to any distributions being made or prior to any commissions or payments being given to the Plaintiff.

27. The Plaintiff often informed the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation that he could not cover the workload required of him in order to receive commissions and other compensation.

28. While he was to have been furthering the business of Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation, the Plaintiff failed to perform work required of him and third parties had to be employed to complete the work the Plaintiff was going to allegedly complete.

29. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation made numerous payments to the Plaintiff in spite of his inability to perform as promised and as relied upon by Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation.

30. Such a failure to perform constitutes a breach of contract entitling the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation to recover all payments made to the Plaintiff in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

31. The Plaintiff is not entitled to retain the benefit of these payments and advancements due to his breach of his agreement with Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation, and these Defendants

are entitled to actual damages in excess of Six Hundred Thousand and No/100 (\$600,000.00)

~~Dollars in amounts to be determined at the trial of this case.~~

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

32. The Defendants repeat and reallege Paragraphs 1 through 31 above as though repeated herein verbatim.

33. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation had valid contract with the Plaintiff for services which the Plaintiff failed to provide.

34. Such a failure constitutes a breach of contract for which the Plaintiff has no legal excuse and which breach has caused the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation to suffer damages in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

35. As a direct and proximate result of the Plaintiff's breach of contract, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation are entitled to actual damages in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars in amounts to be determined at trial.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)

36. The Defendants repeat and reallege Paragraphs 1 through 35 above as though repeated herein verbatim.

~~37. Despite receiving payments, the Plaintiff failed and refused to perform pursuant to his~~
agreement with the Defendants Hilton Head Homes at Allenwood, LLC, Village Square

Development Company, LLC, and Lancaster Redevelopment Corporation and was compensated in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

38. The Plaintiff has been unjustly enriched by having received these payments and it would be inequitable and unjust for the Plaintiff to retain the value of the payments made in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

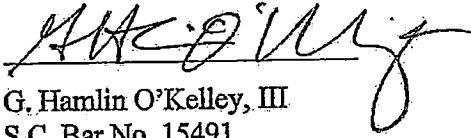
39. As a direct and proximate result of this unjust enrichment, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation are entitled to recover damages against the Plaintiff in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars in amounts to be determined at trial of this case.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corporation, and Gary L. Grossman pray this Court enter its Order as follows:

1. Dismissing the Plaintiff's Complaint;
2. Awarding the Defendants all reasonable attorneys' fees and costs;
3. Awarding the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corporation, damages in the minimum amount of Six Hundred Thousand and No/100 (\$600,000.00) Dollars and other amounts to be determined at trial; and
4. Awarding any and all such further relief as this Court may deem just and proper.

BUIST, BYARS & TAYLOR, LLC

Mount Pleasant, South Carolina

Sept. 1, 2015By: 

G. Hamlin O'Kelley, III

S.C. Bar No. 15491

652 Coleman Blvd., Suite 200

Mt. Pleasant, SC 29464

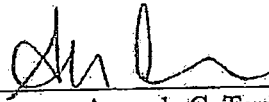
(843) 856-4488

Hamlin.okelley@buistbyars.com

CERTIFICATE OF MAILING

I hereby certify that on September 1, 2015, a copy of the foregoing *Summons, Answer and Counterclaim of the Defendants* was mailed, postage prepaid, to all counsel of record in this matter, as follows.

Mr. Glynn L. Capell, Esq.
The Capell Law Firm, LLC
PO Box 6628
Hilton Head, SC 29938



Amanda C. Taylor
Paralegal to G. Hamlin O'Kelley, III

SEP 01 14 PM 3:53
BEAUFORT COUNTY, S.C.
CLERK OF SUPERIOR COURT

EXHIBIT "B"

Deposition of Ginger Griffith

1 STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
 2 COUNTY OF BEAUFORT * FOURTEENTH CIRCUIT
 3 * C.A. No. 2015-CP-07-02047
 4 James R. Brady, *
 5 Plaintiff, *
 6 v. *
 7 Hilton Head Homes at *
 Allenwood, LLC; Village
 8 Square Development Company, *
 LLC; Lancaster Redevelopment
 9 Corp.; and Gary L. *
 Grossman,

10 *
 Defendants.

11 *

12
 13 * * * * *

14 December 20, 2018

15 * * * * *

16 Videotaped deposition of GINGER GRIFFITH,
 17 held in the offices of Premier Reporting, LLC, 112
 18 Market Street, Suite 406, Harrisburg, Pennsylvania
 19 17101, commencing at 9:10 a.m., on the above date,
 20 before Tracy Dominico, a Professional Court Reporter
 21 and Notary Public of the Commonwealth of Pennsylvania.

22

23

24

25

Deposition of Ginger Griffith

1 APPEARANCES:

2 THE CAPELL LAW FIRM, LLC
3 321 East Bay Street
4 Charleston, South Carolina 29401.
BY: CHARLES W. THOMSON, ESQUIRE
(Via videoconference)
(843) 501-0423

5 Counsel for the Plaintiff
6 BUIST, BYARS & TAYLOR, LLC
652 Coleman Boulevard, Suite 200
7 Mt. Pleasant, South Carolina 29464
BY: G. HAMLIN O'KELLEY, III, ESQUIRE
8 (Via telephone)
(843) 284-1408
9 Counsel for the Defendants

10

Also Present:

11

Kenneth Haase, Videographer

12

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Deposition of Ginger Griffith

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4		By Mr. O'Kelley	36

5

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EXHIBITS

7

NO.	DESCRIPTION	PAGE

8

(None.)

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Deposition of Ginger Griffith

P R O C E E D I N G S

(Proceedings commenced at 9:10 a.m.)

* * * * *

THE VIDEOGRAPHER: Time on the video monitor is 9:10 a.m. My name is Ken Haase for Clark and Associates. This begins the videotaped deposition of Ginger L. Griffith testifying in the matter of James Rod Brady versus Hilton Head Homes at Allenwood, LLC, et al. In the Court of Common Pleas, Fourteenth Circuit, Beaufort County, South Carolina, Case Number 2015-CP-07-02047, taken at Premier Reporting, 8 South Hanover Street, Suite 201, Carlisle, Pennsylvania. Today's date is December 20, 2018.

Will counsel please identify yourselves and state who you represent.

MR. THOMSON: Charles Thomson. I represent the Plaintiff James Rod Brady.

MR. O'KELLEY: And this is Hamlin O'Kelley. I represent the Defendants in this matter.

THE VIDEOGRAPHER: Will the court reporter please identify herself and swear in or affirm the witness.

THE COURT REPORTER: Tracy Dominico. Will you raise your right hand?

* * * * *

ROA 86

Clark & Associates, Inc.

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Deposition of Ginger Griffith

1 GINGER GRIFFITH, after having been duly
2 sworn/affirmed to tell the truth, the whole truth and
3 nothing but the truth, testified as follows:

4 THE VIDEOGRAPHER: Please begin.

5 MR. THOMSON: Ready to go?

6 THE VIDEOGRAPHER: Yep.

7 * * * * *

8 EXAMINATION

9 BY MR. THOMSON:

10 Q. Ms. Griffith, as you know, I'm Charles
11 Thomson. I represent James Rod Brady. Mr. Brady has
12 brought suit against Gary Grossman, Lancaster
13 Redevelopment Corporation and two other single-purpose
14 LLCs in South Carolina for failure to pay money owed to
15 him on two development projects down there, two
16 neighborhood development projects.

17 Can you please, to start out, state your
18 full name for the record?

19 A. Ginger L. Griffith.

20 Q. Okay. Ms. Griffith, thank you for coming
21 today. The main purpose is there's a piece of evidence
22 in this matter, a 2007 letter written by you. And I
23 would like for you to authenticate that letter and
24 educate the jury about the contents.

25 But before we get going on that, just a
ROA 87

Deposition of Ginger Griffith

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1 reminder: You're under oath subject to the penalty of
2 perjury. This, again, the purpose is to educate the
3 jury today, so they are our audience here. We are
4 doing this by video because you being in Selinsgrove,
5 Pennsylvania, this seemed to be a better option than
6 forcing you to travel to South Carolina for -- to
7 testify at the trial in this matter.

8 So we'll get started by briefly going
9 through your background. You were born and raised in
10 Selinsgrove, right?

11 A. Correct.

12 Q. And you went to high school there in
13 Pennsylvania?

14 A. Yes.

15 Q. Okay. And then after high school, you went
16 to Williamsport Community College, right?

17 A. That's correct.

18 Q. And you earned an associate degree in
19 accounting there in 1985?

20 A. That is correct.

21 Q. Okay. And from 1985 to 1998, you worked
22 accounting jobs for two separate companies?

23 A. Yes, yes.

24 Q. Then in 1998, you began working for Gary
25 Grossman's company, Lancaster Redevelopment

Deposition of Ginger Griffith

1 Corporation, right?

2 A. That is correct.

3 Q. And that was 20 years ago obviously. And
4 both Mr. Grossman and Lancaster Redevelopment
5 Corporation are Defendants in this matter, right?

6 A. Yes.

7 Q. And you continued to be -- you were a
8 treasurer for Lancaster Redevelopment Corporation?

9 A. Yes, I held that position.

10 Q. Okay. And you held that position until June
11 of 2010, right?

12 A. Yes.

13 Q. That position expired because Lancaster
14 Redevelopment Corporation just went under?

15 A. Basically, yes.

16 Q. It's not a technical term, but it's probably
17 parlance at least. Okay. And then after June 2010,
18 you continued to be employed by one of Mr. Grossman's
19 companies. But it had a new name of Building Solutions
20 Since 1977, LLC, right?

21 A. That's correct.

22 Q. And that Since 1977 is part of the company
23 name, not a descriptive -- not something I was saying
24 to be descriptive, right?

25 A. Correct, it's part of the company name.

Deposition of Ginger Griffith

1 Q. Right. Okay. So you're not a CPA?

2 A. No.

3 Q. Right?

4 A. No.

5 Q. But you are a professional in the accounting
6 field?

7 A. Yes.

8 Q. And just to repeat, you've been working
9 under the direction of Mr. Grossman since 1998 for 20
10 years, first under Lancaster Redevelopment Corporation,
11 now under a different company name, right?

12 A. That is correct.

13 Q. Why did Lancaster Redevelopment Corporation
14 go out of business?

15 A. The housing market had gone downhill. And
16 the company just did not have enough income to pay
17 debts. It just -- it was failing. And Gary felt it
18 best to shut down that company. The property was sold
19 by the bank that held the mortgage to another
20 individual.

21 So Gary reorganized as a new company.

22 Q. Okay. So is it a correct summary that
23 pretty much the debts outweighed the assets, right?

24 A. Correct.

25 Q. All right. So you were treasurer for

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Deposition of Ginger Griffith

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1 Lancaster Redevelopment Corporation and also for the
2 new company. And you do the accounting for those
3 companies, right?

4 A. Yes.

5 Q. And as part of your job for those companies,
6 you also serve doing the accounting for various
7 single-purpose LLCs owned and directed by either
8 Lancaster Redevelopment Corporation or the Building
9 Solutions company?

10 A. Yes. Most of them are not under the
11 umbrella of Building Solutions. They are Gary
12 Grossman's individual companies that he may have other
13 partners in.

14 Q. Okay. And let's clarify this for the jury:
15 And I'm speaking in generalities here just for
16 background purposes. When a developer develops a
17 specific neighborhood, it might form a single-purpose
18 company for that project. And then when that project
19 is done, that single-purpose company might shut down.

20 But the parent company or other investors
21 might own that single-purpose company. Is that --

22 A. That's correct, yes.

23 Q. -- the general?

24 A. Yes.

25 Q. Yeah. Okay. And that's what we have here

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1 on these two Hilton Head projects at issue in this
2 case, right?

3 A. Yes.

4 Q. Okay. And the two LLCs there are Hilton
5 Head Homes at Allenwood, LLC and Village Square
6 Development Company, LLC?

7 A. Yes.

8 Q. And those companies serve no purpose other
9 than the respected neighborhood development that they
10 were designed to serve?

11 A. Correct.

12 Q. When those two companies were active, you
13 did the accounting for them, right?

14 A. Yes, I did.

15 Q. And while those development projects were
16 active, you did the accounting for Lancaster
17 Redevelopment Corporation?

18 A. Yes.

19 Q. Is that correct?

20 A. Yes, that's correct.

21 Q. Okay. And so you specifically did the
22 accounting on these two projects, Allenwood and Village
23 Square?

24 A. Yes.

25 Q. All right. I would like to place two

Deposition of Ginger Griffith

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1 separate letters before you.

2 MR. THOMSON: And, Madam Court Reporter,
3 these were identified as Exhibit 2 and Exhibit 4 at
4 yesterday's deposition.

5 THE COURT REPORTER: Okay. She has them.

6 BY MR. THOMSON:

7 Q. Okay. For the jury, there are two of these
8 letters. One is the September 13, 2007 letter that I
9 will want you to authenticate. And the other letter is
10 dated February 2, 2004. You didn't write the 2004
11 letter, right?

12 A. No, I did not.

13 Q. Okay. But you did reference that letter
14 when writing the September 13, 2007 letter, right?

15 A. Yes.

16 Q. Okay. So, I guess, first, would you please
17 verify that the September 13, 2007 letter in your
18 possession right now, that that is a genuine copy of
19 the letter that you wrote?

20 A. Yes, it is.

21 MR. THOMSON: And at this time I would like
22 to formally enter that as a trial exhibit whenever we
23 do have a judge assigned to this matter. Any
24 objections, Hamlin?

25 MR. O'KELLEY: I'll reserve my objections as

Deposition of Ginger Griffith

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1 to admissibility with any judge. But she's
2 authenticated it as it's her's. So subject to any
3 later objection to be taken up with the Court, none at
4 this time.

5 MR. THOMSON: Okay.

6 BY MR. THOMSON:

7 Q. All right. And after the 2004 letter, I
8 know you didn't write that, so I'm not asking you to
9 authenticate the authorship, but I do want you to
10 please authenticate that this is indeed a genuine copy
11 of the February 2, 2004 letter that you referenced
12 within your 2007 letter which you just previously
13 authenticated?

14 A. Yes, it is.

15 Q. Okay.

16 MR. THOMSON: And similarly, I would like to
17 formally enter this 2004 letter as a trial exhibit.

18 MR. O'KELLEY: Same response as to the
19 prior.

20 MR. THOMSON: Sure. Okay.

21 BY MR. THOMSON:

22 Q. Let me start with the 2004 letter. As I
23 explained earlier, my purpose here is to get you to
24 explain the 2007 letter. And I know you didn't write
25 this 2004 letter. But I want to go through this

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1 briefly because it provides important background that I
2 think would be helpful to the jury in understanding
3 what's before them in the 2007 letter.

4 So, okay, this 2004 letter, generally the
5 subject is about the beginning of two separate
6 developments in the Hilton Head area, Allenwood and
7 Village Square Development, right.

8 A. Yes.

9 Q. And Mr. Brady and Mr. Grossman are teaming
10 up to fund the development of these neighborhoods. And
11 I'm not asking you to verify the contracting parties
12 from this letter. But generally that's what's going on
13 with this letter, right?

14 A. Yes.

15 Q. Okay. And involved with the development of
16 those neighborhoods, there's various services that need
17 to be performed, we have construction services that
18 need to be performed. And marketing services and real
19 estate sales, right?

20 A. That's correct.

21 Q. On page two of the letter, there's a bunch
22 of bullet points full of terms, right?

23 A. Correct.

24 Q. These are the terms you -- this is your
25 reference points for the 2007 letter. You go to this

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1 letter to see what the terms are, and then you
2 calculate the numbers based on these terms, right?

3 A. That's correct.

4 Q. Okay. Without getting into the details,
5 some of these terms have to do with Rod Brady being
6 compensated for his fees earned for his construction
7 management work, right?

8 A. Yes.

9 Q. And Rod is to market and sell these houses,
10 right?

11 A. Yes.

12 Q. And in exchange for those services he gets
13 certain fees?

14 A. Yes.

15 Q. And Rod is entitled to hire others to help
16 him with the construction of these projects. But if he
17 does hire the help, that money comes out of his fees
18 that he earns on the project, right?

19 A. Yes, that's correct.

20 Q. Okay. And on top of the construction and
21 marketing and real estate services, there is also
22 what's called an incentive management fee, which is
23 pretty much an overall sharing of profits that these
24 single-purpose LLCs make with Rod, right?

25 A. Yes, that is in here.

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1 Q. Okay. And some last terms on this: Before
2 Rod is paid that profit sharing portion, and, again,
3 that's an incentive management fee which is the profit
4 sharing, before Rod gets paid that, Lancaster
5 Redevelopment Corporation gets a cut, a 1 percent
6 return per month on the money it loans to the project,
7 right?

8 A. Yes.

9 Q. And Gary Grossman, personally in his
10 individual capacity, gets 500 points for guaranteeing
11 funds, right?

12 A. Yes.

13 Q. Okay. And that 500 points comes to a 15
14 percent per annum?

15 A. Yes.

16 Q. Okay.

17 A. Okay.

18 Q. At the top of page 3 of the letter, before
19 we move on, it mentions the words of Gary Grossman here
20 that says "I would like all the accounting and debt
21 management to take place from my office so I can stay
22 on top of things."

23 In that sentence when he says he would like
24 his office to take care of accounting, that's talking
25 about a job you would handle, right?

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1 A. Yes, it is.

2 Q. Hopefully that provides some background
3 framework of the letter we're about to go into. So,
4 now, looking at trial Exhibit 1, that is the September
5 13, 2007 letter. Please verify that this is a letter
6 to James Rod Brady written from you?

7 A. Yes, that's correct.

8 Q. And then in the first paragraph of that
9 letter it says "Pursuant to your discussion with
10 Mr. Grossman, I'm transmitting our analysis of the
11 Allenwood compensation to you under our February 2,
12 2004 letter of agreement."

13 That February 2 letter is the letter that we
14 just went through in greater detail, right?

15 A. Yes, it is.

16 Q. Okay. And as a reminder, this is for two
17 separate developments, right? We have the Village
18 Square Development neighborhood and we have the
19 Allenwood neighborhood, right?

20 A. Yes.

21 Q. Okay. And so let's just hit the main
22 numbers on this letter real quick. So the first
23 development, Village Square, it looks like the -- you
24 calculated the income of those two -- of that company
25 for the years 2005 and 2006 as 956,385, right?

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1 A. Yes.

2 Q. And that's net income?

3 A. Yes, I believe so.

4 Q. Okay. And that income means your income
5 after you take into account money that this LLC owes to
6 other entities, right?

7 A. I believe it's net profit after expenses of
8 building the homes.

9 Q. Right. And the expenses of building homes,
10 that would include money owed to vendors or other
11 companies, right, third parties?

12 A. Yes. You're not including banks or anything
13 like that, correct, in your statement?

14 Q. Right.

15 A. Okay.

16 Q. Correct. And then you note on the letter
17 that Rod was paid a 36,000 distribution out of the 2005
18 and 2006 income, right?

19 A. Correct.

20 Q. Okay. So from looking at the paragraph that
21 starts with "Under the February 2, 2004 letter of
22 agreement you are scheduled to be paid" -- the end of
23 that paragraph says -- "I interpret the February 2,
24 2004 letter of agreement to make the construction fees
25 payable at the time each unit sells."

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1 Do you see that?

2 A. Yes.

3 Q. And so what that is telling us here is the
4 fees discussed in this letter, we're talking about
5 houses that the construction is already complete,
6 right?

7 A. Yes.

8 Q. And they've been sold to the owners -- to
9 homeowners, whoever they may be, correct?

10 A. Correct.

11 Q. And the LLC has been paid money for those
12 homes, right?

13 A. Right.

14 Q. Okay. All right. The next paragraph it
15 talks about, you understand that the expenses
16 associated with hiring Nick Grossman and Dan Clore for
17 supervisory work on your behalf are to be deducted.
18 And we went through that on the 2004 letter, right?

19 A. Yes.

20 Q. And, again, we look on the next page, and
21 you were taking into account funds due to Mr. Nick
22 Grossman and Dan Clore as part of this analysis, right?

23 A. That's correct.

24 Q. Okay. And these are for houses that are
25 already completed, right?

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1 A. Yes.

2 Q. Okay. So no need for Mr. -- for Nick
3 Grossman or Dan Clore to incur any additional expenses,
4 right?

5 A. That is correct.

6 Q. All right. Let's go to the numbers on -- we
7 have a construction management fee of 32,500 for the
8 Village Square Development. Then there is a \$1,000
9 real estate fee per unit sold, and that comes to
10 26,000, right?

11 A. Yes.

12 Q. All right. It looks like Mr. Brady was paid
13 a portion of those commissions, 9,415, right?

14 A. Yes.

15 Q. And so your -- you got parentheses here.
16 And that means you were deducting that money that's
17 already paid. The money that's already been paid to
18 Rod, you're deducting that from what you are
19 calculating to be owed to him, right?

20 A. Right.

21 Q. And that's fair, right?

22 A. Yes.

23 Q. The fees for Nick Grossman and Dan Clore,
24 we've got four different numbers in there. I've added
25 those numbers up, and it comes to \$111,81. Any reason

Deposition of Ginger Griffith

1 to believe that's incorrect?

2 A. No.

3 Q. So we are taking into account that Nick
4 Grossman and Dan Clore helped Mr. Brady. Mr. Brady
5 agrees to pay people for their help with the
6 construction of these projects.

7 And so after we go through the numbers of
8 what Mr. Brady earned on his construction management
9 fee and what he had to pay out, and the status as of
10 September 13, 2007, is that Mr. Brady was owing to
11 Lancaster Redevelopment Corporation or whoever those
12 contracting parties may be, Mr. Brady, after taking
13 into account all of those things was owed -- or owed
14 the company \$25,746, right?

15 A. That's right.

16 Q. Okay. All right. So that portion all had
17 to do with construction management and real estate
18 services, right?

19 A. Yes.

20 Q. Okay. And then moving on to the next part
21 of the letter, the next few paragraphs, that has to do
22 with the incentive management fee, basically profit
23 sharing type fees and calculations, right?

24 A. Yes.

25 Q. Okay. And just as a remainder, Rod gets a

Deposition of Ginger Griffith

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1 -- is to receive an incentive management fee profit
2 sharing in the tune of 50 percent of the profits of the
3 LLCs, right?

4 A. Yes.

5 Q. Okay. And but before Rod gets paid,
6 Lancaster Redevelopment Corporation gets a cut, right?

7 A. Yes.

8 Q. And then Gary Grossman individually also
9 gets a cut, right?

10 A. Yes.

11 Q. And so the next three paragraphs, that's
12 what's going on here, right? We're calculating what
13 the profit is. We're seeing what Mr. Grossman's is.
14 We're seeing what Lancaster Redevelopment Corporation's
15 cut is. And then finally from there we're seeing what
16 portion would be due to Mr. Brady, correct?

17 A. Correct.

18 Q. Okay. All right. And it looks like
19 Lancaster Redevelopment Corporation's cut under this
20 section we were just talking about is 841,619. Is that
21 correct? The paragraph starts with the net income.

22 Take the time to read it if you need to.

23 Do you need me to repeat the question?

24 A. I'm just trying to follow our calculations
25 on this letter. It was a long time ago that I wrote

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1 it, so I don't remember everything. Okay. So what was
2 your question again now?

3 Q. You know what, can you just strike that
4 question there? I think that's not LRC's cut. That
5 would be the allocated income.

6 A. Okay. Correct.

7 Q. Let's move on to Mr. Grossman's cut of this
8 profit sharing. The next paragraph where it starts
9 "Under the terms of the February 2, 2004 letter" --

10 A. Yes.

11 Q. -- okay, the last portion of the sentence
12 says "which calculates to a prorated guarantee fee of
13 148,504.85 for 2005."

14 A. Yes.

15 Q. That -- that is what is due to Mr. Grossman
16 personally, right?

17 A. Yes.

18 Q. And if we could, please, connect the dots
19 back to the 2004 letter, I just want to connect this
20 calculation and where it pertains to on the 2004
21 letter. So this 148,504.84 due to Gary Grossman, if we
22 want to see how Mr. Grossman is justified to that fee,
23 we go to page 2 at the bottom paragraph, is that
24 right --

25 A. That's correct.

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1 Q. -- in the 2004 letter? And this is
2 basically he's earning this fee in exchange for him
3 giving a personal guarantee, right?

4 A. Right.

5 Q. All right. And so that fee, we're still
6 just talking about the Village Square neighborhood,
7 right?

8 A. Yes.

9 Q. Okay. And we're separately going to go
10 through what that fee is for Allenwood, right?

11 A. Correct.

12 Q. Just a remainder: We can get lost in the
13 weeds here. Sometimes we need a reminder of where we
14 are locally. Okay. And then the next few paragraphs,
15 you're starting to calculate what Rod's incentive
16 management fee is. And he's already been paid a
17 certain amount of money on his incentive management
18 fee.

19 But after you take into consideration all
20 that he's earned versus all that he's been paid, the
21 net balance due to Rod for an incentive management fee,
22 which is profit sharing on the Village Square
23 Development project only, is \$83,488. Is that correct?

24 A. That is correct.

25 Q. And -- and -- and that money has already

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1 been earned, right?

2 A. Yes.

3 Q. As of September 13, 2007?

4 A. Yes.

5 Q. And the LLCs have already been paid the
6 money that generated the profits from which this
7 calculation was made, right?

8 A. Yes.

9 Q. Okay. And you've already accounted for
10 Lancaster Redevelopment Corporation's portion of
11 profits out of that, right?

12 A. In the calculation, yes.

13 Q. Yes. And you had already accounted for
14 Mr. Grossman's individual cut of that, right?

15 A. Yes.

16 Q. And so in the end Rod's incentive management
17 fee is exactly what it says; it's money due and owing
18 to him after accounting for everything that needs to be
19 accounted for. And that amount due to him is 83,488,
20 right?

21 A. Yes.

22 Q. Okay. All right. That is -- we've gone
23 through the calculations of the Village Square
24 Development neighborhood. And I would like to move on
25 to the second neighborhood here, the Allenwood

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1 neighborhood. So if we go through, it's kind of the
2 same process again, right?

3 A. Yes.

4 Q. Different neighborhood, different numbers to
5 calculate, but the -- and the fees under the agreement
6 might be slightly different, but it's generally the
7 same type of calculations, right?

8 A. That's correct.

9 Q. Okay. All right. So first, looking at the
10 construction management fees for Allenwood, it appears
11 that Mr. Brady has earned about \$240,000 in some fees
12 before taking out other things that you might need to
13 take out, right?

14 A. Yes.

15 Q. Okay. And, again, Mr. Brady was entitled
16 hire help. And it looks like that money just had to
17 come out of his fees, and it looks like he has done
18 that here again with the Allenwood project, right?

19 A. Yes.

20 Q. And he had Rich Raven and RS Davis to help
21 him, right?

22 A. Correct.

23 Q. Okay. And if you add up the two numbers
24 owing to them, and they're both in parentheses there,
25 I'm coming up with \$76,552, correct?

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1 A. Correct.

2 Q. And those numbers are in parentheses because
3 we're saying Rod owes money back for that, right?

4 A. Yes.

5 Q. So it's to be subtracted from the end result
6 of whatever money Rod is owed, right?

7 A. Right.

8 Q. Okay. So after we take all of that into
9 account, and we also add in the real estate fees, and
10 we also take into account money that has already been
11 paid to Rod, we are left with a balance of \$19,629,
12 right?

13 A. Yes.

14 Q. And that is money that is owed to Mr. Brady
15 after accounting for all of these other amounts he
16 owes, right?

17 A. Yes.

18 Q. Okay. And this is just for construction
19 management fees and real estate services, right?

20 A. Correct.

21 Q. And it's just for the Allenwood project,
22 right?

23 A. Correct.

24 Q. Okay. All right. Let's move on to the next
25 set of calculations. We're moving on here to the

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1 calculations for the incentive management fee and the
2 more profit sharing portion of the fees are, right?

3 A. Yes.

4 Q. Okay. And let's go to the line that says
5 "The 500 basis point guarantee fee calculating to,"
6 and it says 99,693, right?

7 A. Yes.

8 Q. Again, we connected the dots on this 500
9 basis point fee. We previously connected the dots to
10 the last paragraph of page 2 of the 2004 letter, right?

11 A. Yes.

12 Q. And that's the same thing we're doing here,
13 right?

14 A. Yes.

15 Q. Okay. And this is for 2005 only. And it's
16 for the Allenwood project only, right?

17 A. Right.

18 Q. And Mr. Grossman is being paid \$99,693 for
19 that portion, right?

20 A. Yes.

21 Q. In exchange for his personal guarantee,
22 correct?

23 A. Correct.

24 Q. Okay. Let's move on down. The 2006, where
25 it says "The 500 basis point guarantee fee," same set

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1 of scenarios, right? We don't need to go back and
2 connect the dots again. But it is the same principle
3 here, right? It's just for 2006 incentive?

4 A. Yes.

5 Q. Okay. And Mr. Grossman's fee in exchange
6 for personally guaranteeing the funds in 2006 for the
7 Allenwood neighborhood is 52,244?

8 A. Yes.

9 Q. Okay. So after taking into account the
10 money owed to Lancaster Redevelopment Corporation, and
11 the money owed to Mr. Grossman individually, we would
12 could then calculate what Mr. Brady's incentive
13 management fee is for the Allenwood project, right?

14 A. Yes.

15 Q. And that number comes to 633,656, right?

16 A. Yes.

17 Q. Owed to Mr. Brady, right?

18 A. Correct.

19 Q. Okay. So now we've -- after we gotten to
20 that point, we made all the preliminary calculations
21 that we need to make to determine the total amount that
22 is owed to Mr. Brady as of September 13, 2007, correct?

23 A. Correct.

24 Q. And that number owed to Mr. Brady as of
25 September 13, 2007 is \$711,027, right?

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1 A. Yes.

2 Q. Okay. Let's go back and summarize that more
3 distinctly in a second. But first, look at the next
4 page, top paragraph of, I believe, that's the third
5 page of the letter -- fourth page. I'm sorry. It
6 says, "Mr. Grossman directed me to access our ability,"
7 right?

8 A. Yes.

9 Q. Do you see that paragraph? And what's going
10 on here is that, if I can distinctly paraphrase that,
11 that paragraph is, yes, Mr. Brady, you're owed money,
12 the \$711,000 and change, but Lancaster Redevelopment
13 Corporation is having financial troubles. And we can't
14 -- we don't have the funds to pay it all to you right
15 now. So what we are going to do is pay you \$10,000 a
16 month.

17 Is that essentially what that paragraph is
18 saying?

19 A. Yes.

20 Q. And you don't recall one way or the other
21 whether any of those monthly payments were made to Rod
22 after September of 2007?

23 A. I don't recall, no.

24 Q. Okay. So Rod was already owed the money,
25 right? He'd already earned it, right?

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1 A. Yes.

2 Q. And the purpose of getting on this payment
3 plan was because Lancaster Redevelopment Corporation
4 had financial issues, right?

5 A. Yes.

6 Q. And the purpose of those financial -- or the
7 source of those financial issues were projects other
8 than the two at issue here, correct?

9 A. One of the issues was past due receivables
10 from the Allenwood project.

11 Q. Would those past due receivables, would
12 those have been accounted for when you calculated the
13 net income of that LLC?

14 A. Yes.

15 Q. Okay. So we've already accounted for those
16 past due receivables within the number owed to Rod,
17 right?

18 A. Yes.

19 Q. Okay. And then the other reason listed, it
20 says, it seems as if the Lancaster Redevelopment
21 Corporation is having problems with carrying costs of
22 Cypress Harbor. That project had nothing to do with
23 Village Square Development, right?

24 A. No.

25 Q. And it had nothing to do with the Allenwood

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1 project, right?

2 A. No.

3 Q. And it had nothing to do with Rod Brady,
4 right?

5 A. I don't believe so. I personally don't
6 remember the Cypress Harbor project.

7 Q. Right. And it doesn't appear to be relevant
8 to this case, I don't think, other than the fact that
9 it seems to be the source of why Lancaster
10 Redevelopment Corporation was having trouble paying Mr.
11 Brady. And this was written in the letter by you,
12 right?

13 A. Yes.

14 Q. And you just don't remember all the complete
15 details of -- behind that -- those problems, right?

16 A. Correct.

17 Q. And it also mentions a "massive increase in
18 overhead associated with the new plant." That didn't
19 have anything to do with Rod Brady, right?

20 A. No.

21 Q. Okay. So to recap, the sales have been
22 final, right, of the properties built on these two
23 neighborhoods, right?

24 A. Yes.

25 Q. And the LLC's, that money from the
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1 purchasers of the homes, right?

2 A. Yes.

3 Q. And there was a profit after that, right?

4 A. Yes.

5 Q. Okay. Lancaster Redevelopment's portion of
6 that profit got accounted for, right?

7 A. Right.

8 Q. And Mr. Grossman's individual profits from
9 those transactions got accounted for, right?

10 A. Yes.

11 Q. And after all that, Mr. Brady was still owed
12 a big chunk of money out of those profits, right?

13 A. Right.

14 Q. For work that has already been earned,
15 right?

16 A. Right.

17 Q. We're not projecting future profits here,
18 right?

19 A. Correct.

20 Q. Okay. And Mr. Brady was not paid that money
21 because Lancaster Redevelopment Corporation had
22 problems on other projects that had nothing to do with
23 Rod Brady, right?

