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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2022-001208
Case No. 2018-CP-10-3286

Karolina Richardson and Krista Richardson, ... Respondents,

v.

Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, and GREP Southeast, LLC,..... Appellants.

RECORD ON APPEAL – VOLUME I OF III
(pp. 1-438)

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1003286

Karolina Richardson et al
PLAINTIFF(S)

Mt Pleasant Square Associates II 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:

Plaintiff filed a Motion to Compel on July 30, 2020 which was heard by this court on December 3, 2020. Upon careful consideration of the arguments and submissions, this court GRANTS Plaintiff's Motion to Compel. Defendant has 30 days from the date of this order to submit discovery responses.

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 01/10/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2021 Jan 11 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

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.

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Charleston Common Pleas

Case Caption:	Karolina Richardson , plaintiff, et al VS Mt Pleasant Square Associates II LLC , defendant, et al
Case Number:	2018CP1003286
Type:	Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1003286

Karolina Richardson et al
PLAINTIFF(S)

Mt Pleasant Square Associates II 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:

DEF Oyster Park motion for leave to amend is DENIED. DEF J A Croson motion to file 4th party complaint DENIED. DEF Dewberry motion for summary judgment CONTINUED until discovery is complete.

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 11/09/2021 .

Carrie Bradley Coleman for GREP Southeast LLC,Mt Pleasant Square Associates II LLC,Oyster Park Apartments,Dewberry Capital Corporation

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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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.

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Charleston Common Pleas

Case Caption:	Karolina Richardson , plaintiff, et al VS Mt Pleasant Square Associates II LLC , defendant, et al
Case Number:	2018CP1003286
Type:	Order/Electronic Form 4

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

ELECTRONICALLY FILED - 2022 Aug 24 2:31 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2018-CP-10-3286
Karolina Richardson and Krista Richardson,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**ORDER DENYING DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT**
	)	
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, and GREP Southeast, LLC,	)	
	)	
Defendants.	)	

This matter came before the Court upon Defendants Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, and GREP Southeast, LLC's ("Defendants") Motion for Judgment Notwithstanding Verdict (hereinafter "Defendants' JNOV Motion").

In ruling on a motion for directed verdict, and similarly on a motion for JNOV, the trial court cannot disturb the factual findings of a jury unless a review of the record shows no evidence which reasonably supports them. *Horry County v. Laychur*, 315 S.C. 364, 434 S.E.2d 259 (19930; *Force v. Richland Mem'l. Hosp.*, 322 S.C. 283, 471 S.E.2d 714 (Ct. App. 1996). Further, the trial court should uphold a jury's verdict if there is any evidence to sustain it. *Burns v. Universal Health Services, Inc.*, 361 S.C. 221, 231-33, 603 S.E.2d 605, 611 (Ct. App. 2004); *Shupe v. Settle*, 315 S.C. 510, 445 S.E.2d 651 (Ct. App. 1994). "[I]n ruling on a motion to set aside a verdict, the trial court is concerned with the existence of evidence, not as weight." *State v. Gunter*, 273 S.C. 347, 256 S.E. 2d 317 (1979). Granting or denying a new trial motion rests with the court's discretion, and the court's decision will not be disturbed on appeal unless the court's findings are wholly

JBM/c

unsupported by the evidence or its conclusions are controlled by an error of law. *Vinson v. Hartley* 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996).

Here, there was substantial evidence in support of Plaintiffs' claims, and the jury weighed the evidence presented at trial and reached a reasonable conclusion as to the value to Plaintiffs' damages suffered as a proximate result of Defendants' conduct. Based upon the foregoing, Defendants' JNOV Motion is hereby DENIED.

IT IS SO ORDERED.

Jennifer B. McCoy
Presiding Circuit Court Judge

August 24, 2022
Charleston, South Carolina

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ELECTRONICALLY FILED - 2022 Dec 08 1:43 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2018-CP-10-3286
Karolina Richardson and Krista Richardson,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**ORDER GRANTING PLAINTIFF'S MOTION FOR SANCTIONS PURSUANT TO RULE 37(b)(2)(C), SCRCP**
	)	
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, and GREP Southeast, LLC,	)	
	)	
Defendants.	)	

This matter came before the Court upon Karolina and Krista Richardson's ("Plaintiffs") Motion for Sanctions pursuant to Rule 37(b)(2)(C), SCRCP against Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments; Dewberry Capital Corporation; and GREP Southeast, LLC ("Defendants"). A hearing was conducted on July 18, 2022, and counsel for the parties were present. Upon careful consideration of the pleadings, discovery facts, additional documentation provided by counsel, oral arguments advanced, and South Carolina law, the Court find Plaintiffs are entitled to sanctions against the Defendants. The Motion is hereby GRANTED.

FINDINGS OF FACT

Plaintiffs have continually requested (in discovery requests, letters, phone calls, emails, at depositions) that Defendants provide information relating to complaints of mold at Oyster Park. On Thursday, July 14th, 2022, after over three (3) years of discovery, Defense counsel, Ross & Cristaldi, LLC, became aware of additional relevant documents. Defense counsel immediately informed Plaintiff's counsel of the documents and that they would be produced no later than the next day, July 15th, 2022. Defendants submitted documentation relating to an additional 50 – 60

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mold complaints by residents at Oyster Park on the Friday, July 15th, 2022, prior to the trial beginning on Monday July 18, 2022. The instant motion by the Plaintiffs followed.

Plaintiffs' counsel submitted 12 exhibits in support of the Motion for Sanctions including numerous requests for the Defendants to provide and produce records of Oyster Park resident's complaints of mold. Plaintiffs were forced to file two Motions to Compel on this issue. After a hearing on the second Motion to Compel, this Court ordered that the Defendants produce the discovery sought by way of a Form 4 Order entered January 11, 2021. The Defendants were ordered to produce the documents within 30 days from January 11, 2021. Based on the Defendants' last-minute production prior to trial, through no fault of Ross & Cristaldi, LLC, this court finds they did not comply with the Order.

APPLICABLE STANDARD

If a party fails to obey an order to provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment. Rule 37(b)(2)(C), SCRCP.

In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice. *See Laney v. Hefley*, 262 S.C. 54, 202 S.E.2d 12 (1974). Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience, or gross indifference to its rights to justify the sanction. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

"An award of attorney's fees and costs is within the sound discretion of the trial court and will not be reversed on appeal absent abuse of that discretion." *McMillian v. Morin*, 319 S.C. 331, 461 S.E.2d 43, 45 (1995).

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The six factors to consider in determining if an award of attorney fees is reasonable are: (A) the nature, extent, and difficulty of the case, (B) the time and labor necessarily devoted to the case, (C) professional standing of counsel, (D) contingency of compensation, (E) beneficial results obtained, and (F) customary legal fees for similar services. *See*, *e.g., Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998).

Plaintiffs requested that the answers of Defendants be struck, and that Defendants be entered into default. The Court declines to strike the answer of Defendants.

However, due to the length of this case, the years of litigation, the time that it has taken for Defendants to produce the information they produced on the eve of trial, and the prejudice resulting to Plaintiffs and their counsel, I do find that Plaintiffs are entitled to the sanction of an award of attorneys' fees and costs against Defendants.

Counsel for Plaintiffs has submitted an Affidavit of Attorneys' Fees and costs to the Court. Based on that Affidavit and this motion, the Court grants Plaintiffs the sanctions of attorneys' fees and costs against Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments; Dewberry Capital Corporation; and GREP Southeast, LLC, joint and severally.

After careful consideration of the factors expressed in *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998), and the Affidavit of Clayton B. McCullough Esq., I find that the attorneys' fees and costs requested by Plaintiffs are reasonable based on the (A) the nature, extent, and difficulty of the case, (B) the time and labor necessarily devoted to the case, (C) professional standing of counsel, (D) contingency of compensation, (E) beneficial results obtained, and (F) customary legal fees for similar services. Defendants are hereby ordered to pay the attorneys' fees and litigation costs resulting from Defendants' failure to timely submit and supplement discovery requested by Plaintiffs and previously ordered by this Court.

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THEREFORE, IT IS HEREBY ORDERED THAT Plaintiffs' Motion for Sanctions against Defendants, pursuant the Rule 37(b)(2)(C) SCRCP, is **GRANTED** and:

(1) Defendants are hereby ordered to reimburse Plaintiffs (by and through their counsel) for the following attorneys' fees and costs within five (5) days of the date of this order, as a sanction, as a joint and several sanction against Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments; Dewberry Capital Corporation; and GREP Southeast, LLC, in the total amount of $25,200.00:

a. Plaintiffs' payment to Rosen Litigation Technology Consulting $2,250.00 for computer forensic services relating to Defendants' May 5, 2022, ESI document production;

b. Fees of Clayton B. McCullough Esq., resulting from twenty-five (25) hours incurred reviewing Defendants' May 5, 2022 and July 15, 2022 document productions in this matter, totaling $11,250; and

c. Fees of Clayton B. McCullough's paralegal, Alicia Terwilliger, resulting from sixty (60) hours incurred reviewing Defendants' May 5, 2022 and July 15, 2022 document productions in this matter, totaling $11,700.

IT IS ORDERED.

_____
Jennifer B. McCoy
Presiding Circuit Court Judge

December _____, 2022
Charleston, South Carolina

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Charleston Common Pleas

Case Caption:	Karolina Richardson , plaintiff, et al VS Mt Pleasant Square Associates II LLC , defendant, et al
Case Number:	2018CP1003286
Type:	Order/Other

So Ordered

s/Jennifer B. McCoy #2764

ELECTRONICALLY FILED - 2023 Jun 06 3:40 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2018-CP-10-03286
Karolina Richardson and Krista Richardson, PLAINTIFFS, v. Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, and GREP Southeast, LLC, DEFENDANTS.	)	ORDER DENYING DEFENDANTS' MOTION TO ALTER OR AMEND ORDER AND/OR MOTION TO RECONSIDER

Defendants filed a Motion to Reconsider this Court's Order granting Plaintiff's Motion for Sanctions which took place immediately prior to the jury trial of this case. The motion to reconsider was heard before this court on January 19, 2023 in the virtual courtroom. "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised,

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but not ruled on, in order to preserve it for appellate review." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). "A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)); *See also* Arnold v. State, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992).

In their Motion, Defendants state that this court erred by not "requir[ing] the Plaintiff to present admissible evidence that there were documents produced on July 15, 2022, that had not been previously produced and available to Plaintiffs' counsel." At the time of trial, it was presented to this court, and agreed upon by Defense counsel, that documents sought during the course of discovery and ultimately ordered via cumbersome technology searches, were actually available in notebooks which sat in the office of the apartment complex at issue. Defense counsel presented to the court that she became aware of the existence of the documents, for the first time, when she was talking to an office employee in preparation for trial the Thursday before trial. Defense counsel also indicated that she was not the first counsel of record for the Defendants. Additionally, Plaintiff's counsel agreed that she immediately made him aware of the documents and produced them as soon as possible thereafter, but nonetheless

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days before trial. While the court appreciates the position Defense counsel found herself in immediately prior to trial, as well as her candor to the court, it was apparent to the court that a long and tenuous discovery exploration was launched that should not have been.

Defendants also argue that paralegal fees should not be reimbursed, pursuant to O'Shields v. Columbia Automotive, LLC, 435 S.C. 319 (Ct. App. 2021).[1] This court's reading of that language in the O'Shields case, however, reveals the court's emphasis on the word "redundant," as the context provides that the Court of Appeals was addressing the issue of recovery of fees on multiple claims. The case does not address the validity of paralegal fees.

As to the Defendants' argument that this court had no authority to place a time limitation on the Defendant's payment, the deadline was not an effort to circumvent any party's ability to appeal. It merely served as a deadline to pay.

Accordingly, Defendant's motion is hereby DENIED.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW

[1] "The circuit court may exclude fees incurred after the date of the September 2016 settlement offer. The circuit court should eliminate any redundant fees, improper cost, and paralegal fees as it had in the previous award." O'Shields v. Columbia Auto., LLC, 435 S.C. 319, 340, 867 S.E.2d 446, 457 (Ct. App. 2021), reh'g denied (Oct. 26, 2021), cert. granted (Sept. 7, 2022).

ELECTRONICALLY FILED - 2023 Jun 06 3:40 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

Charleston Common Pleas

Case Caption:	Karolina Richardson , plaintiff, et al VS Mt Pleasant Square Associates II LLC , defendant, et al
Case Number:	2018CP1003286
Type:	Order/Other

So Ordered

s/Jennifer B. McCoy #2764

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 **CP-**10-03286

Karolina Richardson and Krista Richardson,

PLAINTIFF(S)

Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments; Dewberry Capital Corporation; and GREP Southeast, LLC,

DEFENDANT(S)

Submitted by: Clayton B. McCullough, Esq.	**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: The jury in this case reached the following verdicts in favor of Plaintiffs: $850,000.00 for Plaintiff Karolina Richardson and $150,000.00 for Plaintiff Krista Richardson with Defendants responsible as follows: Dewberry 30% / Oyster Park 35% / GREP 35%

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)
Karolina Richardson	Dewberry Capital Corporation	$255,000.00
Karolina Richardson	Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments	$297,500.00
Karolina Richardson	GREP Southeast, LLC	$297,500.00
Krista Richardson	Dewberry Capital Corporation	$45,000.00

ELECTRONICALLY FILED - 2022 Aug 11 11:33 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

Krista Richardson	Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments	$52,500.00
Krista Richardson	GREP Southeast, LLC	$52,500.00
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	**Judge Code**	**Date**

ELECTRONICALLY FILED - 2022 Aug 11 11:33 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

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.

ELECTRONICALLY FILED - 2022 Aug 11 11:33 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

ELECTRONICALLY FILED - 2022 Aug 11 11:33 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

Charleston Common Pleas

Case Caption:	Karolina Richardson , plaintiff, et al VS Mt Pleasant Square Associates II LLC , defendant, et al
Case Number:	2018CP1003286
Type:	Order/Judgment and Form 4

So Ordered

s/Jennifer B. McCoy #2764

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Karolina Richardson and Krista Richardson, Plaintiffs, v. Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Case No.: 2018-CP-10-03286 **REVISED VERDICT FORM**

1. Do you find that the Plaintiff **Karolina (Karola) Richardson**, proved by a preponderance of the evidence that Defendant was Negligent?

_____ Yes

_____ No (IF NO, STOP DELIBERATIONS)

If you answered "Yes", state the amount of actual damages, if any, resulting from Defendant's Negligence $ 850,000

2. Do you find that the Plaintiff **Krista Richardson**, proved by a preponderance of the evidence that Defendant was Negligent?

_____ Yes

_____ No (IF NO, STOP DELIBERATIONS)

If you answered "Yes", state the amount of actual damages, if any, resulting from Defendant's Negligence $ 150,000

Foreperson

July 22, 2022.

FILED
2022 AUG 11 AM 11:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE, PLEASE KNOCK ON THE DOOR AND NOTIFY THE BAILIFF

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Karolina Richardson and Krista Richardson, Plaintiffs, v. Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Case No.: 2018-CP-10-03286 **SPECIAL VERDICT FORM**

1. Please indicate what percentage of the $850,000 actual damages awarded to the Plaintiff **Karolina (Karola) Richardson** is attributable to the following Defendants:

Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments	35 %
Dewberry Capital Corporation	30 %
GREP Southeast, LLC	35 %

(All totaling 100%)

2. Please indicate what percentage of the $150,000 actual damages awarded to the Plaintiff **Krista Richardson** is attributable to the following Defendants:

Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments	35 %
Dewberry Capital Corporation	30 %
GREP Southeast, LLC	35 %

(All totaling 100%)

Foreperson

July 22, 2022.

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE,
PLEASE KNOCK ON THE DOOR AND NOTIFY THE BAILIFF

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Karolina Richardson and Krista Richardson, Plaintiffs, v. Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Case No.: 2018-CP-10-03286 **SPECIAL VERDICT FORM**

Part 1: As to **Plaintiff Karolina (Karola) Richardson**:

1. Do you unanimously find by clear and convincing evidence that punitive damages should be awarded against Defendant Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments?

   _____ YES ___✓___ NO

   IF YES, GO TO QUESTION 2. IF NOT, GO TO QUESTION 3.

2. What amount of punitive damages should be awarded to the Plaintiff from Defendant Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments?

   $_____

3. Do you unanimously find by clear and convincing evidence that punitive damages should be awarded against Defendant Dewberry Capital Corporation?

   _____ YES ___✓___ NO

   IF YES, GO TO QUESTION 4. IF NOT, GO TO QUESTION 5.

4. What amount of punitive damages should be awarded to the Plaintiff from Defendant Dewberry Capital Corporation?

   $_____

5. Do you unanimously find by clear and convincing evidence that punitive damages should be awarded against Defendant GREP Southeast, LLC?

_____ YES ___✓___ NO

IF YES, GO TO QUESTION 6. IF NOT, GO TO PART 2.

6. What amount of punitive damages should be awarded to the Plaintiff from Defendant GREP Southeast, LLC?

$_____

Part 2: As to **Plaintiff Krista Richardson**:

1. Do you unanimously find by clear and convincing evidence that punitive damages should be awarded against Defendant Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments?

_____ YES ___✓___ NO

IF YES, GO TO QUESTION 2. IF NOT, GO TO QUESTION 3.

2. What amount of punitive damages should be awarded to the Plaintiff from Defendant Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments?

$_____

3. Do you unanimously find by clear and convincing evidence that punitive damages should be awarded against Defendant Dewberry Capital Corporation?

_____ YES ___✓___ NO

IF YES, GO TO QUESTION 4. IF NOT, GO TO QUESTION 5.

4. What amount of punitive damages should be awarded to the Plaintiff from Defendant Dewberry Capital Corporation?

$_____

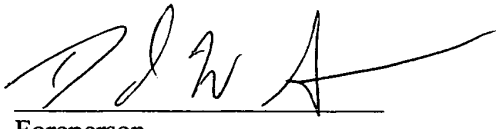
5. Do you unanimously find by clear and convincing evidence that punitive damages should be awarded against Defendant GREP Southeast, LLC?

_____ YES ___✓___ NO

IF YES, GO TO QUESTION 6. IF NOT, STOP.

6. What amount of punitive damages should be awarded to the Plaintiff from Defendant GREP Southeast, LLC?

$_____



Foreperson

July 22, 2022.

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE,
PLEASE KNOCK ON THE DOOR AND NOTIFY THE BAILIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2018-CP-10-_____
Karolina Richardson and Krista Richardson,	)	
	)	
Plaintiffs,	)	
	)	**SUMMONS**
v.	)	
	)	**(JURY TRIAL DEMANDED)**
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, Greystar Management Services, L.P., and Greystar Real Estate Partners, LLC,	)	
	)	
Defendants.	)	

FILED
2018 JUN 27 PM 12:12
JULIE J. ARMSTRONG
CLERK OF COURT

TO: THE ABOVE-NAMED DEFENDANTS:

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 pleading to said Complaint upon the subscribers at their offices at 359 King Street, Suite 200, Charleston, South Carolina 29401, within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, Plaintiffs will apply to the Court for judgment by default for the relief demanded in the Complaint.

McCULLOUGH KHAN, LLC

Clayton B. McCullough (SC Bar #13722)
359 King Street, Suite 200
Charleston, SC 29401
(843) 937-0400
(843) 937-0706 (fax)
Clay@mklawsc.com

ATTORNEY FOR PLAINTIFFS

6.26, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2018-CP-10-_____
Karolina Richardson and Krista Richardson,	)	
	)	
Plaintiffs,	)	
	)	**COMPLAINT**
v.	)	
	)	**(JURY TRIAL DEMANDED)**
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, Greystar Management Services, L.P., and Greystar Real Estate Partners, LLC,	)	
	)	
Defendants.	)	

FILED
2018 JUN 27 PM 12:12
JULIE J. ARMSTRONG
CLERK OF COURT

Plaintiffs, Karolina Richardson and Krista Richardson (hereinafter as "the Richardsons" or "Plaintiffs"), complaining of Defendants, Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, Greystar Management Services, L.P., and Greystar Real Estate Partners, LLC (hereinafter together as "Defendants") would respectfully show the Court as follows:

PARTIES

1. Plaintiff Karolina Richardson is a citizen and resident of Charleston County, South Carolina and is the mother of Krista Richardson.

2. Plaintiff Krista Richardson is a citizen and resident of Charleston County, South Carolina.

3. That, upon information and belief, Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, is a limited liability company organized and existing pursuant to the laws of the State of Georgia and owns property and transacts business in Charleston County, South Carolina. Additionally, upon information and belief, at least one member of this LLC is a South Carolina entity.

4. That, upon information and belief, Dewberry Capital Corporation is a corporation organized and existing pursuant to the laws of Georgia and owns property and transacts business in South Carolina.

5. That, upon information and belief, Greystar Management Services, L.P. is a Limited Partnership organized and existing pursuant to the laws of the State of Delaware and owns property and transacts business in South Carolina. Additionally, upon information and belief, at least one partner of this Limited Partnership is a South Carolina entity.