24 A. Some of the problems had nothing to do with
25 Allenwood.

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1 Q. Okay. Okay. All right. So and let's
2 summarize the specific numbers really quickly. So the
3 total was 711,024 -- or 27 -- I'm sorry. Right?

4 A. Yes.

5 Q. And of that 633,656, that was owed to Rod as
6 an incentive management fee or basically a profit
7 sharing from the Allenwood project, right?

8 A. Right.

9 Q. Already earned, correct?

10 A. Correct.

11 Q. Homes already sold, right?

12 A. Right.

13 Q. LLCs are already paid by the home
14 purchasers, right?

15 A. Yes.

16 Q. And the LLCs made a profit, right?

17 A. Yes.

18 Q. Okay. And then there is an amount 19,629
19 owed to Rod as a construction management fee at
20 Allenwood. And that money was already earned, right?

21 A. Right.

22 Q. And the construction was already completed
23 at those homes, too, correct?

24 A. Correct.

25 Q. All right. And the 83,488 portion was owed

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1 to Rod as his incentive management fee for the Village
2 Square Development project, right?

3 A. Yes.

4 Q. And just like in Allenwood, those fees are
5 already earned, right?

6 A. Yes.

7 Q. And the homes are already sold?

8 A. Yes.

9 Q. Okay. And to be fair, Rod owed Lancaster
10 Redevelopment Corporation, or whoever the contracting
11 parties were, \$25,746. And that was for the difference
12 between his construction management fees and the money
13 he owed for the help he retained to assist him with
14 that construction, right, at the Village Square
15 Development project, right?

16 A. Correct.

17 Q. Okay. But the number that he owed to other
18 people was put into the total, right?

19 A. Yes.

20 Q. And that total, again, that was owed to Rod
21 was \$711,027 as of September 13, 2007?

22 A. Right.

23 Q. And the amount accounted for for his help
24 totalled between Nick Grossman, Dan Clore, Rich Raven
25 and RS Davis we've accounted for \$187,633 between the

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1 four of them if you add up all the individual numbers.
2 Does that sound about right to you?

3 A. Yes, it does.

4 Q. Yeah. I'm not asking you to do math on the
5 spot. But that's the numbers that I came up with
6 anyhow. That number also took into account that
7 Mr. Grossman was getting consideration in exchange for
8 a personal guarantee. And he had -- we had accounted
9 for \$300,441.85 to be owed to him, right?

10 A. Yes.

11 Q. Already accounted for within the number owed
12 to Rod?

13 A. Yes -- owed to Gary.

14 Q. Okay. Yeah, so, essentially just to drive
15 the point home one last time, you concluded on
16 September 13, 2007 that the contracting parties owed
17 Rod \$711,027, right?

18 A. Yes.

19 Q. And you didn't just throw that letter
20 together, right?

21 A. No.

22 Q. And you're a professional in the accounting
23 business, right?

24 A. Right.

25 Q. And you made a good faith effort to get

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1 these numbers right, didn't you?

2 A. Yes.

3 Q. And you haven't discovered any errors in
4 here now since the time you wrote that letter?

5 A. No.

6 Q. Okay. And you do not have any evidence
7 showing that Lancaster Redevelopment Corporation, Gary
8 Grossman or any other affiliated entity paid any money
9 to Rod subsequent to this September 13, 2007?

10 A. I don't know if anything has been paid to
11 Rod or not.

12 Q. Right. But the question is, you don't have
13 any evidence showing it, right?

14 A. Right.

15 MR. THOMSON: Okay. Those are all the
16 questions I have. Mr. O'Kelley, if would like to
17 interview Ms. Griffith, you have may take that
18 opportunity now.

19 MR. O'KELLEY: I thought this is a
20 deposition, not an interview.

21 MR. THOMSON: It's a de bene esse deposition
22 for purpose for use at trial.

23 * * * * *

24 EXAMINATION

25 BY MR. O'KELLEY:

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1 Q. Ms. Griffith, you have the exhibits that Mr.
2 Thomson was asking you about in front of you, correct?

3 A. Yes, I do.

4 Q. All right. What was the arrangement as to
5 how Mr. Brady was to be paid? Mr. Thomson asked you
6 earlier about that, but it's my understanding that Mr.
7 Brady was to be paid after all the debts of the company
8 were to be paid, correct?

9 A. The incentive management fees were to be
10 after the initial debts from Lancaster Redevelopment or
11 Mr. Grossman were repaid.

12 Q. And remind the folks who are listening to
13 you what was going on with the greater economy in 2007?

14 A. I believe that's when the housing market
15 started to take a nose dive.

16 Q. And was Lancaster Redevelopment company in
17 September of the fall of 2007, was it suffering from
18 the falling apart of the housing market?

19 A. Yes. We --

20 Q. And was --

21 A. Go ahead.

22 Q. Go ahead, explain.

23 A. In some of the developments, we had standing
24 inventory that we couldn't sell.

25 Q. And were banks threatening foreclosure

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1 against these developments in the fall of 2007 or had
2 foreclosures actually been filed, if you remember?

3 A. I don't remember exactly when. I know that
4 that came shortly into that time period into early
5 2008.

6 Q. And you're aware that there was a
7 foreclosure against Village Square Development Company,
8 correct?

9 A. Correct.

10 Q. And there was a foreclosure against Hilton
11 Head Homes at Allenwood, correct?

12 A. That's correct.

13 Q. And Mr. Rod Brady had nothing to lose in
14 those foreclosures, did he?

15 A. I don't believe he was a guarantee -- or a
16 guarantor on any debt.

17 Q. And was Mr. Grossman a guarantor on debt?

18 A. Yes, he was.

19 Q. And Mr. Brady was advanced sums during his
20 employment by Hilton Head Homes and by Village Square,
21 correct?

22 A. Yes, against his fees earned.

23 Q. That's correct. And then was he ever an
24 employee of Lancaster Redevelopment Corporation to your
25 knowledge?

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1 A. I'm trying to remember. I know Gary and Rod
2 talked about it, but I don't recall if he ever became
3 an actual employee.

4 Q. And if I were to represent to you that he
5 was never an employee of Lancaster Redevelopment
6 Corporation, do you have any reason to doubt that?

7 A. No, no.

8 MR. O'KELLEY: Thank you, ma'am. That's all
9 I've got.

10 THE WITNESS: Okay.

11 THE VIDEOGRAPHER: Anything else?

12 MR. THOMSON: Just some quick follow-up.

13 * * * * *

14 EXAMINATION (CONT'D.)

15 BY MR. THOMSON:

16 Q. Ms. Griffith, Mr. O'Kelley was just talking
17 to you about how Mr. Brady was to be paid after
18 everyone else got paid, correct?

19 A. For the incentive management fee, yes.

20 Q. Right. I think I've just got that question
21 backwards. I'll re-ask so it's clear for the record.
22 Hamlin asked you about how Lancaster Redevelopment
23 Corporation and Mr. Grossman were to be paid prior to
24 Mr. Brady being paid for the incentive management fee,
25 right?

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1 A. For their initial investment in the
2 development companies.

3 Q. Right. And Mr. O'Kelley asked you a series
4 of questions that basically go into the fact that the
5 company didn't have the funds to pay, right?

6 A. Correct.

7 Q. And we went through this during my direct
8 examination, but the last paragraph -- or on the last
9 page of your 2007 letter on the top paragraph, it talks
10 about some of Lancaster Redevelopment's financial
11 issues, right?

12 A. Yes.

13 Q. And some of those troubles have nothing to
14 do with the two projects at issue here, right?

15 A. That's correct.

16 Q. So even though there might have been an
17 agreement for Mr. Grossman and the Lancaster
18 Redevelopment Corporation to be paid first, that
19 wouldn't necessary excuse some excuse of outside forces
20 taking precedence over payments to Mr. Brady, right?

21 A. Can you repeat that?

22 Q. That wasn't the best-worded question. So
23 even though Lancaster Redevelopment Corporation and
24 Mr. Grossman were to be paid before Rod was to be paid,
25 the confusion of outside economic forces has no bearing

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1 on the amount owed to Mr. Brady, right?

2 A. That's correct.

3 MR. THOMSON: Okay. That's the last
4 question I have. Any more Hamlin?

5 MR. O'KELLEY: That's all.

6 THE VIDEOGRAPHER: This concludes today's
7 deposition. The time on the monitor is 10:00 a.m.

8 THE COURT REPORTER: Do you both want PDFs
9 like yesterday?

10 MR. O'KELLEY: Yes.

11 MR. THOMSON: Yes.

12 (Whereas, the deposition concluded at 10:00
13 a.m.)

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1 COMMONWEALTH OF PENNSYLVANIA)
 2 COUNTY OF CUMBERLAND) SS.
 3

4 I, Tracy Dominico, a Court
 5 Reporter-Notary Public authorized to administer
 6 oaths and take depositions in the trial of causes
 7 and having an office in Mechanicsburg,
 8 Pennsylvania, do hereby certify that the
 9 foregoing is a true record to the testimony
 10 given; that before the taking of said deposition,
 11 the witness was duly sworn/affirmed; that the
 12 questions and answers were taken down stenotype
 13 by said Reporter-Notary and afterwards reduced to
 14 computer printout under the direction of said
 15 Reporter.

16 I further certify that the proceedings
 17 and evidence are contained fully and accurately
 18 in the notes taken by me of the within deposition
 19 to the best of my ability; and that this copy is
 20 a correct transcript of the same.

21 In testimony whereof, I have hereunto
 22 inscribed my hand this 20th day of December,

23 2018 COMMONWEALTH OF PENNSYLVANIA
 24 NOTARIAL SEAL
 25 TRACY DOMINICO
 Notary Public
 HAMPDEN TWP, CUMBERLAND COUNTY
 My Commission Expires Nov 12, 2019

Tracy Dominico
 Tracy Dominico
 Court Reporter-Notary Public

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Deposition of Ginger Griffith

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Deposition of Ginger Griffith

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Deposition of Ginger Griffith

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

vs.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company,
LLC, Lancaster Redevelopment Corp., and
Gary L. Grossman,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2015-CP-07-2047

**CONSENT MOTION FOR AN ORDER
OF PROTECTION AND FOR A
STATUS CONFERENCE TO SET A
TRIAL DATE CERTAIN**

Plaintiff James R. Brady and Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman, by and through undersigned counsel, hereby jointly move this Honorable Court for an Order granting protection for Defendants' counsel, G. Hamlin O'Kelley, III, on the grounds that he has long-standing plans to be out of town from February 11, 2019 through February 15, 2019.

Counsel also hereby move for a status conference for a day certain trial in March 2019 or later, in the above-captioned case.

Respectfully submitted,

WE SO MOVE:

s/ Charles W. Thomson, Esq.
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Charles W. Thomson, PE, Esq.
The Blake House
321 East Bay Street
Charleston, South Carolina 29401
cthompson@capelllaw.cm
Attorney for Plaintiff

WE CONSENT:

s/ G. Hamlin O'Kelley, III
BUIST BYARS & TAYLOR LLC
G. Hamlin O'Kelley, III
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
Hamlin.okelley@buistbyars.com
Attorney for Defendants

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

v.

Hilton Head Homes at Allenwood,
LLC; Village Square Development
Company, LLC; Lancaster
Redevelopment Corp.; and Gary L.
Grossman,

Defendants.

COURT OF COMMON PLEAS
FOURTEENTH CIRCUIT

C.A. No. 2015-CP-07-02047

**Motion for Summary
Judgment as to Defendants'
Counterclaims**

To: All Defendants above-named

Plaintiff James R. Brady, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and any other applicable South Carolina law, will move before this Honorable Court for an order granting summary judgment as to Defendants' counterclaims against Plaintiff. Plaintiff will so move ten days after the date of service hereof or at such time as counsel may be heard.

This matter is a payment claim. Defendants retained Plaintiff to construct, sale, and market many single-family residences. Plaintiff began to perform under the contract, but Defendants failed to pay for all of the work Plaintiff performed, leaving a balance in excess of \$700,000. Plaintiff brought claims against Defendants for breach of contract, unjust enrichment, and conversion. In response, Defendants filed counterclaims of breach of contract and unjust enrichment against Plaintiff, alleging that Plaintiff did not fully perform its contractual duties and that Defendants had to hire third parties to complete the work.

The evidence that has been discovered in this matter casts serious doubt upon Defendants' counterclaim allegations. But more importantly as to this motion, after a full and fair opportunity to complete discovery, Defendants have failed to produce any evidence in support of the allegations asserted in their counterclaims. Thus, there are no genuine issues as to any

material fact that Plaintiff is entitled to summary judgment as to those counterclaims

Plaintiff prays that the Court issue an order holding Plaintiffs are entitled to judgment as a matter of law as to each and every counterclaim asserted by each and every Defendant, and for such further relief as the Court sees fit.

Respectfully submitted,

THE CAPELL LAW FIRM, LLC

s/ Charles W. Thomson

Glynn L. Capell (16552)

GCapell@CapellLaw.com

Charles W. Thomson (101471)

CThomson@CapellLaw.com

321 East Bay St.

Charleston, SC 29401

(843) 501-0423

Attorneys for Plaintiff

January 8, 2019

Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies having served a copy of the foregoing **Motion for Summary Judgment as to Defendants' Counterclaims** to all counsel of record on **January 5, 2017** by eFiling a copy of same, with the following attorney being on the eFiling service list:

G. Hamlin O'Kelley, III, Esq.
BUIST, BYARS & TAYLOR, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464

Per explicit instructions from G. Hamlin O'Kelley, attorney for Defendants, Plaintiff is not serving Gary L. Grossman directly with this notice, despite that the Clerk lists Mr. Grossman as *pro se* counsel.

s/ Charles W. Thomson

Charles W. Thomson

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,
Plaintiff,

v.

Hilton Head Homes at Allenwood,
LLC; Village Square Development
Company, LLC; Lancaster
Redevelopment Corp.; and Gary L.
Grossman,

Defendants.

COURT OF COMMON PLEAS
FOURTEENTH CIRCUIT

C.A. No. 2015-CP-07-02047

**Motion for Summary
Judgment as to Defendants'
Counterclaims**

**To: G. Hamlin O'Kelley, III, Attorney for Hilton Head Homes at
Allenwood, LLC; Village Square Development Company, LLC;
and Lancaster Redevelopment Corp.**

Gary L. Grossman, *Pro Se*

Plaintiff James R. Brady, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and any other applicable South Carolina law, will move before this Honorable Court for an order granting summary judgment as to Defendants' counterclaims against Plaintiff. Plaintiff will so move ten (10) days after the date of service hereof or at such time as counsel may be heard.

This matter is a payment claim. Defendants retained Plaintiff to construct, sale, and market many single-family residences. Plaintiff began to perform under the contract, but Defendants failed to pay for all of the work Plaintiff performed, leaving a balance in excess of \$700,000. Plaintiff brought claims against Defendants for breach of contract, unjust enrichment, and conversion. In response, Defendants filed counterclaims of breach of contract and unjust enrichment against Plaintiff, alleging that Plaintiff did not fully perform its contractual duties and that Defendants had to hire third parties to complete the work.

The basis of this motion is that Defendants have failed to produce evidence in support of the allegations asserted in their counterclaims. As

such, there are no genuine issues as to any material fact that Plaintiff is entitled to summary judgment as to those counterclaims

Plaintiff prays that the Court issue an order holding Plaintiffs are entitled to judgment as a matter of law as to each and every counterclaim asserted by each and every Defendant, and for such further relief as the Court sees fit.

Respectfully submitted,

THE CAPELL LAW FIRM, LLC

s/ Charles W. Thomson

Glynn L. Capell (16552)

GCapell@CapellLaw.com

Charles W. Thomson (101471)

CThomson@CapellLaw.com

174 Meeting Street, Suite 200

Charleston, SC 29401

(843) 689-4280

Attorneys for Plaintiff

January 5, 2017

Hilton Head Island, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies having served a copy of the foregoing **Motion for Summary Judgment as to Defendants' Counterclaims** to all counsel of record on **January 5, 2017** by mailing a copy of same, electronically or with proper postage affixed thereto as follows:

G. Hamlin O'Kelley, III, Esq.
BUIST, BYARS & TAYLOR, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464

Gary L. Grossman
2138 Route 522
Selinsgrove, PA 17870

s/ Charles W. Thomson
Charles W. Thomson

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Mark J. Hayes, II

Case No. 2015-CP-07-02047

RECEIVED
FEB 11 2019
SC Court of Appeals

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company, LLC,
Lancaster Redevelopment Corp. and
Gary Grossman Appellants,

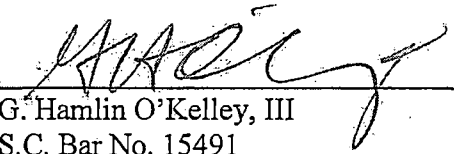
v.

James R. Brady, is the Respondent.

NOTICE OF APPEAL

Hilton Head Homes at Allenwood, LLC, Village Square Development, LLC, Lancaster Redevelopment Corp. and Gary Grossman appeal the Order of the Honorable Mark J. Hayes, II, copies of which are attached hereto, dated February 8, 2019, which the Appellants received written notice of on February 8, 2019.

Mt. Pleasant, South Carolina
February 8, 2019


G. Hamlin O'Kelley, III
S.C. Bar No. 15491
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Attorneys for the Appellants

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP0702047

James R Brady
PLAINTIFF(S)

Hilton Head Homes At Allenwood Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

See Additional Order Information.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/08/2019 .

Gary L Grossman for Gary L Grossman
Gary L Grossman for Gary L Grossman

RECEIVED
FEB 11 2019
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter came before the Court on the Plaintiff's motion for summary judgment as to the counterclaim asserted against the Plaintiff by the Defendants. According to SCRCP 56, summary judgment shall be granted when there is no genuine issue as to any material of fact. Once the moving party has come forth with evidence to support its motion, the non-moving party must offer some evidence that a genuine issue of material fact exists as to each element of the claim. It is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.

In ruling on this summary judgment motion, the court has viewed all of the evidence offered to it and viewed that evidence, and the inferences therefrom, in a light most favorable to the non-moving party. Having reviewed all of the evidence and considering the arguments presented, this Court will grant the Plaintiff's motion for summary judgment as to the counterclaims asserted by the Defendant. Plaintiff's counsel is asked to prepare a formal order granting the motion. The formal Order, once signed and filed with the clerk's office, will be final order of this Court on this motion. This email will be incorporated into a form 4 for filing with the Clerk's office.

The Defendants rely solely upon the deposition testimony of Ginger Griffith. In their memorandum opposing the motion, the Defendants make general references to the Answer and Counterclaim. The Counterclaims seeks damages in an amount "in excess of \$600,000.00" based on assertions that the plaintiff, generally, failed to perform services he should have, invokes equitable theories against the plaintiff, that plaintiff breached a valid a contract for services he failed to provide, and asserts that the plaintiff should not have relied upon a letter from a Mr. Grossman to support his claim. Again, the defendant submitted only the deposition of Ms. Griffith. The Plaintiff also relied upon the deposition of Ms. Griffith but also submitted the affidavit testimony of the plaintiff, Rod Brady.

The Defendants make reference in its memorandum to only pages 7, 37, and 38 to 39, of Ms. Griffith's deposition. The references do not support the assertions made in the counterclaims. Ms. Griffith's testimony was secured as de bene esse deposition for use at trial. After being examined by Plaintiff's attorney, her cross examination simply dealt with issues involving the arrangement of how fees were paid, the difficult housing market in 2007, the housing inventory, the banks threatening foreclosures, actual foreclosures, Mr. Grossman's being a guarantor, the plaintiff not being a guarantor, and the plaintiff's not being an employee of Lancaster Redevelopment. Nowhere in her deposition are the issues raised in the counterclaims mentioned. When viewed in a light most favorable to the defendants, her deposition, at best for the defendants, may explain why the Plaintiff was not paid. No affidavit was submitted to counter Mr. Brady's affidavit.

With respect to an issue upon which the non-moving party has the burden of proof, the moving party may meet its initial responsibility of demonstrating that the absent of a genuine issue of material fact by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case. As referenced in *Hedgepath v. AT&T*, 348 S.C. 340, 559 S.E.2d 327 (Ct App. 2001), once the moving party carries its initial burden, the opposing party must, under Rule 56, do more than simply show a metaphysical doubt as to the material facts but must come forward with specific facts showing a genuine issue for trial. The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings.

Based on the documents and arguments presented to this Court and applying the required standard of review, the present motion for summary judgment is granted.

Again, this email will be incorporated into a form 4 for filing with the Clerk's office and this Court requests a formal order be submitted to the Court for signing.



Beaufort Common Pleas

Case Caption: James R Brady VS Hilton Head Homes At Allenwood Llc ,
defendant, et al
Case Number: 2015CP0702047
Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2019-02-08 11:28:03 page 3 of 3

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Mark J. Hayes, II

Case No. 2015-CP-07-02047

RECEIVED
FEB 11 2019
SC Court of Appeals

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company, LLC,
Lancaster Redevelopment Corp. and
Gary Grossman Appellants,

v.

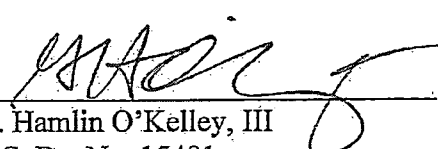
James R. Brady Respondent.

PROOF OF SERVICE

I certify that I have served the Appellant's Notice of Appeal by depositing a copy of same in the U.S. Mail, postage prepaid, along with overnight delivery, addressed to Charles W. Thompson, Esquire, and Glynn L. Capell, Esquire, 321 East Bay Street, Charleston, SC 29401.

The Appellant received a copy of the Order on February 8, 2019

Mt. Pleasant, South Carolina
February 8, 2019


G. Hamlin O'Kelley, III
S.C. Bar No. 15491
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Attorneys for the Appellants

RECEIVED

Feb 10 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price

Case No. 2015-CP-07-02047

James R. Brady,.....Respondent,

v.

Hilton Head Homes at Allenwood, LLC, Village Square Development Company,
LLC, Lancaster Redevelopment Corp., and Gary L. Grossman.....Appellants.

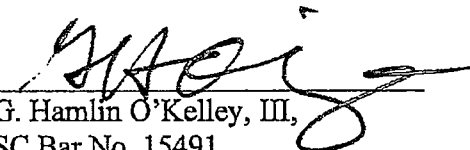
NOTICE OF APPEAL

Hilton Head Homes at Allenwood, LLC, Village Square Development Company,
LLC, Lancaster Redevelopment Corp., and Gary L. Grossman appeal the Orders of The
Honorable Bentley D. Price, copies of which are attached hereto, dated September 1, 2022
and January 13, 2023, which the Appellants received on January 13, 2023.

BUIST BYARS & TAYLOR, LLC

Mount Pleasant, South Carolina

February 10, 2023


G. Hamlin O'Kelley, III,
SC Bar No. 15491
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
T: (843) 856-4488
F: (843) 856-0613
Hamlin.okelley@buistbyars.com
Attorney for Appellants

Cc: Charles W. Thomson, Esq.
Glynn L. Cappell, Esq.
The Honorable Bentley D. Price
The Honorable Jerri Ann Roseneau (Via SC E Filing Portal)

RECEIVED

Feb 10 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price

Case No. 2015-CP-07-02047

James R. Brady,.....Respondent,

v.

Hilton Head Homes at Allenwood, LLC, Village Square Development Company,
LLC, Lancaster Redevelopment Corp., and Gary L. Grossman.....Appellants.

PROOF OF SERVICE

I certify that I have served the Appellants' Notice of Appeal by depositing a copy of same in Via Overnight Delivery, addressed to The Honorable Bentley D. Price, Presiding Judge for Beaufort County, 100 Broad Street, Suite 432, Charleston, SC 29401, Charles W. Thomson, Esq. and Glynn L. Cappell, Esq, Capell Thomson, LLC, 102 Wappoo Creek Drive, Unit 8, Charleston, SC 29412. I certify that I have also served the Appellants' Notice of Appeal on The Honorable Jerri Ann Roseneau, Clerk of Court for Beaufort County, by depositing a copy of same Via SC E Filing Portal.

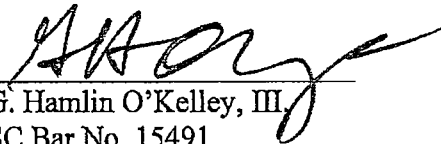
The Appellants received a copy of the Order on Defendants' Motion for Judgment Not Withstanding the Verdict Pursuant to Rule 50(b) SCRCivP on January 13, 2023.

SIGNATURE BLOCK ON FOLLOWING PAGE

ROA 153

Mt. Pleasant, South Carolina
February 10, 2023

BUIST BYARS & TAYLOR, LLC



G. Hamlin O'Kelley, III
SC Bar No. 15491
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
T: (843) 856-4488
F: (843) 856-0613
Hamlin.okelley@buistbyars.com
Attorney for Appellants



652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
Direct Dial 843.284.1408
Main 843.856.4488

G. Hamlin O'Kelley, III
Attorney At Law
Hamlin.okelley@buistbyars.com

February 10, 2023

VIA EMAIL: ctappfilings@sccourts.org
AND OVERNIGHT DELIVERY
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29211

RECEIVED

Feb 10 2023

SC Court of Appeals

*RE: James R. Brady v Hilton Head Homes at Allenwood, LLC, et al.,
C/A No.: 2015-CP-07-02047
Client File No.: 1115.0001*

Dear Ms. Kitchings:

Enclosed please find an original and one (1) copy of the following in the above-referenced matter:

1. Notice of Appeal with attached Orders of the Honorable Bentley D. Price.
2. Proof of Service; and
3. Our firm's check in the amount of \$250.00 for the filing fee.

Please file the original and return the filed-stamped copies to me in the enclosed envelope. By copy of this letter, I am serving same upon The Honorable Bentley D. Price, Presiding Judge for Beaufort County, The Honorable Jerri Ann Roseneau Clerk of Court for Beaufort County, and opposing counsel, Charles W. Thomson, Esq. and Glynn L. Cappell, Esq.

Should you have any questions, please feel free to contact me. With kindest regards, I remain

Yours very truly,

A handwritten signature in black ink, appearing to read 'GHO', followed by a long horizontal flourish.

G. Hamlin O'Kelley, III

GHOIII/atd
Enclosures

ROA 155

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-07-0204

RECEIVED

Feb 10 2023

SC Court of Appeals

James R. Brady,

Hilton Head Homes at Allwood, LLC
Square Development Company, LLC; Lancaster
Redevelopment Corp.; and Gary L. Grossman

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Charles W. Thomson

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant Gary L. Grossman's Motion for Judgment Notwithstanding the Verdict, filed on September 7, 2022 and heard on November 2, 2022, is respectfully DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP0702047**

James R Brady		Hilton Head Homes At Allenwood Llc Lancaster Redevelopment Corp	Village Square Development Company Llc Gary L Grossman

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

RECEIVED
Feb 10 2023
SC Court of Appeals

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:
ORDER INFORMATION

See Verdict Form

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

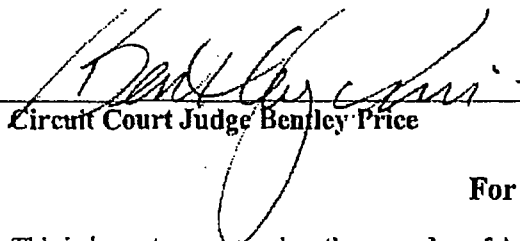
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
James R. Brady	Gary L. Grossman	\$711,027.00

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge Bentley Price

2766
Judge Code

8/30/2022
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of August 2022, and a copy mailed first class or placed in the appropriate attorney's box on the day of August 2022, to attorneys of record or to parties (when appearing pro se) as follows:

Glynn Lindsey Capell PO Box 1559 Bluffton, SC 29910
Charles Whaley Thomson 102 Wappoo Creek Drive, Unit 8
Charleston, SC 29412

George Hamlin O'Kelley III 652 Coleman Blvd., Ste.200 Mt.
Pleasant, SC 29464
Gary L Grossman 2138 Route 522 Selinsgrove, PA 17870

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Cathy Young

Jerri Ann Roscneau - Clerk of Court

Court Reporter: Cathy Young
P.O. Box 4604
Beaufort, SC 29903
clyoung@sccourts.org

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2022 Sep 01 11:53 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

vs.

Gary L. Grossman,

Defendant.

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

) Civil Action No. 2015-CP-07-2047

VERDICT FORM

RECEIVED

Feb 10 2023

SC Court of Appeals

BREACH OF CONTRACT CLAIM AGAINST GARY L. GROSSMAN

1. Do you find, by a preponderance of the evidence, that the Defendant Gary L. Grossman breached a contract with the Plaintiff James R. Brady?

☒ YES: If you answer yes, go to Question No. 2.

☐ NO: If you answer no, then stop here.

2. Do you find, by a preponderance of the evidence, that the Plaintiff James R. Brady was damaged by this breach?

☒ YES: If you answer yes, go to Question No. 3.

☐ NO: If you answer no, then stop here.

3. What damages are owed to Plaintiff James R. Brady as a result of the breach?

\$ 711,000.00

CONVERSION CLAIM AGAINST GARY L. GROSSMAN

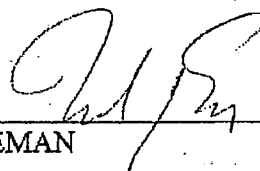
1. Do you find, by a preponderance of the evidence, that the Defendant Gary L. Grossman converted the Plaintiff James R. Brady's personal property, prevented Plaintiff from using the property, and did so without Plaintiff's permission?

✓ YES: If you answer yes, go to Question No. 2.

 NO: If you answer no, then stop here.

2. What damages are owed to Plaintiff James R. Brady as a result of this conversion?

\$ 711,027.00



FOREMAN

August 30, 2022.
Beaufort, South Carolina

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE, NOTIFY THE BAILIFF.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

v.

Hilton Head Homes at Allenwood,
LLC; Village Square Development
Company, LLC; Lancaster
Redevelopment Corp.; and Gary L.
Grossman,

Defendants.

COURT OF COMMON PLEAS
FOURTEENTH CIRCUIT

C.A. No. 2015-CP-07-02047

REPLY TO COUNTERCLAIM

2016 JUL 27 PM 2:15
CLERK OF COURT
SOUTH CAROLINA

To: G. Hamlin O'Kelley, III, Esq.

The Plaintiff James R. Brady replies to the Counterclaims asserted by Defendants as follows:

FOR A FIRST DEFENSE

(Reply to Counterclaim)

1. Each and every allegation as to Plaintiff in the Answer and Counterclaim of Defendants (hereinafter "Answer & Counterclaim") is denied, unless hereinafter admitted, qualified or explained.

2. The allegations contained in Paragraphs 1 to 20 of Answer & Counterclaim are not directed toward Plaintiff and, therefore, do not require a response. To the extent a response is required, Plaintiff denies the allegations.

3. Plaintiff admits the allegations in Paragraphs 21, 22, 23, & 24 of the Answer & Counterclaim.

4. Regarding the allegations contained in Paragraph 25, Plaintiff craves referene to the terms of the Agreement referred to therein.

5. Plaintiff denies the allegations in Paragraphs 26, 27, 28, 29, 30, & 31 of the Answer & Counterclaim.

6. Regarding the allegations contained in Paragraph 32, each and eve-ry allegation set forth above is fully incorporated here.

7. Plaintiff denies the allegations in Paragraphs 33, 34, & 35 of the Answer & Counterclaim.

8. Regarding the allegations contained in Paragraph 36, each and every allegation set forth above is fully incorporated here.

9. Plaintiff denies the allegations in Paragraphs 37, 38, & 39 of the Answer & Counterclaim.

FOR A SECOND DEFENSE

(Reply to Counterclaim)

10. Defendants failed to state claims upon which relief can be granted pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

(Laches)

11. Plaintiff would show, upon information and belief, that there was an unreasonable delay by Defendants in asserting their claims and such claims are therefore barred by laches.

FOR A FOURTH DEFENSE

(Unclean Hands)

12. Upon information and belief, Defendants' claims are barred by the doctrine of unclean hands.

FOR A FIFTH DEFENSE

(Waiver)

13. Plaintiff would show, upon information and belief, that Defendants waived any known right and are therefore barred from any recovery from Plaintiff.

FOR A SIXTH DEFENSE

(Estoppel)

14. Plaintiff would show, upon information and belief, that Defendants are estopped from all claims against Plaintiff.

FOR A SEVENTH DEFENSE

(Mistake)

15. Upon information and belief, a unilateral and/or mutual mistake occurred regarding the terms of the alleged Agreement and, therefore, Defendants are not entitled to recovery.

FOR A EIGHTH DEFENSE

(Statute of Limitations)

16. Defendants are barred from recovery against Plaintiff based upon the applicable statute of limitations.

FOR A NINTH DEFENSE

(Failure to Mitigate)

17. Defendants failed to mitigate their alleged damages and therefore are barred from recovery.

FOR A TENTH DEFENSE

(Breach of Agreement)

18. To the extent there was any Agreement, Defendants breached such Agreement to such a degree that Plaintiff was excused from performance under such Agreement.

FOR A ELEVENTH DEFENSE

(Failure to Comply with Condition Precedent)

19. Defendants failed to comply with conditions precedent in the Agreement and, therefore, are barred from asserting their claims.

FOR A TWELFTH DEFENSE

(Set-Off)

20. Plaintiff is entitled to a set-off for any amounts paid against Defendants' alleged claims.

FOR A THIRTEENTH DEFENSE

(Acceptance)

21. Defendants accepted performance by Plaintiff and therefore are denied recovery from Plaintiff.

FOR A FOURTEENTH DEFENSE
(Intervening Cause or Action by Third Party)

22. The amounts Defendants are allegedly owed, if true, are owed by third parties and/or other parties not a party to this lawsuit and are not owed by Plaintiff.

FOR A FIFTEENTH DEFENSE
(Sole Neglegence)

23. Plaintiff will show that the damages alleged by Defendants, which damages are specifically denied, were the sole and proximate result fo the intervening and/or superseding negligence and/or superseding willful acts and/or recklessness of third persons or parties, which intervening and/or superseding negligence and/or willful acts and/or other actions are a bar to the causes of action asserted by Plaintiff.

FOR A SIXTEENTH DEFENSE
(Contributory Negligence)

24. Plaintiff would show that the damages alleged by Defendants, which are specifically denied, were due to and caused by the reckless, willful, wanton, negligent, careless and grossly negligent acts and conduct of Defendants, which actions combined and concurred with any negligence on the part of Plaintiff, which negligence is hereby specifically denied, to produce such damages, without which the same would not have occurred.

FOR A SEVENTEENTH DEFENSE
(Comparative Negligence)

25. Plaintiff would show that the injuries and/or damages alleged by Defendants, which injuries and damages are hereby specifically denied, were due to and caused by the reckless, willful, wanton, negligent careless and grossly negligent acts and conduct of Defendants, which acts were greater than any acts of negligence on the part of Plaintiff, which acts on the part of Plaintiff are hereby specifically denied, to produce such injury and/or damages, and without which the same would not have occurred.

FOR A EIGHTEENTH DEFENSE

(Assumption of the Risk)

26. Plaintiff would show that Defendants, by and through their actions and/or inactions with regard to the subject alleged in the Counterclaim, have assumed the risk and/or accepted all portions of any damages alleged by Defendants and such assumption of risk and/or acceptance is a bar to claims against Plaintiff.

FOR A NINETEENTH DEFENSE

(Economic Loss Rule)

27. Plaintiff would show that the claims of Defendants are barred by the economic loss rule.

FOR A TWENTIETH DEFENSE

(Reservation and Non-waiver)

28. Plaintiff does not waive, and hereby specifically reserves, any additional and/or further defenses, the propriety of which may be indicated by additional information which may be acquired by Plaintiff or its counsel during the course of discovery or otherwise.

FOR A TWENTY-FIRST DEFENSE

(Statute of Repose)

29. Plaintiff would show that Defendants' claims are barred by the applicable statute and/or statutes of repose.

Wherefore, Plaintiff prays all claims against him be dismissed with prejudice and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

THE CAPELL LAW FIRM, LLC



Glynn L. Capell (16552)

GCapell@CapellLaw.com

Charles W. Thomson (101471)

CThomson@CapellLaw.com

Post Office Box 6628

Hilton Head Island, SC 29938

(843) 689-4280

Attorneys for Plaintiff

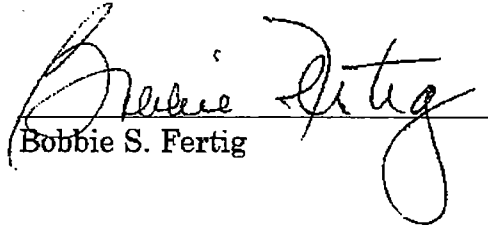
July 25, 2016

Hilton Head Island, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies having served a copy of the foregoing **Reply to Counterclaim** to all counsel of record on **July 25, 2016** by mailing a copy of same, electronically or with proper postage affixed thereto as follows:

G. Hamlin O'Kelley, III, Esq.
BUIST, BYARS & TAYLOR, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464


Bobbie S. Fertig

Hilton Head Island, South Carolina

The Capell Law Firm, LLC

17 Executive Park Road, Suite 5B (29928)
Post Office Box 6628
Hilton Head Island, SC 29938

2016 JUL 27 PM 2:15

Glynn L. Capell
Licensed also in NC & FL
Email: gcapell@capelllaw.com

Charles W. Thomson
Email: cthomson@capelllaw.com

www.capelllaw.com
Phone: 843.689.4280
Facsimile: 843.689.4281

July 25, 2016

The Honorable Jerri Ann Roseneau
Clerk of Court, Beaufort County
P.O. Drawer 1128
Beaufort, South Carolina 29901

RE: *James R. Brady v. Hilton Head Homes at Allenwood, LLC, Village Square
Development Company, LLC, Lancaster Redevelopment Corp. and Gary L.
Grossman*
C.A. 2015-CP-072047

Dear Ms. Roseneau:

Enclosed please find an original and (1) copy of a Reply to Counterclaim in the above-referenced matter. Please file the original and return a stamped copy in the self-addressed, stamped envelope.

With kind regards, I remain

Very truly yours,

THE CAPELL LAW FIRM, LLC



Charles W. Thomson

CWT/bsf
Enclosures
cc: Hamlin O'Kelley via U.S. Mail

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CASE NO. 2015-CP-07-2047

James R. Brady,

)
)
) Plaintiff,
)

vs.

)
)
) Hilton Head Homes at Allenwood, LLC,
) Village Square Development Company,
) LLC, Lancaster Redevelopment Corp.
) and Gary L. Grossman,
)

)
) Defendants.
)

**ANSWER AND COUNTERCLAIM OF THE
DEFENDANTS**

2015 SEP 14 PM 3:33
CLERK OF COURT
BEAUFORT COUNTY, S.C.

TO: GLYNN L. CAPELL, ESQ.
CHARLES W. THOMPSON, ESQ.

The Defendant(S) Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp. and Gary L. Grossman (the "Defendants") by and through their undersigned counsel, answering the Complaint of the Plaintiff James R. Brady and setting forth their Counterclaims against James R. Brady allege and state as follows:

1. Each and every allegation of the Plaintiff's Complaint not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Defendants deny same and demand strict proof thereof.
2. The Defendants admit Paragraph 1 of the Plaintiff's Complaint.
3. The Defendants admit the allegations of Paragraphs 2, 3, and 4 of the Plaintiff's Complaint.
4. The Defendants admit only so much of Paragraph 5 of the Plaintiff's Complaint that alleges the Defendant Gray L. Grossman is a resident of the State of Pennsylvania. The Defendants deny the remaining allegations of said Paragraph and would allege and show that he never conducted business in Beaufort County regarding this matter in his individual capacity.

5. The Defendants are not required to answer the allegations contained in Paragraph 6 of the Plaintiff's Complaint as said allegations constitute legal conclusions.

6. The Defendants deny the allegations of Paragraphs 7, 8, and 9 and demand strict proof thereof.

7. The Defendants are without sufficient information to form a belief as to the allegations of Paragraph 10 of the Plaintiff's Complaint, and, therefore, denies same and demands strict proof thereof.

8. In answering Paragraph 11 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 7 above as though repeated herein verbatim.

9. The Defendants admit only so much of Paragraph 12 of the Plaintiff's Complaint that alleges the Plaintiff at one time worked for the Defendant Hilton Head Homes at Allenwood, LLC. The Defendants deny the remaining allegations of Paragraph 8 of the Plaintiff's Complaint and demand strict proof thereof.

10. The Defendants deny the allegations of Paragraphs 13, 14, and 15 of the Plaintiff's Complaint and demand strict proof thereof.

11. In answering Paragraph 16 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 10 above as though repeated herein verbatim.

12. The Defendants deny the allegations of Paragraphs 17, 18, 19, 20, and 21 of the Plaintiff's Complaint and demand strict proof thereof.

13. In answering Paragraph 22 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 10 above as though repeated herein verbatim.

14. The Defendants deny the allegations of Paragraphs 23, 24, 25, and 26 of the Plaintiff's Complaint and demand strict proof thereof.

FOR A FURTHER ANSWER
AND BY WAY OF AN AFFIRMATION DEFENSE AND
MOTION TO DISMISS

15. The Defendants would allege and show that the Plaintiff's Complaint fails to state facts sufficient upon which relief can be granted, and, as such, the Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) SCRPC.

FOR A FURTHER ANSWER
AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE

16. The Defendants would allege and show that the Plaintiff's own inequitable actions, including non-performance of the duties of his job, act as a complete bar to recover, and, as such, the Plaintiff's Complaint should be dismissed.

FOR A FURTHER ANSWER
AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE

17. The Defendants would allege and show that the Plaintiff's Complaint is barred by the doctrines of waiver, estoppel, and laches as the Plaintiff failed to act when he should have acted in protecting any interest he may have had regarding these claims, if any, and none of which are admitted, as set forth in his Complaint.

FOR A FURTHER ANSWER
AND BY WAY OF A FOURTH AFFIRMATIVE DEFENSE

18. The Defendants would allege and show that the Plaintiff knew or should have known that no fees, compensation, remuneration, or payment of any kind would be paid to him for work not performed by him and that he would only be paid for work in furtherance of the business of Hilton Head Homes at Allenwood, LLC.

FOR A FURTHER ANSWER
AND BY WAY OF A FIFTH AFFIRMATIVE DEFENSE

19. The Defendants would allege and show that the Plaintiff had no reliance upon Gary L. Grossman as any employer and bases his entire baseless case on one letter from Mr. Grossman knowing that he was to further the business of Hilton Head Homes at Allenwood, LLC, and not that of Mr. Grossman, individually.

FOR A FURTHER ANSWER
AND BY WAY OF A SIXTH AFFIRMATIVE DEFENSE
AND BY WAY OF A COUNTERCLAIM

20. The Defendants repeat and reallege Paragraphs 1 through 19 above as though repeated herein verbatim.

21. The Defendants Hilton Head Homes at Allenwood, LLC, and Village Square Development Company, LLC, are limited liability companies organized and existing pursuant to the laws of the State of South Carolina.

22. The Defendant Lancaster Redevelopment Corporation is a corporation organized and existing pursuant to the laws of the State of Pennsylvania and authorized to conduct business in South Carolina.

23. The Defendant Gary L. Grossman is a citizen and resident of the State of Pennsylvania.

24. The Plaintiff James R. Brady is a resident of Beaufort County, South Carolina.

25. Pursuant to the terms and conditions of an agreement with Lancaster Redevelopment Corporation, the Plaintiff was to have provided services to Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation in connection with the construction, sales, and marketing of a certain development in Beaufort County, South Carolina.

26. The Plaintiff was given sums as loans and as advances for work that should have been performed by the Plaintiff, which work was not performed by the Plaintiff, prior to any distributions being made or prior to any commissions or payments being given to the Plaintiff.

27. The Plaintiff often informed the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation that he could not cover the workload required of him in order to receive commissions and other compensation.

28. While he was to have been furthering the business of Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation, the Plaintiff failed to perform work required of him and third parties had to be employed to complete the work the Plaintiff was going to allegedly complete.

29. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation made numerous payments to the Plaintiff in spite of his inability to perform as promised and as relied upon by Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation.

30. Such a failure to perform constitutes a breach of contract entitling the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation to recover all payments made to the Plaintiff in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

31. The Plaintiff is not entitled to retain the benefit of these payments and advancements due to his breach of his agreement with Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation, and these Defendants

are entitled to actual damages in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars in amounts to be determined at the trial of this case.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

32. The Defendants repeat and reallege Paragraphs 1 through 31 above as though repeated herein verbatim.

33. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation had valid contract with the Plaintiff for services which the Plaintiff failed to provide.

34. Such a failure constitutes a breach of contract for which the Plaintiff has no legal excuse and which breach has caused the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation to suffer damages in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

35. As a direct and proximate result of the Plaintiff's breach of contract, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation are entitled to actual damages in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars in amounts to be determined at trial.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)

36. The Defendants repeat and reallege Paragraphs 1 through 35 above as though repeated herein verbatim.

37. Despite receiving payments, the Plaintiff failed and refused to perform pursuant to his agreement with the Defendants Hilton Head Homes at Allenwood, LLC, Village Square

Development Company, LLC, and Lancaster Redevelopment Corporation and was compensated in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

38. The Plaintiff has been unjustly enriched by having received these payments and it would be inequitable and unjust for the Plaintiff to retain the value of the payments made in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

39. As a direct and proximate result of this unjust enrichment, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation are entitled to recover damages against the Plaintiff in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars in amounts to be determined at trial of this case.

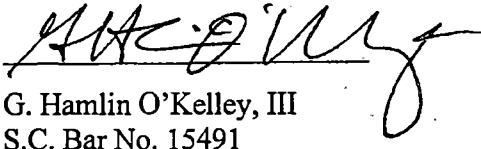
WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corporation, and Gary L. Grossman pray this Court enter its Order as follows:

1. Dismissing the Plaintiff's Complaint;
2. Awarding the Defendants all reasonable attorneys' fees and costs;
3. Awarding the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corporation, damages in the minimum amount of Six Hundred Thousand and No/100 (\$600,000.00) Dollars and other amounts to be determined at trial; and
4. Awarding any and all such further relief as this Court may deem just and proper.

BUIST, BYARS & TAYLOR, LLC

Mount Pleasant, South Carolina

Sept. 1, 2015

By: 

G. Hamlin O'Kelley, III

S.C. Bar No. 15491

652 Coleman Blvd., Suite 200

Mt. Pleasant, SC 29464

(843) 856-4488

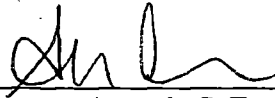
Hamlin.okelley@buistbyars.com

CERTIFICATE OF MAILING

I hereby certify that on September 1, 2015, a copy of the foregoing *Summons, Answer and Counterclaim of the Defendants* was mailed, postage prepaid, to all counsel of record in this matter, as follows.

Mr. Glynn L. Capell, Esq.
The Capell Law Firm, LLC
PO Box 6628
Hilton Head, SC 29938

2015 SEP 14 PM 3:33
U.S. DISTRICT COURT
SOUTH DISTRICT OF FLORIDA
MIAMI, FL 33101



Amanda C. Taylor
Paralegal to G. Hamlin O'Kelley, III



652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
T 843.856.4488 F 843.856.0613 W buistbyars.com

G. HAMLIN O'KELLEY III
ATTORNEY AT LAW
Hamlin.okelley@buistbyars.com

September 1, 2015

The Honorable Jerri Ann Roseneau
Beaufort County Clerk of Court
102 Ribaut Road, Suite 208

Re: James R. Brady v. Hilton Head Homes at Allenwood, LLC, et al.
Case No. 2015-CP-07-2047
File No.: 1115.0001

Dear Ms. Roseneau:

Enclosed please find an original and one (1) copy of the Summons, Answer and Counterclaim of the Defendants in the above-referenced matter. By copy of this letter, we are serving all counsel of record.

Kindly file the original and return the file-stamped copy to us in the return envelope provided. Should you have any questions, feel free to contact me directly at 843.284.1461.

Sincerely,

A handwritten signature in black ink, appearing to be "Amanda C. Taylor".

Amanda C. Taylor
Paralegal to G. Hamlin O'Kelley, III

/act
Enclosures

Cc: (w/ Encl.)
Glynn L. Capell, Esq.

{00664198.DOC}

ROA 181

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

JAMES R. BRADY,

Plaintiff,

vs.

HILTON HEAD HOMES AT
ALLENWOOD, LLC, VILLAGE
SQUARE DEVELOPMENT
COMPANY, LLC, LANCASTER
REDEVELOPMENT CORP. and
GARY L. GROSSMAN

Defendants.

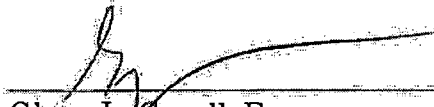
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
C.A. No.: 2015-CP-07- 2047

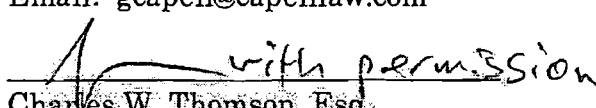
SUMMONS
(Jury Trial Demanded)

FILED
MAR 25 PM 4:00
CLERK OF COURT

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscriber at his office, Post Office Box 6628, Hilton Head Island, South Carolina 29938, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to appear and defend the action as required by law, judgment by default will be rendered against you for the relief demanded in the Complaint.

THE CAPELL LAW FIRM, LLC


Glynn L. Capell, Esq.
SC Bar #: 16552
Email: gcapell@capelllaw.com

 with permission
Charles W. Thomson, Esq.
SC Bar #: 101471
Email: cthomson@capelllaw.com

Post Office Box 6628
Hilton Head Island, SC 29938
Telephone: (843) 689-4280
Facsimile: (843) 689-4281
Attorneys for Plaintiffs

August _____, 2015
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

JAMES R. BRADY,

Plaintiff,

vs.

HILTON HEAD HOMES AT
ALLENWOOD, LLC, VILLAGE
SQUARE DEVELOPMENT
COMPANY, LLC, LANCASTER
REDEVELOPMENT CORP. and
GARY L. GROSSMAN

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) C.A. No.: 2015-CP-07- 2047

) **COMPLAINT**
) (Jury Trial Demanded)

The Plaintiff, James R. Brady ("Plaintiff"), complaining of the Defendants above-named, would respectfully show unto the Court as follows:

PARTIES AND JURISDICTION

1. The Plaintiff is a citizen and resident of Beaufort County, South Carolina.
2. Defendant Hilton Head Homes at Allenwood, LLC ("Hilton Head Homes") is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.
3. Defendant Village Square Development Company, LLC ("Village Square") is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

4. Defendant Lancaster Redevelopment Corporation ("Lancaster") is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of Pennsylvania and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

5. Defendant Gary L. Grossman ("Grossman") is a citizen and resident the State of Pennsylvania and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina

6. This Court has jurisdiction over the subject matter and parties to this action.

FACTUAL ALLEGATIONS

7. On or about February 2, 2004, Grossman entered into a "Letter of Agreement" with Plaintiff wherein Hilton Head Homes, Village Square, Lancaster and Grossman engaged Plaintiff as an independent contractor to perform sales and marketing and construction management services and agreed to compensate Brady as set forth herein.

8. Over the course of the next several years, Brady performed the work as set forth in the February 2, 2004 "Letter of Agreement".

9. On or about September 13, 2007, Plaintiff received a letter from Lancaster setting forth the Defendants' calculations of the amount of money due to Plaintiff for the services he provided to the Defendants since the February 2, 2004 "Letter of Agreement". The September 13, 2007 letter states Plaintiff is due the total amount of \$711,027.00.

10. Plaintiff has retained an accountant to analyze the September 13, 2007 letter and has determined that the actual amount of monies due Plaintiff is \$724,114.00.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract)

11. Each and every allegation set forth above is fully incorporated herein.

12. As set forth more fully above, Plaintiff and Defendants entered into an Agreement wherein Defendants agreed to provide compensation to Plaintiff for providing sales and marketing and construction management services in the construction and sale of single family homes and townhouses in the Allenwood Development ("Allenwood") on Hilton Head Island.

13. Plaintiff performed his obligations of the Agreement and is entitled to compensation for such services as set forth herein.

14. Defendants have breached the Agreement by failing to compensate Plaintiff the amounts admittedly owed.

15. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of \$724,114.00, consequential damages, plus costs, prejudgment interest and postjudgment interest.

FOR A SECOND CAUSE OF ACTION
(Quantum Meruit)

16. Each and every allegation set forth above is fully incorporated herein.

17. As set forth above, Plaintiff provided valuable services to the Defendants in the form of sales and marketing activities as well as construction management services.

18. Defendants accepted, used and enjoyed the services provided by Plaintiff.

19. Defendants were aware Plaintiff expected to be compensated for such services and Defendants have valued such services at \$711,027.00.

20. In light of the above, it would be inequitable for Defendants to retain the value of the services provided by Plaintiff without just compensation to Plaintiff in the amount of at least \$711,027.00.

21. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of \$724,114.00, consequential damages, plus costs, prejudgment interest and postjudgment interest.

FOR A THIRD CAUSE OF ACTION
(Conversion)

22. Each and every allegation set forth above is fully incorporated herein.

23. As set forth above, Defendants have exercised the unauthorized assumption and right of ownership over \$711,027.00 to the exclusion of Plaintiff's rights of such amount.

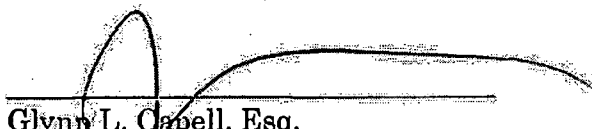
24. Plaintiff has an interest in the \$711,027.00 and Defendants converted the property to their own use without the permission of Plaintiff.

25. Upon information and belief, Defendants knowingly or with reckless intent converted the \$711,027.00 to their own use.

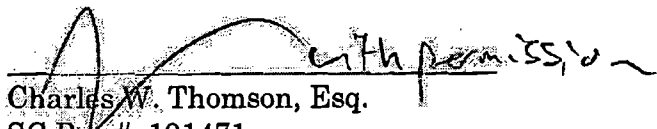
26. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of \$724,114.00, consequential damages, plus costs, punitive damages where applicable, prejudgment interest and postjudgment interest.

WHEREFORE, the Plaintiff prays for judgment against Defendants in the amount of \$724,114.00, plus consequential damages, costs, punitive damages where applicable, and prejudgment interest and postjudgment interest, and for such other and further relief as this Court may deem just and proper.

THE CAPELL LAW FIRM, LLC



Glynn L. Capell, Esq.
SC Bar #: 16552
Email: gcapell@capelllaw.com



Charles W. Thomson, Esq.
SC Bar #: 101471
Email: cthomson@capelllaw.com

Post Office Box 6628
Hilton Head Island, SC 29938
Telephone: (843) 689-4280
Facsimile: (843) 689-4281
Attorneys for Plaintiffs

August 21, 2015
Hilton Head Island, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-07-02690

James R. Brady

Hilton Head Homes at Allenwood LLC et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Megan White

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: After a hearing on May 15, 2015, Plaintiff's Motion to Refer to a Special Referee is denied. Upon the consent of counsel, this case shall be dismissed pursuant to 40(j) and immediately refiled with a new case number.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Circuit Court Judge

2142
Judge Code6/15/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the 16th day of June, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 16th day of June, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Glynis Winkley Capell, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

George Franklin Kelly III
Gary K. Grossman

ATTORNEY(S) FOR THE DEFENDANT(S)

Diana S. Hirsch
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

way differ from the terms and conditions of the agreement, the Defendants deny the remaining allegations of said Paragraph and demand strict proof thereof.

5. The Defendants admit only so much of Paragraph 8 of the Plaintiff's Complaint that alleges the Plaintiff claims to have performed work for the Defendants other than Mr. Grossman individually. To extent the work was performed in any way other than that set forth in the agreement between Mr. Brady and the Defendants other than Mr. Grossman, the Defendants deny the allegations of said Paragraph and demand strict proof thereof.
6. The Defendants deny the allegations of Paragraph 9 of the Plaintiff's Complaint and demand strict proof thereof.
7. The Defendants are without sufficient information to form a belief as to the allegations of Paragraph 10 of the Plaintiff's Complaint, and, therefore, deny same and demand strict proof thereof.
8. In answering Paragraph 11 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 7 above as though repeated herein verbatim.
9. The Defendants deny the allegations of Paragraphs 12, 13, 14, and 15 of the Plaintiff's Complaint and demand strict proof thereof.
10. In answering Paragraph 16 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 9 above as though repeated herein verbatim.
11. The Defendants deny the allegations of Paragraphs 17, 18, 19, 20 and 21 of the Plaintiff's Complaint and demand strict proof thereof.
12. In answering Paragraph 22 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 11 above as though repeated herein verbatim.

13. The Defendants deny the allegations of Paragraphs 23, 24, 25, and 26 of the Plaintiff's Complaint and demand strict proof thereof.

FOR A FURTHER ANSWER
AND BY WAY OF AN AFFIRMATIVE DEFENSE
AND MOTION TO DISMISS

14. The Defendants would allege and show that the Plaintiff's Complaint fails to state facts sufficient upon which relief could be granted, and, as such, the Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) SCRPC.

FOR A FURTHER ANSWER
AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE

15. The Defendants would allege and show that the Plaintiffs' own inequitable actions regarding the facts and circumstances giving rise to his claims, if any, and none of which are admitted, act as a bar to the Plaintiff's recovery, and, as such, the Plaintiff's Complaint should be dismissed.

FOR A FURTHER ANSWER
AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE

16. The Defendants would allege and show that the Plaintiff's Complaint are barred by the doctrines of waiver, estoppel and laches in that the Plaintiff failed to act when he should have to protect any interest he may have regarding his claims, if any, and none of which are admitted, set forth in his Complaint.

FOR A FURTHER ANSWER
AND BY WAY OF A FOURTH AFFIRMATIVE DEFENSE

17. The Defendants would allege and show that the Plaintiff knew or should have know that no fees or compensation for his services would be paid to him only if any work were actually

performed by him and which work the Plaintiff could not provide and, as such, the Plaintiff's Complaint should be dismissed.

FOR A FURTHER ANSWER
AND BY WAY OF A FIFTH AFFIRMATIVE DEFENSE

19. The Defendants would allege and show that the Plaintiff had no contract with the Defendant Gary L. Grossman, individually, and, as such, this Defendant should be dismissed from this suit.

FOR A FURTHER ANSWER
AND BY WAY OF A SIXTH AFFIRMATIVE DEFENSE
AND BY WAY OF A COUNTERCLAIM

20. The Defendants repeat and reallege Paragraphs 1 through 19 above as though repeated herein verbatim.

21. The Defendants Hilton Head Homes at Allenwood, LLC, and Village Square Development Company, LLC, are limited liability companies organized and existing under the laws of the State of South Carolina.

22. The Defendant Lancaster Redevelopment Corporation is a company organized and existing under the laws of the State of Pennsylvania.

23. The Defendant Gary L. Grossman is a citizen and resident of the State of Pennsylvania.

24. The Plaintiff James R. Brady is a resident of Beaufort County, South Carolina.

25. Pursuant to the terms of his agreement with Lancaster Redevelopment Corporation, the Plaintiff was to have provided certain services to Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation in connection with the constructions, sales and marketing of a certain development in Beaufort County.

26. The Plaintiff knew that sums were to be repaid to entities and individuals that loaned money to the development prior to any distributions being made and prior to his receiving any commissions or payments.

27. The Plaintiff informed the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation that he could not cover the workload required of him in order to receive the compensation he now claims he is due.

28. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation had to employ third parties to complete the work that the Plaintiff warranted and promised that he could complete.

29. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation have made payments to the Plaintiff despite his inability to perform as promised.

30. Such a failure to perform constitutes a breach of contract entitling the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation to recover all payments made to the Plaintiff in amounts in excess of Six Hundred Thousand (\$600,000.00) Dollars.

31. The Plaintiff is not entitled to retain these payments due to his breach of his agreement with the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation, and these Defendants are entitled to actual damages in excess of Six Hundred Thousand (\$600,000.00) in an amount to be determined at the trial of this case.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

32. The Defendants repeat and reallege Paragraph 1 through 31 above as though repeated herein verbatim.

33. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation had a contract with the Plaintiff for services which the Plaintiff failed to provide.

34. Such failure constitutes a breach of contract for which the Plaintiff has no legal excuse and which breach has caused the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation to suffer damages in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

35. As a direct and proximate result of the Plaintiff's breach of contract, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation are entitled to actual damages in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars in amounts to be determined at trial.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)

36. The Defendants repeat and reallege Paragraphs 1 through 35 above as though repeated herein verbatim.

37. Despite receiving payment, the Plaintiff failed to perform pursuant to his agreement with the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation and was compensated in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

38. The Plaintiff has been unjustly enriched by having received these payments and it would be inequitable and unjust for the Plaintiff to retain the value of the payments made in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

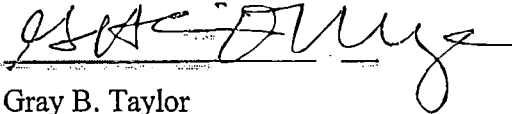
39. As a direct and proximate result of the Plaintiff's actions in being unjustly enriched, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation are entitled to damages in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars in amounts to be determined at trial.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corporation and Gary L. Grossman pray that this Court enter its Order as follows:

1. Dismissing the Plaintiff's Complaint;
2. Awarding these Defendants all costs and fees associated with the defense of this matter;
3. Awarding the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation damages in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars in amounts to be determined at trial; and
4. Awarding any and all such further relief as this Court may deem just and proper.

BUIST, BYARS & TAYLOR, LLC

Mount Pleasant, South Carolina
Aug. 19, 2009

By: 

Gray B. Taylor
S.C. Bar No. 10795
G. Hamlin O'Kelley, III
S.C. Bar No. 15491
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George E. Mullen

Robert L. Wylie, IV

Francis E. Grimball

James E. Lady

Glynn L. Capell

Arthur T. Meeder

Mark A. Bruntz

Amy W. Waters

MULLEN WYLIE
ATTORNEYS

June 16, 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RESTRICTED DELIVERY

Mr. Gary L. Grossman
2138 Route 522
Selinsgrove, PA 17870

RE: *James R. Brady v. Hilton Head Homes at Allenwood, LLC, et al*
C.A. No. 2009-CP-07-02690

Dear Mr. Grossman:

Please find enclosed for service upon you a Summons and Complaint which has been filed regarding the above-referenced matter.

With kind regards, I remain

Very truly yours,

MULLEN WYLIE, LLC

Glynn L. Capell

GLC/pm
Enclosures

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

JAMES R. BRADY,

Plaintiff,

vs.

HILTON HEAD HOMES AT
ALLENWOOD, LLC, VILLAGE
SQUARE DEVELOPMENT
COMPANY, LLC, LANCASTER
REDEVELOPMENT CORP. and
GARY L. GROSSMAN

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
C.A. No.: 2009-CP-07- 02690

SUMMONS
(Jury Trial Demanded)

2009 JUN -5 AM 11:46
CLERK OF COURT
BENEFIT COUNTY S.C.

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscriber at his office, 70 Arrow Road, Ste. 1, Post Office Box 5969, Hilton Head Island, South Carolina 29938, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to appear and defend the action as required by law, judgment by default will be rendered against you for the relief demanded in the Complaint.

MULLEN WYLIE, LLC

By: _____

Glynn L. Capell (S.C. Bar No. 16552)
70 Arrow Road, Suite 1
P.O. Box 5969
Hilton Head Island, SC 29938
(843) 785-6969
Attorneys for the Plaintiff

June 4, 2009
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

JAMES R. BRADY,

Plaintiff,

vs.

HILTON HEAD HOMES AT
ALLENWOOD, LLC, VILLAGE
SQUARE DEVELOPMENT
COMPANY, LLC, LANCASTER
REDEVELOPMENT CORP. and
GARY L. GROSSMAN

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
C.A. No.: 2009-CP-07- 02690

COMPLAINT
(Jury Trial Demanded)

2009 JUN -5 AM 11:46
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The Plaintiff, James R. Brady ("Plaintiff"), complaining of the Defendants above-named, would respectfully show unto the Court as follows:

PARTIES AND JURISDICTION

1. The Plaintiff is a citizen and resident of Beaufort County, South Carolina.
2. Defendant Hilton Head Homes at Allenwood, LLC ("Hilton Head Homes") is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.
3. Defendant Village Square Development Company, LLC ("Village Square") is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

4. Defendant Lancaster Redevelopment Corporation ("Lancaster") is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of Pennsylvania and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

5. Defendant Gary L. Grossman ("Grossman") is a citizen and resident the State of Pennsylvania and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina

6. This Court has jurisdiction over the subject matter and parties to this action.

FACTUAL ALLEGATIONS

7. On or about February 2, 2004, Grossman entered into a "Letter of Agreement" with Plaintiff wherein Hilton Head Homes, Village Square, Lancaster and Grossman engaged Plaintiff as an independent contractor to perform sales and marketing and construction management services and agreed to compensate Brady as set forth herein.

8. Over the course of the next several years, Brady performed the work as set forth in the February 2, 2004 "Letter of Agreement".

9. On or about September 13, 2007, Plaintiff received a letter from Lancaster setting forth the Defendants' calculations of the amount of money due to Plaintiff for the services he provided to the Defendants since the February 2, 2004 "Letter of Agreement". The September 13, 2007 letter states Plaintiff is due the total amount of \$711,027.00.

10. Plaintiff has retained an accountant to analyze the September 13, 2007 letter and has determined that the actual amount of monies due Plaintiff is \$724,114.00.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

11. Each and every allegation set forth above is fully incorporated herein.
12. As set forth more fully above, Plaintiff and Defendants entered into an Agreement wherein Defendants agreed to provide compensation to Plaintiff for providing sales and marketing and construction management services in the construction and sale of single family homes and townhouses in the Allenwood Development ("Allenwood") on Hilton Head Island.
13. Plaintiff performed his obligations of the Agreement and is entitled to compensation for such services as set forth herein.
14. Defendants have breached the Agreement by failing to compensate Plaintiff the amounts admittedly owed.
15. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of \$724,114.00, consequential damages, plus costs, prejudgment interest and postjudgment interest.