6. That, upon information and belief, Greystar Real Estate Partners, LLC, is a limited liability company organized and existing pursuant to the laws of Delaware and owns property and transacts business in Charleston County, South Carolina. Additionally, upon information and belief, at least one member of this LLC is a South Carolina entity.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject of this action.

8. This Court has personal jurisdiction over all parties named in this action.

9. Venue in this matter is proper in this Court because the events, acts, actions and incidences complained of herein all took place in Charleston County, South Carolina.

FACTUAL BACKGROUND

10. Oyster Park Apartments (hereinafter referred to as "Oyster Park") is an apartment complex located at 1421 Shucker Circle, in Mount Pleasant, South Carolina.

11. Upon information and belief, Dewberry Capital Corporation constructed and/or developed Oyster Park.

12. Dewberry Capital Corporation sold Oyster Park to Mt. Pleasant Square Associates, II, LLC, the current owner.

13. Upon information and belief, Greystar Management Services, L.P., and/or Greystar Real Estate Partners, LLC is the property manager of Oyster Park.

14. That, upon information and belief, Defendants are, and at all times relative hereto were, a residential landlord within the meaning of S.C. Code Ann. §27-40-210(6), CODE OF LAWS OF SOUTH CAROINA.

15. That, upon information and belief, Defendants are in the business of developing, constructing, owning, leasing and managing apartments.

16. On May 17, 2017 the Richardsons entered into an Apartment Lease Contract with an entity listed as "Oyster Park" for the rental of Unit 104. The Richardsons moved into unit 104, however, very shortly thereafter were forced to move apartments because Unit 104 flooded.

17. On May 26, 2017 the Richardsons entered into an Apartment Lease Contract with an entity listed as "Oyster Park" for the rental of Unit 101. This unit contained extensive mold in various areas in the apartment. The Defendants were repeatedly notified of the mold and the impact it was having on the Richardsons' health. After multiple demands to do so, Defendants hired a lab to perform mold testing on the apartment.

18. On July 10, 2017 Pro-Lab performed a mold analysis of Unit 101 and the surrounding area. The mold test found significantly elevated levels of mold, specifically Penicilium/Aspergillus.

19. In July, the Richardsons moved to a third apartment, Unit 102, however, continued to suffer the effects of mold in the Oyster Park apartment community. Finally, as a result of their ongoing significant health issues caused by the continuous mold exposure, the Richardsons moved out of Oyster Park on September 2nd -3rd , 2017.

20. As a direct and proximate consequence of the presence of excessive, unreasonable and dangerous levels of the mold concentration in the apartments, Plaintiffs developed and contracted toxic mold disease, among other things, and have undergone numerous medical treatments.

21. That as a direct and proximate consequence of the presence of excessive, unreasonable and dangerous levels of the mold concentration in the apartments, Plaintiffs developed and contracted asthma, chronic rhinitis, migraines, and sinusitis.

22. That to date, Plaintiffs continue to suffer from these ailments and continue to require medical treatment.

FOR A FIRST CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Negligence/Negligence *per se*
Violation of the South Carolina Residential Landlord Tenant Act,
Section 27-40-10, *et. seq.*, CODE OF LAWS OF SOUTH CAROLINA)

23. That each and every allegation set forth in Paragraph 1 through Paragraph 22 hereinabove is incorporated herein as if fully set forth herein verbatim.

24. That, upon information and belief, the relationship among Plaintiffs and Defendants at all times from May 17, 2017 – September 3, 2017 was that of landlord-tenant.

25. That at all times relative hereto, Plaintiffs were lawful occupants of the Apartments.

26. That at all times relative hereto, Defendants as builders, owners, landlords and property managers, had a special relationship with Plaintiffs as tenants, which gave rise to a duty to protect them against unreasonable risk of physical harm.

27. That all duties owed by Defendants, as builders, owners, landlord and property manager, to Plaintiffs, as tenants, arose from common law and pursuant to the South Carolina

Residential Landlord Tenant Act, Section 27-40-10, et. seq., CODE OF LAWS OF SOUTH CAROLINA.

28. That at all times relative hereto, Defendants owed Plaintiffs the following duties:

a. A duty to comply with the requirements of applicable building and housing codes materially affecting health and safety, pursuant to Section 27-440(a)(1), CODE OF LAWS OF SOUTH CAROLINA;

b. A duty to make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition, pursuant to Section 27-440(a)(2), CODE OF LAWS OF SOUTH CAROLINA;

c. A duty to warn of hidden dangers of which Defendants knew, should have known, or in the exercise of reasonable inspection of the Apartment could have known;

d. A duty to lease the Apartment in a reasonably safe condition and to give warning of latent or concealed perils;

e. A duty of due care to discover risks and take safety precautions to warn of or eliminate foreseeable risks;

f. A duty of ordinary care to keep the Apartments in a reasonably safe and habitable condition so that Plaintiffs could use them in the ordinary and reasonable way without danger; and

g. A duty to implement reasonable inspection procedures in order to protect their tenants, including Plaintiffs, from foreseeable risks of harm.

29. Defendants breached these duties owed to Plaintiffs in representing to Plaintiffs that the apartments had been eradicated of mold and that the apartments were safe and habitable, when in fact, the apartments contained excessively, unreasonably and dangerously high levels of Aspergillus/Penicillium.

30. Defendants knew or should have known in the exercise of reasonable caution, prevention and inspection that the mold in the apartments was not properly remediated, that further mold inspections needed to be conducted and that their failure to do so created a latent defect in the apartments, which was neither open nor obvious and about which Plaintiffs

assumed no risk, as such an unavoidable latent hazard has no place in an apartment being rented to the unsuspecting public.

31. The actions of Defendants complained of herein constitute negligence, negligence per se, gross negligence, recklessness, willfulness, and wantonness, in the following particulars, to-wit:

a. In failing to maintain the apartments in good order and repair and in a reasonably safe and habitable condition;

b. In failing to exercise reasonable and ordinary care to guard Plaintiffs against foreseeable risks of physical harm to their persons;

c. In failing to protect Plaintiffs against unreasonable risks of physical harm to their person;

d. In failing to do what a reasonable person or entity would have done under the circumstances;

e. In failing to exercise due care to discover risks and take safety precautions to warn of or eliminate foreseeable risks;

f. In failing to keep the apartments in a reasonably safe condition so that Plaintiffs could use it in an ordinary and reasonable manner without danger;

g. In failing to inspect the apartments or to implement regular inspection procedures in order to protect the guests from foreseeable danger;

h. In failing to eliminate foreseeable risks of harm;

i. In failing to warn Plaintiffs of foreseeable danger; and

j. In such other particulars as may be determined through discovery or trial.

32. Plaintiffs had no knowledge of or reason to suspect danger with regard to the mold contained in the apartments.

33. Plaintiffs' exercised ordinary and reasonable care at all times while in the apartments.

34. As a direct and proximate consequence of the presence of excessive, unreasonable and dangerous levels of the mold concentration in the apartments, and the negligent, grossly negligent, willful, wanton, and reckless acts and omission of Defendants, Plaintiffs have been injured and damaged in the following particulars, to-wit:

a. Physical pain;

b. Suffering;

c. Mental anguish;

d. Emotional distress;

e. Permanent impairment of health and bodily efficiency;

f. Loss of enjoyment of life;

g. Substantial expenses for past and future medical services;

h. Loss of wages;

i. Expenses for transportation to and from medical services;

j. Loss of personal property;

k. Potential future loss of earnings; and

l. Such other particulars as may be found through discovery or trial.

35. That as a direct and proximate consequence of Defendants negligent, willful, wanton and gross negligent conduct complained of herein above, Plaintiffs are entitled to actual, consequential and punitive damages and all other relief as deemed proper by the Court.

FOR A SECOND CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Negligent Misrepresentation)

36. That each and every allegation set forth in Paragraph 1 through Paragraph 35 hereinabove is incorporated herein as if fully set forth herein verbatim.

37. That, at all times relative hereto, Defendants were operating by and through their agents and/or employees, who at all times relevant hereto were acting within the course and scope of their respective agency, businesses, professions and/or employment.

38. That, at all times relative hereto, Defendants has a pecuniary interest in Plaintiffs lease of the apartments.

39. That Defendants negligently, willfully, wantonly and grossly negligently made the following incorrect, inaccurate and/or false representations and provided for the following incorrect, inaccurate and/or false information to Plaintiffs at or before the time the Rental Agreement was entered into:

a. That at all times relative hereto, the apartments were and would be free of mold;

b. That at all times relative hereto the apartments were and would be in a reasonably safe condition;

c. That the apartments were and would be free of unreasonable risks of physical harm;

d. That the apartments could be used in the ordinary and reasonable manner without risk of injury;

e. That the apartments were free from defects that might cause injury to Plaintiffs; and

f. That reasonable procedures for inspection of the apartments were and would be in place in order to protect Plaintiffs from harm.

40. That at no time prior to, at the time of or subsequent to the time Plaintiffs entered into the Apartment Lease Contracts did Defendants advise Plaintiffs that the aforementioned representations and information were incorrect, inaccurate and/or false.

41. That, Plaintiffs justifiably relied on upon the information provided by Defendants and the representations made by Defendants as more particularly described herein above.

42. That Defendants failed to exercise reasonable care, diligence and competence in obtaining or communicating the information set forth herein above.

43. That Defendants intended that Plaintiffs rely on the above stated representations and information.

44. That Plaintiffs had a right to assume that the apartments would be free from defects or pollutants that might cause injury to them and members of their family.

45. That Defendants expressly and/or impliedly represented to Plaintiffs at the time of entry into the Apartment Lease Contracts that the apartments were and would be in a reasonable safe and habitable condition and free of mold.

46. That Plaintiffs had a right to rely upon this representation by Defendants as they had a duty to Plaintiffs to ensure that the apartments were in a reasonably safe and habitable condition.

47. That during their residency in the apartments, Plaintiffs were exposed to dangerous mold spores, resulting in serious medical conditions and creation of an unsafe and uninhabitable living condition.

48. That Plaintiffs justifiable reliance upon the representations and information supplied by Defendants as more fully set forth herein above was a substantial factor in their deciding to lease the apartments.

49. That as a direct and proximate consequence of Plaintiffs justified reliance on the misrepresentation and information supplied by Defendants as more fully set forth herein above, on which Plaintiffs justifiably based their decision to lease the apartments, Plaintiffs suffered pecuniary losses as more fully set forth herein above.

50. The Plaintiffs' injuries described herein above were a reasonably expected consequence of Plaintiffs reliance on the information and representations of Defendants described herein.

51. That Plaintiffs' pecuniary losses were a foreseeable risk of harm created by the representations and information provided by Defendants described herein above.

52. That as a direct and proximate consequence of Defendants negligent representations and negligent supplying of inaccurate, incorrect and/or false information, Plaintiffs are entitled to judgment against Defendants in an amount equal to their pecuniary losses caused by thereby.

FOR A THIRD CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Fraudulent Misrepresentations/Fraud)

53. That each and every allegation set forth in Paragraph 1 through 52 hereinabove is incorporated herein as if fully set forth herein verbatim.

54. That the representation made by and the information provided by Defendants described herein above constitute false statements concerning a material fact or facts.

55. That Defendants knew or should have known the representations they made and the information they provided to Plaintiffs were false.

56. That Defendants made the representations and provided the information to induce Plaintiffs to act on the same, to-wit: enter into the Apartment Lease Contracts.

57. That Plaintiffs relied on the representation and information in entering into the Apartment Lease Contracts.

58. That Plaintiffs had no knowledge that the representations made by and the information provided by Defendants were false.

59. That Defendants occupied such a special situation and possessed such means of knowledge as made it their duty to know the truth or the falsity of the representations which they made and the information which they supplied.

60. That as a direct and proximate consequence of Plaintiffs' reliance upon the representations made by and information provided by Defendants in entering into the Apartment Lease Contracts, they were injured in the manner described herein above.

61. That as a direct and proximate consequence of Defendants' fraudulent misrepresentations, Plaintiffs are entitled to judgment against Defendants in an amount equal to their actual and consequential damages proximately caused thereby and for punitive damages in an appropriate amount.

FOR A FOURTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Unfair Trade Practices Section 39-5-10, *et. seq.*,
SOUTH CAROLINA CODE OF LAWS, 1976)

62. That each and every allegation set forth in Paragraph 1 through Paragraph 61 hereinabove is incorporated herein as if fully set forth herein verbatim.

63. That Plaintiffs and Defendants are "persons" within the meaning of Section 39-5-10(a), SOUTH CAROLINA CODE OF LAWS, 1976.

64. That Defendants' actions, by marketing, managing and renting apartments at Oyster Park, constitutes "trade" within the meaning of Section 29-5-10(b), SOUTH CAROLINA CODE OF LAWS, 1976.

65. That Defendants' actions, described hereinabove, constitute unfair and deceptive practices in violation of Section 39-5-20, SOUTH CAROLINA CODE OF LAWS, 1976.

66. The Defendants' unfair and deceptive acts committed while in the course and scope of its trade or business, were the proximate cause of Plaintiffs' injuries described herein.

67. That Defendants' acts are capable of repetition, and, upon information and belief have been repeated.

68. That Defendants' conduct affects the public interest of South Carolina.

69. That Defendants knew, or reasonably should have known, that their conduct violated the South Carolina Unfair Trade Practices Act.

70. That Plaintiffs in their individual capacities are entitled to an award from Defendants of actual and treble damages, together with interest and attorney's fees, pursuant to Section 39-5-140, SOUTH CAROLINA CODE OF LAWS, 1976.

FOR A FIFTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Civil Conspiracy)

71. That each and every allegation set forth in Paragraph 1 through Paragraph 70 hereinabove is incorporated herein as if fully set forth herein verbatim.

72. That various employees and agents of Defendants, acting in concert together concealed the existence of flooding issues, water leaks, water infiltration, plumbing leaks, and other factors which together caused highly dangerous mold to grow in the apartments.

73. That the acts of Defendants' employees and agents caused injuries to the Plaintiffs as described hereinabove.

74. That as a direct and proximate consequence of Defendants' employees and agents acts of civil conspiracy, Plaintiffs have suffered special damages and are entitled to judgment against Defendants in an amount equal to their actual and consequential damages proximately caused thereby and for punitive damages in an appropriate amount.

WHEREFORE, Plaintiffs, having complained of Defendants, pray that they be awarded judgment against the Defendants as follows:

A. In an amount sufficient to compensate Plaintiffs for their injuries and damages as described herein above;

B. Punitive damages in an appropriate amount up to the amount permitted by law;

C. In an amount equal to all costs and attorney fees incurred by Plaintiffs in connection with this action;

D. For trebled damages under Section 39-5-140, SOUTH CAROLINA CODE OF LAWS, 1976;

E. For a trial before a jury on all issues; and

F. For such other and further relief as this Court deems just and proper.

McCULLOUGH KHAN, LLC

Clayton B. McCullough (SC Bar No.: 13722)
359 King Street, Suite 200
Charleston, SC 29401
(843) 937-0400
(843) 937-0706 (fax)
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ATTORNEY FOR PLAINTIFFS

6.24, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	C.A. NO.: 2018-CP-10-03286
	)	
Karolina Richardson and Krista Richardson,	)	**ANSWER OF DEFENDANT DEWBERRY CAPITAL CORPORATION**
	)	
Plaintiffs,	)	***(Jury Trial Demanded)***
	)	
v.	)	
	)	
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, Greystar Management Services, LP, and Greystar Real Estate Partners, LLC,	)	
	)	
Defendants.	)	

FILED
2018 SEP -4 PM 3:42
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMES NOW, Dewberry Capital Corporation ("Dewberry"), defendant in the above-styled action, and answers the Complaint of Plaintiffs as follows:

FOR A FIRST DEFENSE

PARTIES

1. Dewberry is without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 1 of Plaintiffs' Complaint, and therefore those allegations are denied.

2. Dewberry is without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 2 of Plaintiffs' Complaint, and therefore those allegations are denied.

3. Dewberry admits that co-defendant Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments is a corporation organized under the laws of Georgia, that its principal place of business is in Georgia, and that it is qualified to conduct business in South Carolina. To the extent paragraph number 3 of Plaintiffs' Complaint contains any further allegations, those allegations are denied.

4. Dewberry admits that it is a corporation organized under the laws of Georgia, that its principal place of business is in Georgia, and that it is qualified to conduct business in South Carolina. To the extent paragraph number 4 of Plaintiffs' Complaint contains any further allegations, those allegations are denied.

5. Dewberry is without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 5 of Plaintiffs' Complaint, and therefore those allegations are denied.

6. Dewberry is without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 6 of Plaintiffs' Complaint, and therefore those allegations are denied.

JURISDICTION AND VENUE

7. Dewberry denies the allegations contained in paragraph number 7 of Plaintiffs' Complaint.

8. Dewberry denies the allegations contained in paragraph number 8 of Plaintiffs' Complaint.

9. Dewberry denies the allegations contained in paragraph number 9 of Plaintiffs' Complaint.

FACTUAL BACKGROUND

10. Dewberry admits the allegations contained in paragraph number 10 of Plaintiffs' Complaint.

11. Dewberry admits the allegations contained in paragraph number 11 of Plaintiffs' Complaint.

12. Dewberry admits the allegations contained in paragraph number 12 of Plaintiff's Complaint.

13. Dewberry is without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 13 of Plaintiffs' Complaint, and therefore those allegations are denied.

14. Dewberry states that paragraph number 14 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 14 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

15. Dewberry admits the allegations contained in paragraph number 15 of Plaintiffs' Complaint.

16. Dewberry is without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 16 of Plaintiffs' Complaint, and therefore those allegations are denied.

17. Dewberry is without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 17 of Plaintiffs' Complaint, and therefore those allegations are denied.

18. Dewberry is without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 18 of Plaintiffs' Complaint, and therefore those allegations are denied.

19. Dewberry is without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 19 of Plaintiffs' Complaint, and therefore those allegations are denied.

20. Dewberry states that paragraph number 20 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 20 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

21. Dewberry states that paragraph number 21 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 21 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

22. Dewberry states that paragraph number 22 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 22 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

FOR A FIRST CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Negligence/Negligence *per se* Violation of the South Carolina Residential Landlord And Tenant Act, Section 27-40-10, *et seq.*, CODE OF LAWS OF SOUTH CAROLINA)

23. Dewberry restates and reasserts its responses to paragraph numbers 1-22 above as if fully set forth herein.

24. Dewberry denies the allegations contained in paragraph number 24 of Plaintiffs' Complaint.

25. Dewberry is without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 25 of Plaintiffs' Complaint, and therefore those allegations are denied.

26. Dewberry states that paragraph number 26 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 26 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

27. Dewberry states that paragraph number 27 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 27 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

28. Dewberry states that paragraph number 28, including subparts a. through g., of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph

number 28, including subparts a. through g., of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

29. Dewberry states that paragraph number 29 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 29 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

30. Dewberry states that paragraph number 30 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 30 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

31. Dewberry states that paragraph number 31, including subparts a. through j., of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 22, including subparts a. through j., of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

32. Dewberry states that paragraph number 32 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 32 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

33. Dewberry states that paragraph number 33 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 33 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

34. Dewberry states that paragraph number 34, including subparts a. through l., of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 34, including subparts a. through l., of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

35. Dewberry states that paragraph number 35 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 35 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

FOR A SECOND CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Negligent Misrepresentation)

36. Dewberry restates and reasserts its responses to paragraph numbers 1 through 35 of Plaintiffs' Complaint as if fully set forth herein.

37. Dewberry states that paragraph number 37 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 37 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

38. Dewberry states that paragraph number 38 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 38 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

39. Dewberry states that paragraph number 39, including subparts a. through f., of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 39, including subparts a. through f., of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

40. Dewberry states that paragraph number 40 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 40 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

41. Dewberry states that paragraph number 41 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 41 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

42. Dewberry states that paragraph number 42 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 42 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

43. Dewberry states that paragraph number 43 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 43 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

44. Dewberry states that paragraph number 44 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 44 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

45. Dewberry states that paragraph number 45 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 45 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

46. Dewberry states that paragraph number 46 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 46 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

47. Dewberry states that paragraph number 47 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 47 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

48. Dewberry states that paragraph number 48 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 48 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

49. Dewberry states that paragraph number 49 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 49 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

50. Dewberry states that paragraph number 50 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 50 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

51. Dewberry states that paragraph number 51 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 51 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

52. Dewberry states that paragraph number 52 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 52 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

FOR A THIRD CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Fraudulent Misrepresentation/Fraud)

53. Dewberry restates and reasserts its responses to paragraph numbers 1 through 52 of Plaintiffs' Complaint as if fully set forth herein.

54. Dewberry states that paragraph number 54 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 54 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

55. Dewberry states that paragraph number 55 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 55 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

56. Dewberry states that paragraph number 56 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 56 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

57. Dewberry states that paragraph number 57 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 57 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

58. Dewberry states that paragraph number 58 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 58 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

59. Dewberry states that paragraph number 59 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 59 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

60. Dewberry states that paragraph number 60 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 60 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

61. Dewberry states that paragraph number 61 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 61 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

FOR A FOURTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Unfair Trade Practices Section 9-5-10, *et seq.*,
SOUTH CAROLINA CODE OF LAWS, 1976)

62. Dewberry restates and reasserts its responses to paragraph numbers 1 through 61 of Plaintiffs' Complaint as if fully set forth herein.