FOR A SECOND CAUSE OF ACTION
(Quantum Meruit)

16. Each and every allegation set forth above is fully incorporated herein.
17. As set forth above, Plaintiff provided valuable services to the Defendants in the form of sales and marketing activities as well as construction management services.
18. Defendants accepted, used and enjoyed the services provided by Plaintiff.
19. Defendants were aware Plaintiff expected to be compensated for such services and Defendants have valued such services at \$711,027.00.

20. In light of the above, it would be inequitable for Defendants to retain the value of the services provided by Plaintiff without just compensation to Plaintiff in the amount of at least \$711,027.00.

21. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of \$724,114.00, consequential damages, plus costs, prejudgment interest and postjudgment interest.

FOR A THIRD CAUSE OF ACTION
(Conversion)

22. Each and every allegation set forth above is fully incorporated herein.

23. As set forth above, Defendants have exercised the unauthorized assumption and right of ownership over \$711,027.00 to the exclusion of Plaintiff's rights of such amount.

24. Plaintiff has an interest in the \$711,027.00 and Defendants converted the property to their own use without the permission of Plaintiff.

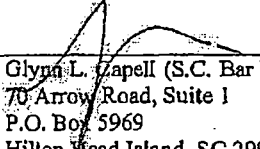
25. Upon information and belief, Defendants knowingly or with reckless intent converted the \$711,027.00 to their own use.

26. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of \$724,114.00, consequential damages, plus costs, punitive damages where applicable, prejudgment interest and postjudgment interest.

WHEREFORE, the Plaintiff prays for judgment against Defendants in the amount of \$724,114.00, plus consequential damages, costs, punitive damages where applicable, and

prejudgment interest and postjudgment interest, and for such other and further relief as this Court may deem just and proper.

MULLEN WYLIE, LLC

By: 
Glynn L. Zapell (S.C. Bar No. 16552)
70 Arrow Road, Suite 1
P.O. Box 5969
Hilton Head Island, SC 29938
(843) 785-6969
Attorneys for the Plaintiff

June 4, 2008
Hilton Head Island, South Carolina

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
VD of Ginger Griffith	08			
Gary Grossman				
By Mr. Capell	10			
By Mr. O'Kelley		43		
By Mr. Capell			79	
By Mr. O'Kelley				96
Judge's Instructions	111			
Closing by Mr. Thomson	127			
Closing by Mr. O'Kelley	138			
Rebuttal Closing by Mr. Thomson	144			
The Verdict	150			
Certificate of Reporter	159			

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P R O C E E D I N G S

* * * * *

THE COURT: All right, so your next witness will
be --

MR. THOMSON: Video of Ginger Griffith.

THE COURT: Do you want to do the video first?

MR. THOMSON: Yes, Your Honor.

THE COURT: All right, good, let's do that. And
while we're doing this, I'm just going to look over
these real quickly, but, obviously, all your jury
charges are standard. I mean they're all in our
standard jury charges.

MR. THOMSON: Well, there is a little bit of
case law I put in there.

THE COURT: Uncontradicted testimony.

MR. O'KELLEY: I think those are mine, Your
Honor.

THE COURT: It's backwards. All yours are
standard?

MR. O'KELLEY: Mine are absolutely standard. I
just lifted most of them from --

THE COURT: Yeah.

MR. O'KELLEY: -- the perspective charge book
and --

THE COURT: So we'll do the same one that we

1 always do. I'll just take a look at it. Yours --

2 MR. THOMSON: I'll tell you which ones.

3 THE COURT: All right, hit me. Obviously,
4 witness credibility all that's very standard.

5 MR. THOMSON: Yeah, that part's standard.
6 Witness credibility standard.

7 MR. O'KELLEY: I've got that one.

8 MR. THOMSON: Converge elements, standard.
9 Converge the money, standard.

10 THE COURT: It'll all be in my conversion
11 charge. We have a standard conversion charge.

12 MR. THOMSON: I've got -- here's -- the one I
13 drafted myself is -- I was beyond very careful with
14 the wording.

15 MR. O'KELLEY: Which one is it?

16 MR. THOMSON: It's number four, or I don't have
17 them labeled at the top. It's called -- it's
18 labeled conversion of corporate funds, Your Honor,
19 and by all means -- it's in your --

20 THE COURT: I've got it.

21 MR. THOMSON: -- it's in your second.

22 THE COURT: All right.

23 MR. THOMSON: By all means look behind me, make
24 sure it's right.

25 THE COURT: I'll do it, yeah. I've got 45

1 minutes to do it, so let me do it all right now,
2 and --

3 MR. THOMSON: Okay.

4 THE COURT: -- Haley has the standard jury
5 charges. All right, anybody need anything before we
6 get started?

7 MR. O'KELLEY: Your Honor, you were taking under
8 advisement whether these four exhibits would be
9 admitted or not. I didn't know if you've made a --

10 THE COURT: Let's wait to see what he says.

11 MR. O'KELLEY: Perfect.

12 THE COURT: All right. Y'all ready?

13 MR. O'KELLEY: Yes, sir

14 MR. THOMSON: Yes, sir.

15 MR. O'KELLEY: We'll wait to see what you have
16 to say about our document.

17 THE COURT: All right.

18 MR. THOMSON: Judge Price --

19 THE COURT: Yeah.

20 MR. THOMSON: This is another one.

21 THE COURT: All right.

22 MR. THOMSON: I drafted it myself.

23 THE COURT: Which one?

24 MR. THOMSON: It's called burden of proof on
25 claims and defendants' defenses.

1 THE COURT: All right, grab that for me real
2 quick.

3 MR. THOMSON: It just says -- it's number seven
4 in your stack.

5 THE COURT: All right.

6 MR. THOMSON: They're not labeled yet.

7 THE COURT: Burden of proof on claims and
8 defenses.

9 MR. THOMSON: Yeah.

10 THE COURT: I think that's already --

11 MR. THOMSON: I -- I didn't -- I didn't see one
12 in our library that was burden of proof on defenses,
13 so --

14 THE COURT: All right, again --

15 MR. THOMSON: -- I just copied --

16 THE COURT: -- I look on preponderance of the
17 evidence, but I think he has it in there.

18 MR. THOMSON: Okay.

19 THE COURT: All right.

20 THE BAILIFF: Are you ready for the Jury?

21 THE COURT: Yes, ma'am, bring them out.

22 MR. THOMSON: Judge Price, the other thing on my
23 jury charge, some of them are standard from a book,
24 but I believe portions that were at issue, like an
25 explanation and consideration, I don't think there's

1 any mention about consideration, so I took that out.

2 THE COURT: We'll have to do it again.

3 MR. THOMSON: Those jury charges, the standard
4 ones from the King book, it just --

5 THE COURT: I --

6 MR. THOMSON: -- they're so long and confusing.

7 THE COURT: I haven't used it -- I've never used
8 it one time. We've got a jury charge book that was
9 done by the Circuit --

10 THE BAILIFF: All ready?

11 THE COURT: Bring them out.

12 THE BAILIFF: All right, bring them in.

13 (Whereupon, Jury enters courtroom.)

14 THE COURT: All right, good morning, I hope
15 y'all had a wonderful evening. Thank you for being
16 on time. At this point in time, as we indicated
17 previously, we are going to have a virtual witness.
18 They have taken a video deposition. All that means
19 is that what you saw yesterday has been videoed.
20 They get to put on their direct, they get to have
21 cross, and they just go back and forth, and
22 everybody has the same opportunity to examine the
23 witness, it's just that that witness was not able to
24 be here, so they video-recorded it, so that's very,
25 very common. It's to be considered just as if they

1 were sitting right there. Fair enough? All right,
2 it's 45 minutes, if anybody needs a break during
3 that time, just let us know, but we'll just run the
4 video, if you need to stop for any reason, just tell
5 us and we'll stop it. All right. If you can't see
6 and you want to stand up, you want to sit over here,
7 you want to sit in the chair back here, if it hurts
8 your neck, wherever you want to go that's
9 comfortable for you to see the video, feel free to
10 move around. Yeah, if you want to sit back there,
11 or you need a chair, whatever's convenient. All
12 right, y'all ready?

13 MR. CAPELL: We did this back before Zoom, so it
14 looks antiquated. Your Honor, whenever --

15 THE COURT: We ready to go?

16 MR. THOMSON: Yeah.

17 THE COURT: We'll turn the lights down whenever
18 it gets going. Hold on, we're going to have to turn
19 it up, I can't even hear it. Hold on.

20 THE BAILIFF: All right, go ahead and play it.

21 (Video testimony of Ginger Griffith is played
22 for the Jury.)

23 THE COURT: All right, ladies and gentlemen, I
24 mean I know not all testimony is, you know, Tom
25 Cruise and Jack Nicholson going at it in, you know,

1 A Few Good Men, but, obviously, that's important
2 information that we need to digest, but let's go
3 ahead and take a quick break, because I think the
4 next one is going to be fairly lengthy, okay? And
5 we'll get a little coffee, stretch your legs, and
6 we'll come right back here. Fair enough?

7 (Whereupon, jury exits courtroom.)

8 (Whereupon, a brief recess is taken.)

9 THE COURT: All right, anything before we bring
10 them back out?

11 MR. THOMSON: In pre-trial, I gave the sheets
12 showing there were no foreclosures filed before 2009
13 and asked you to take judicial notice.

14 THE COURT: They didn't have any objection to
15 it? It's public record.

16 MR. THOMSON: Yeah, and you heard her testimony.
17 She said I think there's some foreclosures right
18 after that in 2008 or so. And there were no
19 foreclosures on either one of those LLCs until two
20 years after the fact. I don't know how they're
21 going to try to use that, but I think it needs to be
22 -- if they do try to use it, it needs to be
23 clarified.

24 THE COURT: Wait, you were the one that produced
25 it to me.

1 MR. THOMSON: Yes, the 2009 foreclosures. I
2 produced that to establish there were no
3 foreclosures prior to 2009. And all the houses that
4 were at issue here are houses that have been sold by
5 2007.

6 THE COURT: Right. And the only issue that we
7 had was I said that I would certainly take judicial
8 notice if it's fine or Jerri could just come up and
9 testify that that's an actual, you know, true and
10 accurate --

11 MR. THOMSON: Yeah, I'm just trying to save
12 time. I mean that's the whole reason I asked to
13 avoid the coffer and mechanics of --

14 THE COURT: I'll take judicial notice of it,
15 that's fine.

16 You can bring them out.

17 (Whereupon, jury enters courtroom.)

18 THE COURT: All right, now we're awake, because
19 that last joke was funny, all right? Only one
20 person laughed, all right, so are y'all pepped up
21 now ready to go?

22 JUROR: Yep.

23 THE COURT: All right, so proud. All right,
24 call your next witness.

25 MR. CAPELL: Your Honor, the Plaintiff calls

1 Gary Grossman to the stand.

2 **GARY GROSSMAN,**

3 being first duly sworn, testified as follow:

4 **DIRECT EXAMINATION**

5 BY MR. CAPELL:

6 Q. All right, good afternoon -- or, good
7 morning, Mr. Grossman; how are you doing today?

8 A. I'm well, thank you.

9 Q. Okay. We first met when I took your
10 deposition in this case; do you remember that?

11 A. Not particularly, sir.

12 Q. Your deposition was on October 17, 2012;
13 does that sound about right to you?

14 A. If you say so, I'll accept that as fact.

15 Q. Do you recall meeting me at all?

16 A. I think it was on Hilton Head Island.

17 Q. Mr. Grossman, you've lived in Pennsylvania
18 most of your life, right?

19 A. As my primary residence, yes.

20 Q. During your career you have primarily been
21 involved in the areas of real estate development and
22 construction, right?

23 MR. O'KELLEY: Your Honor, Mr. Capell is leading
24 the witness, this is not --

25 MR. CAPELL: I can lead a hostile witness, it's

1 in the rules.

2 THE COURT: I understand, but --

3 MR. CAPELL: If I call them, it's in the rules,
4 I'll find it.

5 THE COURT: No, it's 607, but my point is, is
6 that's fine, but just to expedite for the purposes
7 of this, I'll allow it.

8 BY MR. CAPELL:

9 Q. You did the first land development in 1979,
10 right?

11 A. That sounds about right.

12 Q. And since then you have developed and
13 delivered over 11,000 lots; is that right?

14 A. That's about right.

15 Q. And since then you have constructed over
16 7,500 homes?

17 A. Yes.

18 Q. Lancaster Redevelopment Company, or LRC, is
19 what I've been calling it for short, that started
20 around 1981 in Pennsylvania, correct?

21 A. It sounds about right.

22 Q. And you were one of the original owners of
23 LRC?

24 A. No, I was not one of the original founding
25 stockholders, I was not. I came in about six months

1 after it was formed.

2 Q. Okay. And LRC has had an ownership interest
3 in over 60 different companies through its life,
4 right?

5 A. Here in North America?

6 Q. Yes, sir.

7 A. That sounds about right.

8 Q. And as of today, most of those 60 plus
9 companies are either out of business or dissolved,
10 correct?

11 A. Most all companies are formed for a specific
12 project purpose, and when those projects conclude
13 themselves, the companies are concluded, yes.

14 Q. All right, Mr. Grossman, let's look at the
15 February 2, 2004, letter. You have that letter in
16 front of you, I believe that's exhibit --

17 MR. THOMSON: Our exhibit notebook, it's the
18 white binder right up there.

19 MR. CAPELL: May I approach, Your Honor?

20 THE COURT: Absolutely.

21 BY MR. CAPELL:

22 Q. Mr. Grossman, I'm going to hand you what's
23 -- this binder called Trial Exhibit Notebook, and it
24 has exhibits in there by number, and you'll see the
25 tabs on there. I'm going to open it up, and you can

1 see the index page there, right here. And if you'll
2 turn to Exhibit 1, Mr. Grossman, you'll see that's a
3 February 2, 2004, letter; is that right?

4 A. (Reviews document.) Yes.

5 Q. Mr. Grossman, you saw us do this yesterday,
6 but I want to make sure I'm doing it with you again.
7 Exhibit 1, the first page is Exhibit 1A, this
8 posterboard, the exact same page as the first page
9 in Exhibit 1 in your witness notebook? Can you see
10 this is --

11 A. Are you asking me or telling me?

12 Q. I'm asking you, if it's the same page.

13 A. (Reviews document.) It appears to be, yes.

14 Q. Okay. And I just have to go through this
15 exercise to make sure we're looking at the same
16 thing, Mr. Grossman, so I apologize for this, but
17 the second page, is this the exact page?

18 A. (Reviews document.) It appears to be the
19 same.

20 Q. And third page, is this the exact page?

21 A. (Reviews document.) It appears to be the
22 same.

23 Q. This is your personal address at the top of
24 this letter, right?

25 A. (Reviews document.) It is.

1 Q. And on this February 2, 2004, letter it
2 lists your name, Gary L. Grossman, as the author at
3 the end of the letter on page three, right?

4 A. It is.

5 Q. And it has your initials GLG under your name
6 on the bottom of page three; is that right?

7 A. (Reviews document.) That is correct.

8 Q. I'm going to stand up a little bit closer to
9 here, so I can point to this letter. And then it
10 has, after your initials GLG, it has a slash, and it
11 has an SA there. Do you see that?

12 A. (Reviews document.) I do.

13 Q. Okay, and that SA initials, those stand for
14 Suzanne (ph) Aumiller (ph), right?

15 A. That is correct.

16 Q. And Suzanne Aumiller was your personal
17 assistant; is that right?

18 A. That's correct.

19 Q. And her initials on this letter indicated
20 that Suzanne Aumiller would have been the one to
21 type up this letter; is that right?

22 A. Most likely, yes.

23 Q. And under those initials it has
24 HHH/Brady2.2.04. Do you see that?

25 A. (Reviews document.) I do.

1 Q. That refers to an electronic file name on
2 your computer, right?

3 A. That's what it would indicate to me, sir.

4 Q. So this February 2, 2004, letter is from an
5 electronic file on your computer?

6 A. That would be my assumption.

7 Q. And, Mr. Grossman, I would like for you to
8 read a sentence from this letter, if you would, to
9 the Jury, and I want to ask you some questions about
10 it. If you'll please read the first sentence of the
11 last paragraph on page two?

12 A. You -- you want what read, sir?

13 Q. The first sentence, if you'll turn to page
14 two of that letter, I think on the bottom you'll see
15 some page numbers there.

16 A. (Complies.)

17 Q. Do you see it? Are you on page two, sir?
18 And then if you'll go to the last paragraph on page
19 two. It starts, "In addition to."

20 A. "In addition to sales and construction" --

21 THE COURT: Hold on, hold on. If you're going
22 to read, you've got to slow down a lot, because she
23 has to take down every word that you say, okay?

24 WITNESS: Sorry, Your Honor.

25 THE COURT: That's okay.

1 BY WITNESS:

2 A. "In addition to the sales and construction
3 management fees as described, I would like to pay
4 you a set management fee of 50 percent of free tax
5 profits after a one percent per month of cash
6 investment to Langsford Development Corporation, and
7 500 basis points to me, individually, for my
8 guarantee. However, I'm asking that a hundred
9 percent of the cash invested by Forest, Stone,
10 Blanchard and Belk Corporation and/or myself be
11 repaid prior to any profit distribution."

12 Q. Okay, and I just asked you to read the first
13 sentence, not the second sentence, but that's okay.
14 Let's look at that first sentence though that you
15 did read. That first sentence has the words, "to
16 me, individually," in there. Do you see those
17 words, "to me, individually"?

18 A. Yes.

19 Q. In that sentence the words me, individually,
20 means Gary L. Grossman, individually, right? Is
21 that right?

22 A. I think that's open to interpretation, but
23 I'm not sure what the question is.

24 Q. The question is, this letter has your name,
25 Gary L. Grossman, as the author on page three,

1 correct?

2 A. Are we referring to his unsigned letter that
3 I don't recall sending? It was found in discovery
4 in a file.

5 Q. If you'll just answer the questions that I
6 ask that'd --

7 A. I'm sorry.

8 Q. -- be great, Mr. Grossman. This letter has
9 your name listed as the author on page three,
10 correct?

11 A. Yes.

12 Q. Okay. And the word me in this letter --
13 this letter came from your computer, right?

14 A. No, it came from the computer of Suzanne
15 Aumiller.

16 Q. Who's your personal assistant, right?

17 A. Susan?

18 Q. Who's your personal assistant, right?

19 A. Not strictly, she's an employee of Langsford
20 Development Corporation.

21 Q. You just testified that she was your
22 personal assistant.

23 A. Among many other duties, yes.

24 Q. And so this letter came off her computer?

25 A. I assume so.

1 Q. And the word "me, individually," means Gary
2 L. Grossman, individually, correct? That's a
3 question, Mr. Grossman. And you can explain it all
4 if you want to, I would just like a yes or no answer
5 before you explain it.

6 A. I -- I would say on the face of that
7 sentence, yes.

8 Q. And in the first part of that sentence says
9 the phrase, "I would like to pay." The word "I"
10 refers to Gary Grossman, right?

11 A. In the context of the overall letter, which
12 clearly states in two limited LLCs, a qualified yes.
13 It clearly states in two limited liability
14 companies.

15 Q. Those two limited liability companies did
16 not write this letter, did they?

17 A. I'm sorry, sir, I didn't hear that.

18 Q. Those two limited liability companies did
19 not write this letter, did they? Your name is shown
20 as the author of this letter, correct?

21 A. Unsigned, yes.

22 Q. Okay. But your name is shown as the author?

23 A. Obviously.

24 Q. Okay, and we've established this letter is
25 on your personal letterhead, haven't we?

1 A. I'm not sure if that's established because
2 it was found in a computer file of someone who works
3 for me.

4 Q. That someone who works for you is your
5 personal assistant?

6 A. Among many other duties.

7 Q. And that computer file was from your
8 computer, right?

9 A. No, sir, not my computer.

10 Q. It's from your personal assistant's
11 computer?

12 A. From a massive network of computers.
13 There's 30 people who work in that office.

14 Q. You know what that HHH/Brady2.2.04 means,
15 don't you?

16 A. As the CEO of the company, I have an
17 obligation to understand its basic operations, yes.

18 Q. And are you testifying under oath to this
19 jury, that the word "I" and the word "me,"
20 individually, those two words in this letter do not
21 mean Gary Grossman, individually? Is that what
22 you're testifying to this jury?

23 A. My testimony is, taken in the context of the
24 overall letter, not picking out something, sir, that
25 serves your immediate purpose, it means what it

1 says.

2 Q. And you agree with me, Mr. Grossman, that on
3 page three of this letter beside your name, Gary L.
4 Grossman -- you agree with me on page three of this
5 letter, beside your name, Gary L. Grossman, there is
6 no corporate designation, nor any kind of
7 designation whatsoever beside, under or above your
8 name, is there?

9 A. On an unsigned letter that I don't believe
10 was ever sent, there was no need to put a
11 designation.

12 Q. Well, Mr. Grossman, it is possible that you
13 actually signed this letter, isn't it?

14 A. I'm sorry, sir?

15 Q. Mr. Grossman, it is possible that you
16 actually did sign this letter, isn't it?

17 A. We've asked a number of times for a signed
18 letter, nobody's been able to produce one.

19 Q. Do you remember in your deposition when I
20 asked you that question?

21 A. No, sir.

22 Q. Okay, let me read it for you. And let me
23 first talk about this so the jury understands what's
24 going on with the deposition. You testified in the
25 deposition of this case, right?

1 A. Yes, I did testify.

2 Q. You were under oath in that deposition,
3 correct?

4 A. Yes.

5 Q. Okay. And you swore to tell the truth in
6 that deposition, correct?

7 A. I did.

8 Q. And you had your lawyer there, right?

9 A. Yes, I did.

10 Q. And did you tell the truth in that
11 deposition?

12 A. To the best of my knowledge and belief, I
13 did.

14 Q. All right, I'm going to read an excerpt from
15 your deposition.

16 THE COURT: Read slow.

17 MR. CAPELL: Okay. Thank you.

18 BY MR. CAPELL:

19 Q. And I'm going to read page 133, lines 23 to
20 25. And this is -- the first line is a question
21 from me, question, "Is it possible you signed this
22 letter?" Answer, "It is possible, I'm not -- I'm
23 not disputing I may have." Does that refresh your
24 memory, Mr. Grossman, that it is possible you signed
25 this letter?

1 A. Admitting that I may have is different than
2 saying I did not.

3 Q. And regardless of whether or not you signed
4 this letter, you did assume that Rod accepted the
5 terms of this letter as laid out by you, right?

6 A. I assumed that when he signed the assignment
7 of partnership agreement, that's when I assume we
8 have a deal. Also, based on our past business
9 practices, which were many, and he signed a number
10 of similar documents, that's when he should assume
11 we had a deal.

12 Q. Let me ask that question again just so we're
13 not confused. You assumed Rod accepted the terms of
14 this letter, didn't you?

15 A. I never assumed that.

16 Q. I'll remind you of your deposition again,
17 and I'll read you another quote from your
18 deposition, okay? I'm going to read you from page
19 134, lines three through seven. Mr. Grossman, the
20 question that I asked you on that day back in 2012
21 was, "And did Mr. Brady pretty much accept how you
22 laid out the terms of this letter? Did he pretty
23 much accept that?" Answer, "He didn't beat me up,
24 or tell me to go pound sand, so I assume he did."
25 Do you recall testifying to that, Mr. Grossman?

1 A. Using identical terms that are in the
2 operating agreement.

3 Q. That's not my question. Do you recall
4 testifying --

5 A. Fair enough.

6 Q. Was that a true statement when you made it?

7 A. It was.

8 Q. Okay. So you did assume that Rod Grady
9 accepted the terms as you laid out in this letter,
10 correct?

11 A. When he signed the operating agreement.

12 Q. That's not my question. You assumed that he
13 accepted the terms of this letter, correct?

14 A. (No response.)

15 Q. Are you going to answer that question, Mr.
16 Grossman?

17 A. I'm sorry, sir?

18 Q. Are you going to answer that question for
19 me?

20 A. My answer is, my associate when he signed
21 the operating agreement.

22 Q. And at the time this 2004 letter was
23 drafted, LRC was in existence, weren't they?

24 A. I'm sorry, repeat the question, sir.

25 Q. At the time this 2004 letter was drafted on

1 your personal letterhead, LRC was in existence,
2 weren't they?

3 A. It was.

4 Q. In 2004 -- around 2004, when this letter was
5 written, you were the sole owner of LRC at that
6 time, weren't you?

7 A. I was not.

8 Q. Who else was the owner then?

9 A. In 2004 there were five other shareholders.

10 Q. Who were they? Because your sons didn't
11 come in until 2007, right?

12 A. To the best of my knowledge and belief, at
13 that time it was John R. Hoffer, Jay Garaneff (ph),
14 Michael Gary Grossman, Matthew Robert Grossman, and
15 Henry Wofford.

16 Q. I thought you said Hoffer left in the '90s,
17 didn't he?

18 A. Excuse me?

19 Q. I thought you said Hoffer left in the '90s
20 -- 1990s, didn't he?

21 A. Hoffer was out in '94, and then came back in
22 sometime in the early 2000s.

23 Q. You could have chosen to put this 2004
24 letter from your personal letterhead on LRC
25 letterhead, couldn't you?

1 A. Theoretically, yes.

2 Q. Okay, but you didn't, Mr. Grossman, you
3 purposely chose to put this 2004 letter on your
4 personal letterhead rather than LRC letterhead;
5 isn't that right?

6 A. I don't know that I made a conscious
7 decision, but from your point of view I can't say
8 you're wrong.

9 Q. All right. Now, Mr. Grossman, we're going
10 to look at the 2007 letter, the September 13th,
11 2007, letter from Ginger Griffith to Mr. Brady, and
12 that's going to be Exhibit 2 in your binder, so I'd
13 like for you to turn to that, please, while I change
14 these out.

15 A. (Complies.)

16 Q. All right, Mr. Grossman, have you turned to
17 this September 13th, 2007, letter in your exhibit
18 notebook?

19 A. I have.

20 Q. Okay. And this letter is on LRC letterhead,
21 isn't it?

22 A. (Reviews document.) It is.

23 Q. So if you would have chosen to put the 2004
24 letter that's on your personal letterhead on LRC
25 letterhead, it would have had this letterhead on top

1 of it; is that right?

2 A. Yes.

3 Q. And if you look at the last page of this
4 letter, it's got Ginger Griffith listed as the
5 author of this letter; is that right?

6 A. (Reviews document.) That's correct.

7 Q. And she's listed as the treasurer at the end
8 of it; is that right?

9 A. That's correct.

10 Q. Okay, and you were copied on this letter; is
11 that right?

12 A. She says I was, so I presume I was.

13 Q. And at the time of this letter, 2007, you
14 agree with me that Ginger would have had more
15 knowledge or would have been more knowledgeable
16 about the accuracy of the numbers than you, right?

17 A. Yes.

18 Q. And in this letter the phrase February 2,
19 2004, letter of agreement, it's mentioned six times
20 in here, isn't it?

21 A. I'm sorry, sir, I didn't hear the question.

22 Q. The phrase, February 2, 2004, letter of
23 agreement, that's mentioned six times in this
24 letter, isn't it?

25 A. I didn't count --

1 Q. Okay.

2 A. -- but if you say it is, it is.

3 Q. Let's count them for -- just real quick, for
4 the record, let's count them, so we have a clear
5 record of this. If you'll go to the first page, in
6 the first paragraph we see February 2, 2004, letter
7 of agreement; do you see that?

8 A. (Reviews document.)

9 Q. Do you see that, Mr. Grossman?

10 A. In the interest of everybody's time I'll
11 agree, if you say six times, it's six times.

12 Q. All right, well, if you agree with that,
13 then we'll move on, that'll make this a little bit
14 quicker. Thank you, Mr. Grossman, for agreeing to
15 that, I appreciate that. All right, would you
16 please read the last sentence of page two to the
17 jury? Let me get page two up here.

18 A. The last sentence of page two you want it
19 read, sir?

20 Q. Yes, sir.

21 A. "The balance of the 2005, 2006, incentive
22 management fee due to you is \$83,488."

23 THE COURT: Hold on, you've got to read one-
24 tenth of that speed.

25 WITNESS: Sorry.

1 THE COURT: She, again, is trying to take
2 everything down at the same speed.

3 BY WITNESS:

4 A. The balance of the 2005, 2006, incentive
5 management fee due to you is \$83,488."

6 Q. All right, and if you'll read the second to
7 last line on page three of this letter?

8 A. "Your 50 percent incentive management fee
9 is, as of this writing, the total amount due to you
10 \$711,027."

11 Q. Okay, I just -- I'm sorry about that, maybe
12 my question was confusing. I want you to read just
13 the second to the last line of the letter. The
14 second to the last line.

15 A. "Your 50 percent management fee is
16 \$633,656."

17 Q. Okay, and if you'll read the very last line
18 of that letter.

19 A. "As of this writing, the total amount due to
20 you is \$711,027."

21 Q. And if you'll turn to page four, let's read
22 that first sentence on -- on page four to the jury,
23 would you please?

24 A. "Mr. Grossman, you're going to need access
25 our ability to fund a \$10,000 a month draw against

1 those funds."

2 Q. And one more sentence, Mr. Grossman, I'd
3 like for you to read to the jury from this letter.

4 A. "Given the carrying cost of the inventory
5 against the receivables," is that the --

6 Q. That's not the sentence I asked you to read,
7 no.

8 A. Huh?

9 Q. That's not the sentence I asked you to read.

10 A. I'm sorry.

11 Q. I asked you to read the very first sentence
12 of page four, and you did that, so now I'm moving on
13 to the next question. So my next question, there's
14 one more sentence I'd like for you to read in this
15 letter to the jury, and if you'll go to page three
16 for that sentence.

17 THE COURT: And, if you would, tell him what it
18 starts with, so he'll know where to begin.

19 MR. CAPELL: Yeah, all right, thank you, Your
20 Honor.

21 BY MR. CAPELL:

22 Q. Page three, third paragraph, it starts with
23 -- it is the second sentence in that, it starts
24 with, "Mr. Grossman has."

25 A. "Mr. Grossman recently" --

1 Q. I'm sorry, that's the wrong sentence. Third
2 paragraph on page three, second sentence.

3 A. So it starts with --

4 THE COURT: Just show him.

5 MR. CAPELL: Okay.

6 THE COURT: You see it on the top right?

7 BY MR. CAPELL:

8 Q. Right there.

9 A. "Mr. Grossman has indicated his intentions
10 to allow the funds to be paid to you ahead of his
11 recent loans."

12 Q. Oh, and one more thing about this letter I
13 want to ask you, Mr. Grossman, before we move on
14 with this is, we countered this letter, and you
15 agreed with me, graciously, that this letter says
16 February 2, 2004, letter of agreement six times, but
17 this letter doesn't contain the phrase operating
18 agreement anywhere in it, does it? You can take a
19 moment to look if you want to.

20 A. (Reviews document.) It doesn't appear to,
21 no.

22 Q. And this 2007 letter does not contain the
23 word "assignment" anywhere in it, does it?

24 A. (Reviews document.) No.

25 Q. All right. Mr. Grossman, the next document

1 I would like for you to look at is Exhibit 3 in your
2 binder. That's an email from you to Rod Brady dated
3 September 15, 2007; is that right?

4 A. I'm sorry, sir, I didn't hear the question.

5 Q. I'm sorry. Exhibit 3 in your binder, that
6 is an email from you to Rod Brady, dated September
7 15, 2007, right?

8 A. (Reviews document.) Yes.

9 Q. Okay.

10 MR. CAPELL: And I apologize to the jury, we
11 thought we had a post board, this one doesn't, so
12 I'm going to put it up on the big screen on the
13 projector here, it makes it a little bit easier.
14 And I know, ladies and gentlemen, that may be a
15 little bit hard to see, that's as big as I can make
16 it.

17 BY MR. CAPELL:

18 Q. All right, your email address on this email
19 is listed as ggrossman@foresthomes.com, right?

20 A. (Reviews document.) Yes, sir.

21 Q. So you chose to use a Forest Homes email
22 address rather than an LRC email address to send
23 this, right?

24 A. I don't understand the question.

25 Q. You chose -- the email address that you sent

1 this from, that's a Forest Homes email address, it's
2 not a LRC email address, is it?

3 A. That's right.

4 Q. Okay. You don't have an LRC email address,
5 do you?

6 A. I do.

7 Q. Okay. Why didn't you use it in this letter?

8 A. No particular reason.

9 Q. Now, this email is dated two days after the
10 September 13th, 2007, letter from Ginger Griffith
11 that we just looked at, right?

12 A. It appears so.

13 Q. Okay. And you copied Ginger Griffith on
14 this email; is that right?

15 A. I did.

16 Q. Please read the first paragraph of this
17 email you wrote to the jury.

18 A. "I finally got a chance to look at Ginger's
19 September 13th letter and the worksheets. It looks
20 to me like she has accurately accounted for the
21 various forms of compensation as laid out in the
22 February 2, 2004, letter of agreement."

23 Q. And the last sentence in the first
24 paragraph, where you say, "It looks to me like she
25 has accurately accounted for the various forms of

1 compensation as laid out in our February 2, 2004,
2 letter of agreement," where you say that in that --
3 that email -- now, you were telling the truth when
4 you wrote that sentence in this email, weren't you?