63. Dewberry states that paragraph number 63 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 63 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

64. Dewberry states that paragraph number 64 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 64 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

65. Dewberry states that paragraph number 65 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 65 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

66. Dewberry states that paragraph number 66 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 66 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

67. Dewberry states that paragraph number 67 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 67 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

68. Dewberry states that paragraph number 68 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 68 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

69. Dewberry states that paragraph number 69 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 69 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

70. Dewberry states that paragraph number 70 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 70 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

FOR A FIFTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Civil Conspiracy)

71. Dewberry restates and reasserts its responses to paragraph numbers 1 through 70 of Plaintiffs' Complaint as if fully set forth herein.

72. Dewberry denies the allegations set forth in paragraph number 72 of Plaintiffs' Complaint.

73. Dewberry states that paragraph number 73 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 73 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied.

74. Dewberry states that paragraph number 74 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 74 of Plaintiffs' Complaint contains any allegations against Dewberry, those allegations are denied. Dewberry denies the *ad damnum* clause contained in paragraph number 74 of Plaintiffs' Complaint.

75. To the extent any allegation contained in Plaintiff's Complaint is not specifically, admitted, or explained, it is denied.

FOR A SECOND DEFENSE

76. Dewberry reserves the right to seek a change of venue, if appropriate, based upon the applicable statutes, the convenience of witnesses, and the ends of justice.

FOR A THIRD DEFENSE

77. Plaintiffs' claims against Dewberry should be dismissed because Plaintiffs have failed to state a cause of action under Rule 12(b)(6), SCRCP, against Dewberry upon which relief can be granted.

FOR A FOURTH DEFENSE

78. Dewberry reserves the right to seek a change of venue, if appropriate, based upon the applicable statutes, the convenience of the witnesses, and the ends of justice.

FOR A FIFTH DEFENSE

79. Dewberry reserves the right to assert claims for contribution, indemnity, and subrogation against any party or a party not named in this action.

FOR A SIXTH DEFENSE

80. Dewberry asserts and relies upon any and all defenses or benefit codified in South Carolina Code Ann. § 15-38-15 *et. seq.* including the right to have the jury apportion fault among any other party whether or not named.

FOR A SEVENTH DEFENSE

81. Plaintiffs' claims against Dewberry should be dismissed because no action or inaction by Dewberry was the actual or proximate cause of Plaintiffs' alleged damages.

FOR AN EIGHTH DEFENSE

82. Plaintiffs' claims against Dewberry should be dismissed due to Plaintiffs' failure to mitigate damages.

FOR A NINTH DEFENSE

83. Plaintiffs' claims against Dewberry should be dismissed because of Plaintiffs' failure to mitigate damages.

FOR A TENTH DEFENSE

84. Plaintiffs' claims against Dewberry are barred or in the alternative reduced due to Plaintiffs' comparative negligence.

FOR AN ELEVENTH DEFENSE

85. Plaintiffs' claims against Dewberry may be barred by the doctrines of waiver, estoppel, laches, and/or release.

FOR A TWELFTH DEFENSE

86. Any alleged damages claimed by Plaintiffs, which Dewberry denies, were solely due to, resulted from, and caused by the negligence, carelessness, recklessness, willfulness, and wantonness of third parties other than Dewberry and which Dewberry had no control.

FOR A THIRTEENTH DEFENSE

87. Plaintiffs' Complaint against Dewberry should be dismissed pursuant to Rule 12(b)(7), SCRCP, because Plaintiffs failed to join a necessary party to this litigation as required by Rule 19, SCRCP.

FOR A FOURTEENTH DEFENSE

88. Plaintiffs' claims against Dewberry should be dismissed because Plaintiffs knew or should have known of any alleged deficiencies at the property and avoided the problem as they would have been open and obvious and not hidden.

FOR A FIFTEENTH DEFENSE

89. Plaintiffs' claims against Dewberry should be dismissed because Plaintiffs gave Dewberry no notice or request to act specifying any acts or omissions by Dewberry.

FOR A SIXTEENTH DEFENSE

90. Plaintiffs' claims against Dewberry should be dismissed because Plaintiffs' alleged damages, if any, are the direct and proximate result of intervening and superseding acts of third-parties not affiliated with Dewberry and not under Dewberry's control.

FOR A SEVENTEENTH DEFENSE

91. Dewberry alleges that any recovery by Plaintiffs must be set off or reduced, abated, or apportioned to the extent any other party's actions caused or contributed to damages, if any.

FOR A EIGHTEENTH DEFENSE

92. Plaintiffs' claims against Dewberry should be dismissed because any alleged act or omission by Dewberry was not the cause-in-fact or proximate cause of Plaintiffs' alleged injuries.

FOR A NINETEENTH DEFENSE

93. Plaintiffs' claims against Dewberry should be dismissed because any damages alleged by Plaintiffs were the result of acts or omissions of other parties, named and unnamed in this action, for which Dewberry bears no responsibility.

FOR A TWENTIETH DEFENSE

94. Plaintiffs' claims against Dewberry should be dismissed pursuant to the South Carolina Landlord/Tenant Act.

FOR A TWENTY-FIRST DEFENSE

95. Plaintiffs' claims against Dewberry should be dismissed because, to the extent Plaintiffs seek recovery based upon the lease agreement, Plaintiffs materially breached the terms and conditions of said agreement and are not entitled to relieve under the agreement.

FOR A TWENTY-SECOND DEFENSE

96. Plaintiffs' claims against Dewberry should be dismissed because any and all repairs Dewberry may have provided met all property management industry customs, practices, and standards applicable to Plaintiffs' claims.

FOR A TWENTY-THIRD DEFENSE

97. Dewberry states Plaintiffs were obligated to provide appropriate climate control, keep the apartment clean, and take other measures to retard and prevent mold and mildew from accumulating in the apartment. If Plaintiffs failed to do so, then such is the direct and proximate cause of the damage allegedly suffered by Plaintiffs and therefore constitutes a complete defense to the claims of Plaintiffs.

FOR A TWENTY-FOURTH DEFENSE

98. Plaintiffs' claims against Dewberry should be dismissed because Dewberry relied upon information provide to it by Plaintiffs which, if true, may justify the decisions made and Dewberry cannot be held responsible.

FOR A TWENTY-FIFTH DEFENSE

99. Plaintiffs are not entitled to punitive damages because Plaintiffs' claims for punitive damages and any award of punitive damages would violate the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and due process clause of Article I, Section 3 of the South Carolina Constitution.

FOR A TWENTY-SIXTH DEFENSE

100. Discovery has not yet taken place, and there may be facts that give rise to defenses of which Dewberry is not currently aware. Dewberry therefore reserves the right to amend and assert affirmative defenses as provided by the South Carolina Rules of Civil Procedure, and for these reasons, among others, Dewberry may have no liability to Plaintiffs.

WHEREFORE, having fully answered Plaintiff's Complaint, and having set forth affirmative defenses, defendant Dewberry Capital Corporation respectfully requests that Plaintiffs' Complaint against Dewberry Capital Corporation be dismissed, that Plaintiffs have and recover nothing of Dewberry Capital Corporation, that all costs of this action be taxed against Plaintiffs, that Dewberry Capital Corporation be dismissed with prejudice from this case, and that this case be heard by a jury of twelve (12), and that Dewberry Capital Corporation be awarded such other and further relief as this Court deems just and appropriate.

JURY TRIAL DEMANDED

[SIGNATURES ON FOLLOWING PAGE]

This the 31st day of August, 2018.

GOWER, WOOTEN & DARNEILLE, LLC

J. Timothy Wooten (S.C. Bar No.: 71717)
Jamie Ackerman (S.C. Bar No.: 72427)
223 West Stone Avenue
Greenville, South Carolina 29609
(864) 991-3197
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Jamie@GWDlawfirm.com
Attorneys for Defendant
Dewberry Capital Corporation

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2018-CP-10-3286
Karolina Richardson and Krista Richardson,	)	
	)	
Plaintiffs,	)	**CONSENT STIPULATION TO SUBSTITUTE PROPER PARTY DEFENDANT**
	)	
v.	)	
	)	
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, Greystar Management Services, L.P., and Greystar Real Estate Partners, LLC,	)	
	)	
Defendants.	)	

FILED
2018 SEP 27 PM 12:58
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW the Parties by and through their undersigned counsel, who file this Consent Stipulation to Substitute a Proper Party Defendant, and state as follows:

1. Plaintiffs filed suit against Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, Greystar Management Services, L.P. and Greystar Real Estate Partners, LLC on June 27, 2018.

2. Defendant Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments filed an Answer on September 4, 2018.

3. Defendant Dewberry Capital Corporation filed an Answer on September 4, 2018.

4. Defendants Greystar Management Services, L.P. and Greystar Real Estate Partners, LLC, filed a Motion to Dismiss on September 4, 2018 and contended that the proper party Defendant for the managing agent is "GREP Southeast, LLC."

5. The parties hereby agree to the substitution of the proper party Defendant for Defendants Greystar Management Services, L.P. and Greystar Real Estate Partners, LLC, hereinafter to be designated as "GREP Southeast, LLC."

6. The Parties hereby agree that, notwithstanding the substitution of the proper party Defendant, "GREP Southeast, LLC," Plaintiffs' Amended Complaint and Defendants' Answers to Amended Complaint will remain in force such that no additional pleadings are necessary to effectuate the substitution of "GREP Southeast, LLC" as the proper party Defendant in this case.

WHEREFORE, the parties respectfully request that this Court enter an Order allowing "GREP Southeast, LLC" to be substituted for Defendants Greystar Management Services, L.P. and Greystar Real Estate Partners, LLC, in the above captioned matter.

Respectfully submitted this 19th day of September, 2018.

WE CONSENT:

Clayton B. McCullough (SC Bar No.: 13722)
McCULLOUGH KHAN, LLC
359 King Street, Suite 200
Charleston, SC 29401
Clay@mklawsc.com

ATTORNEY FOR PLAINTIFFS

By: (w/consent)
J. Timothy Wooten (SC Bar No.: 71717)
Jamie Ackerman (SC Bar No.: 72427)
GOWER, WOOTEN & DARNEILLE, LLC
223 West Stone Avenue
Greenville, SC 29609
Tim@GWDlawfirm.com
Jamie@GWDlawfirm.com

ATTORNEYS FOR DEFENDANTS MT. PLEASANT SQUARE ASSOCIATES, II, LLC d/b/a OYSTER PARK APARTMENTS AND DEWBERRY CAPITAL CORPORATION

By: (w/consent)
Thomas A. Howard, Jr. (SC Bar No.: 101252)
BROWNLEE WHITLOW & PRAET, PLLC
3255 Landmark Drive, Suite 301
North Charleston, SC 29418
Thoward@bwpf-law.com

ATTORNEY FOR GREYSTAR MANAGEMENT SERVICES, L.P. AND GREYSTAR REAL ESTATE PARTNERS, LLC (SUBSTITUTED PARTY GREP SOUTHEAST, LLC)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	C.A. NO.: 2018-CP-10-03286
	)	
	)	
Karolina Richardson and Krista Richardson,	)	**ANSWER**
	)	**OF DEFENDANT GREP SOUTHEAST, LLC**
Plaintiffs,	)	***(Jury Trial Demanded)***
	)	
v.	)	
	)	
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC,	)	
	)	
Defendants.	)	
	)	

FILED
2018 NOV -5 AM 11:45
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW, GREP Southeast, LLC ("GREP"), defendant in the above-styled action, and answers the Complaint of Plaintiffs as follows:

FOR A FIRST DEFENSE

PARTIES

1. GREP admits the allegations contained in paragraph number 1 of Plaintiffs' Complaint.

2. GREP admits the allegations contained in paragraph number 2 of Plaintiffs' Complaint.

3. GREP admits the allegations contained in paragraph number 3 of Plaintiffs' Complaint.

4. GREP admits the allegations contained in paragraph number 4 of Plaintiffs' Complaint.

5. GREP admits the allegations contained in paragraph number 5 of Plaintiffs' Complaint.

6. GREP admits the allegations contained in paragraph number 6 of Plaintiffs' Complaint.

JURISDICTION AND VENUE

7. GREP admits the allegations contained in paragraph number 7 of Plaintiffs' Complaint.

8. GREP admits the allegations contained in paragraph number 8 of Plaintiffs' Complaint.

9. GREP admits the allegations contained in paragraph number 9 of Plaintiffs' Complaint.

FACTUAL BACKGROUND

10. GREP admits the allegations contained in paragraph number 10 of Plaintiffs' Complaint.

11. GREP admits the allegations contained in paragraph number 11 of Plaintiffs' Complaint.

12. GREP admits the allegations contained in paragraph number 12 of Plaintiff's Complaint.

13. GREP admits the allegations contained in paragraph number 13 of Plaintiffs' Complaint.

14. GREP states that paragraph number 14 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 14 of Plaintiffs' Complaint contains any allegations against GREP, those allegations are denied.

15. GREP admits the allegations contained in paragraph number 15 of Plaintiffs' Complaint.

16. GREP admits the allegations contained in paragraph number 16 of Plaintiffs' Complaint.

17. GREP admits Plaintiffs entered into an apartment lease contract at Oyster Park and moved into Unit 101. GREP further admits that Plaintiffs alleged Unit 101 had mold and GREP hired a laboratory to perform mold testing at Unit 101. GREP denies the remaining allegations contained in paragraph number 17 of Plaintiffs' Complaint.

18. GREP admits that Pro-Lab performed a mold analysis of Unit 101 on July 10, 2018 and an elevated level of Penicillium/Aspergillus was found. GREP denies the remaining allegations contained in paragraph number 18 of Plaintiffs' Complaint.

19. GREP admits Plaintiffs moved into Unit 102 and alleged they continued to suffer effects from mold. GREP further admits Plaintiffs moved from Oyster Park on or about September 2, 2017 or September 3, 2017. GREP denies the remaining allegations contained in paragraph number 19 of Plaintiffs' Complaint.

20. GREP states that paragraph number 20 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 20 of Plaintiffs' Complaint contains any allegations against GREP, those allegations are denied.

21. GREP states that paragraph number 21 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 21 of Plaintiffs' Complaint contains any allegations against GREP, those allegations are denied.

22. GREP states that paragraph number 22 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 22 of Plaintiffs' Complaint contains any allegations against GREP, those allegations are denied.

FOR A FIRST CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Negligence/Negligence *per se* Violation of the South Carolina Residential Landlord And Tenant Act, Section 27-40-10, *et seq.*, CODE OF LAWS OF SOUTH CAROLINA)

23. GREP restates and reasserts its responses to paragraph numbers 1-22 above as if fully set forth herein.

24. GREP admits the allegations contained in paragraph number 24 of Plaintiffs' Complaint.

25. GREP admits the allegations contained in paragraph number 26 of Plaintiffs' Complaint.

26. GREP states that paragraph number 26 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 26 of Plaintiffs' Complaint contains any allegations against GREP, those allegations are denied.

27. GREP states that paragraph number 27 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 27 of Plaintiffs' Complaint contains any allegations against GREP, those allegations are denied.

28. GREP states that paragraph number 28, including subparts a. through g., of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 28, including subparts a. through g., of Plaintiffs' Complaint contains any allegations against GREP, those allegations are denied.

29. GREP denies the allegations contained in paragraph number 29 of Plaintiffs' Complaint.

30. GREP denies the allegations contained in paragraph number 30 of Plaintiffs' Complaint.

31. GREP denies the allegations contained in paragraph number 31, including subparts a. through j., of Plaintiffs' Complaint.

32. GREP is without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 32 of Plaintiffs' Complaint and, therefore, those allegations are denied.

33. GREP is without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 33 of Plaintiffs' Complaint and, therefore, those allegations are denied.

34. GREP denies the allegations contained in paragraph number 34, including subparts a. through l., of Plaintiffs' Complaint.

35. GREP denies the allegations contained in paragraph number 35 of Plaintiffs' Complaint.

FOR A SECOND CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Negligent Misrepresentation)

36. GREP restates and reasserts its responses to paragraph numbers 1 through 35 of Plaintiffs' Complaint as if fully set forth herein.

37. GREP states that paragraph number 37 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 37 of Plaintiffs' Complaint contains any allegations against GREP, those allegations are denied.

38. GREP states that paragraph number 38 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 38 of Plaintiffs' Complaint contains any allegations against GREP, those allegations are denied.

39. GREP denies the allegations contained in paragraph number 39, including subparts a. through f., of Plaintiffs' Complaint.

40. GREP states that paragraph number 40 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 40 of Plaintiffs' Complaint contains any allegations against GREP, those allegations are denied.

41. GREP states that paragraph number 41 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 41 of Plaintiffs' Complaint contains any allegations against GREP, those allegations are denied.

42. GREP denies the allegations contained in paragraph number 42 of Plaintiffs' Complaint.

43. GREP denies the allegations contained in paragraph number 43 of Plaintiffs' Complaint.

44. GREP states that paragraph number 44 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 44 of Plaintiffs' Complaint contains any allegations against GREP, those allegations are denied.

45. GREP states that paragraph number 45 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 45 of Plaintiffs' Complaint contains any allegations against GREP, those allegations are denied.

46. GREP states that paragraph number 46 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 46 of Plaintiffs' Complaint contains any allegations against GREP, those allegations are denied.

47. GREP denies the allegations contained in paragraph number 47 of Plaintiffs' Complaint.

48. GREP denies the allegations contained in paragraph number 48 of Plaintiffs' Complaint.

49. GREP denies the allegations contained in paragraph number 49 of Plaintiffs' Complaint.

50. GREP denies the allegations contained in paragraph number 50 of Plaintiffs' Complaint.

51. GREP denies the allegations contained in paragraph number 51 of Plaintiffs' Complaint.

52. GREP denies the allegations contained in paragraph number 52 of Plaintiffs' Complaint.

FOR A THIRD CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Fraudulent Misrepresentation/Fraud)

53. GREP restates and reasserts its responses to paragraph numbers 1 through 52 of Plaintiffs' Complaint as if fully set forth herein.

54. GREP denies the allegations contained in paragraph number 54 of Plaintiffs' Complaint.

55. GREP denies the allegations contained in paragraph number 55 of Plaintiffs' Complaint and denies any misrepresentations to Plaintiffs.

56. GREP denies the allegations contained in paragraph number 56 of Plaintiffs' Complaint.

57. GREP denies the allegations contained in paragraph number 57 of Plaintiffs' Complaint.

58. GREP denies that any representations it made to Plaintiffs were false. GREP denies the remaining allegations contained in paragraph number 58 of Plaintiffs' Complaint.

59. GREP denies that any representations it made to Plaintiffs were false. GREP denies the remaining allegations contained in paragraph number 59 of Plaintiffs' Complaint.

60. GREP denies the allegations contained in paragraph number 60 of Plaintiffs' Complaint.

61. GREP denies the allegations contained in paragraph number 61 of Plaintiffs' Complaint.

FOR A FOURTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Unfair Trade Practices Section 9-5-10, *et seq.*,
SOUTH CAROLINA CODE OF LAWS, 1976)

62. GREP restates and reasserts its responses to paragraph numbers 1 through 61 of Plaintiffs' Complaint as if fully set forth herein.

63. GREP states that paragraph number 63 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. GREP further states that South Carolina Code Ann. § 39-5-10(a) speaks for itself. To the extent paragraph number 63 of Plaintiffs' Complaint contains any allegations against GREP, those allegations are denied.

64. GREP states that paragraph number 64 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. GREP further states that South Carolina Code Ann. § 39-5-10(b) speaks for itself. To the extent paragraph number 64 of Plaintiffs' Complaint contains any allegations against GREP, those allegations are denied.

65. GREP denies the allegations contained in paragraph number 65 of Plaintiffs' Complaint.

66. GREP denies the allegations contained in paragraph number 66 of Plaintiffs' Complaint.

67. GREP denies the allegations contained in paragraph number 67 of Plaintiffs' Complaint.

68. GREP states that paragraph number 68 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 68 of Plaintiffs' Complaint contains any allegations against GREP, those allegations are denied.

69. GREP denies any conduct in violation of the South Carolina Unfair Trade Practices Act. GREP denies the allegations contained in paragraph number 69 of Plaintiffs' Complaint.

70. GREP denies the allegations contained in paragraph number 70 of Plaintiffs' Complaint.

FOR A FIFTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Civil Conspiracy)

71. GREP restates and reasserts its responses to paragraph numbers 1 through 70 of Plaintiffs' Complaint as if fully set forth herein.

72. GREP denies the allegations contained in paragraph number 72 of Plaintiffs' Complaint.

73. GREP denies the allegations contained in paragraph number 73 of Plaintiffs' Complaint.

74. GREP denies the allegations contained in paragraph number 74, including the *ad damnum* clause, of Plaintiffs' Complaint.

75. To the extent any allegation contained in Plaintiff's Complaint is not specifically, admitted, or explained, it is denied.

FOR A SECOND DEFENSE

76. GREP reserves the right to seek a change of venue, if appropriate, based upon the applicable statutes, the convenience of witnesses, and the ends of justice.

FOR A THIRD DEFENSE

77. Plaintiffs' claims against GREP should be dismissed because Plaintiffs have failed to state a cause of action under Rule 12(b)(6), SCRCP, against GREP upon which relief can be granted.

FOR A FOURTH DEFENSE

78. GREP reserves the right to seek a change of venue, if appropriate, based upon the applicable statutes, the convenience of the witnesses, and the ends of justice.

FOR A FIFTH DEFENSE

79. GREP reserves the right to assert claims for contribution, indemnity, and subrogation against any party or a party not named in this action.

FOR A SIXTH DEFENSE

80. GREP asserts and relies upon any and all defenses or benefit codified in South Carolina Code Ann. § 15-38-15 *et. seq.* including the right to have the jury apportion fault among any other party whether or not named.

FOR A SEVENTH DEFENSE

81. Plaintiffs' claims against GREP should be dismissed because no action or inaction by GREP was the actual or proximate cause of Plaintiffs' alleged damages.

FOR AN EIGHTH DEFENSE

82. Plaintiffs' claims against GREP should be dismissed due to Plaintiffs' failure to mitigate damages.

FOR A NINTH DEFENSE

83. Plaintiffs' claims against GREP should be dismissed because of Plaintiffs' failure to mitigate damages.

FOR A TENTH DEFENSE

84. Plaintiffs' claims against GREP are barred or in the alternative reduced due to Plaintiffs' comparative negligence.

FOR AN ELEVENTH DEFENSE

85. Plaintiffs' claims against GREP may be barred by the doctrines of waiver, estoppel, laches, and/or release.

FOR A TWELFTH DEFENSE

86. Any alleged damages claimed by Plaintiffs, which GREP denies, were solely due to, resulted from, and caused by the negligence, carelessness, recklessness, willfulness, and wantonness of third parties other than GREP and which GREP had no control.

FOR A THIRTEENTH DEFENSE

87. Plaintiffs' Complaint against GREP should be dismissed pursuant to Rule 12(b)(7), SCRCP, because Plaintiffs failed to join a necessary party to this litigation as required by Rule 19, SCRCP.

FOR A FOURTEENTH DEFENSE

88. Plaintiffs' claims against GREP should be dismissed because Plaintiffs knew or should have known of any alleged deficiencies at the property and avoided the problem as they would have been open and obvious and not hidden.

FOR A FIFTEENTH DEFENSE

89. Plaintiffs' claims against GREP should be dismissed because Plaintiffs gave GREP no notice or request to act specifying any acts or omissions by GREP.

FOR A SIXTEENTH DEFENSE

90. Plaintiffs' claims against GREP should be dismissed because Plaintiffs' alleged damages, if any, are the direct and proximate result of intervening and superseding acts of third-parties not affiliated with GREP and not under GREP's control.

FOR A SEVENTEENTH DEFENSE

91. GREP alleges that any recovery by Plaintiffs must be set off or reduced, abated, or apportioned to the extent any other party's actions caused or contributed to damages, if any.

FOR AN EIGHTEENTH DEFENSE

92. Plaintiffs' claims against GREP should be dismissed because any alleged act or omission by GREP was not the cause-in-fact or proximate cause of Plaintiffs' alleged injuries.

FOR A NINETEENTH DEFENSE

93. Plaintiffs' claims against GREP should be dismissed because any damages alleged by Plaintiffs were the result of acts or omissions of other parties, named and unnamed in this action, for which GREP bears no responsibility.

FOR A TWENTIETH DEFENSE

94. Plaintiffs' claims against GREP should be dismissed pursuant to the South Carolina Landlord/Tenant Act.

FOR A TWENTY-FIRST DEFENSE

95. Plaintiffs' claims against GREP should be dismissed because, to the extent Plaintiffs seek recovery based upon the lease agreement, Plaintiffs materially breached the terms and conditions of said agreement and are not entitled to relieve under the agreement.

FOR A TWENTY-SECOND DEFENSE

96. Plaintiffs' claims against GREP should be dismissed because any and all repairs GREP may have provided met all property management industry customs, practices, and standards applicable to Plaintiffs' claims.

FOR A TWENTY-THIRD DEFENSE

97. GREP states Plaintiffs were obligated to provide appropriate climate control, keep the apartment clean, and take other measures to retard and prevent mold and mildew from accumulating in the apartment. If Plaintiffs failed to do so, then such is the direct and proximate cause of the damage allegedly suffered by Plaintiffs and therefore constitutes a complete defense to the claims of Plaintiffs.

FOR A TWENTY-FOURTH DEFENSE

98. Plaintiffs' claims against GREP should be dismissed because GREP relied upon information provide to it by Plaintiffs which, if true, may justify the decisions made and GREP cannot be held responsible.

FOR A TWENTY-FIFTH DEFENSE

99. Plaintiffs are not entitled to punitive damages because Plaintiffs' claims for punitive damages and any award of punitive damages would violate the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and due process clause of Article I, Section 3 of the South Carolina Constitution.

FOR A TWENTY-SIXTH DEFENSE

100. Discovery has not yet taken place, and there may be facts that give rise to defenses of which GREP is not currently aware. Dewberry therefore reserves the right to amend and assert affirmative defenses as provided by the South Carolina Rules of Civil Procedure, and for these reasons, among others, GREP may have no liability to Plaintiffs.

WHEREFORE, having fully answered Plaintiff's Complaint, and having set forth affirmative defenses, defendant GREP respectfully requests that Plaintiffs' Complaint against GREP be dismissed, that Plaintiffs have and recover nothing of GREP, that all costs of this action be taxed against Plaintiffs, that GREP be dismissed with prejudice from this ca

se, and that this case be heard by a jury of twelve (12), and that GREP be awarded such other and further relief as this Court deems just and appropriate.

JURY TRIAL DEMANDED

This the 31st day of October, 2018.

GOWER, WOOTEN & DARNEILLE, LLC

J. Timothy Wooten (S.C. Bar No.: 71717)
Jamie Ackerman (S.C. Bar No.: 72427)
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Attorneys for Defendant GREP

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Karolina Richardson and Krista Richardson, Plaintiffs, v. Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC, Defendants. Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC, Third-Party Plaintiffs, v. J.A. Croson LLC and LandSouth Construction, LLC, Third-Party Defendant.	)	IN THE COURT OF COMMON PLEAS C.A. NO.: 2018-CP-10-03286 **DEFENDANTS' MOTION TO AMEND ANSWER AND ASSERT THIRD-PARTY CLAIMS** ***(Jury Trial Demanded)***

FILED
2019 JUN 21 PM 1:53
JULIE J. ARMSTRONG
CLERK OF COURT

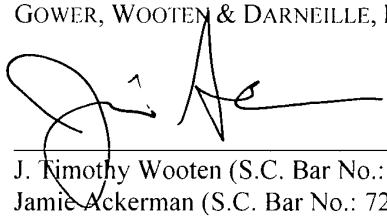
COME NOW Defendants Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC (hereinafter referred to collectively as "Defendants"), and pursuant to South Carolina Rule of Civil Procedure 14(a) and 15, hereby jointly file this motion to amend their Answers to assert a third-party claim against LandSouth Construction, LLC and J.A. Croson LLC. The basis of this motion is that LandSouth Construction, LLC and J.A. Croson LLC, upon information and belief, provided services and/or materials in connection with the construction of the apartment complex at issue in this lawsuit, and LandSouth Construction, LLC and J.A. Croson LLC may be liable to Defendants for all or part of the Plaintiffs' claims against Defendants. Defendants are informed and believe that their request to amend their Answers would not prejudice the interest of the Plaintiffs,

and that such amendment is required and in the interest of justice. The Proposed Amended Answer and Third-Party Summons and Complaint is attached hereto as Exhibit "A."

Based upon the foregoing, the applicable case law, the South Carolina Rules of Civil Procedure, and such other documents and evidence as may be presented to the Court at or prior to a hearing on this motion, Defendants respectfully request this Court issue an Order allowing Defendants to amend their Answers and assert third-part claims against LandSouth Construction, LLC and J.A. Croson LLC, and for such other relief as this Court deems just and proper.

Respectfully submitted this the 20th day of June, 2019.

GOWER, WOOTEN & DARNEILLE, LLC



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Attorneys for Defendants/Third-Party Plaintiffs

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Karolina Richardson and Krista Richardson, Plaintiffs, v. Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC, Defendants.	)	IN THE COURT OF COMMON PLEAS C.A. NO.: 2018-CP-10-03286 ***PROPOSED*** **AMENDED ANSWER OF DEFENDANTS AND THIRD-PARTY COMPLAINT AGAINST LANDSOUTH CONSTRUCTION, LLC AND J.A. CROSON LLC** ***(Jury Trial Demanded)***
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC, Third-Party Plaintiffs, v. J.A. Croson LLC, and LandSouth Construction, LLC, Third-Party Defendant.	)	

Defendants Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC (hereinafter referred to collectively as "Defendants"), having previously filed individual answers to the Complaint in this matter, hereby jointly file their amended answer to the Complaint and assert a Third-Party Complaint as to LandSouth Construction, LLC, and J.A. Croson LLC as follows:

FOR A FIRST DEFENSE

PARTIES

1. Defendants are without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 1 of Plaintiffs' Complaint, and therefore those allegations are denied.

2. Defendants are without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 2 of Plaintiffs' Complaint, and therefore those allegations are denied.

3. Defendant Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments (hereinafter referred to as "Mt. Pleasant Square"), admits it is a corporation organized under the laws of Georgia, that its principal place of business is in Georgia, and that it is qualified to conduct business in South Carolina. To the extent paragraph number 3 of Plaintiffs' Complaint contains any further allegations, those allegations are denied.

4. Defendant Dewberry Capital Corporation (hereinafter referred to as "Dewberry"), admits that it is a corporation organized under the laws of Georgia, that its principal place of business is in Georgia, and that it is qualified to conduct business in South Carolina. To the extent paragraph number 4 of Plaintiffs' Complaint contains any further allegations, those allegations are denied.

5. Defendant GREP Southeast, LLC (hereinafter referred to as "GREP"), which was substituted into this case as a party in place of the original defendants Greystar Management Services, LP, and Greystar Real Estate Partners, LLC, is a corporation organized under the laws of Delaware, and is qualified to conduct business in South Carolina. To the extent paragraph number 5 of Plaintiffs' Complaint contains any further allegations, those allegations are denied.

6. Defendant GREP Southeast, LLC, which was substituted into this case as a party in place of the original defendants Greystar Management Services, LP, and Greystar Real Estate Partners, LLC, is a corporation organized under the laws of Delaware, and is qualified to conduct business in South Carolina. To the extent paragraph number 6 of Plaintiffs' Complaint contains any further allegations, those allegations are denied.

JURISDICTION AND VENUE

7. Defendants deny the allegations contained in paragraph number 7 of Plaintiffs' Complaint.

8. Defendants deny the allegations contained in paragraph number 8 of Plaintiffs' Complaint.

9. Defendants deny the allegations contained in paragraph number 9 of Plaintiffs' Complaint.

FACTUAL BACKGROUND

10. Defendants admit the allegations contained in paragraph number 10 of Plaintiffs' Complaint.

11. Defendants admit the allegations contained in paragraph number 11 of Plaintiffs' Complaint.

12. Defendants admit the allegations contained in paragraph number 12 of Plaintiff's Complaint.

13. In response to paragraph 13 of Plaintiffs' Complaint, Defendant GREP Southeast, LLC, which was substituted into this case as a party in place of the original defendants Greystar Management Services, LP, and Greystar Real Estate Partners, LLC, admits it was the property manager of Oyster Park.

14. Defendants state that paragraph number 14 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 14 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

15. Defendants admit the allegations contained in paragraph number 15 of Plaintiffs' Complaint.

16. Defendants are without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 16 of Plaintiffs' Complaint, and therefore those allegations are denied.

17. Defendants are without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 17 of Plaintiffs' Complaint, and therefore those allegations are denied.

18. Defendants are without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 18 of Plaintiffs' Complaint, and therefore those allegations are denied.

19. Defendants are without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 19 of Plaintiffs' Complaint, and therefore those allegations are denied.

20. Defendants state that paragraph number 20 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 20 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

21. Defendants state that paragraph number 21 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 21 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

22. Defendants state that paragraph number 22 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 22 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

FOR A FIRST CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Negligence/Negligence *per se* Violation of the South Carolina Residential Landlord And Tenant Act, Section 27-40-10, *et seq.*, CODE OF LAWS OF SOUTH CAROLINA)

23. Defendants restate and reasserts its responses to paragraph numbers 1-22 above as if fully set forth herein.

24. Defendants deny the allegations contained in paragraph number 24 of Plaintiffs' Complaint.

25. Defendants are without knowledge or information sufficient to form an opinion about the truthfulness of the allegations contained in paragraph number 25 of Plaintiffs' Complaint, and therefore those allegations are denied.

26. Defendants state that paragraph number 26 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 26 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

27. Defendants state that paragraph number 27 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 27 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

28. Defendants state that paragraph number 28, including subparts a. through g., of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 28, including subparts a. through g., of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

29. Defendants state that paragraph number 29 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 29 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

30. Defendants state that paragraph number 30 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 30 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

31. Defendants state that paragraph number 31, including subparts a. through j., of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 22, including subparts a. through j., of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

32. Defendants state that paragraph number 32 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 32 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

33. Defendants state that paragraph number 33 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 33 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

34. Defendants state that paragraph number 34, including subparts a. through l., of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number

34, including subparts a. through l., of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

35. Defendants state that paragraph number 35 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 35 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

FOR A SECOND CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Negligent Misrepresentation)

36. Defendants restate and reasserts its responses to paragraph numbers 1 through 35 of Plaintiffs' Complaint as if fully set forth herein.

37. Defendants state that paragraph number 37 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 37 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

38. Defendants state that paragraph number 38 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 38 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

39. Defendants state that paragraph number 39, including subparts a. through f., of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 39, including subparts a. through f., of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

40. Defendants state that paragraph number 40 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 40 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

41. Defendants state that paragraph number 41 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 41 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

42. Defendants state that paragraph number 42 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 42 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

43. Defendants state that paragraph number 43 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 43 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

44. Defendants state that paragraph number 44 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 44 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

45. Defendants state that paragraph number 45 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 45 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

46. Defendants state that paragraph number 46 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 46 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

47. Defendants state that paragraph number 47 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 47 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

48. Defendants state that paragraph number 48 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 48 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

49. Defendants state that paragraph number 49 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 49 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

50. Defendants state that paragraph number 50 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 50 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

51. Defendants state that paragraph number 51 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 51 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

52. Defendants state that paragraph number 52 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 52 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

FOR A THIRD CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Fraudulent Misrepresentation/Fraud)

53. Defendants restate and reasserts its responses to paragraph numbers 1 through 52 of Plaintiffs' Complaint as if fully set forth herein.

54. Defendants state that paragraph number 54 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 54 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

55. Defendants state that paragraph number 55 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 55 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

56. Defendants state that paragraph number 56 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 56 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

57. Defendants state that paragraph number 57 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 57 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

58. Defendants state that paragraph number 58 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 58 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

59. Defendants state that paragraph number 59 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 59 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

60. Defendants state that paragraph number 60 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 60 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

61. Defendants state that paragraph number 61 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 61 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

FOR A FOURTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Unfair Trade Practices Section 9-5-10, *et seq.*,
SOUTH CAROLINA CODE OF LAWS, 1976)

62. Defendants restate and reasserts its responses to paragraph numbers 1 through 61 of Plaintiffs' Complaint as if fully set forth herein.

63. Defendants state that paragraph number 63 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 63 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

64. Defendants state that paragraph number 64 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 64 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

65. Defendants state that paragraph number 65 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 65 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

66. Defendants state that paragraph number 66 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 66 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

67. Defendants state that paragraph number 67 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 67 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

68. Defendants state that paragraph number 68 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 68 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

69. Defendants state that paragraph number 69 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 69 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

70. Defendants state that paragraph number 70 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 70 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

FOR A FIFTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Civil Conspiracy)

71. Defendants restate and reasserts its responses to paragraph numbers 1 through 70 of Plaintiffs' Complaint as if fully set forth herein.

72. Defendants deny the allegations set forth in paragraph number 72 of Plaintiffs' Complaint.

73. Defendants state that paragraph number 73 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 73 of Plaintiffs' Complaint contains any allegations against Defendants, those allegations are denied.

74. Defendants state that paragraph number 74 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent paragraph number 74 of Plaintiffs' Complaint

contains any allegations against Defendants, those allegations are denied. Defendants deny the *ad damnum* clause contained in paragraph number 74 of Plaintiffs' Complaint.

75. To the extent any allegation contained in Plaintiff's Complaint is not specifically, admitted, or explained, it is denied.

FOR A SECOND DEFENSE

76. Defendants reserve the right to seek a change of venue, if appropriate, based upon the applicable statutes, the convenience of witnesses, and the ends of justice.

FOR A THIRD DEFENSE

77. Plaintiffs' claims against Defendants should be dismissed because Plaintiffs have failed to state a cause of action under Rule 12(b)(6), SCRCP, against Defendants upon which relief can be granted.

FOR A FOURTH DEFENSE

78. Defendants reserve the right to seek a change of venue, if appropriate, based upon the applicable statutes, the convenience of the witnesses, and the ends of justice.

FOR A FIFTH DEFENSE

79. Defendants reserve the right to assert claims for contribution, indemnity, and subrogation against any party or a party not named in this action.

FOR A SIXTH DEFENSE

80. Defendants assert and relie upon any and all defenses or benefit codified in South Carolina Code Ann. § 15-38-15 *et. seq.* including the right to have the jury apportion fault among any other party whether or not named.

FOR A SEVENTH DEFENSE

81. Plaintiffs' claims against Defendants should be dismissed because no action or inaction by Defendants were the actual or proximate cause of Plaintiffs' alleged damages.

FOR AN EIGHTH DEFENSE

82. Plaintiffs' claims against Defendants should be dismissed due to Plaintiffs' failure to mitigate damages.

FOR A NINTH DEFENSE

83. Plaintiffs' claims against Defendants should be dismissed because of Plaintiffs' failure to mitigate damages.

FOR A TENTH DEFENSE

84. Plaintiffs' claims against Defendants are barred or in the alternative reduced due to Plaintiffs' comparative negligence.

FOR AN ELEVENTH DEFENSE

85. Plaintiffs' claims against Defendants may be barred by the doctrines of waiver, estoppel, laches, and/or release.

FOR A TWELFTH DEFENSE

86. Any alleged damages claimed by Plaintiffs, which Defendants deny, were solely due to, resulted from, and caused by the negligence, carelessness, recklessness, willfulness, and wantonness of third parties other than Defendants and which Defendants had no control.

FOR A THIRTEENTH DEFENSE

87. Plaintiffs' Complaint against Defendants should be dismissed pursuant to Rule 12(b)(7), SCRCP, because Plaintiffs failed to join a necessary party to this litigation as required by Rule 19, SCRCP.

FOR A FOURTEENTH DEFENSE

88. Plaintiffs' claims against Defendants should be dismissed because Plaintiffs knew or should have known of any alleged deficiencies at the property and avoided the problem as they would have been open and obvious and not hidden.

FOR A FIFTEENTH DEFENSE

89. Plaintiffs' claims against Defendants should be dismissed because Plaintiffs gave Defendants no notice or request to act specifying any acts or omissions by Defendants.

FOR A SIXTEENTH DEFENSE

90. Plaintiffs' claims against Defendants should be dismissed because Plaintiffs' alleged damages, if any, are the direct and proximate result of intervening and superseding acts of third-parties not affiliated with Defendants and not under Defendants' control.

FOR A SEVENTEENTH DEFENSE

91. Defendants alleges that any recovery by Plaintiffs must be set off or reduced, abated, or apportioned to the extent any other party's actions caused or contributed to damages, if any.

FOR A EIGHTEENTH DEFENSE

92. Plaintiffs' claims against Defendants should be dismissed because any alleged act or omission by Defendants were not the cause-in-fact or proximate cause of Plaintiffs' alleged injuries.

FOR A NINETEENTH DEFENSE

93. Plaintiffs' claims against Defendants should be dismissed because any damages alleged by Plaintiffs were the result of acts or omissions of other parties, named and unnamed in this action, for which Defendants bear no responsibility.

FOR A TWENTIETH DEFENSE

94. Plaintiffs' claims against Defendants should be dismissed pursuant to the South Carolina Landlord/Tenant Act.

FOR A TWENTY-FIRST DEFENSE

95. Plaintiffs' claims against Defendants should be dismissed because, to the extent Plaintiffs seek recovery based upon the lease agreement, Plaintiffs materially breached the terms and conditions of said agreement and are not entitled to relieve under the agreement.

FOR A TWENTY-SECOND DEFENSE

96. Plaintiffs' claims against Defendants should be dismissed because any and all repairs Defendants may have provided met all property management industry customs, practices, and standards applicable to Plaintiffs' claims.