5 A. Simply using the language that she
6 characterized that letter as. Again, it's an
7 unsigned letter.

8 Q. Was it a true statement that you made in
9 this email, or a false statement?

10 A. Just characterizing what she put in her
11 letter.

12 Q. All right. Are you saying -- Mr. Grossman,
13 are you testifying to this jury that the sentence
14 you wrote in this email, you don't know if it was
15 true or false; is that what you're saying?

16 A. That's not what I'm saying. I'm saying my
17 memo to Rod starts out by characterizing the
18 language that she used in her September 13th letter,
19 as simple as that.

20 Q. I'm going to ask you one more time, Mr.
21 Grossman, so that the record's clear and the jury
22 can understand your answer. Is the second sentence
23 in this email a true statement made by you?

24 MR. O'KELLEY: Objection, Your Honor, he's
25 already answered this question.

1 MR. CAPELL: But he hasn't answered it, that's
2 why we're here. That's why I'm asking it, because
3 he hasn't answered.

4 MR. O'KELLEY: Your Honor, the answer that he
5 said he is quoting from the September 13th letter.
6 That Mr. Capell doesn't like his answer is a
7 different story, he's -- it's been asked and
8 answered.

9 MR. CAPELL: I never got my answer, is it true
10 or false?

11 THE COURT: All right, let's start again. Ask
12 the question, Mr. Grossman, you have to say yes or
13 no, and then I'll give you as much time as you'd
14 like to explain.

15 WITNESS: Okay.

16 BY MR. CAPELL:

17 Q. Mr. Grossman, the last sentence in the first
18 paragraph of this email, where it says, "It looks to
19 me like she has accurately accounted for the various
20 forms of compensation, as laid out in our February
21 2, 2004, letter of agreement." You were telling the
22 truth when you wrote that sentence, correct?

23 A. Yes, to the extent of her characterization
24 of that statement in her response to Rod.

25 Q. So on September 15th, 2007, you acknowledge

1 the February 2, 2004, letter of agreement existed,
2 right?

3 A. As far as I know, it only existed in our
4 internal thoughts.

5 Q. But, again, in 2007 you acknowledged that
6 this February 2, 2004, letter of agreement was in
7 existence?

8 THE COURT: Yes, no, and then I'll let you
9 explain.

10 BY WITNESS:

11 A. Yes, as an internal document.

12 Q. And on September 15th, 2007, you
13 acknowledged that Rod Brady is due \$711,027 under
14 that agreement, right?

15 A. (Reviews document.) Yes, owed by the LLCs
16 of which he was a participant, subject to all the
17 qualifying standards of those operating agreements.

18 Q. You used the words "accurately accounted
19 for," those are your words, right?

20 A. (No response.)

21 Q. In your -- in your email you used the words
22 "accurately accounted for"?

23 A. It appears so, yes.

24 Q. Okay. And in your email here in 2007 you
25 used the words, "our," O-U-R, "February 2, 2004,

1 letter of agreement," right?

2 A. Yes, but on reflecting what was in her
3 underlying response to Rod Brady.

4 Q. And you said something about it referred
5 back to some kind of operating agreement, or
6 assignment, or something like that. I don't see
7 anywhere in this email, Mr. Grossman, where it uses
8 the phrase "operating agreement" or "operating
9 agreements," do you?

10 A. Rod's not a child, he's highly educated,
11 he's fully of aware of what he signed. I didn't
12 feel the need to remind him of that.

13 Q. Can you answer yes or no, and then explain
14 your answer? I don't see anywhere in your email
15 where you reference or refer to the operating
16 agreements of any LLC; is that right?

17 A. Your observation is correct. By way of
18 further explanation, Rod is not a child, he's highly
19 educated. I didn't feel the need to remind him of
20 that.

21 Q. Why did you feel the need to remind him of
22 the February 2, 2004, letter of agreement then?

23 A. I didn't remind him, I was simply
24 regurgitating, basically, what Ginger put in her
25 response to Rod.

1 Q. Now, we talked about those operating
2 agreements that you've brought up, and then you
3 brought up an assignment, too, it's something that
4 signed by Rod. I don't see the word "assignment" or
5 "assignments" at all in this email, do you?

6 A. No.

7 Q. So your email to Rod two days after Ginger
8 Griffith's letter saying how much Rod was owed does
9 not mention the words "operating agreements" or
10 "assignments" at all, does it?

11 A. It does not.

12 Q. But it does mention the -- the words, our
13 February 2, 2004, agreement, doesn't it?

14 A. As a characterization of Ginger's response
15 to Rod, it does.

16 Q. Okay. Would you go to paragraph five of
17 your email? If you'll count them down, it says,
18 "Hi, Rod," in the first paragraph, what you're
19 talking about?

20 A. Yes.

21 Q. Okay, and if you'll read on paragraph five,
22 if you'll please read the first sentence of that
23 paragraph to the jury?

24 A. "I will personally lend LRC \$10,000 so that
25 LRC can pay you \$10,000 payment on the business

1 development issue."

2 Q. So here, Gary Grossman, individually, is
3 giving personal money to LRC to give to Rod Brady;
4 is that right?

5 A. On the business development issue, which had
6 nothing to do with any of these other claims. He
7 did business development work for Lancaster
8 Redevelopment Corporation, for it's Forest Homes
9 franchise network, that is completely unrelated to
10 the rest of this claim.

11 Q. And if we look at Ginger Griffith's letter,
12 you might have to go back to Exhibit 2 for this, on
13 page four of this letter, the first sentence there,
14 it says, "Mr. Grossman directed me to access our
15 ability to fund a \$10,000 a month draw against these
16 funds." Is that the same 10,000 you we're talking
17 about in your email, or is that a different 10,000?

18 A. I don't -- I don't recall.

19 Q. But either way, in -- in this email, the
20 fifth paragraph, the bottom line of this sentence
21 that you read, the bottom line is that money is
22 being moved from you personally to Rod personally
23 through LRC?

24 A. I don't necessarily agree with your
25 characterization, sir.

1 Q. Okay.

2 A. In a single instance, for a specific
3 purpose, I'll stipulate to that.

4 Q. Okay. Thank you, I'll move on with that.
5 All right, Mr. Grossman, will you please read the
6 sixth paragraph, the next paragraph? Will you
7 please read that paragraph in your email to the
8 jury?

9 A. "Please note that I feel very badly that we
10 have drifted this far apart. I value your
11 friendship, I acknowledge your valuable contribution
12 to my varied business interest in the Lowcountry,
13 and, clearly, want to continue our business
14 relationship on a fair basis going forward."

15 Q. You consider Rod a valued friend, right?

16 A. The biggest tragedy of this whole dispute is
17 where we now are.

18 Q. And now after this you and Rod had a heated
19 conversation about money being owed, didn't you?

20 A. I'll classify them as unpleasant
21 conversations.

22 Q. You physically threatened him in a heated
23 conversation, didn't you?

24 A. That is absolutely untrue.

25 Q. In fact, you had one very heated argument,

1 where had he got up, you would have hurt him, right?

2 A. I -- I don't understand the question or the
3 basis for the ask.

4 Q. Okay. You had -- let me just repeat it, and
5 let's see if -- if you can answer it that way. In
6 fact, you had one very heated argument where had Mr.
7 Brady gotten up, you would have hurt him, right?

8 A. I'm a highly trained combat Marine, I'm not
9 going to let anybody hurt me, is the best way I can
10 answer that; but I never threatened Mr. Brady, and
11 he would have to physically assault me to get me to
12 defend myself.

13 Q. I asked you that question in your
14 deposition. You gave an answer to that. I'm going
15 to read it, and let you tell me if it's a truthful
16 statement. I am going to read from page 203, lines
17 11 through 13. "By this time," this is your
18 testimony, Mr. Grossman, "by this time I don't
19 recall the exact date of it, but we had one very
20 heated argument where had he got up, I would have
21 hurt him." Is that a truthful statement in your
22 deposition under sworn testimony?

23 A. I guess if I made -- if -- if you're asking
24 me is it true that I made the statement? I made it
25 under oath, I apparently made that statement.

1 Q. So, Mr. Grossman, are you willing to
2 physically hurt one of your valued friends because
3 he's asking for money he's owed?

4 A. I'm willing to defend myself when the need
5 arises is my answer.

6 Q. Now -- now, Mr. Grossman, you know that the
7 Bank foreclosed on Rod's house after this, don't
8 you?

9 A. I learned that for the first time listening
10 to his testimony yesterday.

11 Q. Okay. Now, Mr. Grossman, I want to shift
12 gears a little bit, and talk about this lawsuit, and
13 I'm almost done. When you first got sued in this
14 case, you filed a counterclaim against Rod Brady,
15 didn't you.

16 A. I did.

17 Q. And you claimed that Rod owed you over
18 \$600,000 in that countersuit, didn't you?

19 A. We made 600,000 plus in payments to Rod.

20 Q. And a judge found that you did not produce
21 any evidence of your counterclaim against Rod, and
22 he dismissed your counterclaim, right?

23 A. In the end -- that's -- that's not true. In
24 the end it was overturned on appeal.

25 Q. Then let me ask you that again, Mr.

1 Grossman.

2 A. At -- at least that's my understanding.

3 Q. Okay. You -- you filed an appeal to the
4 South Carolina Court of Appeals, right?

5 A. Yes.

6 Q. And that appeal took years, didn't it?

7 A. You -- you are correct. I was mistaken in
8 my answer.

9 Q. And -- and so you filed an appeal to the
10 South Carolina Court of Appeals, and that appeal
11 took years, didn't it?

12 A. It did.

13 Q. Okay. And you lost that appeal, right?

14 A. We did.

15 Q. And as part of losing that appeal, in fact,
16 you were ordered by the South Carolina Court of
17 Appeals to pay the cost of that appeal to Rod Brady,
18 weren't you?

19 A. I believe that is correct.

20 Q. And to date, you have not paid those costs,
21 have you?

22 A. I'm unaware one way or the other.

23 MR. CAPELL: That's all the questions I have,
24 Your Honor.

25 THE COURT: Thank you very much. Anybody need a

1 break? If so, raise your hand. All right.

2 MR. O'KELLEY: Thank you, Your Honor.

3 **CROSS-EXAMINATION**

4 BY MR. O'KELLEY:

5 Q. Mr. Grossman, we're going to walk through a
6 number of the documents that Mr. Capell just walked
7 you through. Do you still have that folder in front
8 of you?

9 A. This one?

10 Q. Yes, sir. Mr. Grossman, turn to Exhibit 1,
11 sir, Plaintiff's Exhibit 1. Mr. Capell just asked
12 you if this case has been going on a long time, and
13 you've answered yes, correct?

14 A. Yes.

15 Q. And in the whole time this case has been
16 going on, have you seen a signed copy anywhere of
17 this letter from February 2nd, 2004?

18 A. I have not.

19 Q. Has anyone on God's green earth been able to
20 produce a signed copy of this letter; to your
21 knowledge?

22 A. To -- to the best of my knowledge and
23 belief, they have not.

24 Q. All right, sir, and this letter that has
25 been called a letter of agreement, among other

1 things, Ms. Griffith, who worked for you, we're
2 going to walk through it kind of paragraph-by-
3 paragraph. I asked Mr. -- and you were in the
4 courtroom yesterday, of course?

5 A. Yes.

6 Q. And I asked Mr. Brady, "Who's Chris Gannon,"
7 who is mentioned in the first paragraph of this
8 letter?"

9 A. I'm sorry?

10 Q. I said, "Who is Chris Gannon who is listed
11 in the first paragraph of this letter?" I asked Mr.
12 Brady about Mr. Gannon yesterday.

13 A. Chris Gannon is a -- sort of an office
14 developer who lives on Hilton Head Island, who had
15 some form of approvals on what ultimately became
16 known as Allenwood. He did not have the ability to
17 get himself financed, without the rest of the
18 financing and financial guarantees, could not get to
19 a final plan, which is the status of Allenwood when
20 I learned of its availability.

21 Q. And when you say approval, do you mean from
22 the Town of Hilton Head or Beaufort County,
23 something of that nature?

24 A. Correct.

25 Q. All right, sir. And you state in here that

1 it's a -- there's going to be a single-family lot
2 takedown transaction by agreeing to purchase the 92
3 townhouse lots in a three-phase bulk buy. I read
4 that correctly, did I not?

5 A. I'm sorry.

6 MR. THOMSON: Objection, leading.

7 THE COURT: Hold -- hold on, hold on.

8 MR. THOMSON: That's --

9 THE COURT: What's the objection?

10 MR. THOMSON: Leading. It's -- we've been
11 letting it go a little bit, but it's --

12 THE COURT: I let it go for y'all, so I'm going
13 to let it go for them.

14 MR. O'KELLEY: It's cross-examination. Thank
15 you, Your Honor.

16 BY MR. O'KELLEY:

17 Q. So I'm going to ask you again, tell me if I
18 read this correctly, "As you know, I have been in
19 direct negotiations with Chris Gannon, to keep us in
20 the single-family lot takedown transaction by
21 agreeing to purchase the 92 townhouse lots in a
22 three-phase bulk buy." Did I read that correctly?

23 A. (Reviews document.) Yes.

24 Q. And what is a single-family lot takedown
25 transaction? Explain that to the jury.

1 A. If my memory serves, there were about 64
2 single family lots, and about a 100 townhouse -- or
3 92 townhouse lots, and in order to get Chris where
4 he needed to be, I had to, basically, buy the
5 townhouse lots in its entirety. And I was trying to
6 break up the 64, 65 lots into 20 lots -- then 20
7 lots, and maybe 24 lots. In the end, he couldn't
8 work with that, so we wound up buying the whole
9 thing in a single settlement.

10 Q. All right, sir, look at the next paragraph;
11 if you would. That paragraph states --

12 A. (Reviews document.) I then convinced him to
13 let us buy it in two separate transactions, where I
14 would cause one company to buy the townhomes, and a
15 separate company to buy single-family lots.

16 Q. And you state in that paragraph, or it's
17 stated rather in that paragraph that there would be
18 separate transactions using Lancaster Redevelopment
19 Corporation.

20 MR. O'KELLEY: Bless you, Your Honor.

21 THE COURT: Thank you.

22 MR. O'KELLEY: Yes, sir.

23 Juror 1: Bless you.

24 Juror 2: Bless you.

25 Juror 3: God bless you.

1 THE COURT: Finally I got some cooperation,
2 geez, again, it's a tough crowd.

3 BY MR. O'KELLEY:

4 Q. But I'll ask it again since we were all
5 blessing His Honor for his sneeze.

6 THE COURT: Sure, thanks.

7 BY MR. O'KELLEY:

8 Q. Lancaster Redevelopment Corporation was
9 going to be the purchaser of the townhouse lots,
10 according to this letter, correct?

11 A. That's correct.

12 Q. All right, sir. And then in the next
13 paragraph you say that you and Mr. Gannon went back
14 and forth all weekend by email, which resulted in
15 the enclosed contracts. Have you seen any enclosure
16 to this letter?

17 A. Repeat the question, please?

18 Q. Yes, sir. You -- it states here that there
19 were contracts enclosed. I've not seen any -- I'll
20 represent to you I've not seen any enclosed
21 contracts attached to this document.

22 MR. THOMSON: Object to the form.

23 THE COURT: All right.

24 MR. THOMSON: He's asking for a legal
25 conclusion.

1 MR. O'KELLEY: I'm asking if there were
2 enclosures. It's a question of fact, Your Honor.

3 THE COURT: Okay.

4 BY WITNESS:

5 A. And I don't believe this letter ever left my
6 office. It's an internal memorandum that I believe
7 was circulated during the discovery process.

8 Q. All right.

9 THE COURT: All right, I'll overrule the
10 objection.

11 MR. O'KELLEY: Thank you, Your Honor.

12 BY MR. O'KELLEY:

13 Q. Let's go to the next paragraph, please, sir.
14 That states that, "Please make note that the 64 --
15 and, I'm sorry, Madam Reporter, I slow down -- that
16 the 64 single-family lot agreement has Hilton Head
17 Homes, LLC, not Hilton Head Homes, Inc., as the
18 purchaser." To your knowledge, what was Hilton Head
19 Homes, Inc.?

20 A. Hilton Head Homes, Inc., was a Forest Homes
21 authorized builder, that was co-owned by Mr. Brady
22 and myself, subject to any license agreement, which
23 is a standard format agreement. I had about 80
24 other operations on the Mid-Atlantic
25 Eastern Seaboard in play, and that was the initial

1 deal with Rod when I met him at a builder show, and
2 a number of homes were built in that entity.

3 Q. And you testified when Mr. Capell was asking
4 you questions that Forest Homes was a franchisee of
5 Lancaster Redevelopment Corporation; is that
6 correct; or how did that work between Forest Homes
7 and Lancaster --

8 A. Forest Homes, Inc., was a franchisor, so to
9 speak. It didn't technically franchise and enter
10 into any licensing agreements. There's a very
11 finite difference under federal franchise law.

12 Q. All right, sir. So Hilton Head Homes, Inc.,
13 was not going to be purchaser of the lots at issue
14 in this letter, correct?

15 A. Correct.

16 Q. And, in fact, you were going to form Hilton
17 Head Homes, LLC, right?

18 A. A specific purpose LLC which is my normal
19 business practice.

20 Q. All right, sir. And in the next paragraph
21 it states, "I do not want any creditor of Hilton
22 Head Homes, Inc., to be able to take hostile action
23 against the Allenwood project, i.e., subcontractor
24 vendors." Were you aware of any issues at the time
25 that Mr. Brady was having with his creditors, or any

1 of his companies?

2 A. He was involved in some unpleasantry, a
3 project at that time known as Cypress Harbor with a
4 guy named Bill Ryan. I was initially not involved
5 in that. I, subsequently, made a deal with that
6 underlying lender, I bought their note. I took Bill
7 Ryan out of it in an effort to try to help Rod.
8 Then we embarked on a totally different transaction
9 out there. I arranged for some financing out there.
10 The Bank wanted equity in the deal, so I lent Rod
11 100 grand personally for his end of it, my son
12 Michael put 200 grand in it, I put 200 grand in it.
13 That was one of the things that that bank took as
14 part of the workout, so to speak, in Allenwood.

15 Q. At Allenwood or at Cypress Harbor?

16 A. At Allenwood, it was cross-collateralized.

17 Q. And when you say the workout, are you
18 talking about 2008, '09, '10?

19 A. Prior -- prior to the 2009 foreclosure,
20 there was a series of hostile actions taken there
21 that started in about September of 2007 when we
22 missed our sales projection. We were in technical
23 default.

24 Q. With your lender at the time, correct?

25 A. It was with Sea Island Bank.

1 Q. All right. We'll get to that in a minute,
2 but let's go back to this agreement. You state in
3 this letter also that the two Allenwood transactions
4 required an absolute minimum of 110,000 in cash
5 equity, probably more, and recourse positions on a
6 minimum of three million in debt. Did you have to
7 personally guarantee that debt?

8 A. Every dime of it.

9 Q. All right. Did Mr. Brady ever guarantee a
10 dime of debt owed by any of the LLCs he was involved
11 in?

12 A. He did not.

13 Q. All right, sir. And then the next paragraph
14 you talk about the unresolved problem at Cypress
15 Harbor; do you not?

16 A. I'm sorry?

17 Q. I'm sorry. Following along, going down to
18 the second to the last paragraph, you stated you had
19 some concern about the unresolved problem at Cypress
20 Harbor. You just told the jury about that; did you
21 not?

22 A. Well, again, at the time this was offered,
23 this was an internal memorandum, so in all fairness
24 to Mr. Brady, I don't know that this was ever
25 communicated to him, but the simple fact is, is that

1 the start-up debt was started at the three million,
2 where it, ultimately, wound up with at Allenwood was
3 ten million bucks.

4 Q. Go the next paragraph, Mr. Grossman. You
5 stated in here, or someone stated in here, "I
6 believe there's a high probability that the bank
7 will pursue an efficiency action against you." Do
8 you know if Mr. Brady, at one point, was a personal
9 guarantor of some debt at Cypress Harbor?

10 A. (Reviews document.) To not confuse the
11 issue, Cypress Harbor was a standalone deal, he and
12 Bill Ryan, I think his last name was, were already
13 in technical default and conceded at the time to
14 move the loan, they couldn't get approvals. The
15 bank was in the early stages of foreclosure. They
16 had entered into a forbearance agreement, and I
17 didn't see that between the two of them they had the
18 knowledge, expertise, or the capital to get out of
19 that mess, and I didn't think that, given the
20 complexity of the approval process, anybody real
21 knowledgeable was going to let them out of it once
22 it became public that the bank was leaning on them.

23 Q. And when you say "leaning on them," do you
24 mean starting the foreclosure process or putting
25 them in default?

1 A. A knowledgeable developer would just wait it
2 out and go buy it from the bank.

3 Q. But instead, y'all negotiated some workout
4 with the bank where you took over Cypress Harbor,
5 and then you were going to develop Allenwood and
6 Hilton Head Homes, Village Square rather?

7 A. So I, basically, went to BB&T, and said,
8 "I'll take you guys out of this, but Brady gets a
9 free walk."

10 Q. And let's look at the next -- turn to the
11 next page, the top of the page, and we'll read this
12 -- and I'll read this in conjunction. "Unless and
13 until this threat is resolved, I do not believe it
14 in my best interest to be 'joined at the hip' on a
15 three-year -- three or four-year project that
16 involves three million plus dollars of debt." Do you
17 see that sentence?

18 A. (Reviews document.) Yes.

19 Q. And the three million plus dollars of debt,
20 did that refer to Cypress Harbor, Village Square,
21 and Allenwood, or just Cypress Harbor?

22 A. Just Allenwood.

23 Q. Just Allenwood, all right, sir. And then
24 the next paragraph states, "Having said all this, I
25 value our friendship highly. I want to work through

1 these difficult issues and move onto better times."

2 And you testified earlier today that the biggest

3 tragedy of all this is losing a friend, correct?

4 What -- what's your -- is that a yes, sir?

5 THE COURT: You have to say yes or no.

6 BY WITNESS:

7 A. Yes, I'm sorry.

8 Q. And -- and we can all see you nodding your

9 head yes, but this lady's got to have a yes or no.

10 So at one point you and Mr. Brady were very close

11 friends, correct?

12 A. Best of friends. Our families were friends.

13 My wife and I were very attached to his children.

14 Q. And Mr. Brady testified yesterday y'all

15 would stay at each other's houses and visit, things

16 of that nature?

17 A. Yes.

18 Q. Y'all recreational activities together,

19 correct?

20 A. He taught me a lot about boating. Was on my

21 yacht when I sank it. Interesting day.

22 Q. That's -- so y'all have been through a lot

23 of personal relationship and business relationship

24 --

25 A. Absolutely.

1 Q. And you heard him testify how you met
2 yesterday. And when I say "him," I mean Mr. Brady,
3 correct?

4 A. Yes.

5 Q. And that jives with your memory of how you
6 met and the circumstances at the National
7 Association of Home Builders conference?

8 A. Yes.

9 Q. And just tell the jury about that a little
10 bit.

11 A. I was extremely involved in the National
12 Association of Home Builders National Leadership for
13 35 years. I'm still a Life Director there. I was
14 the longest running Chairman of its only for profit
15 subsidiary for nine years. Mr. Brady had more
16 involvement in the local scene here in the
17 Lowcountry, worked his way through the chairs, was
18 the President of the Home Builders Association, had
19 a lot of local contacts that I never took the time
20 to build. So there was a lot of synergy common
21 interest there, but as we got to know each other,
22 there was just a lot of common interest, a common
23 ideal, if you will, about our families, our
24 children, what we wanted for our children. My wife
25 and I have seven children, and my children were

1 quite a bit older than his children, had not yet had
2 our grandchildren, so it was a good fit. My wife
3 was suffering from the empty nest syndrome, so to
4 speak, and she was very bonded to his children. The
5 wives did a lot of things together. We did a lot of
6 social things together, and life in those days for
7 my wife and I where we spent 12 days a month at our
8 farm in Pennsylvania. I own a couple of airplanes,
9 I'm a high-time pilot, so it was three hours kitchen
10 to kitchen. We almost lived two lives, friends,
11 networks, clothes, wardrobe. You know you're
12 getting old when the only thing you have to pile on
13 your airplane is your dog and your meds, and that's
14 how we lived our life for 12 years. And Rod would
15 come to our meetings up north, and he would stay at
16 my home, and he knew a lot of my friends up there,
17 and it was everything that Mr. Brady described in
18 his testimony.

19 Q. Let's go back to the letter, please. The
20 third paragraph on the second page, you were asked
21 about the liability -- limited liability companies
22 in Lancaster Redevelopment Corporation by Mr.
23 Capell, but I'm going to read this paragraph into
24 the record, and you tell me if I read it right. "I
25 would like to proceed with both transactions and

1 separate limited liability companies, wherein,
2 Lancaster Redevelopment Corporation own 100 percent
3 of the companies, but engages you and Joy Walker as
4 independent contractors under the following terms
5 and conditions." Did I read that correct?

6 A. (Reviews document.) Yes.

7 Q. All right, sir, and I want to show you what
8 was marked yesterday, as Defendant's Exhibit 1,
9 Defendant's Exhibit 3, and ask if you recognize
10 those documents, sir?

11 A. (Reviews documents.) I do.

12 Q. And what are these -- what are these two
13 documents?

14 A. They are the operating agreements for Hilton
15 Head Homes at Allenwood, LLC, and Village Square
16 Development Company, LLC, which are limited
17 liability companies created for the sole and
18 specific purpose of undertaking the projects at the
19 Allenwood development; one of which was to build
20 single-family homes, the owner of which was to build
21 the townhomes. And the specific reason for two
22 companies was, if it became necessary, and provided
23 the legal infrastructure for me to seek financing
24 from two separate sources, because if the deal sold
25 like we anticipated it would -- that might be a bit

1 more exposure to a single institution than they may
2 have the appetite for. So I laid the groundwork
3 from the beginning to be able to get one line of
4 credit from one institution for the townhomes, and a
5 different line of credit from a different
6 institution for the single-family homes, because
7 both of which in today's society you more or less
8 have to build a turn-key product so that the
9 underlying buyer can go to any mortgage source and
10 not have to get construction to permanent financing,
11 which is a little bit too complicated for the
12 instant gratification young people market that we
13 all raised.

14 Q. Okay.

15 A. People like things easy.

16 Q. And, Mr. Grossman, on page 23 of the
17 operating agreement, it states that the member is
18 Lancaster Redevelopment Corporation, and the manager
19 was Lancaster Redevelopment Corporation. And then
20 on page 24 it says that Lancaster Redevelopment
21 Corporation owned 100 percent of the voting rights.

22 A. (Review document.) Yes.

23 Q. Is that -- is that a correct statement?

24 A. That was the ability to be the vehicle to
25 get the entity formed, and then the idea was to

1 admit Mr. Brady, if the deal went hard, but I had to
2 have the entity formed to go apply for the
3 financing, to get the deal settled, and into an
4 entity's name.

5 Q. And I'm going to show you Exhibits 2 and 4,
6 and ask you if you recognize those documents?

7 A. (Reviews documents.) I do.

8 Q. And tell the jury what those documents are,
9 sir.

10 A. As I see, they're more or less identical
11 documents, with the exception of one is an
12 assignment of interest and written consent in lieu
13 of special meeting. One is for Hilton Head Homes at
14 Allenwood, LLC, the other one is for Village Square
15 Development Company, LLC, and they are fairly
16 technical documents that are multiple pages in
17 length, five such pages. The long and the short of
18 it is, it admits new members, one, Arthur F. Long,
19 and one James R. Brady, into both entities, subject
20 to four pages of conditions, whereby, they're
21 acknowledging that they read and understood the
22 operating agreement, they're accepting the terms of
23 those operating agreements, and it imposes some
24 additional duties and disclosures upon each of those
25 new members. You know, all -- all of which were

1 binding on them, and their heirs and successors in
2 interest should there sometime be one by devise of
3 law.

4 Q. And turn to page four of those assignments,
5 please, Mr. Grossman.

6 A. I'm sorry, sir?

7 Q. Turn to page four.

8 A. Of the assignment?

9 Q. Of the two assignments, yes, sir.

10 A. Okay.

11 Q. And what -- what was the ownership and
12 voting percentage after these agreements were
13 executed and signed?

14 A. (Reviews documents.) Lancaster
15 Redevelopment Corporation was 88 percent, Arthur F.
16 Long, Jr., was six percent, James R. Brady was six
17 percent, for a total membership of 100 percent.

18 Q. And on the last page of these two documents,
19 there's signatures of Arthur F. Long, Jr., and James
20 R. Brady; are there not?

21 A. There are.

22 Q. And then there are two pages fives, I'll
23 represent to you, because on the first page five
24 there's a signature of Gary L. Grossman as President
25 of Lancaster Redevelopment Corporation, correct?

1 A. That is correct.

2 Q. All right, sir. And yesterday I asked
3 Mr. Brady about paragraph 9.5 of these agreements.
4 Do you remember my asking him that?

5 A. Yes.

6 Q. And you read this agreement before you
7 signed it; did you not?

8 A. I did.

9 Q. And are you aware that these assignments
10 that relate back to these operating agreements
11 contain the entire agreement between you and Mr.
12 Brady, and when I say you, I mean Lancaster
13 Redevelopment Corporation, not you, Gary Grossman?
14 Between Lancaster Redevelopment Corporation and Rod
15 Brady for the two LLCs, Village Square Development
16 Company, LLC, and Hilton Head Homes at Allenwood,
17 LLC?

18 A. That is correct.

19 Q. Tell me if I read this correctly, "9.5,
20 Entire Agreement. This assignment constitutes the
21 entire agreement between the parties pertaining to
22 its subject matter, and it supersedes all prior and
23 contemporaneous agreements, representations, and
24 understandings of the parties. No supplement,
25 modification, or amendment of this assignment will

1 be binding unless executed in writing by all
2 parties." Did I read that correctly?

3 A. Yes, sir.

4 MR. O'KELLEY: Your Honor, at this time, we
5 would like to move Defendant's 1 through 4 into
6 evidence.

7 (Move Defendant's 1 through 4 into evidence.)

8 MR. CAPELL: Your Honor, I object. We had the
9 standing objection, and I still have to cross-
10 examine him on these documents.

11 THE COURT: All right, I'll still --

12 MR. O'KELLEY: And, Your Honor, I've been --
13 I've been very lenient, but do I have two opposing
14 counsel, or one opposing counsel? I'm not --

15 MR. CAPELL: I'm sorry, Hamlet, I meant to --

16 MR. O'KELLEY: That's all right. That's all
17 right, I just want to make sure I'm not --

18 MR. CAPELL: That's my fault, I --

19 MR. O'KELLEY: -- being outgunned, Your Honor.

20 BY MR. O'KELLEY:

21 Q. Mr. Grossman, let's go back to Plaintiff's
22 Exhibit 1. These assignments were dated July of
23 2004, correct?

24 A. (Reviews documents.) Yes.

25 Q. And that's five months after February of

1 2004; is it not?

2 A. That's correct.

3 Q. All right, sir. Looking back at Exhibit 1,
4 you were asked some questions by Mr. Capell where he
5 made some emphasis about a statement, "Me,
6 individually," on the bottom of the second page; do
7 you remember that testimony?

8 A. Yes.

9 Q. All right, sir, tell me if I read this
10 correctly. "In addition to the sales and
11 construction management fees," well, it says fess,
12 we've established that but it should probably say,
13 "fees as described, I would like to pay you an
14 incentive management fee of 50 percent of free tax
15 profits, after a one percent per month interest on
16 cash investment to Lancaster Redevelopment
17 Corporation, and 500 basis points to me,
18 individually, for my guarantee." The individually
19 aspect that Mr. Capell was asking about, he didn't
20 ask you about that guarantee, did he?

21 A. He did not.

22 Q. So what were you doing here vis-a-vis a
23 guarantee for debt, Mr. Grossman, or debts of rather
24 Lancaster Redevelopment Corporation, who is the
25 member of the LLC?

1 A. I'm not sure I understand the exact
2 question, but in --

3 Q. Well, let me rephrase it. Why would you put
4 this in your -- why -- what did you, personally,
5 have to guarantee, me, individually?

6 A. Well, I had to guarantee all the debt, but
7 in the end it's a moot point, because I never took a
8 dime for my exposure at any time from any entity. I
9 was never actually paid a dime.

10 Q. And let's go to the next sentence of that
11 paragraph. It states, "However, I'm asking that 100
12 percent of cash invested by Forest Homes, Lancaster
13 Redevelopment Corporation, and/or myself be repaid
14 prior any profit distribution." I read that
15 correctly, did I not?

16 A. (Reviews document.) Yes.

17 Q. And tell the jury why you would want that to
18 be paid first in terms of the way developing
19 property works? Or we can go through it with Ms.
20 Griffith's letter, either way, but just tell --

21 A. In all fairness, I'd have to answer that
22 question with the same qualification I gave Mr.
23 Capell. My answer would have to be in the total
24 context of this -- that characterizes as a letter,
25 but it was, actually, a internal document. I made

1 it perfectly clear I wanted to proceed with the
2 transactions in separate limited liability
3 companies. Everything contained in these four
4 pieces of paper comes back to my statement, I want
5 to proceed with both transactions in separate
6 limited liability companies.