FOR A TWENTY-THIRD DEFENSE

97. Defendants state Plaintiffs were obligated to provide appropriate climate control, keep the apartment clean, and take other measures to retard and prevent mold and mildew from accumulating in the apartment. If Plaintiffs failed to do so, then such is the direct and proximate cause of the damage allegedly suffered by Plaintiffs and therefore constitutes a complete defense to the claims of Plaintiffs.

FOR A TWENTY-FOURTH DEFENSE

98. Plaintiffs' claims against Defendants should be dismissed because Defendants relied upon information provide to it by Plaintiffs which, if true, may justify the decisions made and Defendants cannot be held responsible.

FOR A TWENTY-FIFTH DEFENSE

99. Plaintiffs are not entitled to punitive damages because Plaintiffs' claims for punitive damages and any award of punitive damages would violate the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and due process clause of Article I, Section 3 of the South Carolina Constitution.

FOR A TWENTY-SIXTH DEFENSE

100. Discovery has not yet taken place, and there may be facts that give rise to defenses of which Defendants are not currently aware. Defendants therefore reserves the right to amend and assert affirmative defenses as provided by the South Carolina Rules of Civil Procedure, and for these reasons, among others, Defendants may have no liability to Plaintiffs.

FOR A TWENTY-SEVENTH DEFENSE AND BY WAY OF THIRD-PARTY COMPLAINT AS TO LANDSOUTH CONSTRUCTION, LLC AND J.A. CROSON LLC

101. Plaintiffs have sued Defendants/Third-Party Plaintiffs claiming damages arising from exposure to mold while living at the Oyster Park Apartments ("the Project"), located in Charleston County, South Carolina. A true and accurate copy of Plaintiffs' Complaint is attached hereto as Exhibit A.

102. On information and belief, the underlying cause of the mold is a construction defect arising from the installation of certain plumbing.

97. Defendants state Plaintiffs were obligated to provide appropriate climate control, keep the apartment clean, and take other measures to retard and prevent mold and mildew from accumulating in the apartment. If Plaintiffs failed to do so, then such is the direct and proximate cause of the damage allegedly suffered by Plaintiffs and therefore constitutes a complete defense to the claims of Plaintiffs.

FOR A TWENTY-FOURTH DEFENSE

98. Plaintiffs' claims against Defendants should be dismissed because Defendants relied upon information provide to it by Plaintiffs which, if true, may justify the decisions made and Defendants cannot be held responsible.

FOR A TWENTY-FIFTH DEFENSE

99. Plaintiffs are not entitled to punitive damages because Plaintiffs' claims for punitive damages and any award of punitive damages would violate the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and due process clause of Article I, Section 3 of the South Carolina Constitution.

FOR A TWENTY-SIXTH DEFENSE

100. Discovery has not yet taken place, and there may be facts that give rise to defenses of which Defendants are not currently aware. Defendants therefore reserves the right to amend and assert affirmative defenses as provided by the South Carolina Rules of Civil Procedure, and for these reasons, among others, Defendants may have no liability to Plaintiffs.

FOR A TWENTY-SEVENTH DEFENSE AND BY WAY OF THIRD-PARTY COMPLAINT AS TO LANDSOUTH CONSTRUCTION, LLC AND J.A. CROSON LLC

101. Plaintiffs have sued Defendants/Third-Party Plaintiffs claiming damages arising from exposure to mold while living at the Oyster Park Apartments ("the Project"), located in Charleston County, South Carolina. A true and accurate copy of Plaintiffs' Complaint is attached hereto as Exhibit A.

102. On information and belief, the underlying cause of the mold is a construction defect arising from the installation of certain plumbing by contractors working on the Project.

103. On information and belief, Third-Party Defendant LandSouth Construction, LLC ("LandSouth") is a limited liability company organized and existing under the laws of the State of Georgia and is registered to do business and does business in the State of South Carolina.

104. On information and belief, Third-Party Defendant J.A. Croson LLC ("Croson") is a limited liability company organized and existing under the laws of the State of Florida and is registered to do business and does business in the State of South Carolina.

105. Third-Party Defendant Croson may be served with the Summons and Third-Party Complaint through its registered agent for service CT Corporation System, 2 Office Park Court, Suite 103, Columbia, South Carolina 29223.

106. Venue for this Third-Party Complaint is proper in this Court.

107. This Court has jurisdiction over this matter and over Third-Party Defendants LandSouth and Croson.

108. Defendant/Third-Party Plaintiff Mt. Pleasant Square entered into an Agreement with LandSouth, as general contractor, to construct buildings at the Project.

109. Third-Party Defendant LandSouth, upon information and belief, entered into a subcontract (hereinafter "the Subcontract") with Third-Party Defendant Croson wherein Croson agreed to provide certain materials and labor for plumbing and HVAC at the Project pursuant to certain terms and conditions set forth in the Agreement.

110. By virtue of Third-Party Defendants LandSouth and Croson's providing services and materials for the Project, a special relationship was created and exists between Defendants/Third-Party Plaintiffs and Third-Party Defendants LandSouth and Croson.

111. Upon information and belief, Plaintiffs' claims against Defendants/Third-Party Plaintiffs arise in whole or in part out of Third-Party Defendants LandSouth and Croson's alleged acts and omissions, including breaches of various duties owed to Defendants/Third-Party Plaintiffs.

112. Defendants/Third-Party Plaintiffs denied responsibility for any alleged damages sustained by Plaintiffs arising out of the alleged incidents set forth in the Complaint. However, to the extent Plaintiff

proves these allegations, then such outcome will be the result of the actions, errors, or omissions of Third-Party Defendants LandSouth and Croson and the breach of their duty of due care, their breach of the contract agreements and/or deviation from plans and specifications, industry standards, manufacturer's installation instructions and/or applicable building codes.

FOR A FIRST CAUSE OF ACTION
(Indemnity as to Third-Party Defendants LandSouth Construction, LLC and J.A. Croson LLC)

113. Defendants/Third-Party Plaintiffs re-allege and incorporate by reference all preceding paragraphs of their Third-Party Complaint as if fully repeated herein verbatim.

114. Third-Party Defendant LandSouth agreed to contractually indemnify and hold Defendant/Third-Party Plaintiff Mt. Pleasant Square and its agents and employees harmless for any and all claims, causes of actions, losses and /or expenses resulting from the performance of LandSouth or any of its subcontractors' work.

115. Third-Party Defendant Croson, on information and belief, agreed to contractually indemnify and hold Defendant/Third-Party Plaintiff Mt. Pleasant Square and its agents and employees harmless for any and all claims, causes of actions, losses and /or expenses resulting from the performance of its work.

116. Third-Party Defendants LandSouth and Croson owe Defendants/Third-Party Plaintiffs indemnity either in contract and/or in equity for any and all damages Defendants/Third-Party Plaintiffs have incurred, and will incur, in the amount of any money it is adjudged to owe to Plaintiffs, or which it may pay Plaintiffs in settlement of the claims, plus the costs and attorneys' fees associated with investigating the claims and defending this action, as well as special and consequential damages, including injury to their business and business reputation.

FOR A SECOND CAUSE OF ACTION
(Negligence as to Third-Party Defendants LandSouth Construction, LLC and J.A. Croson LLC))

117. Defendants/Third-Party Plaintiffs re-allege and incorporate by reference all preceding paragraphs of their Third-Party Complaint as if fully repeated herein verbatim.

118. Third-Party Defendants LandSouth and Croson owed a duty of due care to perform their work on this Project in conformity with the Agreement and Subcontract, plans, specifications, industry standards, applicable building codes and/or manufacturer 's installation instructions.

119. Based on the allegations, Third-Party Defendants LandSouth and Croson's actions, errors, omissions, breaches, or deviations constitute negligence or gross negligence that have caused Defendants/Third-Party Plaintiffs to sustain special damages due to having to incur legal fees, costs, and expenses, and being subject to an adverse judgment as a result of LandSouth and Croson's scopes of work.

120. Based on the allegations, Third-Party Defendants LandSouth and Croson breached a duty of due care owed to Defendants/Third-Party Plaintiffs and have actually and proximately caused Defendants/Third-Party Plaintiffs injuries, damages, or losses for which they are responsible and liable.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract as to Third-Party Defendants LandSouth Construction, LLC and J.A. Croson LLC)

121. Defendants/Third-Party Plaintiffs re-allege and incorporate by reference all preceding paragraphs of their Third-Party Complaint as if fully repeated herein verbatim.

122. Defendant/Third-Party Plaintiff Mt. Pleasant Square entered into the Agreement with LandSouth, as general contractor, to construct buildings at the Project.

123. Defendant/Third-Party Plaintiff Mt. Pleasant Square was an intended third-party beneficiary of the Subcontract entered into between LandSouth and Croson.

124. Pursuant to the terms of the Agreement and Subcontract, Third-Party Defendants LandSouth and Croson agreed to provide certain materials and labor to the Project.

125. Defendant/Third-Party Plaintiff Mt. Pleasant Square satisfied its contractual obligations to LandSouth Construction and Croson within the terms of the Agreement.

126. Third-Party Defendants LandSouth and Croson failed to perform their work in accordance with the Agreement and Subcontract, plans, specifications, industry standards, applicable building codes and/or manufacturer 's installation instructions.

127. As a result of Third-Party Defendants LandSouth and Croson's breach of their contracts, Defendants/Third-Party Plaintiffs have incurred, and will incur, damages in the amount of any money it is adjudged to owe to Plaintiffs, or which it may pay Plaintiffs in settlement of the claims, plus the costs associated with investigating the claims and defending this action, as well as special and consequential damages, including injury to their business and business reputation.

FOR A FOURTH CAUSE OF ACTION
(Breach of Warranty as to Third-Party Defendants LandSouth Construction, LLC and J.A. Croson LLC)

128. Defendants/Third-Party Plaintiffs re-allege and incorporate by reference all preceding paragraphs of their Third-Party Complaint as if fully repeated herein verbatim.

129. Third-Party Defendants LandSouth and Croson entered into the Agreement containing express warranty provisions.

130. Third-Party Defendants Croson, on information and belief entered into the Subcontract containing express warranty provisions.

131. Additionally, an implied warranty of workmanlike service exists under South Carolina law pursuant to which Third-Party Defendants LandSouth and Croson are responsible to perform their work.

132. Third-Party Defendants LandSouth and Croson have breached these express and implied warranties to Defendants/Third-Party Plaintiffs, thus actually and proximately causing injury, special damages, loss or damages to Defendants/Third-Party Plaintiffs for which LandSouth and Croson, are responsible and liable.

WHEREFORE, having fully answered the Complaint asserted by Plaintiffs, these Defendants/Third-Party Plaintiffs demand that the Complaint be dismissed with costs and attorney's fees

and it further prays that the Court award Defendants/Third-Party Plaintiffs their damages, including special and consequential damages, on its Third-Party Complaint against Third-Party Defendants LandSouth and Croson, including but not limited to, the amount of any settlement or judgment to Plaintiff by Defendants/Third-Party Plaintiffs and their attorney's fees and costs incurred as a result of this action, as well as special and consequential damages, and further requiring Third-Party Defendants LandSouth and Croson to fully indemnify Defendants/Third-Party Plaintiffs against all losses and expenses incurred as a result of Plaintiffs' claims, and for such other and further relief as the Court deems just and proper

Dated this the ___ day of June, 2019.

Respectfully submitted,

GOWER, WOOTEN & DARNEILLE, LLC

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EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2018-CP-10-_____
Karolina Richardson and Krista Richardson,	)	
	)	
Plaintiffs,	)	
	)	**COMPLAINT**
v.	)	
	)	**(JURY TRIAL DEMANDED)**
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, Greystar Management Services, L.P., and Greystar Real Estate Partners, LLC,	)	
	)	
Defendants.	)	

FILED
2018 JUN 27 PM 12: 12
JULIE J. ARMSTRONG
CLERK OF COURT

Plaintiffs, Karolina Richardson and Krista Richardson (hereinafter as "the Richardsons" or "Plaintiffs"), complaining of Defendants, Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, Greystar Management Services, L.P., and Greystar Real Estate Partners, LLC (hereinafter together as "Defendants") would respectfully show the Court as follows:

PARTIES

1. Plaintiff Karolina Richardson is a citizen and resident of Charleston County, South Carolina and is the mother of Krista Richardson.

2. Plaintiff Krista Richardson is a citizen and resident of Charleston County, South Carolina.

3. That, upon information and belief, Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, is a limited liability company organized and existing pursuant to the laws of the State of Georgia and owns property and transacts business in Charleston County, South Carolina. Additionally, upon information and belief, at least one member of this LLC is a South Carolina entity.

4. That, upon information and belief, Dewberry Capital Corporation is a corporation organized and existing pursuant to the laws of Georgia and owns property and transacts business in South Carolina.

5. That, upon information and belief, Greystar Management Services, L.P. is a Limited Partnership organized and existing pursuant to the laws of the State of Delaware and owns property and transacts business in South Carolina. Additionally, upon information and belief, at least one partner of this Limited Partnership is a South Carolina entity.

6. That, upon information and belief, Greystar Real Estate Partners, LLC, is a limited liability company organized and existing pursuant to the laws of Delaware and owns property and transacts business in Charleston County, South Carolina. Additionally, upon information and belief, at least one member of this LLC is a South Carolina entity.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject of this action.

8. This Court has personal jurisdiction over all parties named in this action.

9. Venue in this matter is proper in this Court because the events, acts, actions and incidences complained of herein all took place in Charleston County, South Carolina.

FACTUAL BACKGROUND

10. Oyster Park Apartments (hereinafter referred to as "Oyster Park") is an apartment complex located at 1421 Shucker Circle, in Mount Pleasant, South Carolina.

11. Upon information and belief, Dewberry Capital Corporation constructed and/or developed Oyster Park.

12. Dewberry Capital Corporation sold Oyster Park to Mt. Pleasant Square Associates, II, LLC, the current owner.

13. Upon information and belief, Greystar Management Services, L.P., and/or Greystar Real Estate Partners, LLC is the property manager of Oyster Park.

14. That, upon information and belief, Defendants are, and at all times relative hereto were, a residential landlord within the meaning of S.C. Code Ann. §27-40-210(6), CODE OF LAWS OF SOUTH CAROINA.

15. That, upon information and belief, Defendants are in the business of developing, constructing, owning, leasing and managing apartments.

16. On May 17, 2017 the Richardsons entered into an Apartment Lease Contract with an entity listed as "Oyster Park" for the rental of Unit 104. The Richardsons moved into unit 104, however, very shortly thereafter were forced to move apartments because Unit 104 flooded.

17. On May 26, 2017 the Richardsons entered into an Apartment Lease Contract with an entity listed as "Oyster Park" for the rental of Unit 101. This unit contained extensive mold in various areas in the apartment. The Defendants were repeatedly notified of the mold and the impact it was having on the Richardsons' health. After multiple demands to do so, Defendants hired a lab to perform mold testing on the apartment.

18. On July 10, 2017 Pro-Lab performed a mold analysis of Unit 101 and the surrounding area. The mold test found significantly elevated levels of mold, specifically Penicilium/Aspergillus.

19. In July, the Richardsons moved to a third apartment, Unit 102, however, continued to suffer the effects of mold in the Oyster Park apartment community. Finally, as a result of their ongoing significant health issues caused by the continuous mold exposure, the Richardsons moved out of Oyster Park on September 2nd -3rd , 2017.

20. As a direct and proximate consequence of the presence of excessive, unreasonable and dangerous levels of the mold concentration in the apartments, Plaintiffs developed and contracted toxic mold disease, among other things, and have undergone numerous medical treatments.

21. That as a direct and proximate consequence of the presence of excessive, unreasonable and dangerous levels of the mold concentration in the apartments, Plaintiffs developed and contracted asthma, chronic rhinitis, migraines, and sinusitis.

22. That to date, Plaintiffs continue to suffer from these ailments and continue to require medical treatment.

FOR A FIRST CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Negligence/Negligence *per se*
Violation of the South Carolina Residential Landlord Tenant Act,
Section 27-40-10, *et. seq.*, CODE OF LAWS OF SOUTH CAROLINA)

23. That each and every allegation set forth in Paragraph 1 through Paragraph 22 hereinabove is incorporated herein as if fully set forth herein verbatim.

24. That, upon information and belief, the relationship among Plaintiffs and Defendants at all times from May 17, 2017 – September 3, 2017 was that of landlord-tenant.

25. That at all times relative hereto, Plaintiffs were lawful occupants of the Apartments.

26. That at all times relative hereto, Defendants as builders, owners, landlords and property managers, had a special relationship with Plaintiffs as tenants, which gave rise to a duty to protect them against unreasonable risk of physical harm.

27. That all duties owed by Defendants, as builders, owners, landlord and property manager, to Plaintiffs, as tenants, arose from common law and pursuant to the South Carolina

Residential Landlord Tenant Act, Section 27-40-10, et. seq., CODE OF LAWS OF SOUTH CAROLINA.

28. That at all times relative hereto, Defendants owed Plaintiffs the following duties:

a. A duty to comply with the requirements of applicable building and housing codes materially affecting health and safety, pursuant to Section 27-440(a)(1), CODE OF LAWS OF SOUTH CAROLINA;

b. A duty to make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition, pursuant to Section 27-440(a)(2), CODE OF LAWS OF SOUTH CAROLINA;

c. A duty to warn of hidden dangers of which Defendants knew, should have known, or in the exercise of reasonable inspection of the Apartment could have known;

d. A duty to lease the Apartment in a reasonably safe condition and to give warning of latent or concealed perils;

e. A duty of due care to discover risks and take safety precautions to warn of or eliminate foreseeable risks;

f. A duty of ordinary care to keep the Apartments in a reasonably safe and habitable condition so that Plaintiffs could use them in the ordinary and reasonable way without danger; and

g. A duty to implement reasonable inspection procedures in order to protect their tenants, including Plaintiffs, from foreseeable risks of harm.

29. Defendants breached these duties owed to Plaintiffs in representing to Plaintiffs that the apartments had been eradicated of mold and that the apartments were safe and habitable, when in fact, the apartments contained excessively, unreasonably and dangerously high levels of Aspergillus/Penicillium.

30. Defendants knew or should have known in the exercise of reasonable caution, prevention and inspection that the mold in the apartments was not properly remediated, that further mold inspections needed to be conducted and that their failure to do so created a latent defect in the apartments, which was neither open nor obvious and about which Plaintiffs

assumed no risk, as such an unavoidable latent hazard has no place in an apartment being rented to the unsuspecting public.

31. The actions of Defendants complained of herein constitute negligence, negligence per se, gross negligence, recklessness, willfulness, and wantonness, in the following particulars, to-wit:

a. In failing to maintain the apartments in good order and repair and in a reasonably safe and habitable condition;

b. In failing to exercise reasonable and ordinary care to guard Plaintiffs against foreseeable risks of physical harm to their persons;

c. In failing to protect Plaintiffs against unreasonable risks of physical harm to their person;

d. In failing to do what a reasonable person or entity would have done under the circumstances;

e. In failing to exercise due care to discover risks and take safety precautions to warn of or eliminate foreseeable risks;

f. In failing to keep the apartments in a reasonably safe condition so that Plaintiffs could use it in an ordinary and reasonable manner without danger;

g. In failing to inspect the apartments or to implement regular inspection procedures in order to protect the guests from foreseeable danger;

h. In failing to eliminate foreseeable risks of harm;

i. In failing to warn Plaintiffs of foreseeable danger; and

j. In such other particulars as may be determined through discovery or trial.

32. Plaintiffs had no knowledge of or reason to suspect danger with regard to the mold contained in the apartments.

33. Plaintiffs' exercised ordinary and reasonable care at all times while in the apartments.

34. As a direct and proximate consequence of the presence of excessive, unreasonable and dangerous levels of the mold concentration in the apartments, and the negligent, grossly negligent, willful, wanton, and reckless acts and omission of Defendants, Plaintiffs have been injured and damaged in the following particulars, to-wit:

a. Physical pain;

b. Suffering;

c. Mental anguish;

d. Emotional distress;

e. Permanent impairment of health and bodily efficiency;

f. Loss of enjoyment of life;

g. Substantial expenses for past and future medical services;

h. Loss of wages;

i. Expenses for transportation to and from medical services;

j. Loss of personal property;

k. Potential future loss of earnings; and

l. Such other particulars as may be found through discovery or trial.

35. That as a direct and proximate consequence of Defendants negligent, willful, wanton and gross negligent conduct complained of herein above, Plaintiffs are entitled to actual, consequential and punitive damages and all other relief as deemed proper by the Court.

FOR A SECOND CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Negligent Misrepresentation)

36. That each and every allegation set forth in Paragraph 1 through Paragraph 35 hereinabove is incorporated herein as if fully set forth herein verbatim.

37. That, at all times relative hereto, Defendants were operating by and through their agents and/or employees, who at all times relevant hereto were acting within the course and scope of their respective agency, businesses, professions and/or employment.

38. That, at all times relative hereto, Defendants has a pecuniary interest in Plaintiffs lease of the apartments.

39. That Defendants negligently, willfully, wantonly and grossly negligently made the following incorrect, inaccurate and/or false representations and provided for the following incorrect, inaccurate and/or false information to Plaintiffs at or before the time the Rental Agreement was entered into:

a. That at all times relative hereto, the apartments were and would be free of mold;

b. That at all times relative hereto the apartments were and would be in a reasonably safe condition;

c. That the apartments were and would be free of unreasonable risks of physical harm;

d. That the apartments could be used in the ordinary and reasonable manner without risk of injury;

e. That the apartments were free from defects that might cause injury to Plaintiffs; and

f. That reasonable procedures for inspection of the apartments were and would be in place in order to protect Plaintiffs from harm.

40. That at no time prior to, at the time of or subsequent to the time Plaintiffs entered into the Apartment Lease Contracts did Defendants advise Plaintiffs that the aforementioned representations and information were incorrect, inaccurate and/or false.

41. That, Plaintiffs justifiably relied on upon the information provided by Defendants and the representations made by Defendants as more particularly described herein above.

42. That Defendants failed to exercise reasonable care, diligence and competence in obtaining or communicating the information set forth herein above.

43. That Defendants intended that Plaintiffs rely on the above stated representations and information.

44. That Plaintiffs had a right to assume that the apartments would be free from defects or pollutants that might cause injury to them and members of their family.

45. That Defendants expressly and/or impliedly represented to Plaintiffs at the time of entry into the Apartment Lease Contracts that the apartments were and would be in a reasonable safe and habitable condition and free of mold.

46. That Plaintiffs had a right to rely upon this representation by Defendants as they had a duty to Plaintiffs to ensure that the apartments were in a reasonably safe and habitable condition.

47. That during their residency in the apartments, Plaintiffs were exposed to dangerous mold spores, resulting in serious medical conditions and creation of an unsafe and uninhabitable living condition.

48. That Plaintiffs justifiable reliance upon the representations and information supplied by Defendants as more fully set forth herein above was a substantial factor in their deciding to lease the apartments.

49. That as a direct and proximate consequence of Plaintiffs justified reliance on the misrepresentation and information supplied by Defendants as more fully set forth herein above, on which Plaintiffs justifiably based their decision to lease the apartments, Plaintiffs suffered pecuniary losses as more fully set forth herein above.

50. The Plaintiffs' injuries described herein above were a reasonably expected consequence of Plaintiffs reliance on the information and representations of Defendants described herein.

51. That Plaintiffs' pecuniary losses were a foreseeable risk of harm created by the representations and information provided by Defendants described herein above.

52. That as a direct and proximate consequence of Defendants negligent representations and negligent supplying of inaccurate, incorrect and/or false information, Plaintiffs are entitled to judgment against Defendants in an amount equal to their pecuniary losses caused by thereby.

FOR A THIRD CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Fraudulent Misrepresentations/Fraud)

53. That each and every allegation set forth in Paragraph 1 through 52 hereinabove is incorporated herein as if fully set forth herein verbatim.

54. That the representation made by and the information provided by Defendants described herein above constitute false statements concerning a material fact or facts.

55. That Defendants knew or should have known the representations they made and the information they provided to Plaintiffs were false.

56. That Defendants made the representations and provided the information to induce Plaintiffs to act on the same, to-wit: enter into the Apartment Lease Contracts.

57. That Plaintiffs relied on the representation and information in entering into the Apartment Lease Contracts.

58. That Plaintiffs had no knowledge that the representations made by and the information provided by Defendants were false.

59. That Defendants occupied such a special situation and possessed such means of knowledge as made it their duty to know the truth or the falsity of the representations which they made and the information which they supplied.

60. That as a direct and proximate consequence of Plaintiffs' reliance upon the representations made by and information provided by Defendants in entering into the Apartment Lease Contracts, they were injured in the manner described herein above.

61. That as a direct and proximate consequence of Defendants' fraudulent misrepresentations, Plaintiffs are entitled to judgment against Defendants in an amount equal to their actual and consequential damages proximately caused thereby and for punitive damages in an appropriate amount.

FOR A FOURTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Unfair Trade Practices Section 39-5-10, *et. seq.*,
SOUTH CAROLINA CODE OF LAWS, 1976)

62. That each and every allegation set forth in Paragraph 1 through Paragraph 61 hereinabove is incorporated herein as if fully set forth herein verbatim.

63. That Plaintiffs and Defendants are "persons" within the meaning of Section 39-5-10(a), SOUTH CAROLINA CODE OF LAWS, 1976.

64. That Defendants' actions, by marketing, managing and renting apartments at Oyster Park, constitutes "trade" within the meaning of Section 29-5-10(b), SOUTH CAROLINA CODE OF LAWS, 1976.

65. That Defendants' actions, described hereinabove, constitute unfair and deceptive practices in violation of Section 39-5-20, SOUTH CAROLINA CODE OF LAWS, 1976.

66. The Defendants' unfair and deceptive acts committed while in the course and scope of its trade or business, were the proximate cause of Plaintiffs' injuries described herein.

67. That Defendants' acts are capable of repetition, and, upon information and belief have been repeated.

68. That Defendants' conduct affects the public interest of South Carolina.

69. That Defendants knew, or reasonably should have known, that their conduct violated the South Carolina Unfair Trade Practices Act.

70. That Plaintiffs in their individual capacities are entitled to an award from Defendants of actual and treble damages, together with interest and attorney's fees, pursuant to Section 39-5-140, SOUTH CAROLINA CODE OF LAWS, 1976.

FOR A FIFTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Civil Conspiracy)

71. That each and every allegation set forth in Paragraph 1 through Paragraph 70 hereinabove is incorporated herein as if fully set forth herein verbatim.

72. That various employees and agents of Defendants, acting in concert together concealed the existence of flooding issues, water leaks, water infiltration, plumbing leaks, and other factors which together caused highly dangerous mold to grow in the apartments.

73. That the acts of Defendants' employees and agents caused injuries to the Plaintiffs as described hereinabove.

74. That as a direct and proximate consequence of Defendants' employees and agents acts of civil conspiracy, Plaintiffs have suffered special damages and are entitled to judgment against Defendants in an amount equal to their actual and consequential damages proximately caused thereby and for punitive damages in an appropriate amount.

WHEREFORE, Plaintiffs, having complained of Defendants, pray that they be awarded judgment against the Defendants as follows:

A. In an amount sufficient to compensate Plaintiffs for their injuries and damages as described herein above;

B. Punitive damages in an appropriate amount up to the amount permitted by law;

C. In an amount equal to all costs and attorney fees incurred by Plaintiffs in connection with this action;

D. For trebled damages under Section 39-5-140, SOUTH CAROLINA CODE OF LAWS, 1976;

E. For a trial before a jury on all issues; and

F. For such other and further relief as this Court deems just and proper.

McCULLOUGH KHAN, LLC

Clayton B. McCullough (SC Bar No.: 13722)
359 King Street, Suite 200
Charleston, SC 29401
(843) 937-0400
(843) 937-0706 (fax)
Clay@mklawsc.com

ATTORNEY FOR PLAINTIFFS

6.26, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	C.A. NO.: 2018-CP-10-03286
	)	
Karolina Richardson and Krista Richardson,	)	**AMENDED ANSWER AND THIRD-PARTY COMPLAINT AGAINST J.A. CROSON, LLC**
Plaintiffs,	)	
v.	)	***(Jury Trial Demanded)***
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC,	)	
Defendants.	)	
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC,	)	
Third-Party Plaintiffs,	)	
v.	)	
J.A. Croson, LLC,	)	
Third-Party Defendant.	)	

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Defendants/Third-Party Plaintiffs Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC (hereinafter referred to collectively as "Defendants/Third-Party Plaintiffs"), would respectfully show unto the Court as follows.

1. Defendants/Third-Party Plaintiffs restate and reasserts its previous responses to Plaintiffs' Complaint as if fully set forth herein.

2. Third-Party Defendant J.A. Croson LLC ("Croson") is a limited liability company organized and existing under the laws of the State of Florida and is registered to do business and does business in the State of South Carolina.

3. Third-Party Defendant Croson may be served with the Summons and Complaint through its registered agent for service CT Corporation System, 2 Office Park Court, Suite 103, Columbia, South Carolina 29223.

4. Venue for this Third-Party Complaint is proper in this Court.

5. This Court has jurisdiction over this matter and over Third-Party Defendant Croson and all parties in this action.

6. Dewberry entered into an Agreement with LandSouth Construction, as general contractor, to construct buildings at Oyster Park Apartments ("the Project").

7. LandSouth Construction entered into a subcontract with Third-Party Defendant Croson wherein Third-Party Defendant Croson agreed to provide certain materials and labor for plumbing and HVAC at the Project pursuant to certain terms and conditions set forth in the Agreement.

8. Third-Party Defendant Croson failed to correctly and sufficiently perform its obligations under the Agreement and under its subcontract.

9. Plaintiffs allege certain injuries and damages arising out of a leak that occurred on the subject property (which Defendants/Third-Party Plaintiffs deny).

10. Defendants/Third-Party Plaintiffs have denied responsibility for any alleged damages sustained by Plaintiffs arising out of the alleged incident. However, to the extent Defendants/Third-Party Plaintiffs are found liable for any portion of Plaintiffs' damages at the subject property, Defendants/Third-Party Plaintiffs are informed and believe Third-Party Defendant Croson shall indemnify Defendants/Third-Party Plaintiffs for any such damages.

FOR A FIRST CAUSE OF ACTION AGAINST J.A. CROSON, LLC
BY WAY OF A CROSS CLAIM
(Equitable Indemnity)

11. Defendants/Third-Party Plaintiffs re-allege and incorporate by reference all preceding paragraphs of their Third-Party Complaint as if fully repeated herein verbatim.

12. Plaintiffs allege construction defects at the Project caused their damages (which Defendants deny).

13. Even if Defendants/Third-Party Plaintiffs are deemed at fault or responsible for the Plaintiffs' damages alleged (which is denied), Defendants/Third-Party Plaintiffs did not furnish or install any of the plumbing at the Project, but relied upon Third-Party Defendant Croson's ability to correctly perform the work required of Third-Party Defendant Croson under the contract and subcontract.

14. If and to the extent Plaintiffs' allegations have merit, Defendants/Third-Party Plaintiffs are entitled to indemnification from Third-Party Defendant Croson under principals of equity and because a special relationship exists between Defendants/Third-Party Plaintiffs and Third-Party Defendant Croson under South Carolina law. Defendants/Third-Party Plaintiffs are entitled to recover from Third-Party Defendant Croson (i) all damages that may be awarded to Plaintiffs from Defendants/Third-Party Plaintiffs; (ii) all costs and attorney's fees that Defendants/Third-Party Plaintiffs incur in connection with this action; and (iii) all other damages that may be incurred by Defendants/Third-Party Plaintiffs

FOR A SECOND CAUSE OF ACTION BY WAY OF A CROSS CLAIM
(Negligence against J.A. Croson LLC)

15. Defendants/Third-Party Plaintiffs re-allege and incorporate by reference all preceding paragraphs of their Third-Party Complaint as if fully repeated herein verbatim.

16. Third-Party Defendant Croson owed a duty of due care to perform their work on this Project in conformity with the Agreement and Subcontract, plans, specifications, industry standards, applicable building codes and/or manufacturer 's installation instructions.

17. Upon information and belief, Third-Party Defendant Croson's actions, errors, omissions, breaches, or deviations constitute negligence or gross negligence that is the proximate cause of the Plaintiff's alleged damages and has cause Defendants/Third-Party Plaintiffs to sustain special damages of legal fees, costs, and expenses, and being subject to an adverse judgment as a result of the acts and omission of Crowson in it performance of its work on the Project.

18. Upon information and belief, Third-Party Defendant Croson breached a duty of due care owed to Defendants/Third-Party Plaintiffs and have actually and proximately caused Defendants/Third-Party Plaintiffs injuries, damages, or losses for which they are responsible and liable.

FOR A THIRD CAUSE OF ACTION AGAINST J.A. CROSON, LLC BY WAY OF A CROSS CLAIM
(Breach of Contract)

19. Defendants/Third-Party Plaintiffs re-allege and incorporate by reference all preceding paragraphs of their Third-Party Complaint as if fully repeated herein verbatim.

20. Defendant/Third-Party Plaintiff Dewberry was an intended third-party beneficiary of the subcontract between LandSouth Construction and Third-Party Defendant Croson.

21. The subcontract required Third-Party Defendant Croson to provide certain materials and labor for plumbing at the Project pursuant to certain terms and conditions.

22. Defendant/Third-Party Plaintiff satisfied its contractual obligations to Third-Party Defendant Croson within the subcontract.

23. Third-Party Defendant Croson breached the subcontract by:

a. Failing to provide sufficiently skilled workmen to perform its work;

b. Failing to correct its defective work;

c. Damaging the work of other trade contractors;

d. Failing to perform its work in accordance with the contract documents, plans, and specifications;

e. Failing to perform its work in a workmanlike manner; and

f. In such other and further manners as may be discovered prior to trial.

24. Defendants have incurred actual and consequential damages as a direct and proximate result of Third-Party Defendant Croson's breach of contract, in a manner to be determined at trial.

FOR A FOURTH CAUSE OF ACTION AGAINST J.A. CROSON, LLC
(Breach of Warranty)

25. Defendants/Third-Party Plaintiffs re-allege and incorporate by reference all preceding paragraphs of their Third-Party Complaint as if fully repeated herein verbatim.

26. Third-Party Defendant Croson entered into the Agreement containing express warranty provisions.

27. Third-Party Defendant Croson, on information and belief entered into the subcontract containing express warranty provisions.

28. Additionally, an implied warranty of workmanlike service exists under South Carolina law pursuant to which Third-Party Defendant Croson are responsible to perform their work.

29. Third-Party Defendant Croson has breached these express and implied warranties to Defendants/Third-Party Plaintiffs, thus actually and proximately causing injury, special damages, loss or damages to Defendants/Third-Party Plaintiffs for which Third-Party Defendant Croson is responsible and liable.

WHEREFORE, having fully answered the Complaint asserted by Plaintiffs, these Defendants/Third-Party Plaintiffs demand that the Complaint be dismissed with costs and attorney's fees and it further prays that the Court award Defendants/Third-Party Plaintiffs their damages, including special and consequential damages, on its Amended Answer and Third-Party Complaint, including but not limited to, the amount of any settlement or judgment awarded to Plaintiff by Defendants/Third-Party Plaintiffs in including Defendants/Third-Party Plaintiffs' attorney's fees and costs incurred as a result of this action, as well as special and consequential damages, and further requiring Third-Party Defendants Croson to fully indemnify Defendants/Third-Party Plaintiffs against all losses and expenses incurred as a result of Plaintiffs' claims, and for such other and further relief as the Court deems just and proper

[SIGNATURE ON FOLLOWING PAGE]

Dated this the 30th day of September, 2019.

Respectfully submitted,
GOWER, WOOTEN & DARNEILLE, LLC

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Douglas E. Leadbitter (S.C. Bar No.: 68430)
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ELECTRONICALLY FILED - 2022 Jul 15 2:29 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2018-CP-10-3286
Karolina Richardson and Krista Richardson,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**PLAINTIFFS' MOTION FOR SANCTIONS PURSUANT TO SCRCP 37(b)(2)(C)**
	)	
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, and GREP Southeast, LLC,	)	
	)	
Defendants.	)	

TO: COUNSEL FOR ABOVE-NAMED DEFENDANTS

Karolina and Krista Richardson ("Plaintiffs"), by and through their undersigned counsel, herby submit this consolidated motion for the striking of the answer, pursuant to Rule 37(b)(2)(C) SCRCP, filed on behalf of Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments; Dewberry Capital Corporation; and GREP Southeast, LLC ("Defendants") and to enter Defendants in default, pursuant to Rule 55(a), SCRCP.

ANALYSIS

The law in South Carolina is clear. If a party fails to obey an order to provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment. Rule 37(b)(2)(C), SCRCP.

In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice. *See Laney v. Hefley*, 262 S.C. 54, 202 S.E.2d 12 (1974). Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful

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disobedience or gross indifference to its rights to justify the sanction. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

In *Griffin*, the trial court's decision to strike the defendants' answer was upheld. The appellate court noted, "the record is full of multiple, egregious discovery abuses that blocked the opposing party's attempts to conduct meaningful discovery." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198-99, 511 S.E.2d 716, 719 (Ct. App. 1999). (Emphasis added).

As outlined above, Defendants have continuously blocked Plaintiffs' attempts to conduct meaningful discovery by failing to supplement their responses which required to do so and disregarding an order by this Court. Applying the factors, set forth in *Laney*, supports striking Defendant's Answer and therefore an entry of default.

The precise nature of discovery mirrors the core issue of this case – mold exposure. Plaintiffs have **continually** requested (in letters, phone calls, emails, at depositions) Defendants provide information relating to complaints of mold at Oyster Park. Today, after over three (3) years of discovery, Defendants submitted documentation relating to an additional 50 – 60 mold complaints by residents at Oyster Park.

"A willful act is one done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; this is to say, with bad purpose either to disobey or disregard the law." *Ex Parta Lipscomb*, 398 S.C. 463, 730 S.E.2d 320 (Ct. App. 2012).

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MOTION FOR ATTORNEY FEES AND COSTS

"An award of attorney's fees and costs is within the sound discretion of the trial court and will not be reversed on appeal absent abuse of that discretion." *McMillian v. Morin*, 319 S.C. 331, 461 S.E.2d 43, 45 (1995).

"The six factors to consider in determining an award of attorney fees are: 1) the nature, extent and difficulty of the legal services rendered; 2) the time and labor devoted to the case; 3) the professional standing of counsel; 4) the contingency of compensation; 5) the fee customarily charged in the locality for similar services; and 6) the beneficial results obtained." *LeFurgy v. Long Cove Club Owners Assoc.*, 313 S.C. 555, 443 S.E.2d 577, n4 (Ct. App. 1994). Here, thousands of dollars and hundreds of hours of time was spent in an incomplete and flawed ESI search that was performed after being ordered to do so by the Honorable Court. Defendants clearly blocked a fair and full ESI search since NONE of these 50 plus complaints were included in any of the 15,000 plus ESI responsive materials.

CONCLUSION

Based on the conduct of Defendants, their Pleadings should be struck and an entry of default should be entered. Defendants should be ordered to pay a fair financial sanction based on their conduct. Finally, if the Court determines these are not the appropriate remedies, Plaintiffs request those remedies the Court deems just and proper.

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McCULLOUGH ▪ KHAN ▪ APPEL

s/Clayton B. McCullough
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July 15, 2022
Mount Pleasant, South Carolina

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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2022, I caused the foregoing document to be electronically filed with the Clerk of Court using CM/ECF, which will provide electronic notice of such filing to all counsel of record.

s/Clayton B. McCullough
Clayton B. McCullough

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Karolina Richardson and Krista Richardson, Plaintiffs, v. Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Case No.: 2018-CP-10-03286 **MT. PLEASANT SQUARE ASSOCIATES, II, LLC D/B/A OYSTER PARK APARTMENTS, DEWBERRY CAPITAL CORPORATION, AND GREP SOUTHEAST, LLC'S MOTION IN LIMINE**

DEFENDANTS MT. PLEASANT SQUARE ASSOCIATES, II, LLC D/B/A OYSTER PARK APARTMENTS, DEWBERRY CAPITAL CORPORATION, AND GREP SOUTHEAST, LLC'S TO EXCLUDE EVIDENCE AT TRIAL.

COMES NOW Defendants Mt. Pleasant Square Associates, LLC D/B/A Oyster Park Apartments, Dewberry Capital Corporation, and GREP Southeast, LLC's (collectively "Defendants"), by and through their attorneys, hereby move this Court for an *Order in Limine* Pursuant to Rule 401 of the South Carolina Rules of Evidence, excluding and precluding Plaintiffs and their counsel, and lay and expert witnesses offered by Plaintiffs, from mentioning in the presence of the jury (in their opening statement, closing argument, or otherwise) or introducing evidence (either testimonial or documentary) concerning;

1. Evidence of mold in Oyster Park Apartment units other than Building 1401 including Units: 101, 102, and 104, or any other Oyster Park Apartment Units associated with the Defendants including Plaintiff's proposed Exhibits 14-18 and 19-33.

2. Evidence of mold in units caused by or alleged to be caused by roof leaks or HVAC issues at Oyster Park Apartments including Plaintiff's proposed Exhibits 14-17 and 20-33.

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3. Evidence of negative reviews of Oyster Park Apartments which cannot be connected to a renter including Plaintiff's proposed Exhibit 18.

4. Photographs of mold in Units other than Units lived in by Plaintiff including Plaintiff's proposed Exhibits 19 and 20.

5. Any testimony by Oba Mubarak, Kate Rawlins, and Adam Morrow concerning mold at Oyster Park caused by an event other than a plumbing pipe leak.