7 Q. Okay.

8 A. I've been clear about that from the outset,
9 no matter how this memo's characterized.

10 Q. And the limited -- I mean limited liability
11 companies are governed by those operating agreements
12 and assignments; are they not?

13 A. They are the limited liability companies,
14 and they're the companies that I set up to close on
15 the land. I never took them in my individual name.
16 Lancaster Redevelopment Corporation never closed on
17 them, they're -- they took claim to them.

18 Q. And Lancaster Redevelopment Corporation, at
19 one point, was a 100 percent number of those LLCs,
20 and then became an 88 percent member of those LLCs,
21 correct?

22 A. Correct.

23 Q. Turn to the Exhibit 2 of the Plaintiff's,
24 please, sir, it's the letter from September 13th,
25 2007. Tell the jury what was going on with the

1 development of property in the summer of 2007. How
2 was that working out for Lancaster Redevelopment
3 Corporation, or Forest Homes, or Village Square, or
4 -- or Hilton Head Homes at Allenwood, how was that
5 -- what was going on?

6 A. In Village Square or --

7 Q. No, sir.

8 A. -- the market, in general?

9 Q. In the market, in general, in the summer of
10 2007, when this letter was written in late summer,
11 September 13 of 2007.

12 A. Well, we closed out the year in 2006 where
13 my development sales for the first in my life
14 exceeded 100 million dollars in any single year,
15 which I started in 1977 with a \$100 pickup truck,
16 that I still owed 60 bucks on, so that was a major
17 milestone achievement in my life. By May of 2007,
18 the market began its so-called correction, which I
19 naively believe what the Feds were publishing, it
20 was going to be a correction, probably the biggest,
21 single biggest mistake in my life. We got our first
22 notice of technical default from Sea Island Bank on
23 about July the 10th, because we missed our second
24 quarter sales projection at Allenwood. I got
25 similar notices in the northeast on projects. Banks

1 evaluate your sales performance on a quarterly
2 basis, and in about 70 percent of our developments,
3 we missed our second quarter sales projections, and
4 we report on notices, not at 100 percent of the
5 places we missed it but a very high percentage of
6 them, and had to remove the plan, had to take
7 corrective action which mostly resulted in price
8 reductions. Sea Island Bank took the most
9 aggressive stance. They laid out a response to our
10 plan, and made it very clear if we didn't hit the
11 revised projections and implement the new marketing
12 plan correctly, the first thing that would happen is
13 they were going to cancel our interest reserve.

14 Q. And what's an interest reserve? Explain
15 that to the jury.

16 A. So when we booked a development cost, we
17 booked an interest reserve, which was a certain
18 amount of money allocated in the development cost
19 schedule, that they would debit interest carry
20 against the gross amount of the loan. So on one
21 hand, it guarantees that they have a performing loan
22 from an interest payment standpoint of view; but on
23 the other hand, they're advancing more money, which
24 you pay points on, and you pay interest on the
25 interest, which was a common practice in the 2000s,

1 because just like there was a bunch of cheap money
2 that consumers couldn't afford, which led to the
3 implosion, in all fairness, they shouldn't have been
4 doing that for developers, but every developer was
5 doing it.

6 Q. And when you --

7 A. So they ended the interest reserves when we
8 missed the projections at the end of September,
9 that's when the screws really started tightening.

10 Q. And that was after the September 13th letter
11 from Ms. Griffith, correct?

12 A. That's correct.

13 Q. And just so we can be sure about this, Mr.
14 Capell went over this letter in great detail with
15 you; did he not?

16 A. He did.

17 Q. All right, and I want you to go to the third
18 page, please, and look at the second and third
19 paragraphs, please. And I'll ask it this way, why
20 did you have to loan Village Square Development
21 \$124,750 at the time?

22 A. (Reviews document.) These houses that were
23 built took packages from a factory owned by
24 Lancaster Redevelopment Corporation, which was
25 probably 85 percent of the materials coming from a

1 single source. And there were receivables that were
2 severely past due, and part of the operating capital
3 from the Company, at that time, was a line of credit
4 financed by Pennsylvania Bank, and, you know,
5 essentially hot receivables. And on the 90th day of
6 the receivable, you buy back that receivable off
7 your line of credit. So the line of credit for that
8 factory was about a 7.5 million dollar line of
9 credit, and when you have 83 retail operations open,
10 and you're buying millions of dollars' worth of
11 lumber all the time, and you have a 90-day past due
12 of 124,750 from one customer, and then you multiply
13 that by a bunch of guys that are getting beat up by
14 their lines of credit, it starts to take its toll
15 after a bit. So one of the things where I have some
16 level of control, I personally lent Village Square
17 Development Company a 124,750, so it could pay its
18 past due receivable back to LRC.

19 Q. LRC being Lancaster Redevelopment
20 Corporation, correct?

21 A. Yes.

22 Q. All right, sir. Because Lancaster
23 Redevelopment Corporation had its own debts it had
24 to pay, correct?

25 A. That's correct.

1 Q. And then the next paragraph states -- that
2 says -- excuse me, the second part of that sentence
3 states, "And Forest Homes has past due receivables
4 of \$173,700." The next paragraph states, "We must
5 repay the 173,700 past due receivables as a first
6 priority." Why would that be a first priority, sir?

7 A. Well, what I indicated was just somewhat
8 misstated in Ms. Griffith's statement here, is that
9 Rod had a monthly note, if you will, to keep his
10 household afloat of ten grand a month. Under the
11 operating agreement, all these funds had to be
12 repaid ahead of his. I said, "Look, you can't
13 starve, Rod," he has a family to feed, "as long as
14 we're able send Rod ten grand a month, even if that
15 violates the operating agreement.

16 Q. And you state that -- that Ms. Griffith
17 stated that on page four; did she not?

18 A. So that's where she said, "Mr. Grossman has
19 indicated his intentions to allow funds to be paid
20 to you ahead of his recent loan." She didn't
21 qualify that.

22 Q. But turn to page four of the letter, sir,
23 and read the first paragraph. Let me -- I'll read
24 it in the record, and you tell me I read this
25 correct. "Mr. Grossman directed me to access our

1 ability to fund a 10,000 a month draw against these
2 funds." Is that the \$10,000 you were just talking
3 about?

4 A. Yes.

5 Q. And, Mr. Grossman, ultimately, Mr. Capell
6 asked you, you had to shut down Lancaster
7 Redevelopment Corporation, correct?

8 A. In the end.

9 Q. In the end. Sometime in 2010 you closed it,
10 shut it down, correct?

11 A. Maybe I'll start with the big picture, and
12 we can back into it.

13 Q. Absolutely. Explain it to the jury.

14 A. December 31st, 2006, my personal net worth
15 was 55 million dollars. By July of 2010, my net
16 worth was give or take about \$900,000, and all that
17 was the equity in my personal residence.

18 Q. And, ultimately, your companies ended up --
19 and I say companies, I'm talking about Village
20 Square, Allenwood, Lancaster Redevelopment, all had
21 to go through, basically, a foreclosure process, or
22 reorganization process, something of that nature;
23 did they not?

24 A. A lot of them were what's known as friendly
25 workouts. I'm morally opposed to the concept of

1 bankruptcy, although I -- as a legal tactic with a
2 team of very talented lawyers we threatened a number
3 of bankruptcies, but we never -- we -- we put one
4 company into an active bankruptcy, just to get their
5 attention, but what the deal was, is we were going
6 to move them to the Eastern District of New York,
7 because I had a very troubled project in New York,
8 and, therefore, qualified. And when we did that,
9 Sea Island Bank suddenly got some religion, so I
10 bought back my ten-million-dollar guarantee for a
11 million bucks in cash, agreed to the friendly
12 foreclosure, which did, in fact, start taking place
13 in 2009. But to Counsel's point, when they said,
14 "Well the first foreclosures didn't take until
15 2009," that's because between 2007 and 2009 they
16 were tightening the screws where they first
17 cancelled the interest reserve, and I was struggling
18 to make the interest payments out-of-pocket. Then
19 they froze the bank accounts, took the cash that was
20 in there. Couldn't do anything. Then they launched
21 judgments, which meant that nobody else would touch
22 us. Then we have intense negotiations. Then I put
23 LRC Ridgeland into bankruptcy to get their
24 attention, then I brought a new team of experts in.
25 So, finally, on or about December the 9th of 2009 we

1 cut a deal.

2 Q. And as part of that deal, did you have to
3 agree to repay things over time, or what's the
4 situation with any of those companies' debt as we
5 stand here today or your personal debt as we stand
6 here today?

7 A. I gave them a million bucks in cash. I
8 agreed to pay them another million over time. I
9 agreed not to seek bankruptcy protection for the
10 companies or myself. And I wrapped up everything
11 that they were cross-collateralized on in one nice,
12 neat package, and that deal closed on December the
13 30th, 2009.

14 Q. And as we stand here today in 2022, tell us
15 about what debts you, Mr. Grossman, owe, or any of
16 your entities owe. Because -- let me -- let me ask
17 it this way. So were you -- was there debt
18 forgiveness that is attributed to these companies --

19 A. Oh --

20 Q. -- as income?

21 A. -- the unfortunate part of this is, the only
22 difference between the book value of the debt and
23 what they settled it for, there's the delta.

24 Q. And delta meaning a difference, correct?

25 A. The difference. All of that difference is

1 fully taxable to me.

2 Q. As income, correct?

3 A. As income. So there's currently judgments
4 still against me, individually, for 2.4 million
5 dollars owed to the IRS. In addition to that,
6 there's an officer assessment pending against me for
7 1.2 million. I never had problems like that before,
8 so what -- I've learned a new trick late in life is
9 it's bad to have creditors with hostile judgments.
10 The ones you don't want to have is the IRS in any
11 form or fashion. They have a lot of rights nobody
12 else has. I asked them today -- well, recently to
13 defeat three of the four officer assessments.

14 Q. And what are officer assessments? Explain
15 that to the jury.

16 A. Well, the IRS has, under certain
17 circumstances, the right to reach through a
18 corporation and go after specific officers.

19 Q. To pierce the corporate veil in other words,
20 correct?

21 A. (Nods head.)

22 Q. Is that a yes? Just for the record.

23 A. And as part of that they also seized my
24 passport.

25 Q. Mr. -- Mr. Grossman, we need -- we need a

1 yes or no to my last question. I asked is it
2 basically like piercing the corporate veil?

3 A. Yes.

4 MR. THOMSON: Objection, that's a leading -- a
5 legal question.

6 THE COURT: It's all right. He understands what
7 piercing the corporate veil is.

8 MR. O'KELLEY: And he's asked and answered.

9 BY MR. O'KELLEY:

10 Q. So in terms of -- I want you to look at
11 Exhibit Number 2 again, the last page.

12 A. This is Exhibit 2 --

13 Q. The last -- the last page, page four, sir.

14 A. Oh, the September 13th letter?

15 Q. Yes, sir. And I'm going to read this into
16 the record. "Given the carrying cost of the
17 inventory and past due receivables to Forest Homes
18 from Allenwood, the monthly carrying cost at Cypress
19 Harbor, and our massive increase and the overhead
20 associated with the new plant, LRC simply cannot
21 fund any additional monthly expenses." Did I read
22 that correctly?

23 A. (Reviews document.)

24 Q. Did I read that correctly, Mr. Grossman?

25 A. This was written by Ginger Griffith in

1 September.

2 Q. Right. And did I just read that correctly?

3 A. Yes.

4 Q. And have you explained to the jury sitting
5 here in this early afternoon why you simply cannot
6 fund any additional monthly expenses as to what was
7 going on with your business and the housing market
8 in 2007?

9 A. Well, for starters, Allenwood, Cypress
10 Harbor, and the new plant were all part of debt
11 structures at Sea Island Bank. The new plant cost
12 me 11 million dollars to build. It was in
13 Ridgeland, South Carolina. I put six million in
14 cash in, and I took a five-million-dollar industrial
15 development bond, and Sea Island Bank was the
16 sponsor/originator of that bond, so they had credit
17 exposure on that. Part of that credit exposure, it
18 was cross-collateralized under my personal guarantee.
19 So when they moved on those assets as technical
20 defaults, it affected the credit rating of the
21 underlying bond. The day they seized the cash in
22 the accounts of the two LLCs, they seized all the
23 cash at LRC Ridgeland.

24 Q. And was LRC Ridgeland -- what entity was
25 that? Was that the factory?

1 A. That was the entity that was operating the
2 plant --

3 Q. The plant.

4 A. -- which is what led to the officer
5 assessments, because there was payroll taxes, checks
6 written, sales tax checks written, and when they
7 seized the cash, those checks bounced. Those
8 entities came back against me individually.

9 Q. And besides the Village Square, and Hilton
10 Head Homes at Allenwood, Cypress Harbor, you had
11 other LRC related entities around the Lowcountry;
12 did you not?

13 A. Yes.

14 Q. You have one in Battery Creek, correct?

15 A. Yes.

16 Q. And that development, ultimately, went
17 belly-up, as well; did it not?

18 A. That one, as part of the package, cost me
19 650 in cash as part of my structured guarantee deal
20 with the bank.

21 Q. And you had --

22 A. In -- in addition to the cash I put in when
23 I bought it.

24 Q. All right. And tell the jury about any
25 other entities you have in the local area. I think

1 you have one called LRC Linebeck; if I'm not
2 mistaken?

3 A. I'm sorry?

4 Q. Did you have another entity called LRC -
5 Linebeck (ph), if you recall that in --

6 A. No, Linbeck (ph) --

7 Q. Linbeck.

8 A. -- Universal Trust is a family trust that
9 voluntarily liquidated some assets to finance all
10 this mess.

11 Q. So the statement, "LRC simply cannot fund
12 any additional monthly expenses," have you told the
13 jury all the reasons why LRC could not fund any
14 additional monthly expenses?

15 A. That's correct.

16 Q. Thank you, Mr. Grossman.

17 MR. O'KELLEY: And, again, Your Honor, just want
18 to make for the record that we have proffered those.
19 I know Your Honor's considering them, but they are
20 our four exhibits.

21 THE COURT: All right.

22 **REDIRECT EXAMINATION**

23 BY MR. CAPELL:

24 Q. Mr. Grossman, I'm a little bit confused on
25 some of your last testimony that you were talking

1 about with the IRS, and -- and things going on
2 there. This IRS stuff happened in --

3 A. May I ask a question, sir?

4 Q. Yes, sir.

5 A. I'm a pretty severe diabetic --

6 Q. Oh, yeah.

7 A. -- may I get --

8 THE COURT: Yeah.

9 BY WITNESS:

10 A. -- a glass of water, please?

11 Q. Certainly.

12 THE COURT: Y'all want to take a break?

13 MR. O'KELLY: Do you need a five-minute to get a
14 snack or something?

15 THE WITNESS: A glass of water will be fine,
16 sir.

17 THE COURT: Okay.

18 BY MR. CAPELL:

19 Q. And, Mr. Grossman, you tell me when you're
20 ready.

21 A. I'm fine, sir, thank you.

22 Q. All right, so, Mr. Grossman, I'm a little
23 bit confused about some of the things you were
24 talking about with the IRS, and -- and what was
25 going on there. That happened in late 2009?

1 A. It actually started in 2009, '10, the
2 assessments.

3 Q. So everything you're -- you're talking about
4 with the IRS happened a couple years after this 2007
5 letter from Ginger; is that right?

6 A. I don't recall the first flows, but it was
7 in full swing -- it was in full swing by the late
8 2009, 2010.

9 Q. And did you say -- did I hear you say that
10 somebody had to pay Sea Island Bank a million
11 dollars to -- to get out of this?

12 A. I did.

13 Q. Okay. What -- when you say I did, who paid
14 Sea Island Bank a million dollars?

15 A. I personally did.

16 Q. Okay. And Sea Island Bank, what was their
17 involvement in all of this?

18 A. We started out in the beginning with a
19 three-million-dollar line of credit, and then when
20 -- the first thing that took off was the single-
21 family homes, and we exceeded the credit capacity of
22 the initial loan.

23 Q. And -- and let me stop you there, because my
24 -- my question may be a lot more simpler than that.
25 Sea Island Bank, they were a bank that funded loans

1 for the Allenwood development, right?

2 A. And other projects, but, yes.

3 Q. Okay, all right. The million dollars that
4 you paid to Sea Island Bank personally, was that for
5 relief from the Allenwood project or other projects?

6 A. Just the Allenwood.

7 Q. Okay. And so -- so for just the Allenwood
8 project, you paid, personally, a million dollars to
9 the bank to get out of any kind of deficiency
10 judgments from the bank; is that right?

11 A. By the time the whole thing collapsed, we
12 went back multiple times for increases in the line
13 of credit, and I don't know the exact number, but it
14 was somewhere between nine and ten million; and when
15 consumers realized that the market was unraveling
16 and prices were declining, then we had a contract
17 cancellation problem. So in addition to what was
18 built and we thought was sold, we had a significant
19 contract cancellation issue, so stuff even Sea
20 Island Bank counted as sold all of a sudden was
21 unsold. So the line of credit was pretty big,
22 prices crashed, we made a deal, they took a big
23 bath, I -- they knew they were going to take a big
24 bath, and I beat them down to a million dollars on
25 the walk.

1 Q. And -- and that beat them down to a million
2 dollars was in late December of 2009, right?

3 A. That's right.

4 Q. Okay, so as of December of 2009, you
5 personally had at least a million dollars in your
6 bank account, right?

7 A. I had -- I had to liquidate multi-family
8 assets I owned to raise the cash.

9 Q. And then Battery Creek you talked about,
10 that was another 650,000 cash you came up with?

11 A. Correct. All -- all of which was raised by
12 selling multi-family assets in the County I live in
13 at significant discounts.

14 Q. All right, Mr. Grossman, let's talk about
15 the assignments and the operating agreement. You've
16 got those both in front of you.

17 A. I do.

18 Q. I've got a copy of those with me as well.
19 And we talked about it briefly, but Hamlin went over
20 that in a lot more detail than I did, so I've got
21 some follow-up questions with -- with those
22 documents for you. Let's start with the assignment
23 -- or the assignments. Those are the only two
24 documents that are signed by Mr. Brady, right?

25 A. That's correct.

1 Q. Okay. Now, the purpose of those assignments
2 is to allow new members to make an investment in the
3 Company in return for an ownership share, right?

4 A. Yes.

5 Q. So for \$100,000 Rod got a six percent
6 ownership in Hilton Head -- Hilton Head Homes at
7 Allenwood; is that right?

8 A. Yes.

9 Q. And the same for Village Square, for
10 \$100,000 Rod got a six percent ownership interest in
11 -- in Village Square?

12 A. Yes.

13 Q. Okay. These assignments, and you can take a
14 minute to look at them if you want to, but they
15 don't say anything about who is going to get paid
16 for managing construction, do they?

17 A. The operating agreements do.

18 Q. Okay. We'll get to that in a minute. These
19 assignments do not say anything about who is going
20 to get paid to do the sales and marketing, do they?

21 A. It's in the operating agreement.

22 Q. And, in fact, these assignments don't even
23 mention construction management or sales, do they?

24 A. Not on the assignments.

25 Q. These assignments do not contain the phrase

1 incentive management fee anywhere in them, do they?

2 A. They do not.

3 Q. Okay. And, in fact, let's look at cause
4 9.5, Mr. Hamlin read this to you.

5 MR. O'KELLEY: Just for the record, it's
6 O'Kelley.

7 MR. CAPELL: Ham, I'm sorry.

8 MR. O'KELLEY: That's quite all right.

9 MR. CAPELL: I'm so sorry.

10 MR. O'KELLY: It's quite all right.

11 BY MR. CAPELL:

12 Q. Mr. Grossman, have you turned to 9.5?

13 A. Yes, sir.

14 Q. Okay. Hamlin read this paragraph to you,
15 the entire agreement. And if you look in there, you
16 will see the phrase, "Pertaining to a subject
17 matter," right?

18 A. (Reviews document.) Yeah.

19 Q. Do you see that phrase in there?

20 A. Uh-huh.

21 Q. Okay. And I think you just testified that
22 the subject matter of this assignment is paying
23 \$100,000 to get a six percent interest, right? And,
24 now, that's one of the first questions I asked you,
25 and I think you said yes.

1 A. Well, I didn't say it was the subject
2 matter. You said what's the emphasis of the
3 agreement? You characterized it, and I didn't
4 disagree with it. I think you're asking me to reach
5 a conclusion of law, which I'm not qualified to do.

6 Q. I -- one of the first questions I asked you
7 about the assignments was, the purpose of these
8 assignments is to allow new members to make an
9 investment in the company in return for an ownership
10 share, right, and you said yes, right?

11 A. That's generally what it does, yes.

12 Q. Okay. So construction management, sales,
13 incentive management fees, they're not the subject
14 of this assignment, are they?

15 A. I don't have an answer to that. It's -- it
16 -- it admits -- it admits people to a limited
17 liability company.

18 Q. And these assignments were done in 2004,
19 right?

20 A. Yes.

21 Q. Do you have --

22 A. Prior -- prior to the closing of the deal.

23 Q. Do you have a date on those assignments
24 anywhere? We know 2004, but have you got any kind
25 of specific date, or month?

1 A. All I know is it preceded the closing of the
2 deal, because, if not, I wouldn't have done the
3 deal.

4 Q. May we look at your copy real quick? My
5 copy may say something different than yours at the
6 top of it. Okay, yeah, at the very top,
7 Mr. Grossman, there's a date up there, it looks like
8 a fax when we used to use faxes. What's that date
9 on that fax up there?

10 A. (Reviews document.) The date on the copy of
11 this is August the 20th, 2004.

12 Q. Okay, and if we look at Ginger's letter,
13 which I put up here on the -- the easel, it's
14 stating that Rod is due the \$711,000. That letter's
15 dated September 13th, 2007, right?

16 A. Yes.

17 Q. Okay. That's, roughly, three years after
18 these assignments, right?

19 A. Yes.

20 Q. Okay. And these assignments -- I asked you
21 this before, these assignments are not mentioned in
22 Ginger's letter, correct?

23 A. They don't appear to be.

24 Q. Okay. And Ginger's letter mentions the
25 February 2, 2004, letter of agreement six times,

1 right?

2 A. It says what it says, yeah.

3 Q. And Ginger's calculations in this letter,
4 you watched her deposition, or her -- her testimony
5 on -- on the TV there, her calculations in this
6 letter are based on the February 2, 2004, letter of
7 agreement, right?

8 A. I -- I don't know what she based it on. I
9 can't speak for her.

10 Q. Will you turn back in your -- your exhibit
11 book, please, Exhibit 2? And the -- the first
12 sentence of the letter says, "Pursuant to your
13 discussion with Mr. Grossman, I am transmitting our
14 analysis of the Allenwood conversation to you under
15 our February 2, 2004, letter of agreement"; that's
16 what it says, right?

17 A. (Reviews document.) Yes.

18 Q. So the reason why you can't tell me or you
19 can't answer whether or not her letter is basing
20 this calculation on the February 2, 2004, agreement
21 is because you didn't write it?

22 A. Excuse me?

23 Q. Why can't you tell me whether or not her
24 letter is basing the calculations in her letter on
25 the February 2, 2004, letter of agreement?

1 A. I can agree to what the letter says.

2 Q. Okay.

3 A. I -- I -- I don't know what these
4 calculations are based on that letter, or otherwise,
5 I don't know what she based it on.

6 Q. In your September 15th email, too, that
7 we've got still pulled up here on the screen there,
8 that letter refers to the February -- or refers to
9 the February 2, 2004, letter of agreement, right?

10 A. Yes.

11 Q. And I want to be clear, Mr. Grossman, for
12 the jury. I want you to -- to make sure I
13 understand your testimony clearly, what your
14 testimony to the jury is. Are you testifying that
15 these assignments dated in 2004 somehow supersedes
16 the February 2, 2004, letter of agreement?

17 Q. You keep characterizing this as a letter of
18 agreement. It's not signed. I never do business in
19 my personal name. You're trying to create the
20 illusion that I somehow personally guaranteed all
21 this letter of agreement.

22 THE COURT: Hold on, hold on, hold on. Just
23 answer the question, please.

24 BY WITNESS:

25 A. What's the question, sir?

1 Q. I said -- and I'll -- let me ask it again.
2 Just to be clear, Mr. Grossman, are you testifying
3 that this assignment -- these assignments, these two
4 assignments you're looking at up here, dated in
5 2004, somehow supersedes the February 2, 2004,
6 letter of agreement?

7 A. Absolutely, that's my testimony.

8 Q. So even though both you and Ginger refer to
9 the February 2, 2004, letter of agreement, in 2007,
10 both of y'all do that, even though you do three
11 years after the agreement, you believe the February
12 2, 2004, letter of agreement no longer applies?

13 A. As I previously testified, sir, I didn't
14 opine to that. I told you I referenced her letter.

15 Q. Isn't it true, Mr. Grossman, that there
16 would be no way for Ginger to make the calculations
17 that she makes in that letter, that 2007 letter,
18 there'd be no way for her to make those calculations
19 without referring to the terms of the 2002 -- or the
20 February 2000 -- February 2, 2004, letter of
21 agreement?

22 A. No. And to my -- the answer to that
23 question, sir, is no.

24 Q. So -- so she could not have written and made
25 the calculations she made in her September 13, 2007,

1 letter without referring to the February 2, 2004,
2 letter, right?

3 A. I don't know that that's true.

4 Q. All right, well, let's look at the operating
5 agreements then. You've got those two in front of
6 you. And so operating agreements are dated July
7 8th, 2004, right?

8 A. (Reviews document.) Yes.

9 Q. The -- these operating agreements do not say
10 anything about who's going to get paid for managing
11 the construction, do they?

12 A. (Reviews document.)

13 THE COURT: While he's doing that, how much
14 longer do you think you'll have for this? At some
15 point, I've got to give them a break.

16 MR. CAPELL: Almost done, almost.

17 THE COURT: Okay.

18 MR. CAPELL: I'll be quick, Your Honor.

19 THE COURT: Cathy, are you okay?

20 COURT REPORTER: Yes, sir.

21 THE COURT: All right.

22 BY WITNESS:

23 A. Yes, it touches on some of the duties and
24 responsibilities starting in Article 10.

25 Q. Article 10, page 12. The -- the title of

1 Article 10 is Fiduciary Duties, Right to Rely
2 Indemnification; is that correct?

3 A. "Specifically, James R. Brady of Hilton Head
4 Homes holds a South Carolina contractor's license
5 and may act as the permit holder for and on behalf
6 of the Company. In the event he doesn't, shall be
7 reimbursed for all costs related to this including
8 but not insurance costs attributable to the
9 project."

10 Q. And let me -- let me clear up one thing
11 while you're still looking at it. I just want to
12 make sure that Article 10 that you referred to, the
13 title of that Article is Fiduciary Duties, Right to
14 Rely Indemnification; is that correct?

15 A. Yes.

16 Q. All right. So you're free to have as much
17 time as you need to to look, but these operating
18 agreements don't say anything about who is going to
19 get paid for managing construction, do they?

20 A. No, it doesn't.

21 Q. And these operating agreements do not say
22 anything about who is going to get paid, or do the
23 sales and marketing for Allenwood, do they?

24 A. No, it doesn't.

25 Q. And these operating agreements -- take time

1 to look if you need this -- to -- to look for this
2 too, but these operating agreements do not contain
3 the phrase incentive management fee anywhere in
4 there, do they?

5 A. They do not. But -- but I'm not disputing
6 the compensation.

7 Q. I'm -- I'm sorry?

8 A. I don't dispute the compensation. I've
9 stipulated that he's owed the money. He's owed by
10 these entities.

11 Q. So you --

12 A. I don't owe the money individually.

13 Q. So you stipulate in open court today in
14 front of this jury that Rod Brady is owed \$711,000?

15 A. Yes, sir.

16 Q. And -- and you've stipulated that what
17 entities owe that money?

18 A. A combination of Village Square Development
19 Company, LLC; Hilton Head Homes at Allenwood, LLC;
20 and/or Lancaster Redevelopment Corporation, one of
21 those three entities owes some certain line owner
22 the total of \$711,000. I'll stipulate to that, I
23 have all along.

24 Q. And if you're wanting to stipulate to that,
25 can you show me, or this jury, any document that you

1 have, or produced ever, that shows an agreement
2 between those three companies and Mr. Brady for the
3 terms of the \$711,000?

4 A. Likewise, y'all have nothing that binds me
5 to that concept.

6 Q. I just went through the assignment with you,
7 there's nothing in there. I just went through the
8 operating agreements, there's nothing in there. And
9 so you're saying, likewise, we have nothing that
10 binds you individually to paying Rod or owing Rod
11 \$711,000; is that right?

12 A. Well, I -- I've been asking for ten years to
13 show me a signed copy of that letter. Nobody can
14 produce it.

15 Q. Now, we asked you for a copy of the letter,
16 right, in discovery; do you recall that?

17 A. Yeah.

18 Q. You were supposed to turn over all the
19 documents that you could find to us in discovery; is
20 that right?

21 A. We did, yeah.

22 Q. This -- this case has been going on for 13
23 years, right?

24 A. I think so, yeah.

25 Q. And in all those 13 years you haven't been

1 able to find any other copy of this letter other
2 than the one you gave us?

3 A. That's correct.

4 Q. And you told me in your deposition and-
5 today, it's possible you signed that letter, didn't
6 you?

7 A. It's possible. I don't have a copy of it.
8 I can assure you, if we did, I would have
9 surrendered it.

10 Q. All right, a couple more things, and then
11 I'll be done, Mr. -- Mr. Grossman. The September
12 13th, 2007, letter, I just want to touch on this
13 real quick, from Ginger Griffith. That is about
14 houses that have already been completed -- the
15 construction's been completed, and they've been
16 sold, right?

17 A. It depends on your definition of completed.

18 Q. They -- let me just say this, let me
19 rephrase. The -- the houses that are referred to in
20 the Ginger Griffith 2007 letter are houses that have
21 already been sold, right?

22 A. Which had customer punch lists, warranties,
23 etcetera, all of which had to be serviced by
24 Mr. Culour (ph) or Nick Grossman at an additional
25 expense to the company.

1 Q. But the houses that were -- were sold were
2 not seized in any type of foreclosure action, right?

3 A. That were sold and settled, actually
4 transferred.

5 Q. Okay, all right. So -- so at the time of
6 this September 2013 letter, every house that was
7 sold was not foreclosed on later by Sea Island Bank
8 or any other entity, right?

9 A. If they were sold and settled, as in
10 transferred by deed to the third party, your answer
11 -- your question, sir, is that is correct; but there
12 was a significant cancellation rate.

13 Q. And these foreclosures that you've referred
14 to in this trial all started in 2009 or later?

15 A. The foreclosures were actually initiated
16 sometime in 2008.

17 MR. CAPELL: Thank you, Mr. Grossman, that's all
18 the questions I have.

19 MR. O'KELLEY: And, Your Honor, I know we have
20 to take a break, but I have two quick questions.

21 **RECROSS-EXAMINATION**

22 BY MR. O'KELLEY:

23 Q. Mr. Grossman, put in front of you the
24 Assignment of Interest and Written Consent in Lieu
25 of a Special Meeting, Exhibits 2 and 4 that are

1 right over there, sir. Have you got those in front
2 of you?

3 A. I do.

4 Q. Tell me if I read this correctly, sir, it's
5 on the first page, paragraph two, "Acceptance. By
6 signing this assignment and making the investment in
7 the company as set forth herein, each new member
8 accepts the assignment and transfer of interest from
9 the company and agrees to be bound by the terms and
10 provisions of the operating agreement." Did I read
11 that correctly?

12 A. Yes, sir.

13 Q. And in the operating agreements, Mr. Capell
14 just asked you about an article. Turn to Article 12
15 that's on page 15, sir. Does that Article 12 set
16 forth the way calculations of profits and losses and
17 distributions are going to be done for these LLCs?

18 A. (Reviews document.) Article 12 in its
19 entirety?

20 Q. Yes, sir.

21 A. Yes.

22 Q. All right. And the only signed document
23 we've seen so far in the trial of this case signed
24 by Gary L. Grossman for Lancaster Redevelopment
25 Corporation, by Arthur F. Long, Jr., and James R.

1 Brady are these assignments; isn't that correct, Mr.
2 Grossman?

3 A. That is correct.

4 Q. Thank you, sir.

5 MR. O'KELLEY: Thank you, Your Honor.

6 THE COURT: All right. Have you got anything
7 further?

8 MR. CAPELL: Nothing further, Your Honor.

9 THE COURT: All right. So do you want to call
10 your next witness, or did you want to rest?

11 MR. CAPELL: We're resting, Your Honor.

12 THE COURT: All right. Ladies and gentlemen of
13 the jury, the Plaintiffs have rested. Give me one
14 second to confer with Counsel, and I will tell you
15 what we're going to do the remaining balance of the
16 day.

17 (Whereupon, we go briefly off the record.)

18 THE COURT: It's nothing secret, we're just
19 talking scheduling.

20 THE COURT: All right, I'll allow the Defense to
21 call its first witness.

22 MR. O'KELLEY: And, Your Honor, at this time,
23 you've -- the -- the jury has heard from
24 Mr. Grossman and anything he would have put up in
25 defense, so the Defense rests at this time.

1 THE COURT: All right. So that's what we were
2 going to work out, so, ladies and gentlemen of the
3 jury, that concludes that portion of the case. So
4 what I'm going to allow us to is we're going to stay
5 and work. We've got to go over some legal issues
6 that need to be resolved prior to giving you all the
7 charge on the -- the legal charge and allowing them
8 to give their closing arguments. So what I'm going
9 to do is, I'm going to give you about an hour and 20
10 minutes, and then when we come back, I'm going to
11 charge you on -- well, we're going to stay and work,
12 but I'm going to charge you on the law, let them
13 give their closing arguments, and I'm going to give
14 you case, and let y'all begin your deliberations, so
15 we should be done today, all right? All right, I
16 can't see what time it is. It is 12:40, so come
17 back at 2 o'clock, right? Isn't that right, it's an
18 hour and 20 minutes?

19 THE BAILIFF: Yes.

20 THE COURT: Okay. All right, well, I hope you
21 enjoy your lunch, and we'll see you then.

22 (Whereupon, the jury exits courtroom.)

23 (Whereupon, a lunch recess is taken.)

24 THE COURT: All right, before we do the request
25 for summary judgment, let's go ahead and go over the

1 -- the jury charges and verdict forms, if there's
2 anything that needs to be changed, be working on it.

3 MR. O'KELLEY: Your Honor, briefly, I've told
4 your clerk this, I -- I think we can do them all in
5 one fell swoop, because I'm going to have motions
6 for a directed verdict as to -- well, first of all I
7 want to move to amend our answer, under Rule 15(b)
8 to a certain defense of statute of frauds. You
9 heard yesterday from Mr. Brady that -- and from Mr.
10 Grossman, and from Ms. Griffith that this letter
11 that is a letter of agreement, as we've called it,
12 has not been signed. You also heard from Mr. Brady
13 yesterday that the document, the acts to perform,
14 under that letter of agreement was going to take
15 longer than a year, so I think under 15(b) we're
16 allowed to assert these statute of frauds at this
17 time. Of course, amendments are freely given,
18 especially under 15(b), so we have that motion.

19 I'm also going to move, at this time, Your
20 Honor, for a directed verdict on breach of contract,
21 quantum meruit, and conversion, and punitive
22 damages. The only contracts that we have in this
23 case, Your Honor, are the signed operating agreement
24 assignments, which, Your Honor, has not admitted yet
25 as evidence, but every witness that has been alive

1 has testified about them and admitted that they are
2 the signatures of Mr. Brady on that document. Mr.
3 Grossman admitted that his signatures were also on
4 that document on behalf of Lancaster Redevelopment
5 Corporation. The only Defendant left in this case
6 is Gary L. Grossman, and, Your Honor, we, frankly,
7 don't think the proof is there that there was an
8 actual contract with Gary L. Grossman. The letter
9 agreement actually states that there are going to be
10 two LLCs to be formed, and, again, the only contract
11 that has been presented is not yet admitted are the
12 assignments. Your Honor, we also are moving for a
13 directed verdict on hearing quantum meruit, that is
14 not something for the jury to decide. The law on
15 quantum meruit is that it is an equitable doctrine,
16 and as Your Honor knows equitable doctrines are for
17 the Court to decide as a matter of law.

18 We also are moving for a directed verdict as to
19 punitive damages. We've not heard of willful,
20 wanton and reckless behavior. In fact, Ms.
21 Griffith's letter for the former Defendant,
22 Lancaster Redevelopment Corporation, states, "We
23 simply could not pay." Mr. Grossman was on the
24 stand for a long time today, and he never testified,
25 "Well, I took this money. I had this money in my

1 pocket, that I'm taking away from Mr. Brady." The
2 -- the evidence has shown that the money wasn't
3 there, for whatever reason, mainly as a result of
4 the housing market. Again, Your Honor, I don't
5 think anything's been proven to the degree required
6 for punitive damages, so we'd ask, Your Honor, for a
7 directed verdict as to punitive damages, because if
8 there's no conversion, there's no punitive damage,
9 Your Honor. So I -- I know Your Honor's general
10 thoughts on directed verdict motions, but I've made
11 it now for the record. If Your Honor is inclined to
12 grant any of those, then some of these jury charges
13 will come out. And, frankly, I think that some of
14 these -- if any of those are granted, Your Honor,
15 then the jury form, as to conversion and quantum
16 meruit and breach of contract, if granted on all of
17 it, we don't go to the jury, but I think the one
18 most likely to remain will be breach of contract,
19 Your Honor, and we'll just need to change the form,
20 depending on how Your Honor rules on that.

21 THE COURT: All right.

22 MR. CAPELL: Your Honor, I was waiting on -- let
23 me grab this letter over here. I was waiting on
24 Charlie. We didn't go to lunch with him because he
25 wanted to practice his evidence. I don't know where

1 he is. I'm trying to contact him now. He was in
2 charge of doing these arguments, but I think I can
3 get through it pretty quickly.

4 THE COURT: No problem.

5 MR. CAPELL: The statute of frauds argument,
6 that's an affirmative defense, Rule 8(c) requires
7 you to plead that as an affirmative defense, Hamlin
8 didn't plead it, so --

9 THE COURT: Got you.

10 MR. CAPELL: -- so I think that's gone. And
11 even if it was pled, part performance is an
12 exemption to the statute of frauds, and we have all
13 the evidence in the world that part -- in fact,
14 whole performance was done, and everybody recognized
15 that, Ginger did, and so did Rod. So I think part
16 performance is an exemption, even if it's not --
17 even if it was affirmatively pled. So that's the
18 statute of frauds issue. The quantum meruit issue,
19 we produced a lot -- and I understand it's an
20 equitable claim for Your Honor, we produced a lot of
21 evidence that showed the elements of quantum meruit,
22 and one of them was the email that I just went up
23 there and got where I had Mr. Grossman read, "I
24 acknowledge their valuable contribution to my varied
25 business interest throughout the Lowcountry." And

1 this was referencing to the February 2, 2004, letter
2 of agreement, and we have a -- a definite sum of
3 money, \$711,000, which, as you know, is a definite
4 sum of money. It can't be the subject of quantum
5 meruit and -- and conversion on that. So -- and I
6 think we've proven conversion as well, the elements
7 of conversion. Whether or not the conduct is
8 willful or wanton, I believe that's a question for
9 the jury to decide, it's a question of fact on
10 whether some of the comments that Mr. Grossman made
11 rise to that level of behavior. I would say no.
12 Having that million dollars cash to throw out to a
13 bank instead of paying Rod, that could be something
14 that could be willful and wanton that the jury can
15 decide, but there's many evidences of that, as well.
16 As far as the breach of contract goes, we all know
17 you don't have to have a signed document to have a
18 contract formation, so we have evidence of
19 performance on the contract. We have Mr. Grossman
20 had said that Mr. Brady accepted the terms of that
21 contract. I have that direct testimony that I asked
22 him about, and so we have a contract form with both
23 parties accepting it. Mr. Brady performed it. Mr.
24 Griffith said -- or Ms. Ginger Griffith said Mr.
25 Brady fully performed all of his work for Homesern

1 (ph), and we've shown the breach of the contract and
2 the damages, so --

3 MR. O'KELLEY: Your Honor, just to mention,
4 quantum meruit is an equitable claim for Your Honor,
5 so I think at least that one is gone from the
6 verdict form and from the charges, at the very
7 minimum.

8 MR. CAPELL: Yeah, that's right, Your Honor.

9 MR. O'KELLEY: Yeah.

10 MR. CAPELL: I believe it's --

11 THE COURT: I'm sorry, say that again?

12 MR. CAPELL: Hamlin said that the quantum meruit
13 is an equitable claim for you to decide, so I don't
14 believe that's on the jury charges.

15 THE COURT: Gotcha, gotcha.

16 MR. O'KELLEY: Or on the verdict form.

17 MR. CAPELL: Yeah.

18 MR. O'KELLEY: So I guess that's --

19 THE COURT: So would that need to be determined
20 by myself at the close of the case?

21 MR. CAPELL: Yes, sir, Your Honor.

22 THE COURT: All right. All right, so I'll take
23 it out, and we'll take it off the verdict form. All
24 right, as to the breach of contract claim,
25 obviously, there's been testimony on behalf of

1 Mr. Grossman that there may have potentially been a
2 signed copy, and just for the record, the copy that
3 was produced during the discovery was not signed.
4 Certainly, it does not mean that there's not a
5 contract between the parties, so I will deny the
6 breach of contract motion as to quantum meruit.
7 Again, I think you just indicated that's for the
8 Court to determine at the end, which of course would
9 be at the punitive damages stage, so I'm not going
10 to charge the punitive damages, obviously, at this
11 time. And as to conversion, obviously, that's one
12 of the major issues in the case is, did he convert
13 the money that was owed to Mr. Brady to his own use,
14 and toward him -- and for any other abuses
15 potentially with one of his companies, so I will
16 deny those claims as well. All right, so I'll take
17 out quantum meruit and punitive damages, I'll take
18 it off the verdict form.

19 MR. O'KELLEY: And, Your Honor, I don't think
20 punitives was on the verdict form.

21 THE COURT: No. I'm talking about taking it out
22 of the jury charge.

23 MR. O'KELLEY: Yes, sir.

24 Your Honor, just before we go, I hope -- we would
25 again move the four exhibits we have into evidence.

1 They've not been officially admitted. Your Honor had them
2 under advisement. Mr. Grossman testified to them. Mr.
3 Brady testified to them. They are relevant, because
4 they've completed all issues about which of the deed was
5 involved, who, what, where, when and why. So again, we'd
6 move those into evidence, Your Honor.

7 MR. CAPELL: We obviously object, Your Honor,
8 because they don't have anything to do with
9 anything.

10 THE COURT: I agree. That's the basis of the
11 case. I think it's a fact question for the jury
12 whether it does have any affect basis on the
13 contractual obligation. So I'm going to allow them
14 in.

15 MR. O'KELLEY: Thank you, Your Honor.

16 MR. CAPELL: Thank you, Your Honor.

17 MR. O'KELLEY: I just wanted to make sure we
18 did that before --

19 THE COURT: Yeah, before we forget.

20 MR. O'KELLEY: We'd say we don't forget and
21 then we go, gosh, we forgot to do that.

22 THE COURT: I agree, if that's -- that's the
23 basis of the case, I think it's a fair question for
24 the Jury, whether it does have any effective basis
25 on the question of obligation, so I'm going to allow

1 them in.

2 MR. HAMLIN: Thank you, Your Honor.

3 MR. CAPELL: Thank you, Your Honor.

4 (Whereupon, court is in recess.)

5 THE BAILIFF: All rise, the Court is back in
6 session.

7 THE COURT: All right, thank you very much.

8 MR. CAPELL: Your Honor, now we're missing
9 Hamlin, but --

10 THE COURT: All right.

11 MR. CAPELL: -- I've got a couple things.
12 Charlie's back, and so I've got a couple of things I
13 want to add, when Charlie's back, but we'll wait
14 until Hamlin gets here.

15 MR. THOMSON: Your Honor, we have a proposed
16 verdict form, well, I'll wait.

17 MR. CAPELL: Hamlin, I want to bring a couple
18 things up now that Charlie's back.

19 One, Your Honor, the quantum meruit, I got
20 confused on the fly, the punitive damages go with
21 the conversion cause of action, not with the quantum
22 meruit cause of action.

23 MR. THOMSON: Right, and they don't go with
24 breach of contract, we recognize that, but you can
25 receive punitives for conversion.

1 MR. CAPELL: That -- that -- and I got confused
2 about you taking the conversion charges with quantum
3 meruit -- I mean you taking the punitive damages
4 with quantum meruit, they go with conversion, which
5 means they should be read by --

6 MR. THOMSON: Right, I --

7 MR. CAPELL: -- the Jury, so I -- I apologize
8 for that.

9 MR. THOMSON: We agree you should rule the
10 quantum meruit, not the Jury, but conversion
11 definitely has punitive damage component.

12 MR. CAPELL: And --

13 THE COURT: Is it a statutory requirement, or is
14 this still --

15 MR. HAMLIN: Yeah.

16 THE COURT: -- I determine whether it's reckless
17 or wanton based on the testimony given?

18 MR. HAMLIN: That's -- that's for you to
19 determine.

20 THE COURT: Right, that's what I thought.

21 MR. CAPELL: And -- and then, Your Honor, the
22 other thing that -- that Hamlin and I talked about
23 right after you left was, the accountant letter, was
24 that ever -- do you remember the accountant that
25 passed away that Rod had on there? Was that ever

1 admitted?

2 MR. HAMLIN: It was.

3 THE COURT: Cathy, that wasn't admitted, was it?

4 MR. HAMLIN: It wasn't, Your Honor, and we still
5 have our hearsay objection to it.

6 She was not here yesterday, Judge, so she
7 wouldn't know.

8 COURT REPORTER: Oh, I'm sorry, there's -- so I
9 -- I don't know from looking at this.

10 MR. HAMLIN: It was not admitted.

11 THE COURT: Yeah.

12 MR. HAMLIN: It was one of the ones, Your
13 Honor --

14 COURT REPORTER: What number was it?

15 MR. CAPELL: Exhibit 4.

16 MR. HAMLIN: It was one of the ones Your Honor
17 took under advisement.

18 COURT REPORTER: Oh, the one in your book?

19 MR. CAPELL: Yeah.

20 COURT REPORTER: That you just took out?

21 MR. CAPELL: Yeah, that's it. That's -- that's
22 what I --

23 THE COURT: She was -- the -- the lady that
24 testified utilized --

25 MR. CAPELL: No, Rod utilized it. His -- his

1 accountant gave it to him, and he -- his accountant
2 passed away. And -- and what we decided to do with
3 it, Your Honor, remember was, we would stipulate to
4 the 7/11 instead of the 7/24 in this letter, so --

5 THE COURT: Okay, well, that's fine.

6 MR. CAPELL: Okay.

7 THE COURT: It's excluded at this time.

8 MR. CAPELL: Okay.

9 (Jury enters courtroom.)

10 MR. HAMLIN: Are these the new ones, Your Honor?

11 THE COURT: We're about to find out.

12 MR. HAMLIN: Okay, all right.

13 THE COURT: Yeah, so here's the verdict form.

14 Do you have a proposed one?

15 MR. THOMSON: Yes, Your Honor. It's got the
16 punitive damages on there.

17 THE COURT: I'm going to -- I'm going to hold
18 off on the punitive damages at this point in time.
19 I'm going to wait to see if, in fact, if there is a
20 verdict in the case, and then I will make a
21 determination, obviously, as to quantum meruit
22 determination and the punitives, and if I decide so,
23 then I can send it back to the Jury to review this,
24 okay?

25 MR. THOMSON: Okay.

1 THE COURT: All right? All right, bring them
2 out.

3 (Jury enters courtroom.)

4 **JUDGE'S INSTRUCTIONS TO JURY**

5 THE COURT: All right. All right. What we're
6 going to do is, as I indicated before, is I'm going
7 to charge you on the law. As I indicated at the
8 beginning of the trial, and I am the sole judge of
9 the law, and you are the sole judge of the facts.
10 So what I'm going to do now is, don't worry, it's
11 going to be a lot of information for you to digest,
12 but I'm going to allow you to have this in the back,
13 but the law states I have to read it to you into the
14 record, okay? So don't ignore me, because I'm put a
15 lot of emphasis on things -- I just read it. But
16 anyway, with that being said, at the close of that,
17 I'm going to obviously let the lawyers make a
18 closing argument. And what they're going to argue
19 is that what they believed the evidence was going to
20 show at the beginning, they now are going to argue
21 that what has been shown to mirror the law which I
22 have charged you on, all right? So we'll let the
23 Plaintiff go first, the Defense goes, and the
24 Plaintiff will say a very, very, very short
25 rebuttal, and then we'll give you the case, fair

1 enough? All right.

2 I'll remind you that during this trial you and I
3 have certain duties to perform. As the trial judge
4 it is my responsibility to preside over the trial of
5 this case. And I also have the duty to rule on the
6 admissibility of the evidence offered during this
7 trial. You are to consider only the evidence before
8 you. If there was any testimony ordered stricken
9 from the record during this trial, you must
10 disregard that testimony. You are to consider only
11 the testimony which has been presented from the
12 witness stand, any exhibits which have been made a
13 part of the record in this case, and any
14 stipulations made by counsel. I have the additional
15 duty to charge you the law applicable to this case.
16 It is your duty as jurors to accept and apply the
17 law as I now state it to you. If you think you have
18 any idea as to what the law is or what the law ought
19 to be and does not agree with what I tell you the
20 law actually is, you must forget that idea, because
21 you are sworn to accept the law and apply the law
22 exactly as I state it to you. In every case tried
23 in this Court before a jury, the jury becomes the
24 sole and exclusive judge of the facts. A Trial
25 Judge cannot comment on or make any statement about

1 the facts in the case. Since you are the sole
2 judges of the facts, do not think by anything I have
3 said during this trial that I have any opinion about
4 the facts of this case. The law does not allow me
5 to have any opinion about the facts of this case.
6 There are two types of evidence generally presented
7 during a trial, direct evidence and circumstantial
8 evidence. Direct evidence is the testimony of a
9 person who claims to have actual knowledge of a
10 fact, such as an eyewitness. It is evidence which
11 immediately establishes the main fact to be proven.
12 Circumstantial evidence is proof of a chain of facts
13 and circumstances indicating the existence of a
14 fact. It is evidence which immediately establishes
15 collateral facts from which the main fact may be
16 inferred. Circumstantial evidence is based on
17 inference and not on personal knowledge or
18 observation. It is proof that does not actually
19 establish the fact in question, but that a search
20 has described something else from which you may
21 either reasonably infer the truth of the fact, or at
22 least reasonably infer an increase in the
23 probability that the fact is true. For
24 circumstantial evidence to be sufficient to warrant
25 the finding of a fact, the circumstances must lead

1 to that fact with reasonable certainty. The facts
2 and circumstances should be considered in light of
3 ordinary experience and common sense. The existence
4 of a fact cannot be based on speculation, surmise or
5 conjecture. The law makes absolutely no distinction
6 between the weight or value to be given to either
7 direct or circumstantial evidence, nor is a greater
8 degree of certainty required of circumstantial
9 evidence than of direct evidence. The burden of
10 proof in this case is by preponderance of the
11 evidence. By preponderance of the evidence simply
12 means the greater weight of the evidence. It is
13 evidence which, as a whole, shows that the fact
14 sought to be proven is more likely true than not
15 true. This can be illustrated by imagining a set of
16 scales. When the case begins, the scales are even.
17 After all the evidence has been presented, if the
18 scales remain even, or if they tip even slightly in
19 favor of the Defendant, then the Plaintiff has
20 failed to meet the burden of proof, and would not be
21 entitled to recover in this case. If on the other
22 hand, the scales tip even slightly in favor of the
23 Plaintiff, the Plaintiff will have met the burden of
24 proof, and you should return a verdict for the
25 Plaintiff. The preponderance of the evidence is not

1 determined by the number of witnesses; instead, it
2 must be determined by the greater weight of all the
3 evidence presented.

4 Necessarily, you must determine the credibility
5 of the witnesses you -- who have testified in this
6 case. Credibility simply means believability. It
7 becomes your duty as jurors to evaluate the evidence
8 and determine which evidence convinces you it is
9 true. In determining the believability of witnesses
10 who have testified in this case, you may believe one
11 witness over several witnesses. Several witnesses
12 over one witness. You may believe a part of the
13 testimony of a witness and reject the remaining part
14 of the testimony of that same witness. You may
15 believe the testimony of a witness in its entirety,
16 or you may reject the testimony of a witness in its
17 entirety. You may consider whether the witness has
18 an interest in the result of the trial, whether the
19 witness is prejudiced for either the Plaintiff or
20 the Defendant. The opportunity for the witness to
21 have seen the matters, and things about which the
22 witness may testify, and the way the witness acts on
23 the witness stand.

24 In this case, the Plaintiff claims that the
25 Defendant breached a contract that existed between

1 the parties. In order to recover for a breach of
2 contract, the Plaintiff must prove the claim by a
3 preponderance of the evidence, or, as I indicated,
4 the greater weight of the evidence. The first thing
5 that the Plaintiff must prove by a preponderance or
6 greater weight of the evidence is that the parties
7 intended to enter into a binding contract. A
8 contract is an agreement entered into by two or more
9 parties in which each party agrees to perform or not
10 to perform certain acts. It may be shown by words,
11 written or oral, or by conduct. However, a contract
12 is more than the mere exchange of promises. For the
13 agreement to be considered a contract, the parties
14 must have intended to enter into a contract and must
15 have reached a mutual understanding of the terms of
16 that contract. This is sometimes called a meeting
17 of the minds. The parties must intend to be
18 mutually bound by the agreement. To make a contract
19 there must be an offer and an acceptance. An offer
20 is a proposal, which is definite and certain in its
21 terms. The offer must be communicated to the other
22 party. The mere intention to do an act is not an
23 offer. In addition, preliminary negotiations are
24 not offers. An offer may be withdrawn at any time
25 before it -- it is accepted. If you find that an

1 offer was made, you must next decide whether the
2 offer was accepted. An offer can only be accepted
3 by the person to whom it was made. The acceptance
4 must be communicated to the person who made the
5 offer. Unless the offer specifically states that
6 the acceptance must be made at a certain place or
7 time, or in a certain way, an offer may be accepted
8 in any way, which lets the person making the offer
9 know that it has been accepted. An acceptance does
10 not have to be expressed. It may be inferred from
11 the acts or conduct of a party accepting the offer.
12 However, there must be some expression of the intent
13 to accept the offer, either by words, signing, or
14 some act communicated to the person making the
15 offer, or that person's agent.

16 In order to have a valid contract, it is not
17 always necessary that it is signed by both parties.
18 It may be sufficient if it is signed by one party
19 and is accepted and acted on by the other party. If
20 you find that offer was rejected or was not
21 accepted, then there was no contract, and you must
22 return a verdict for the Defendant. In addition,
23 each party to the contract must give some valuable
24 consideration to the offer. This means that there
25 must be something that benefits each party.

1 Consideration may be some right, interest or benefit
2 given to a party. It -- it may also be the failure
3 to do an act, a loss, or a responsibility which is
4 undertaken by a party. Consideration may be money,
5 an act, a service, or a promise to do something, or
6 not to do something in the future. Mutual promises
7 may constitute consideration. For example, if I buy
8 a loaf of bread from a grocery store, the
9 consideration the grocery store gives to me is the
10 bread. The consideration I give to the grocery
11 store is the money.

12 In making your decision, as to whether a valid
13 contract exists, you should only be concerned with
14 whether there was -- was any consideration, not the
15 value of the consideration. You should not weigh
16 the value of the consideration given by one party
17 against the value of the other party's
18 consideration. You are to decide only whether there
19 was consideration to support the agreement, not
20 whether the agreement was an actually -- was an
21 actual good one. In interpreting contracts, you
22 must determine the intention of the parties, and put
23 those intentions into effect. In doing this, you
24 must consider only the outward expressions of the
25 parties. You cannot consider any undisclosed or

1 secret intentions of the parties. Contracts should
2 be liberally construed to carry out the intentions
3 of the parties. It's the substance of the
4 agreement, not the form, which must control the
5 construction of the contract. When you're
6 interpreting a contract, you are not limited to the
7 literal meaning of any term of the contract if you
8 decide that the literal meaning would defeat the
9 parties true intentions. The contract is to be
10 considered by looking at its subject matter, nature
11 and purpose. When you have determined the general
12 purpose of the contract, you should look at the
13 language of the contract in light of its purpose.

14 The person who received the offer may also
15 choose to reject it, by words or acts, which
16 indicates that the offer has thus been rejected.
17 The Plaintiff claims that the Defendant in this case
18 breached the contract by refusing to acknowledge the
19 contract as a valid agreement. This is called
20 repudiation. The Plaintiff must first show that
21 there was a valid contract, then the Plaintiff must
22 show that the Defendant rejected the contract. The
23 absolute rejection of a valid contract is a breach
24 of the contract. If the Defendant refuses to
25 recognize the existence of the contract, or is not

1 -- or does something inconsistent with the existence
2 of the contract, the Defendant may be found to have
3 breached the contract if it happens after the time
4 the contract was to have been performed.
5 Repudiation of a contract which has expired is not a
6 breach of contract. If you find that a valid
7 contract existed, and that the Defendant rejected
8 the contract, you should return a verdict for the
9 Plaintiff. Next, the Plaintiff must show by
10 preponderance or greater weight of the evidence that
11 the Defendant unjustifiably breached the contract.
12 The word breach means the failure, without legal
13 excuse, to perform any promise that forms the whole,
14 or a part of the contract. This includes the
15 refusal of the party to recognize the existence of
16 the contract, or the doing of something inconsistent
17 with the existence of the contract. A party
18 breaches a contract when that party does not perform
19 as agreed under the contract by failing to carry out
20 a term, promise, or condition of that contract.

21 Finally, the Plaintiff must prove by a
22 preponderance of the evidence or greater weight of
23 that evidence that the Plaintiff suffered damages,
24 which were proximally caused by the Defendant's
25 breach of the contract. The Plaintiff must prove

1 damages, by the preponderance or greater weight of
2 the evidence. This does not mean that the Plaintiff
3 must prove damages to a mathematical certainty, or
4 produce evidence of the exact amount of damages
5 suffered; however, the amount of damages cannot be
6 left to guess work or speculation. Instead, the
7 evidence presented by the Plaintiff must be enough
8 to allow you to determine the amount of damages,
9 with reasonable certainty and accuracy. Damages or
10 breach of contract are those that may fairly and
11 reasonably be construed to arise naturally from the
12 breach of the contract itself, or those that may be
13 reasonably supposed to have been in the minds of the
14 parties at the time the contract was made. The
15 Plaintiff may not recover damages for breach of
16 contract unless the Plaintiff shows that he has
17 performed his part of the contract, or at least was
18 able, ready and willing to perform at the
19 appropriate time. Actual damages are damages to
20 compensate the Plaintiff and put him as closely as
21 possible in the same position he was before the
22 breach of the contract. In other words, actual
23 damages are the actual losses and expenses which the
24 Plaintiff has suffered because the Defendant
25 breached the contract. Generally, actual damages

1 are the out-of-pocket costs actually paid by the
2 Plaintiff, as a result -- as a result of the breach
3 of contract, and the gain above the costs that would
4 have been realized if the contract had been
5 performed. Also, the Plaintiff has the duty to
6 minimize the damages caused by the Defendant's
7 breach of contract. The test is whether the
8 Plaintiff has done what an ordinarily prudent person
9 would have done under like circumstances. If the
10 Plaintiff has used reasonable care to reduce the
11 losses, the Plaintiff may recover the full amount.
12 If the Plaintiff has not done so, then you would
13 reduce the damages accordingly. The Plaintiff has
14 also claimed conversion, that the Defendant
15 converted the Plaintiff's personal property.
16 Personal property is anything that is not real
17 estate. Conversion is the unauthorized exercise of
18 control over personal property belonging to another
19 person, which either changes or excludes the owner's
20 right to that property. In order to prove
21 conversion, the Plaintiff must first prove that the
22 Plaintiff owned or had a right to possess a certain
23 piece of personal property. The Plaintiff must then
24 show that the Defendant gained control and
25 possession of the property or prevented the

1 Plaintiff from using the property. Finally, the
2 Plaintiff must show that the Defendant did this
3 without the Plaintiff's permission. If the
4 Plaintiff expressly or impliedly agreed to or
5 approved the Defendant's taking, use, retention, or
6 disposition of the property, the Plaintiff cannot
7 recover for conversion of the property. Conversion
8 can arise in three different ways. First, there is
9 a conversion if the Defendant wrongfully gets the
10 property. In this case, the conversion takes place
11 when the Defendant gets the property. Second,
12 conversion can occur when the Defendant legally got
13 the property, then improperly disposed of it. In
14 this case, the conversion takes -- I'm not talking
15 about this actual case, I'm saying this instance.
16 In this instance, the conversion takes place when
17 the Defendant gets the property. Oh, that was the
18 first one, I shouldn't have looked up. In this
19 case, or in this instance, the one I just described,
20 the conversion takes place when the Defendant
21 improperly disposes of that said property. A
22 conversion can also take place when the Defendant
23 legally got the property, then to refuse to give it
24 back when asked. In this instance, the conversion
25 takes place when the Defendant refused to give the

1 property back to the Plaintiff after the Plaintiff
2 asked the Defendant to return the property. If you
3 find that a conversion did take place, you should
4 return a verdict for the Plaintiff for the value of
5 the property taken with interest. You may award the
6 Plaintiff up to the highest value for the property
7 up until the time of the trial. Damages for
8 conversion may be reduced if the Defendant returns
9 the property, and the Plaintiff accepts it back. If
10 that happens, the damages should be reduced to a
11 small sum, or to an amount equal to the reduction
12 value of the property between the time of the
13 conversion, and the return of the property. If you
14 find that the Plaintiff is entitled to damages for
15 conversion of the property, you must then decide
16 whether the Defendant's acts were willful, reckless
17 and/or committed with conscious indifference to the
18 rights of others. If so, then you may award the
19 Plaintiff damages.

20 No, you have to strike that last one, that
21 wasn't supposed to be in there. So disregard -- if
22 I say if you find that the Plaintiff is entitled to
23 damages for conversion of the property, you must
24 then decide whether -- you not need to determine
25 that whatsoever, all right? That's a misprint, it

1 shouldn't have been in there.

2 Ladies and gentlemen, that is the charge. Haley
3 will correct that, and I will give you a copy of
4 this in the back. I know it's a lot to digest. If
5 y'all certainly understood when I was saying in
6 this, when it kept saying in this specific case, I
7 wasn't telling you that was the facts of the case, I
8 was talking about the same instance, okay? Good.
9 That's poorly written, we'll have to change that.
10 So -- all right, I think we've got that cleared up.

11 Mr. Foreman, at the close of their closing
12 arguments, I will give you your final duties at that
13 time, and I will go over the verdict form with you,
14 and then as soon as we have all the evidence put
15 together, we'll let y'all begin your deliberation.
16 All right?

17 MR. O'KELLEY: Your Honor, if it remained, also
18 have the charge about unanimity of the verdict, I
19 think that was in -- in the charge.

20 THE COURT: I'll go over all that.

21 MR. O'KELLEY: Thank you, Your Honor.

22 THE COURT: Yeah. So I'll go over the verdict
23 form, and go over how we're going to proceed forward
24 and everything, but let's just go ahead and let them
25 give the closing arguments while it's fresh in their

1 mind. We're ready.