6. Evidence of a presumption of mold in other units which was not tested and verified.

7. Evidence regarding settlement discussions or settlements with any Defendant who is a party or witness to this case.

8. Complaints, emails, correspondence, or testimony from other residents unrelated to the units Plaintiffs lived in.

9. Deposition testimony taken by Counsel for dismissed Defendant JA Croson.

10. Documents produced by non-party Landsouth Construction, LLC.

11. Documents produced by non-party JA Croson, LLC.

12. Documents produced by Rimkus Consulting Group, Inc.

13. Deposition testimony by Robert Lewis.

14. Deposition testimony by Richard Stone.

15. The financial income or net worth of any of the defendants.

16. Any evidence of whether the original contractors complied with the applicable laws, rules, and standards.

17. Any testimony regarding original construction.

Rule 401 of the South Carolina Rules of Evidence defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination

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of the action more probable or less probable than it would be without the evidence." Rule 402 states that "[e]evidence which is not relevant is not admissible." Defendants assert that the evidence listed above is factually unconnected and irrelevant to the matter at hand. Defendants do not seek to keep the evidence out merely because it is prejudicial, but to prevent it from being improperly used in this case solely to inflame the passions of the jury.

For the aforementioned reasons, Defendants respectfully request that this Court GRANT Defendants Motion *in Limine* to exclude and preclude Plaintiffs and their counsel, and lay and expert witnesses offered by Plaintiffs, from mentioning in the presence of the jury (in their opening statement, closing argument, or otherwise) or introducing evidence (either testimonial or documentary) requested in items 1 through 5 of this motion.

2022.07.13 Defendants Motion In Limine

ROSS & CRISTALDI, LLC

s/Emily C. Sheets
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Mount Pleasant, South Carolina

July 15, 2022

ELECTRONICALLY FILED - 2022 Jul 17 9:07 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Karolina Richardson and Krista Richardson, Plaintiffs, v. Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Case No.: 2018-CP-10-03286 **MT. PLEASANT SQUARE ASSOCIATES, II, LLC D/B/A OYSTER PARK APARTMENTS, DEWBERRY CAPITAL CORPORATION, AND GREP SOUTHEAST, LLC'S**

DEFENDANTS MT. PLEASANT SQUARE ASSOCIATES, II, LLC D/B/A OYSTER PARK APARTMENTS, DEWBERRY CAPITAL CORPORATION, AND GREP SOUTHEAST, LLC'S MEMORANDUM IN SUPPORT OF MOTION IN LIMINE:

This motion is in support of our motion in limine to keep out any reference to any other units other than Plaintiffs' unit 101, and the two units above theirs.

Background

Oyster Park was built by Landsouth Construction, a Florida based company. The project is owned by Oyster Park, LLC. At the time of this incident, it was managed by defendant GREP Southeast, LLC ("Greystar"). The project was completed and a certificate of occupancy was issued on April 13, 2017.

On May 17, 2017 Plaintiff signed a lease and moved into her first apartment, apartment 104. About 10 days later, there was a very heavy rainstorm and her apartment flooded. The management company offered to move her to a different unit, unit 101, that same day. Shortly thereafter, she complained of mold. Defendants immediately investigated and she was moved to another unit, larger than the original, unit 102 on July 12, 2017. It was determined that a plumbing

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leak on the third floor caused the mold in Plaintiff's apartment. Plaintiff ultimately moved out of the complex in September 2017.

Argument

The issue in this case is or should be very limited and only to Plaintiff's apartment in which the mold was discovered. Defense counsel initially brought in the original plumber, JA Croson, and later tried to bring in Landsouth, but that motion was refused. It was represented to the defense in Court that this was a personal injury case and not a construction defect case. (See attached Exhibit A - transcript of a Court hearing dated November 1, 2021, page 23). Based on that representation, defendants dismissed JA Croson. Plaintiffs claim that "The statute, unfortunately for Dewberry, has run and they have huge construction defect claim that they have allowed to expert. But that has no business in our personal injury claim." See *Id* at, page 27.

Plaintiffs are now trying to make this a construction defect case by attempting to bring in all the moisture intrusion problems from all other buildings and other units unrelated to the underlying claim – a personal injury claim to the Plaintiffs.

The argument is multifaceted. First, if the Plaintiff wanted to sue for construction defects, which it appears that they are trying to do, they could have. Second, this Plaintiff has no standing to sue over damages to any other unit. Third, allowing Plaintiff to bring in evidence of roof leaks or other problems to other units has nothing to do with the alleged damages to the Plaintiff or their units. The Plaintiff is trying to make this case an allegedly "sick" and dangerous group of buildings. However, we are only dealing with one unit.

In support of Plaintiffs' claims, they are arguing that the issues in other units put the defendants on notice of the issues and therefore, the defendants should have addressed the. This

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argument is unfounded because Ms. Richardson was on of the first residents in the complex. Even if defendants had any notice at all of issues of any type whatsoever, prior to Plaintiff's complaints, they had no reason to think they were widespread. This building was brand new, built by a reputable contractor, and defendants had the right to rely on and believe that it was built properly. Nothing short of Ms. Richardson's complaint would have or did put defendants on notice of any type of widespread issue that Plaintiff is claiming.

Further, given the recent accident that occurred, and which was widely reported by the news, allowing the Plaintiff to argue that this is a dangerous building, when the issue is one unit with mold from a pipe leak, is highly prejudicial to the defendants given that most of the jurors probably watch the news and are aware of the incident.

Conclusion

Based on the above, we ask the Court to not allow any testimony about any issues in any other units.

ROSS & CRISTALDI, LLC

s/Jeff. A. Ross
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Attorneys for Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, and GREP Southeast, LLC

Mount Pleasant, South Carolina

July 17, 2022

Exhibit A

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS NONJURY
COUNTY OF CHARLESTON)

KAROLINA RICHARDSON AND KRISTA RICHARDSON,

PLAINTIFFS,

vs.

MT. PLEASANT SQUARE ASSOCIATES, II, LLC D/B/A OYSTER PARK APARTMENTS, DEWBERRY CAPITAL CORPORATION, GREYSTAR MANAGEMENT SERVICES, L.P., AND GREYSTAR REAL ESTATE PARTNERS, LLC,

DEFENDANTS.

TRANSCRIPT OF RECORD

2018-CP-10-3286

November 1st, 2021

B E F O R E:

THE HONORABLE ROGER M. YOUNG, SR., Judge.

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A P P E A R A N C E S:

CLAYTON B. McCULLOUGH
ESQ.
Attorney for the Plaintiffs

KIRKLEY GIBSON WHITE
ESQ.
Attorney for the Defendants Mt. Pleasant Square Associates, II LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, Greystar Real Estate Partners, LLC

JOSHUA A. BENNETT
ESQ.
Attorney for the Third Party Defendant J.A. Croson, LLC

Transcribed by Pamela E. Green, from DCRP, Digital Courtroom Recorder Project

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I N D E X

(WHEREUPON, there were no exhibits marked or testimony taken during this hearing.)

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P R O C E E D I N G S

MS. WHITE: Your Honor, this is Kirkley White. I'm here on behalf of the -- most of the defendants except for Mr. (indiscernible).

We have several motions before Your Honor today. I, I think it makes sense for us to do the motion for summary judgment first and then we can go forward with our alternative motions, which are as -- motion to amend unless Your Honor would like to do this in a different order.

THE COURT: Go right ahead.

MS. WHITE: All right.

UNIDENTIFIED SPEAKER: Judge, this is (indiscernible). In full disclosure, I want to let you know that I also am here and I'm -- just by listening in. So, I didn't -- wanted to let you know that.

Good to see you.

THE COURT: All right.

UNIDENTIFIED SPEAKER: It's been a while.

THE COURT: Thank you.

Go ahead.

MS. WHITE: Well, may it please the Court, Your Honor.

For the record, my name is Kirkley White and I represent Mt. Pleasant Square Associates doing business as Oyster Park Apartments, Dewberry Capital Corporation, and

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GREP Southeast, LLC in this case.

This matter arises out of a personal injury case wherein the plaintiffs are alleging damages due to mold exposure during their time living at Oyster Park Apartments. My clients are collectively the developer, owner, and property managers of Oyster Park Apartments.

As a little bit of background, the Certificate of Occupancy for the building that the plaintiffs lived in was issued in April of 2017. The plaintiffs entered a lease May 17th, 2017, for Unit 104 in the building that they lived in.

They did have some water intrusion due to a rain event in that building about a week and a half after they moved in. It came under the doors. There's no evidence that they were exposed to any mold due to that, and, shortly thereafter, within two days, they were moved into Unit 101.

After they moved into Unit 101, approximately two months later, on July 10th, 2017, Karolina Richardson sent an email at 2:31 in the morning to the property management company stating that they had found mold in the closet where their washers and dryers were. Within 12 hours of that notification, the apartment complex had a mold company, PRO-LAB, come out and test the mold. They moved Ms. Richardson and her daughter into another apartment within two days to get them out of that apartment and, within two

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weeks, they had the apartment remediated, the mold remediated. Thereafter, Ms. Richardson and her daughter refused to move back into Unit 101 and, and here we are today.

The plaintiffs have brought several causes of action today. They've brought a claim for negligence and negligence per se say under the Landlord Tenant Act. Their claim for negligence per se fails on its face because there were no code violation issued. There's no evidence that they violated any building code or any other code that they were required to abide by.

Their claim for negligence, under the South Carolina Landlord Tenant Act, fails on its face as well because, according to the preamble to that act and according to the case law interpreting that act, it was the intent of the Legislature to provide for a cause of action for injuries resulting from the failure of the landlord to act after notice to keep residential premises in repair.

Well, within 12 hours of the notice of the mold in that unit, my clients had put into an action ways to remediate the mold. They had a mold company come out and test within 12 hours. They moved the plaintiffs into another unit and they had it repaired within two weeks.

They've also brought claims for negligent misrepresentation. There's no evidence. There's no

affidavit. There's no deposition testimony. There have been no documents to show that any of my clients made any representations to either of the plaintiffs regarding mold or mold exposure in the apartment complex.

They've also brought a claim under the Unfair Trade Practices Act. There's no evidence to support that whatsoever.

They've brought claims for fraud. They, they have no evidence that there were any fraudulent representations made to any plaintiffs in this case.

And they've also brought a claim for civil conspiracy. There's no evidence that any of our clients did anything to conspire against either Karolina or Krista Richardson.

What there is evidence of is that they put my clients on notice of mold at 2:31 AM on July 10th, and, by 2:00PM on July 10th, my clients put into action a plan to remediate and to address the situation and that is what they're required to do under the Landlord Tenant Act and they've complied with that.

And so there's no evidence, whether it's deposition testimony, documents, anything else, to support any of their causes of action in this case. And, for that reason, we respectfully request that you grant our motion for summary judgment.

THE COURT: Is discovery complete?

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MR. McCULLOUGH: No, sir.

THE COURT: Well, how can I hear a summary judgment motion if discovery's not complete?

MS. WHITE: Well, Your Honor, in plaintiff's memo in opposition to our motions today, they stated that the defendants had completely discovered this case already. And, and so I'm not sure how discovery hasn't been completed.

This case has been going on for three years now. We've had over 12 depositions. We've had numerous discovery exchanges. We've produced every document that we have related to this case.

So, if Mr. McCullough would like to enlighten me on how discovery isn't complete, I'd be happy to hear it. But this case has been going on for three years and, and, so far, we've produced everything that we have.

MR. McCULLOUGH: Well, I -- Kirkley, we both know we had a conversation about open items of discovery. More importantly, a motion to compel that wasn't complied with and we had a conversation about it last week. So I don't believe that's a fair representation of where we are---

MS. WHITE: And it's---

MR. McCULLOUGH: ---at all.

MS. WHITE: And, Your Honor, just a little background on this too.

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Our firm was hired approximately 30 days ago to take over the case. So, what has happened with discovery prior to this date we're still catching up on. But there is an outstanding issue of an ESI discovery that Mr. McCullough wanted.

It was my understanding, and, Mr. McCullough, you can please correct me if I'm incorrect in my understanding of our conversation, that that discovery isn't needed for him to prepare for trial.

THE COURT: What is an ESI?

MR. McCULLOUGH: An electronic search, Your Honor, and, and Clay McCullough here on behalf of the plaintiff.

We have more than sufficient evidence in the record or can be -- I emailed last week. We have several thousand documents and pages of people -- of paper. There are genuine issues of material fact throughout this case that would, that would necessitate, in our opinion, a denial of the motion. But there is an outstanding ESI search request and I want to preference this by saying that Kirkley is right.

They just got into this case. This is the fourth lawyer in the case. And, Your Honor, you might recall we were in front of you I think six weeks ago or two months ago with a different group of lawyers asking for a date certain trial and continuances.

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And, and so what is happened, the first time we were up for trial in 2019, the -- they, they moved to add a, a, a general contractor and a plumber. Judge Jefferson heard that motion, and over our objections, granted their motion to allow an amendment to be filed and a third party complaint to be filed which bought everybody another six months and then they, you know, have, have since swapped lawyers two more times. And so now Jeff and Kirkley are on the case.

And, and, you know, to be blunt, I'm thrilled they're involved, know them well. They're fantastic lawyers. But they got into this 30 days ago and, and this case is three years old.

And so what had happened shortly after -- Your Honor, I'm, I'm, I'm hesitating on how to respond. So, let me -- I can kind of launch into my response on the discovery outstanding or launch into my response on the, on the -- directly on the motion.

Tell me if you're---

THE COURT: Well, why don't we go about the discovery because I can't grant a motion for summary judgment if there's still discovery.

MR. McCULLOUGH: So, Your Honor -- yes, sir.

THE COURT: That's pretty basic.

MR. McCULLOUGH: Yes, sir.

So, what happened was we had depositions at my office about two and a half years ago. And, in those depositions, the primary point person, the property manager, essentially the day before, had come to the conclusion and told Jamie, the first lawyer, that there were -- they had never done an, an email search. There were photographs missing. They didn't have -- they purported to have a notebook of mold related claims but they have never provided that.

I had sent motions -- I sent discovery requests to, to them for a, a, a kind of rather robust electronic discovery to include downloading servers and doing search terms just at Oyster Park but for all of the defendants and phone searches because all of the communications between the, the, the, the supervisor, the maintenance folks, internal, a lot of it was text messages and we never received a single text message, photograph, or otherwise in discovery.

We had a hearing and that motion to compel was granted and Doug Leadbetter was the lawyer at that point. Doug then and then Tim Wooten and I had some back and forth about the production of that and then -- now Kirkley and, and Jeff are involved. What I have said the other day was I wanted to proceed with this motion, and, to be blunt, want to proceed with the trial of this case just because it's three years old and counting. But we still would like to get that discovery.

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We think, to be blunt, there is an active effort to hide mold related claims at Oyster Park. Even from the discovery that I have received, we've got over 45 written complaints that were submitted by tenants at Oyster Park and we do not have virtually no internal emails, no text messages, no photographs. In my last conversation with the defense lawyers about all of this was they don't represent Greystar anymore because Dewberry either didn't retain or fired Greystar. And so there was some consternation about asking Greystar for documents and electronic -- being able to access their, their server and their phones and Greystar are the folks we're actually dealing with it on a day-to-day basis.

Based on the testimony that we've got, and the limited information that we have been able to get internally, it's clear that there were daily, weekly, and monthly complaints about water intrusion and humidity issues at Oyster Park and yet they don't have any internal recordkeeping. They don't have -- they don't follow their own policies and procedures and they don't follow the processes that they've put in place. And that's why we asked for the ESI.

MS. WHITE: Your Honor, may I respond?

THE COURT: Yes.

MS. WHITE: The complaints that Mr. McCullough is talking about regarding the water intrusion and other mold

issues all happened months after the Richardsons moved out of the property. All of those complaints are from 2018 and after. There's one complaint of a roof leak in a different building that occurred prior to the Richardson's complaint.

All of these moisture intrusion claims are immaterial to what the plaintiffs have pled as to their causes of action and their damages in this case.

MR. McCULLOUGH: Your Honor, we've got email communications and part of what we're trying to get into is an -- and, and what you're gonna hear in a subsequent motion is they want to sue the general contractor because of foundation issues, HVAC issues, plumbing issues, roof issues, issues, and window issues. These issues were ongoing before the CO was issued. These issues were -- they're emails from March of 2017 before my clients moved in and then they're emails showing, a communication showing that there were issues with the units that they moved my client into. It was one of the ones that was flooded.

So, that's absolutely incorrect and there were ongoing issues.

Have they gotten worse?

Probably because none of them have been fixed. But there were absolutely issues before CO was granted. And in -- and one of the things that they will have to admit is that there was a, a whopping mechanic's lien filed because

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Dewberry did not pay the general contractor what was owed because of ongoing complaints about construction related issues, and there was a confidential settlement entered and a release entered as a result of their complaints about construction defects in the property prior to CO being granted.

MS. WHITE: Judge---

MR. McCULLOUGH: So I completely disagree that there's not evidence in the record and all of this goes to or our UTPA claim, the fraud claim, and the civil conspiracy claim, and the punitive claims and they're -- I get calls quarterly, unsolicited, from folks that are living down the street at Oyster Park right now because they will not respond to mold claims and that the, the property manager even testified that they were trying to avoid, you know, the -- rumor mills and things like that.

She testified they don't do mold tests unless demanded by the, by the tenant. And, again, they didn't produce any sort of list to me. We had to create it based on the haphazard discovery we've gotten to date and it hasn't been supplemented. I suspect there's many more since the 45 that we tabulated the last round of discovery.

But we absolutely have evidence that this was occurring before CO, before the first lease was entered with Ms. Richardson, before the second lease was entered into, and

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before they moved her into the third apartment, which is one of the ones that had been flooded before as far as notice. Their own emails say that it was flooded. Unit 101 was flooded but Unit 102 was flooded.

THE COURT: All right. Well, let's get that settled. Y'all have to provide responses to his discovery or -- and certainly discovery has to be complete before we can schedule any summary judgment motions. I really don't know how one would be successful at this point. But, nevertheless, if you want to hear one, provide all that -- the information to them and then we will reschedule.

What other motions do we have?

MR. BENNETT: Your Honor, I'm -- my name's Josh Bennett. I represent a third party defendant and we have a motion for partial summary judgment if it makes sense to hear that next.

THE COURT: Well, how is that without discovery being complete?

MR. BENNETT: Well, this just involves the third party claims by the main defendants to my client and it is on a very focused issue. It's, it's based on the Stoneledge cases. So I, I, I, I don't think that any outstanding discovery -- even -- I don't think, you know, there is any outstanding discovery between the, the third party claims except for maybe me noticing the depositions of some

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experts. But I don't think that has any bearing upon this specific issue though.

MS. WHITE: Your Honor, I wouldn't disagree with that. I, I, I don't think there's any additional discovery needed before we hear his motion for summary judgment.

MR. McCULLOUGH: I agree.

THE COURT: Okay. Wait a minute. I -- maybe I just misheard.

You -- y'all both agree that discovery is complete as to your parties or not?

MR. BENNETT: I think they might have been referring to the, the third party claims. Not the main case but the third party claims against my client.

MR. McCULLOUGH: I -- from the plaintiff's prospective, I have no discovery that Josh owes me. So, I don't have a -- I don't think they should get out on summary judgment but I, I don't have any discovery issues with them. I don't know about Kirkley.

MS. WHITE: I don't -- Your Honor, I -- we don't have any discovery issues that would preclude his motion for partial summary judgment going forward at this time. It's just the Stoneledge argument. And, and so I don't, I don't know that we need any additional discovery before his motion is heard.

THE COURT: Then you're okay with the motion being

heard?

MS. WHITE: I am, Your Honor.

THE COURT: Is there any opposition to the motion being heard then?

(WHEREUPON, there was no audible response.)

THE COURT: All right. Well then go ahead.

MR. BENNETT: Thank you, Your Honor.

Again, Josh Bennett here for third party defendant, J.A. Croson. They were the plumbing company who installed the plumbing during original construction at, at the property, and we filed just a motion for partial summary judgment on a very focused issue. It's essentially---

THE COURT: What, what is the name of your client again?

MR. BENNETT: J.A. Croson.

THE COURT: Okay.

MR. BENNETT: Essentially trying to clean up some of the causes of action be -- before the case is, you know, whether we add a party or before trial and the basis for the motion is one that's become extremely common for third parties and that's the Stoneledge cases and their rule that the disguised equitable indemnity claims must be dismissed.

So, to hear -- when a -- when the third party plaintiffs asserted their claims against my client, they alleged claims for equitable indemnification. They didn't

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alleged contractual indemnification because there's no contract between our parties. So, equitable indemnity, negligence, breach of contract, and breach of warranty.

Now, the Stoneledge cases say that those causes of action, negligence, breach of contract, breach of warranty, are just disguised claims for equitable indemnity because they are contingent on what might be recovered by the plaintiff against those third party claims.

Now, after I filed this motion, the third party plaintiffs did supplement their discovery and said they have direct damages like cost of repair and lost rent. The amount of which is very small when compared to what's being alleged by the main plaintiffs in this case.

But, Your Honor, if, if they're gonna now allege those direct damages, it's very important to, to my client that we clarify that the third party plaintiffs can only allege their claims of negligence, breach of contract, and breach of warranty for those direct damages and that any potential claim they had for past through damages is limited to their equitable indemnification claim.