2 MR. THOMSON: May it please the Court?

3 THE COURT: Yes, sir.

4 MR. THOMSON: Mr. O'Kelley?

5 MR. O'KELLEY: Yes, sir.

6 **CLOSING ARGUMENTS BY MR. THOMSON**

7 MR. THOMSON: Ladies and gentlemen of the Jury,
8 thank you for your time these past couple days.
9 Your job here is very important. Mr. Brady has been
10 waiting for this day for a very long time. You
11 might have heard one reason it took so long earlier
12 today, and that's because when we filed this lawsuit
13 Mr. Grossman's company said, "Hey, not only do we
14 not owe you the money, but you owe us in excess of
15 \$600,000." He had a few years to produce evidence
16 of those claims, he failed to do so. The Court
17 recognized that he failed to do so. They went to
18 the Court of Appeals, they said -- they -- they gave
19 an opinion in Mr. Brady's favor, saying, "No, Mr.
20 Grossman, you did not produce any evidence in
21 support of these counterclaims." Judge Price
22 charged you on credibility. I'm not here to speak
23 about Mr. Grossman's credibility outside of the
24 confines of this litigation, but I can tell you
25 within this litigation he has not been credible. He

1 started off by -- he's denied he's owed the money.
2 He claimed that Rod owed him money instead. He gave
3 answer, after answer, after answer today that was
4 squirrely and evasive. He didn't concede or admit
5 much. He did concede or admit some. But how much
6 weight do you think you should give his testimony?
7 On the other hand, Mr. Brady -- I hope you believe
8 he came across like the honest, fair dealing person
9 that he is, and he did. I'll tell you who else is
10 credible, Ginger Griffith. She conceded that
11 Mr. Brady was owed the money. Mr. Grossman's
12 argument here, it is that it's not him who owes the
13 money, it's these LLCs. He is wrong on that on two
14 different tracks. The first track is breach of
15 contract. He contracted individually with
16 Mr. Brady. The second is called conversion, you
17 heard the charge on that, put a bookmark on that,
18 I'll get to it later. How do you resolve the breach
19 of contract claim? I'll submit to you that there's
20 only one question that you need to ask in your own
21 mind as to resolving that. That question is who was
22 the offeror in 2004? In other words, who is making
23 an offer in this letter? Mr. Grossman drafted this
24 letter. He had full control over its contents.
25 That has a legal impact. To the extent you can't

1 understand some of the language, it's appropriate to
2 view that ambiguity in Mr. Brady's favor, but it's
3 not even ambiguous as to who was the offeror in
4 2004. First, the letterhead, Mr. Grossman had full
5 control over what letterhead he put on that letter,
6 and he freely chose to use this one. He might
7 testify as to his secret intent, or whatever, but
8 that does not matter. All that matters is the
9 outward expressions. What outward expressions did
10 he make to Mr. Brady? This is an expression that he
11 is making an offer in his individual capacity. Same
12 with the signature block. This is the wrong letter.
13 Same with the signature block here, he put Gary L.
14 Grossman. When somebody sends a letter on behalf of
15 a company, the proper way to communicate, again,
16 it's the outward expressions that matter, right?
17 The proper way to communicate, I'm sending you an
18 offer on behalf of a company is to put the company
19 name either in the signature block on behalf of, put
20 it in the letterhead, he chose -- freely chose not
21 to do that. The word I appears in this letter 21
22 times. Who is I? You can't tell me that I is not
23 Gary L. Grossman in his individual capacity. Who is
24 making promises and offers in this letter? Gary L.
25 Grossman is, he was the offeror in 2004. Let's look

1 at those promises. This says, "I would like to pay
2 you an incentive management fee of 50 percent of
3 pretax profits." Is that ambiguous? Is Gary
4 Grossman making an offer there in his individual
5 capacity? You heard reference to other companies.
6 He did mention those companies but those companies
7 are not making any promises in this letter. They
8 cannot be the promisor. They cannot be the offeror.
9 Where he references these companies, the beginning
10 of that sentence starts with, "I would like." So
11 what's he offering there? I'll tell you what he's
12 offering. He's offering to set up a deal where he
13 agrees to puppeteer his companies such as those --
14 those companies will pay Mr. Brady. Is he allowed
15 to delegate the performance payment? Sure, of
16 course, but that delegation does not excuse him for
17 being liable for his promises. And we're giving him
18 credit for the money the LLCs paid. They might tell
19 you, "Well," and it's a false flag. You can tell
20 who contracted this, 'cause who paid Mr. Brady? It
21 was the LLCs, that is a false flag. He delegated
22 his duty to pay to the LLCs, and that's what we
23 interpret from this letter. That's why those
24 companies are mentioned. He is still the offeror.
25 None of those LLCs are making any offer in this

1 letter. Another false flag, there were other
2 agreements. You heard the testimony on those other
3 agreements. They want to confuse you. They're
4 going to give you these big operating agreements.
5 They're going to give you documents about six
6 percent owner of the company. Those were separate
7 deals. They are being disingenuous by claiming this
8 was a contract we're litigating today. They don't
9 get to tell us what contract we are suing them over.
10 A separate deal. We are suing over this contract.
11 They can see the February 2nd, 2004, letter of
12 agreement. This letter is what governed their
13 entire deal. Mr. Grossman admitted that in an email
14 in 2007. Now he comes back in this litigation
15 because he wants to pull a fast one on you, and he
16 says these other agreements are what Clyde [sic]
17 said. Those other agreements were from July 2007.
18 These are from February -- or, I'm sorry, those
19 other agreements were from July of 2004, and around
20 that time the letter of agreement that they
21 continually refer to as governing the deal when the
22 facts were still present is the February 2nd, 2004,
23 letter. They cannot run from that. It's insulting
24 that they tried. Again, because it's so important,
25 "I would like to pay you an incentive management fee

1 of 50 percent pretax profits." Who was the offeror
2 in 2004? There's no ambiguity. To the extent there
3 is, you are permitted to construe that ambiguity in
4 Mr. Brady's favor because Mr. Grossman drafted this
5 letter. The next component of breach of contract is
6 the actual breach. It's pretty easy. There's been
7 admissions that Mr. Brady is owed the 711,027. You
8 don't have to think too hard about that. It's in
9 this letter. The bottom line right here, both
10 bottom line of the letter and the bottom line of
11 this litigation, "Of this writing the total amount
12 due to you is 711,027." So don't let them come in
13 here and say, "We're excused from paying you because
14 we had all these other deals go bad, deals that had
15 nothing to do with Rod Brady, or nothing to do with
16 the projects we're litigating here today. All
17 complicated accounting aside, and you can get in the
18 weeds with this accounting letter, if you want, some
19 of you might have done that. If you haven't, all
20 you've got to do is read this conclusion of this
21 writing, "You are owed 711,027," so that's breach.

22 Conversion, I remind you earlier there's two
23 tracks to hold Mr. Grossman liable in his individual
24 capacity. The second track is conversion. What is
25 conversion? It essentially means using somebody

1 else's property to the exclusion of their rights.
2 Is it a conversion when there's money sitting in a
3 corporate bank account, and somebody's owed profits
4 from that money that is sitting in those accounts,
5 and an offset company takes that money away and use
6 it to pay his other unrelated debts? Yes, that is a
7 conversion. And you can hold Mr. Grossman,
8 individually, liable for that conversion. So did we
9 prove that Mr. Brady's profits were sitting in the
10 LLC's accounts and were used for other purposes?
11 Yes, we absolutely did. I'm going to read you some
12 testimony from the deposition of Ginger Griffith
13 that you heard earlier today. I'll go slow. "And
14 so what that is telling us here is the fees
15 discussed in this letter, we're talking about houses
16 that the construction is already complete, right?"
17 "Yes." "And they've already been sold to
18 homeowners, whoever they may be, correct? And the
19 LLC has been paid money for those homes, right?"
20 "Right." What does that tell us? They have Rod's
21 money. It is sitting in their accounts, it is owed
22 to him, it is due to him, they used it for unrelated
23 debts, that is conversion. Let me drive this home
24 even further. There are two more clips from this
25 deposition that are very important to pay attention

1 to. The first clip is for the Village Square
2 Development portion of the debts, and this isn't the
3 whole debt, but it says, or I asked Ms. Griffith,
4 "But after you take into consideration all that he's
5 earned versus all that he's been paid, the net
6 balance due to Rod due for an incentive management
7 fee, which is profit sharing on the Village Square
8 Development project only, is 83,488; is that
9 correct?" "That is correct." "And this money has
10 already been earned, right?" "Yes." "As of
11 September 13th, 2007?" "Yes." "And the LLCs have
12 already been paid the money that generated the
13 profits from which that calculation was made?"
14 "Yes." I'll say it again. "And the LLCs have
15 already been paid the money that generated the
16 profits from which that calculation was made?" They
17 had Rod's money sitting in their bank account, they
18 didn't give it to him. It's a sad story. Two and a
19 half years of his life's work, and they think he
20 isn't owed the money because I lost money on other
21 deals. You know what deal they didn't lose money
22 on? This one, Rod paid them a lot of money.

23 Final clip that says the same thing again, but
24 it ties in to -- ties it into the entire amount of
25 the 711,027. "Okay. And Mr. Grossman's fee in

1 exchange for personally guaranteeing the funds in
2 2006 for the Allenwood neighborhood is 52,244?"
3 "Yes." "Okay, so taking into account the money owed
4 to reclaim Lancaster Redevelopment Corporation, and
5 the money owed to Mr. Grossman, individually, we
6 could then calculate Mr. Brady's incentive
7 management fee for the Allenwood project, right?"
8 "Yes." Let me pause there. What does that mean?
9 It means Mr. Grossman's claiming throughout this
10 litigation, I don't know if he'll drop it, or if
11 he'll tell it to you in closing, but he's saying he
12 doesn't have to pay Rod because he was to be paid
13 first. That testimony shows that he was paid first.
14 Back into this testimony again, "And that number, it
15 ended as we could then calculate what Mr. Brady's
16 incentive management fee for the Allenwood project,
17 right?" "Yes." "And that's after we take out the
18 money that was paid to Mr. Grossman and his
19 companies. And that number comes to 633,656,
20 right?" "Yes." "Owed to Mr. Brady, right?"
21 "Correct." "Okay. So now after we've gotten to
22 that point, we make all the prelamination
23 calculations that we need to make to determine the
24 total amount to Mr. Brady as of September 13, 2007,
25 correct?" "Correct." "They deducted all money that

1 they were entitled to deduct, and that number owed
2 to Mr. Brady as of September 13th, 2007, is 711,027,
3 right?" Ginger Griffith says, "Yes." Again, all of
4 those were clips from Ms. Griffith's testimony
5 today. You might fallen to him, you would be
6 forgiven if you didn't at the time, but they
7 establish Mr. Brady's conversion cause -- cause of
8 action against Mr. Grossman.

9 I want to talk about the verdict form real
10 quick. Here's how I want you to fill it out. First
11 question says, "Do you find by a preponderance of
12 evidence that Defendant -- that Gary L. Grossman
13 breached a contract with the Plaintiff, James R.
14 Brady?" Of course, the answer is yes because Mr.
15 Grossman was an offeror in 2004. "Do you find by
16 preponderance of the evidence that Plaintiff James
17 R. Brady, was damaged by this breach?" You know the
18 answer to that. "What damages are owed to James R.
19 Brady as a result of this breach?" Right there I
20 would like you to put the 711,027.

21 The next question is under conversion. It says,
22 "Do you find by a preponderance of the evidence that
23 Defendant Gary L. Grossman converted the Plaintiff
24 James R. Brady's personal property," meaning money,
25 "prevented Plaintiff from using the property,"

1 meaning money, "and did so without Plaintiff's
2 permission?" You've heard plenty of testimony that
3 they didn't have Rod's permission to not pay him his
4 money, so, of course, you check yes to that
5 question. "What damages are owed to Plaintiff --
6 Plaintiff James R. Brady as a result of this
7 conversion?" You know that number, it's the
8 711,027. Now, just because you write the 711,027 on
9 here twice, or three times, actually, because
10 there's quantum meruit that I'm about to get to at
11 the end, that does not mean that Mr. Brady gets to
12 double recover. You collect your actual damages one
13 time. So I want you to fill it out on all three
14 causes of action in case something happens on
15 appeal, we can have a backdrop, but Mr. Brady's
16 entitled on all three of these claims to the 711,027
17 in actual damages. The last --

18 THE COURT: You are in your -- I've determined
19 that quantum meruit is a decision, and it's a legal
20 decision, and as I've indicated, I am the only sole
21 decision maker as to legal claims, and so post-
22 verdict, I will decide as to quantum meruit, so
23 that's not on your -- it will not be on your verdict
24 form, okay? Fair enough?

25 MR. THOMSON: All right. Well, I told you there

1 was two tracks, but I didn't think that was going to
2 be on there, and it's not, so anyhow, it's been a
3 long road for Mr. Brady. Mr. Grossman thinks he's
4 entitled to avoid his debts and do so with impunity
5 because he lost money on other deals. He does not.
6 He needs to be disabused of thinking he can do that.
7 All while contracting under separate LLCs, no, you
8 didn't, you did not. Gary L. Grossman made an offer
9 in his individual capacity. "And on this writing,
10 you are due 711,027." It says it is due, which
11 means him losing money on other deals does not
12 excuse his obligation to pay Mr. Brady. Thank you.

13 THE COURT: All right.

14 MR. O'KELLEY: May it please the Court?

15 THE COURT: Yes, sir.

16 **CLOSING ARGUMENTS BY MR. O'KELLEY**

17 MR. O'KELLEY: Ladies and gentlemen, as I said
18 during my opening statement, and as Mr. Thomson just
19 said, thank you very much for your service.
20 Congratulations, you now don't have to do this for
21 at least another year.

22 COURT REPORTER: Can you speak up, please?

23 MR. O'KELLEY: Say it again?

24 COURT REPORTER: Can you speak up?

25 MR. O'KELLEY: I'm sorry, what I said was,

1 congratulations, they don't have to do this for
2 another year.

3 THE COURT: Or, potentially, on Thursday and
4 Friday.

5 MR. O'KELLEY: So -- so what have we heard over
6 the last two days? Remember I told you while no
7 good deed goes unpunished? What you heard was that
8 this man was in a real financial hole involving a
9 little project called Cypress Harbor. He then talks
10 to his friend Gary Grossman, his dear friend, that
11 he had met at the National Association of
12 Homebuilders Convention, and they talk about doing a
13 development, two developments, Hilton Head Homes at
14 Allenwood, Village Square Development, LLC, which
15 would be separate limited liability companies,
16 wherein, Lancaster Redevelopment Corporation owns
17 100 percent of the companies, the same Lancaster
18 Redevelopment Corporation, and this is their
19 exhibit, ladies and gentlemen, of course, the same
20 one he ties to Redevelopment Corporation, that sent
21 this letter in 2007 that stated -- and you heard
22 Mr. Grossman state in his testimony about the
23 housing market. Where's the last page? And this is
24 the key. "LRC simply cannot fund any additional
25 monthly expenses." And before this case started

1 yesterday, Mr. Brady got very cute because he had a
2 lawsuit against Village Square, Hilton Head Homes at
3 Allenwood, and Lancaster Redevelopment, and
4 yesterday he dismissed them. You heard Mr. Grossman
5 on the stand earlier today say, "Hilton Head Homes
6 at Allenwood, Village Square Development, and
7 Lancaster Redevelopment Corporation did indeed owe
8 the Plaintiff the money he claimed." But what these
9 people want you to believe is that an unsigned
10 letter in February of 2004, that we don't even have
11 proof was actually transmitted, somehow creates a
12 contractual obligation, and who are we talking
13 about? Mr. Brady testified before you that he's a
14 pretty sophisticated guy. He's developed all kinds
15 of things. He was the head of the Hilton Head
16 branch of the National Association of Builders.
17 Then we're talking about Gary Grossman, who has
18 built thousands of developments in this country, and
19 around the world. He talked about his businesses
20 there in Pennsylvania. He talked about his
21 businesses here. And what he also talked about was
22 how the housing market turned south in 2007. No one
23 saw that coming. Well, I take that back, Michael
24 Lewis might have seen it coming in The Big Short.
25 With that being said, ladies and gentlemen, what

1 contracts do you really have to look at here? There
2 are four of them. It's the operating agreements and
3 the assignments, in which Mr. Brady and his friend
4 became members of those LLCs, six percent members
5 each. And those are the only signed documents
6 before you, the only admitted contracts in this
7 case. The only documents that say in paragraph 9.5,
8 and Your Honor's going to give them to you so y'all
9 can review them at your leisure when you go back to
10 the jury room, that the entire agreement between the
11 parties is contained in those two operating
12 agreements. I'm going to say that again, the entire
13 agreement. It's not, well, we'll look at something
14 else, well, we'll do X, Y and Z, the entire
15 agreement is in those two documents, and that's
16 important, Your Honor, I mean ladies and gentlemen,
17 not Your Honor, but I think of you all as judges in
18 a way, because, of course, your judging the facts in
19 this case. That letter from 2007 and Mr. Grossman's
20 testimony today make it very clear that any of the
21 entities that could potentially owe Mr. Brady money,
22 are not here. And what has two days of testimony
23 also taught you about what's going on in this case?
24 Mr. Brady testified that he worked some 90 hours on
25 this case, didn't see a single proof of the hours he

1 had worked on this case. He didn't bring anything
2 showing you how his, quote, unquote, "Blood, sweat
3 and tears had been poured into this project." If
4 anyone's blood, sweat and tears were poured into
5 this project it was Mr. Grossman's. Mr. Grossman
6 testified before you that he was liable personally
7 for all the debt at both of these companies. Mr.
8 Grossman testified today that he had to sign
9 personal guarantees. In fact, one of the -- one of
10 the allegations that they keep harping on is, "That
11 in addition to sales and construction management
12 fees," again, the fees, typo, as described, "I would
13 like payments in a management fee of 50 percent pre-
14 tax profits, after one percent month interest on
15 cash investment to Lancaster Redevelopment." They
16 leave that point -- part out, "And 500 basis points
17 to me, individually, for my guarantee." So who's
18 really on the hook for these developments that,
19 ultimately, failed? It's not Mr. Brady, it's Mr.
20 Grossman, but, yet, here he is with his hand out
21 saying, "Give me \$711,000," money that he simply
22 cannot pay, according to Ms. Griffith.

23 And what -- what's here before you? A breach of
24 contract. Again, show me the contracts. The only
25 signed contracts that show a clear meeting of the

1 minds are the operating agreements and the
2 assignments. These other cause of actions for
3 conversion, there was no testimony that Mr. Grossman
4 took this money and did anything with it, except try
5 and keep these companies going in September of 2007,
6 when the housing market was failing. In fact, Mr.
7 Grossman's testimony, and it's proven by this
8 exhibit, was actually loaning personal money to
9 Village Square Development Company, LLC. He wasn't
10 trying to take money that was owed to Mr. Brady,
11 personally, and go to Europe, or live some lavish
12 lifestyle. In fact, what did he tell you today? He
13 thinks this case is a tragedy because he's lost his
14 former best friend. He also testified that he is
15 the one who's had to work out over 3.6 million
16 dollars with the banks to get the ox out of the
17 ditch. Mr. Brady didn't have to do that. In fact,
18 Mr. Brady got out scot-free. I just heard Mr.
19 Thomson say that our entire case is disingenuous and
20 insulting. My client certainly doesn't think he's
21 being disingenuous or insulting. My client takes
22 this very seriously. I also heard Mr. Thomson say
23 something, but I guess he was not in the same
24 courtroom I was in. Because Mr. Grossman testified
25 he lost money all around on these projects. That

1 hasn't been refuted by anybody. Mr. Brady
2 understood that these projects -- no one had any
3 money on these projects. Like a typical developer,
4 they were robbing Peter to pay Paul, and then the
5 music stopped back in the summer of 2007. Again,
6 ladies and gentlemen, there is a verdict form, the
7 Judge is going to give it to you. And we think,
8 based on the testimony you've heard over the last
9 two days, you're going to find a verdict in favor of
10 my client. Thank you.

11 THE COURT: All right. Briefly as to his
12 closing.

13 MR. THOMSON: Thank you.

14 **REBUTTAL CLOSING BY MR. THOMSON**

15 MR. THOMSON: A few points of clarification.
16 Mr. O'Kelley just got up here and said they didn't
17 dismiss those parties until yesterday. Do you know
18 why we didn't do that? Because they didn't let us
19 do it. They wouldn't stipulate to it. They want to
20 confuse you. They wanted these other companies on
21 the verdict form. Mr. -- Mr. Brady contracted with
22 Mr. Grossman. Mr. Grossman was the offeror in 2004.
23 He misled you in another way, that the no signature
24 on this document means somehow this document is not
25 the contract. Did you hear in your jury charges

1 that a contract does not have to be any kind of
2 certain formal document, it can even be oral. You
3 can say, "I'll cut your grass for \$10," the other
4 person says, "I accept," offer acceptance, bam,
5 contract, it can be oral. But here we have a
6 writing that tells you what the terms of that
7 agreement are. They say that this -- these
8 operating agreements constitute the agreement. Look
9 in there for a term that says 500 basis points. You
10 notice over here Mr. Grossman is paying himself 500
11 basis points, that's not a term in the -- in the
12 document that they claimed to be the applicable
13 contract. So they want to have their cake and eat
14 it too. They are the ones who told us, not in this
15 courtroom, because they just couldn't exceed it, but
16 they are the ones who told us in 2007 that this is
17 the agreement, it's the contract. Thank you.

18 THE COURT: All right, ladies and gentlemen of
19 the jury, that will conclude the trial of this case.
20 I have already charged you on the law. Just so you
21 know, I wasn't trying to be funny about y'all being
22 here for the next three days in this case, you have
23 to come back tomorrow, if -- once you're done with
24 this, because you have to serve the whole week.
25 Just to shore that up, I certainly don't believe

1 y'all are going to be here tomorrow on this case.
2 So anyway, with that being said, this is the verdict
3 form, and they have already gone over it with you.
4 Just so you understand, when you begin your
5 deliberations, Mr. Foreman, I charge you with these
6 duties. First of all, everyone must participate.
7 You'll find that some may participate a bunch, you
8 may find that some will participate very, very
9 little, and that's okay. They just have the -- have
10 to have the opportunity to participate. Now,
11 whether they choose to or not, that's their
12 decision, all right? And the reason I say that is,
13 this is supposed to be a unanimous decision. All 12
14 members must agree, all right? And so in doing so,
15 I'd just ask that if anyone takes a break, if anyone
16 needs to have an emergency, maybe somebody has a
17 flat tire, may need to use the phone real quickly,
18 that's okay, but stop the deliberations immediately,
19 all right? Because it must be a unanimous decision,
20 all right?

21 The verdict form I have already printed out for
22 you. I will go back into the back with you, and
23 once you have your verdict, Mr. Foreman, if you'll
24 simply just sign where it says, Foreman, if you'll
25 just date it, and you'll knock on the door and tell

1 the Bailiffs that you have a verdict, we will bring
2 you out, and we will read your verdict. All right.

3 I also charge you, Mr. Foreman, if there's any
4 questions that you may have, simply just reduce it
5 to writing, and give it to the Bailiff, knock on the
6 door, and he'll bring it out to me. And by any
7 questions, I mean anybody. Now, mind you that I
8 will answer every single one of your questions,
9 okay, but you may not like the answer, all right?
10 Fair enough? All right. All right, so if there's
11 nothing further -- anything further from the
12 Plaintiff or the Defense?

13 MR. CAPELL: No, Your Honor.

14 MR. THOMSON: No, Your Honor. And, Your Honor,
15 and two people get to go home if they want to.

16 THE COURT: That's correct, we'll bring them out
17 in a second. So I would ask that you go back,
18 please don't begin deliberating until I bring you
19 all of the evidence, and that will be in about three
20 to four minutes. And so if you'll just retire to
21 the jury room, once the Foreman comes back, and
22 brings the evidence back, and tells y'all to begin
23 deliberation, if Mrs. Muckelvaney and Mrs. Hatchell,
24 if you'll please come back out, your service will be
25 completed at that time. All right, y'all may be

1 excused.

2 (Jury leaves the courtroom.)

3 BAILIFF: The Jury is cleared, Your Honor.

4 THE COURT: All right. For the record, I did
5 give them -- or charge them to disregard that
6 portion of that last three sentences that I was
7 going to -- it talked about punitive damages. Haley
8 has since taken it out, and I have since put it back
9 in, so that's what -- I'll make that determination
10 if, in fact, when we get a verdict as to this case.
11 Anything further from the Plaintiff?

12 MR. CAPELL: No, Your Honor.

13 THE COURT: From the Defense?

14 MR. THOMSON: I have -- I -- I've printed out
15 copies of the test transcript I read, it's from the
16 de bene esse deposition. I think it will aid them
17 in the deliberation of this case. If -- if you are
18 inclined, and they want to see it, I think it would
19 help them.

20 THE COURT: Well, they'll have the original back
21 there, so if they want to find it, they can find it.
22 If they have any questions about the pages and
23 lines, they can send us the question, and come back
24 out and we'll refer to it, but right now let's just
25 leave it --

1 MR. THOMSON: Okay.

2 THE COURT: -- in evidence. All right, anything
3 further from the Defense?

4 MR. HAMLIN: No, sir, Your Honor.

5 THE COURT: All right, y'all hang tight close
6 and let's see what happens, because, of course, the
7 first question is how much money is the lawyer going
8 to get?

9 MR. CAPELL: That's right. Thank you, Your
10 Honor.

11 THE COURT: Yeah. I'm going to release the
12 alternates now..

13 MR. O'KELLEY: Do we need to do anything on the
14 record with that, Your Honor?

15 MR. CAPELL: Yeah, we're okay with that.

16 THE COURT: No. I'll bring them back and tell
17 them they can get their stuff and go.

18 MR. O'KELLEY: Thank you.

19 (Recess while the Jury deliberates.)

20 (Jury enters courtroom.)

21 THE BAILIFF: All rise. This court is back in
22 session.

23 THE COURT: Thank you very much. Please be
24 seated. All right. Let's bring them out.

25 THE BAILIFF: The Jury's entering the courtroom,

1 Your Honor.

2 (Jury enters the courtroom.)

3 THE BAILIFF: The Jury's seated, Your Honor.

4 THE COURT: All right. Do you -- Mr. Foreman,
5 do you have the verdict?

6 FOREMAN: We do, Your Honor.

7 THE COURT: All right, is it unanimous?

8 FOREMAN: It is unanimous.

9 THE COURT: All right, if you'll give it to Mr.
10 Rick.

11 FOREMAN: (Complies.)

12 **THE VERDICT**

13 THE COURT: All right. James Brady v. Gary
14 Grossman, Civil action number 2015-CP-07-2047, "Do
15 you find by a preponderance of the evidence that the
16 Defendant Gary Grossman breached a contract with the
17 Plaintiff, James R. Brady? If, yes, answer -- if
18 you answer yes, go to question number two." The
19 answer's yes. "Do you find by a preponderance of
20 the evidence that Plaintiff James R. Brady was
21 damaged by this breach?" "Yes." If so, go to
22 number three. "What damages are owed to the
23 Plaintiff James R. Brady as a result of the breach?"
24 "711,027.00". "Do you find by a preponderance of
25 the evidence that the Defendant Gary Grossman

1 converted the Plaintiff James Brady's personal
2 property, prevented the Plaintiff from using the
3 property, and did so without Plaintiff's
4 permission?" The answer, "Yes." What damages are
5 owed to Plaintiff James Brady as a result of this
6 conversion?" "\$711,027." Signed, is that your
7 signature, Mr. Foreman?

8 FOREMAN: Yes.

9 THE COURT: Signed this 30th day of August in
10 Beaufort, South Carolina. Is this your verdict?

11 FOREMAN: Yes, it is, Your Honor.

12 THE COURT: All right, everyone raise your right
13 hand. If it's still your verdict, please remove
14 your hand, or take it down. Did you change your
15 mind the 30 second when you went from there to here?

16 JURY IN UNISON: No.

17 THE COURT: All right, then it's unanimous. Any
18 further polling of the Jury?

19 MR. CAPELL: No, Your Honor.

20 MR. HAMLIN: No, sir.

21 THE COURT: All right, ladies and gentlemen,
22 this is a rarity, but I would normally say that's it
23 for the week, but it's not, so that's what I meant
24 earlier when I said that we may have to serve on
25 Wednesday, Thursday or Friday. We have two other

1 cases that need to be heard this week. They are one
2 witness cases. As I indicated, or may have told you
3 before, they're pro se cases, which means they don't
4 have lawyers. And so one case my understanding is
5 it's just one witness, and the other case is just
6 two witnesses, and so they won't last much longer
7 than a couple hours, all right, probably from start
8 to finish. So those are going to go Wednesday and
9 Thursday. Friday I know we're not going to have
10 trials. All right? So you will not be here on
11 Friday, regardless, because I've got other things
12 I've got to do on Friday. So with all that being
13 said, I want to thank you so very much for your
14 services today, and, hopefully, you will get to see
15 me again tomorrow. So be here tomorrow morning at
16 9:30. All right? Thank you all so very much, and
17 have a wonderful rest of your day.

18 (Jury exits courtroom.)

19 THE COURT: Are you all still seeking to go
20 forward on anything else?

21 MR. O'KELLEY: Give us a minute.

22 THE COURT: All right. Rick, hold them back
23 there, please.

24 THE BAILIFF: Yes, sir, I will.

25 BAILIFF: The Jury's clear, Your Honor.

1 THE COURT: All right, let me hear from the
2 Plaintiff.

3 MR. THOMSON: Your Honor, it's a clear case for
4 punitive damages, converted to allow them, willful,
5 wanton and reckless. Mr. Grossman knew exactly what
6 he was doing. He knew that Rod's money was in his
7 corporate checking accounts, and he used it to pay
8 unrelated debts, and it's -- it's complete disregard
9 to Mr. Brady's rights.

10 THE COURT: Okay.

11 MR. O'KELLEY: Your Honor, the testimony was,
12 and it's from the letter from Ms. Griffith and her
13 -- her statement, "We simply cannot pay." There was
14 nothing willful about this. You heard from
15 Mr. Grossman that it was three entities. It was his
16 thought that they should always pay. We haven't
17 heard anything willful, wanton, reckless. What you
18 heard was that the companies were circling the
19 drain, and they were doing the best they can to keep
20 things afloat. He was even loaning money to the
21 Village Square, LLC, so that they could keep it
22 afloat. If anything, Mr. Grossman went above and
23 beyond in terms of trying to make -- make it, so
24 they could pay him. Said, "That I will pay you
25 \$10,000 a month going forward to try and make this

1 right." So anything he was trying to do the right
2 thing, but willful, wanton and recklessness I just
3 don't think was before the Court, or before the Jury
4 at any time. It appears, Your Honor, that Mr. Brady
5 has now elected his remedy of conversion, but we
6 don't see that there was any willfulness, wantonness
7 or recklessness giving rise to this going to the
8 Jury, Your Honor.

9 THE COURT: All right, I agree. This is an
10 unfortunate set of facts, and I also believe, based
11 on the testimony, that at the time that this was
12 kind of all falling apart between Mr. Brady and Mr.
13 Grossman, I believe it was both of their intentions
14 to try to see what they could do to salvage this
15 relationship, this friendship, and this financial
16 burden that they somewhat placed on each other, to
17 some extent, so I don't find, at this point in time
18 there's any willful, wanton, or reckless behavior,
19 so, therefore, I'm not going to move forward with
20 punitive damages. Is there any reason to move
21 forward as to quantum meruit?

22 MR. THOMSON: Yes, Your Honor, I would like you
23 to rule on it, just in case on appeal.

24 THE COURT: All right.

25 MR. THOMSON: And the law -- I've signed a

1 pretrial brief, it's Erstame's (ph) case, it -- it
2 -- they're alternative remedies.

3 MR. O'KELLEY: And, Your Honor, again, are they
4 going to elect a remedy? I mean they got what they
5 wanted. They've got conversion, they've got their
6 full duties, I think quantum meruit is there when
7 the law doesn't provide a remedy. The law has
8 provided a remedy. Equity doesn't need to, because
9 equity follows law.

10 THE COURT: I agree with that.

11 MR. THOMSON: Your Honor, we'd like to move for
12 pretrial interest.

13 MR. CAPELL: Pre-judgment interest.

14 THE COURT: Did you file a confession of
15 judgment?

16 MR. THOMSON: We --

17 MR. O'KELLEY: No, sir.

18 MR. THOMSON: We liquidated the damages in the
19 complaint.

20 THE COURT: Yeah, but you have to file a
21 confession of judgment for an offer to say you're
22 accepting an offer before you receive any of your
23 costs.

24 MR. THOMSON: Your Honor, that's not the law to
25 my knowledge.

1 MR. O'KELLEY: There's -- there's got to be an
2 offer of judgment or confession , something of that
3 nature, that we have ten days to respond to before
4 trial; otherwise, I don't -- they didn't put a
5 specific amount --

6 THE COURT: Because you have to have a date it
7 has to start from, and the start date is the day
8 that you offer -- file an offer of judgment.

9 MR. THOMSON: The start date is the day the
10 money becomes due.

11 MR. O'KELLEY: Your Honor --

12 MR. THOMSON: You're -- he's talking about Rule
13 68 costs. I'm talking about prejudgment instruments
14 when you liquidate your damages in your complaint.
15 There's -- there's citations up there.

16 MR. O'KELLEY: Your Honor, and, again, that's if
17 there's a sum certain set forth in the complaint.

18 MR. THOMSON: Let me see if I have the case in
19 here.

20 MR. O'KELLEY: And, Your Honor, just --

21 MR. THOMSON: I can pull up the case right now.

22 MR. O'KELLEY: -- since you've ruled about
23 the punitives, I guess --

24 THE COURT: That's fine, you can release them
25 now.

1 BAILIFF: Go ahead and release them?

2 THE COURT: That's fine.

3 MR. THOMSON: Section 33-34-31-20(a) of the
4 South Carolina Code provides in cases of accounts
5 stated, "And in all cases wherein any sum or sums of
6 money shall be ascertained and being due shall draw
7 interest, according to law, the legal interest shall
8 be at the rate of 8 and three-fourths percent per
9 annum." It's not only permissible, it's obligatory.
10 It's per statute.

11 THE COURT: Can I see it? You can just hand it
12 here.

13 MR. THOMSON: Your Honor, if you need to take it
14 under advisement, we can send you a case, another
15 case and the statute.

16 MR. O'KELLEY: And we can, Your Honor, I'm happy
17 for you to take it under advisement, but I'd also
18 ask to be given the ten days that I get under Rule
19 50(b) for any of those trial motions.

20 THE COURT: Yeah, let's just give everybody ten
21 days to go ahead and file their motions. Fair
22 enough?

23 MR. THOMSON: Yes, sir.

24 MR. O'KELLEY: Thank you, Your Honor.

25 MR. CAPELL: Thank you, Your Honor.

1 MR. THOMSON: Thank you, Your Honor.

2 THE COURT: All right.

3 - - -END OF TRANSCRIPT- - -

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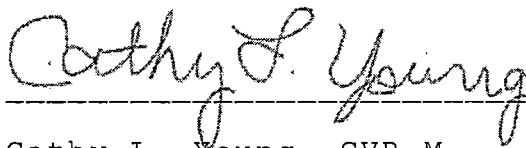
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CERTIFICATE OF REPORTER

I, Cathy L. Young, CVR-M, for the
Fourteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete Transcript of Record of
the proceedings had and evidence introduced in the
trial of the captioned case, relative to appear, in
the Circuit Court for Beaufort County, South
Carolina, on the 30th day of August, 2022.

I do further certify that I am neither of
kin, counsel nor interest to any party herein.

A handwritten signature in cursive script, reading "Cathy L. Young", is written over a horizontal line.

Cathy L. Young, CVR-M

Court Reporter and Notary

Public in and for South Carolina

My Commission expires: 3-28-2029