So, I, I would ask that the Court strike any language in a third party complaint that suggests otherwise with that. That's the first, first part of the, of the motion.

The second part is based on the breach of contract claim. We ask that it be dismissed because there is no

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contract between the, the parties. My client's contract was with the general contractor who is not yet a party to this case.

So, based on those two points, we're asking that the Court issue an order that clarifies that those third party claims for negligence, breach of contract, and breach of warranty against J.A. Croson are stricken but just for purposes of any damages that are derivative of the plaintiff's claims against the defendants. And also dismissing the breach of contract claim entirely because of the lack of a contract between the parties.

So, I'm happy to answer any questions that the Court may have on that.

MS. WHITE: Your Honor, we would argue that Stoneledge isn't applicable to the claims that we have pled against J.A. Croson. Our clients are respectively the, the developer, owner, and property manager. And so we are more akin to the plaintiffs in a construction defect case.

Stoneledge applies when a general contractor brings those claims against a subcontractor and, and the reason being is that their damages only relate to having to defend the case. We have damages outside of having to defend this case.

We have damages in the fact that they improperly installed the plumbing that caused issues and caused damage

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to the property, caused us to lose rent, caused damage to our reputation, and caused us to expend money in making repairs. And so Stoneledge is not applicable in this particular set of circumstances. And, for those reasons, we would ask that you deny their motion.

And as it related to the breach of contract claim, I'll touch on that too, we pled that we are a third party beneficiary of the contract between them and Land South. And as they breached their contract with Land South, since we were the beneficiary, that extends to us as well.

And so we would ask that their motion for summary judgment as to that issue be denied.

THE COURT: This is a---

MR. BENNETT: If I could---

THE COURT: This is a landlord tenant case or is this a owner?

I mean you said you was moving from unit to unit.

Was it a tenant that was in the property or are y'all --?

MR. McCULLOUGH: Yes, sir, it's, it's my client, a, a tenant, a father -- a mother and a daughter, yes, sir.

THE COURT: All right. How is this morphed into a construction case then?

I'm a---

MR. McCULLOUGH: Well---

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THE COURT: How would has ever happened -- how could that be that a tenant can sue and ends up being a construction case?

MR. BENNETT: Well, it was, it was originally landlord tenant type action. But then the main defendants, the, the owner or the property manager, asked the Court to sue my client in -- at the end of 2019.

And so, when my -- when the third party action came in, that's a construction defect action. And so that's how the, the CD aspect gets involved.

But if, if I may quickly respond to what Kirkley said earlier, Your Honor?

THE COURT: Go ahead.

MR. BENNETT: I'd say that the, the third party plaintiffs here, the, the owner, the property manager, are not like the owner in Stoneledge because the owner in Stoneledge are the ones who were doing the suing. Here, the main defendants, are the ones that had been sued and are seeking damages from a third party, my client.

But, more importantly, the Stoneledge cases aren't limited to claims between general contractors and subcontractors. I had one in another case that involved the architect. But instead, the, the Stoneledge cases stand for the law that if you are seeking damages, pass through damages, from a third party, then you are limited to a claim

for indemnification, either contractural, contractural or equitable. And, in fact, in Stoneledge the Court discusses just, just this situation where there are past through damages being alleged but also direct damages. And it discusses that with the Addy versus Bolton case where an owner was allowed to assert a negligence claim against a contractor.

But the Court said, and, and let me quote it to you, "it says to the extent Addy allowed a direct claim for negligence against the contractor, the claim would of been based on damages to the building that the Addy appellant suffered directly as a result of the fire."

So, according to the Court in Stoneledge, a party can assert additional claims for direct damages like negligence, breach of contract, breach of warranty. But those claims are only for those direct damages. Not for the potential past through damages from the plaintiff. And, and I just want to make sure that's crystal clear prior to trial because, as it reads now, the third party complaint I think is, is vague as to that point and I just want to make sure that issue is settled before we go to trial.

THE COURT: And --.

MR. BENNETT: As, as to the third party beneficiary argument, I, I don't -- I don't know there's -- I don't think there's any evidence that my client intended for these

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parties to be direct beneficiaries of the contract. Even if there was evidence to that, it would be impossible for Greystar to be a beneficiary since they were not involved in the construction, the building, and were just a future property manager. And, again, none of these parties ever had a contract with my client.

So, happy to answer any questions -- any further questions though.

MR. McCULLOUGH: Your Honor, this is Clay McCullough very briefly. I'm -- my only point is this would be to circle back to a question you asked.

This, this is a personal injury action, and, and to some extent, there are -- and you will hear a couple more construction related claims associated to this. It's not been brought by us.

But I would say that, based on the deposition testimony of Douglas German, who was the representative for the owner at the time, and Greystar actually was involved in the development aspects of this, I do think there are enough intertwined facts from the very beginning of this development that at, at least they're genuine issues of material fact, and, and if this is to be decided, it should be at the directed verdict phase. Not at this stage.

MR. BENNETT: I -- and, and, Your Honor, I don't think there's any genuine issues of material fact as to whether

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the, the language should be stricken from the third party complaint related to the Stoneledge argument. That's, that's good law. Those, those motions are granted, you know, weekly, weekly in, in trial courts.

THE COURT: Well, yeah, I guess -- I agree with Mr. Bennett. I'll still scratch my head. I'll -- a landlord tenant dispute morphs into a construction defect case but whatever. But prepare an order up on that.

What else?

MR. BENNETT: Yes, Your Honor.

MS. WHITE: Your Honor, I have a motion to amend to bring in the general contractor and the structural engineer and I believe Mr. Bennett also has a motion to amend to bring in the structural engineer. And I would just like to touch on the question that you had about how this morphed into a construction defect case.

Our clients have a right to bring in anyone who's responsible for the defects that are the basis of the plaintiffs' complaints. If you read Mr. McCullough's memo in opposition to both our motion for summary judgment and our motion to amend, in opposition to our motion to amend he states that this is not a construction defect case.

But in our -- in his motion -- memo in opposition to our motion for summary judgment, he goes on to cite to all of these construction issues, improper grading, roof leaks,

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HVAC issues, all of the issues with the construction that somehow he believes have caused injury to his clients.

This is a construction defect case is the sense that we should be able to bring that claim against the parties who are responsible for creating the conditions that allegedly caused the plaintiff's harm and that's, that's kind of how it morphed.

The reason that the plaintiffs were exposed to mold in this case is actually pretty limited. It has nothing to do with the HVAC issues, the roof issues, the grading issues. None of those have anything to do with her mold exposure really and it, it sounds likes the plaintiffs are trying to eat their cake and have it too.

Either this case is about the limited issue of the plumbing pipe bursting and causing mold, causing harm, or it's a bigger construction defect case about the, the moisture intrusion related to the HVAC and the grading and the roof leaks. None of which -- you know, the only, the only moisture intrusion other than the plumbing pipe burst that the plaintiffs were exposed to was the rain event that caused flooding and they were immediately moved out of the unit after that.

So that's kind of how this morphed into a construction defect case. And so, because of that, we are requesting this Court allows us to amend our pleadings so that we can

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bring in the general contractor and the structural engineer who are the parties responsible for the pipe bursting in the first place. And, and so we would ask that the Court allow us leave to, to amend our pleadings so that we can bring those parties in.

MR. McCULLOUGH: Briefly, Your Honor.

The construction related issues that I'm referencing and have referenced are relevant to notice, not to damages, and certainly not to the presentation of our case for causation. It's simply to show notice to the defendants.

There is -- these, these are very sick buildings. There's a fantastic construction defect claim that should have been brought. I have no idea why the owner didn't sue the general contractor but, of course, we're now more than three years past when they -- when I had conversations with their in-house counsel about the fact that they needed to file a lawsuit because these were sick building and they just didn't do it and nobody on this Zoom is associated with those decisions but it's just a fact they didn't do it.

Your Honor, I have already lost this motion. I lost it over two years ago. The predecessors to Jeff and Kirkley, the, the -- I think this was the first lawyer, maybe the second, filed the same motion. I lost.

In, in September of 2019, Judge Jefferson filed an order that says you can sue the general contractor and she

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also, because I was -- at that point we were up for trial, and I was asking for -- to motivate them to see if they're gonna do something different, do it. She actually submitted a scheduling order that said any motions to amend to add new parties will be done before June 21, 2019. Trial not before 9/1/19.

I have no idea why they didn't do it. They sued the plumber. They just chose not to sue the general contractor. They chose not to sue the structural engineer, and, you know, for them to -- and again this is -- I'm not casting stones at the lawyers that are here today making these arguments. But I think it's outrageous that they filed this motion. I think it's sanctionable conduct.

They have won already and then they ignored it for two years. Now that we're up for trial again, they're trying to add another party to buy another six months. The statute, unfortunately for Dewberry, has run and they have a huge construction defect claim that they have allowed to expire. But that has no business in our personal injury action. None.

THE COURT: So Judge Jefferson gave you the relief you asked for two years ago?

How come we didn't take advantage of that or why should I grant it now?

MS. WHITE: Your Honor, I can not speak to the

decisions of prior counsel. All of these motions were filed before we were retained. And so I'm simply here to pick up the torch and represent my client the best I can.

However, we do strongly feel that we have claims against the general contractor and the structural engineer for creating the condition that has allegedly caused harm to these plaintiffs and, and we are entitled to seek relief from the parties responsible. And, and that's all we're asking the Court to do.

I, I, I recognize and I readily admit that the relief we are seeking, as it relates to the general contractor, was granted to us. I don't know why -- I, I can't speak to why the decision was made not to do it. But to protect my client's interest, we are asking for it now. And, in addition to the general contractor, the structural engineer as well.

THE COURT: All right. Well, the motion's denied. You had two years to do it and they didn't do it and it's too late. It needs to -- the case needs to be ready for trial.

MR. BENNETT: Your Honor, I've, I've -- I represent a third party who was not in the case when the hearing happened on the original motion to amend. And so I have filed a motion for leave to assert a fourth party complaint against the structural engineer, not the general contractor, just the structural engineer, based on an affidavit that --

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of merit that we received from our expert in the case.

And so it's, it's a similar motion to Kirkley's motion. But it's, it's different in terms of who's being sued and the timing and why if, if the Court's willing to hear my motion on that.

THE COURT: No, it's the same thing. It's just somehow or another gotten where it's morphed into a construction case and the plaintiffs, the plaintiffs have a right to go forward on their case and the fact that people have turned this into a construction case in defending is, you know, neither here nor there. It's, it's beyond the scope of what they sued and it makes no sense to do it now.

So that's denied.

What else?

MR. McCULLOUGH: Your Honor, I think---

MS. WHITE: Your Honor?

MR. McCULLOUGH: Go ahead. I'm sorry.

MS. WHITE: That's all the motions we have before you today. Thank you.

THE COURT: All right.

MR. McCULLOUGH: Your Honor, while we've got you, and, and I'm sure that you are always asked for advisory opinions, do you -- I, I read the, the monthly postings and I know we're, I think, Number 45 on the docket.

Based on kind of where we're bumping along, any ideas

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of what to expect over the next couple months?

THE COURT: In terms of what?

MR. McCULLOUGH: Just to -- the, the jury roster and kind of how cases are moving.

THE COURT: Well, I would say, if you're gonna be Number 45, you could be Number 1 next week. It all depends on what's in front of you.

It, it -- here's, here's my mystification. As I get complaints on the one hand from the bar that, oh, my God, we didn't -- we got to have our case. We're not getting our day in court and we set a docket with 40 cases on it based purely upon how old the case is. As soon as we can publish that docket, docket, at least 20 cases then request on, my God, we got to have a status conference or a consent scheduling order because we're not ready despite the fact that it's a 2018, '19, '17 case in some cases.

And so that all of a sudden you go from being Number 40 to Number 1 because half of them are gonna settle, half of them are gonna ask for a continuances, and go we need a scheduling order to -- and we're not ready yet. And, and so you sit there going well, I, I couldn't possibly be Number 1. You could easily be Number 1 and the -- there's no way for me to give you any kind of prediction as to where you'll be.

You could be up really, really fast.

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MR. McCULLOUGH: Okay. But, that answers---

THE COURT: And it's been my---

MR. McCULLOUGH: That answers my questions.

THE COURT: Yeah, it's been my experience people are waiting until their trial, their case goes on the trial docket before they ask for a scheduling order. They could ask for a scheduling order today and it's, it's -- the magic words are consent. I mean I give people consent scheduling orders every single day and the vast majority of them are people that have just waited until their case went on the trial docket. So --.

MR. McCULLOUGH: Okay.

THE COURT: I would say you could be ready very, very soon.

MR. McCULLOUGH: That's what we need to know.

THE COURT: Be prepared for trial very, very soon.

MS. WHITE: Your Honor, in that vein, we would like to ask, since we are fresh to the case, we were just retained 30, you know, a little over 30 days ago, if the parties are agreeable, could we have an additional 30 days?

I, I think we'd like to try to get this settled. I, I -- we had a mediation set and, a third mediation, and we did cancel it just to give -- we need a little bit more time. But to give us some time. There've been over 10 depositions in this case, three years of materials that my

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firm is trying to catch up on. If, if there's no opposition to that, we would ask for an additional 30 days be, before the trial is set.

MR. McCULLOUGH: Your Honor, can we -- let me confer with my client who's been rather bombastic on the desire to move this forward.

So, I don't want to get in trouble here. But I can't, despite appearances, Josh, Kirkley, and I work quite well together. We are -- we're cleaning up some prior issues. So, with, with Your Honor's consent, and I apologize with this being forward, maybe we could, we could huddle and submit something to, to Michael after, after this and we have a chance to talk if that's okay.

THE COURT: That will be fine.

MR. McCULLOUGH: All right. Thank you so much.

THE COURT: Okay.

MR. BENNETT: And, Judge Young, for the, the proposed order granting my motion for partial summary judgment, you prefer it by email or, or eFiled?

THE COURT: Well, email it to my law clerk and then it's easier to do it up that way.

MR. BENNETT: Will do. Thank you, Your Honor.

THE COURT: And he'll then eFile it but circulate it to the other lawyers before you send it to me.

MR. BENNETT: Will do. Thank you.

THE COURT: Okay.

MR. McCULLOUGH: Thank you.

THE COURT: All right.

MS. WHITE: Thank you, Your Honor.

MR. BENNETT: Thank you.

* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for 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 appeal, in the Court of Common Pleas Nonjury for Charleston County, South Carolina, on the 1st day of November, 2021.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 13th, 2022



PAMELA E. GREEN, Court Reporter

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Karolina Richardson and Krista Richardson, Plaintiffs, v. Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Case No.: 2018-CP-10-03286 **MT. PLEASANT SQUARE ASSOCIATES, II, LLC D/B/A OYSTER PARK APARTMENTS, DEWBERRY CAPITAL CORPORATION, AND GREP SOUTHEAST, LLC'S MOTION IN OPPOSITION TO SANCTIONS**

DEFENDANTS MT. PLEASANT SQUARE ASSOCIATES, II, LLC D/B/A OYSTER PARK APARTMENTS, DEWBERRY CAPITAL CORPORATION, AND GREP SOUTHEAST, LLC'S MOTION IN OPPOSITION TO PLAINTIFFS' MOTION FOR SANCTIONS.

Defendants Mt. Pleasant Square Associates, LLC D/B/A Oyster Park Apartments, Dewberry Capital Corporation, and GREP Southeast, LLC's (collectively "Defendants"), by and through their attorneys, hereby submits this memorandum in opposition to Plaintiffs' Motion for Sanctions.

Standard

In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice. *See Laney v. Hefley,* 262 S.C. 54, 202 S.E. 2d 12 (1974). When deciding the severity of sanctions "for failure to disclose evidence during the discovery process, the trial court should weigh the nature of the [discovery request], the discovery posture of the case, willfulness, and degree of prejudice." *Id.*

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Background

On December 3, 2021, an Order was entered into the record for the parties to share in the costs of gathering electronically stored information ("ESI"). (*See* Ex. 1). On February 9th, the costs and search terms were agreed to by Plaintiffs' counsel pursuant to the Order issued. (*See* Ex. 2.) On February 11, over a terabyte of information was given to the vendor and 26 search terms were provided to vendor. (*See* Ex. 3). On March 16th, 2022, the ESI vendor informed us that he was substantially complete with the search. (*See* Ex. 4). On March 17, the ESI vendor stated after 15 hours of work at a cost of $4500, there was still one file to search but there were 4.8 million emails on that email account. (*See* Ex. 5). On March 17, 2022, Ms. Sheets asked Mr. McCullough if he wanted to continue with the search to ensure he would continue sharing in the costs. (*See* Id.). Mr. McCullough asked that we stop the search to see what we had. (*See* Ex. 6). We began doing our initial review of the materials for privileged information. On May 4, 2022, Rosen forwarded a bill for payment, and we requested Plaintiffs' share through Mr. McCullough. (*See* Ex. 7). Mr. McCullough expressed surprise at the costs, but after being reminded he was copied on a February 18, 2022, email and a March 17, 2022 concerning the costs he agreed to pay and we produced the documents via thumb drive that day. (*See* Ex. 8 and 9). There are over 136,000 pages of documents produced as a result of this search.

Earlier this week Counsel for the Defendant became aware of notebooks containing the documents that our client believed were produced in the ESI search. They were unaware that creating notebooks on the same created discoverable information. Once Counsel for the Defendants became aware of the notebooks they were immediately picked up, reviewed, and sent to ProCopy for copying and production to the Plaintiffs. In addition, Counsel for the Defendants informed Plaintiffs' counsel of this production and provided a chart of the tabs that it could not

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confirm whether they did or did not include information contained in the ESI search to make it easier for Plaintiff to review. (*See* Ex. 10).

Argument

There was no willful concealment of information. As shown above at great cost of time and resources, the Defendants have complied with discovery. Moreover, there is no prejudice to the Plaintiff, the contents of this notebook do not relate to new information on plumbing pipe leaks, and they certainly do not relate to Plaintiffs alleged personal injury. In fact, the only thing these notebooks show is that the Defendant Oyster Park is diligent in tracking, investigating, **and** remedying any issue complained about by a tenant. To further show the lack of prejudice Counsel for the Plaintiff has already reviewed these documents and added 100 pages to its exhibit list.

Conclusion

Sanctions are a remedying limited to punish willfulness and prejudice to the opposing party. In these instances, both elements are missing and the Defendants request that this honorable court deny Plaintiffs' Motion for Sanctions and further refuse to strike the answer of the Defendants. Alternatively, if Plaintiffs want to continue the trial if they claim they did not have time to review the information, Defendants will not oppose the request.

(Signature Page to Follow)

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Mount Pleasant, South Carolina

July 17, 2022

Ex. 1

MT. PLEASANT SQUARE ASSOCIATES, II, LLC D/B/A OYSTER PARK APARTMENTS, DEWBERRY CAPITAL CORPORATION, AND GREP SOUTHEAST, LLC'S MOTION IN OPPOSITION TO SANCTIONS

Karolina Richardson and Krista Richardson,
Plaintiffs,
v.
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC
Defendants.

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

KAROLINA RICHARDSON , ET AL.,
PLAINTIFFS,

-VS-
MT. PLEASANT SQUARE ASSOCIATES II, LLC, ET AL.

DEFENDANTS.

2018-CP-10-03286

TRANSCRIPT OF RECORD

DECEMBER 3, 2021
HEARING HELD VIA WEBEX

B E F O R E:

THE HONORABLE JENNIFER B. MCCOY, JUDGE.

A P P E A R A N C E S:

CLAYTON B. MCCULLOUGH, ESQUIRE
ATTORNEY FOR THE PLAINTIFFS

DOUGLAS EDWARD LEADBITTER, ESQUIRE
ATTORNEY FOR DEFENDANT:

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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IN D E X

WITNESS	**PAGE NO.**
HEARING	3
CERTIFICATE OF REPORTER	21

(NO EXHIBITS INTRODUCED DURING THIS HEARING)

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THE COURT: We are here on a motion to compel. I am happy to hear from the moving party. If you gentlemen would just state your names and who you are here on behalf of, we can get started.

MR. MCCULLOUGH: Thank you, Judge. Clay McCullough. I am here on behalf of the Plaintiffs and it is my motion.

MR. LEADBITTER: Your Honor, I am Doug Leadbitter and I have all the Defendants except for Croson. Josh Bennett has Croson.

THE COURT: All right. Mr. McCullough, I'm happy to hear from you.

MR. MCCULLOUGH: Thank you. I'll be brief. Your Honor, this is a personal injury case regarding a mold exposure at the Oyster Park Apartments in Mount Pleasant. My clients, mother and daughter, lived in Oyster Park Apartments and, I don't think there is a dispute, had mold in their apartment and suffered health issues as a result of it. We filed a lawsuit in June 2018 against two defendants. To boil it down it's the owner and the property manager. The owner is the Dewberry group through an LLC, and the property manager at the time was Greystar. We have four causes of action; a negligence claim, which is based on the violation of the landlord tenant act, a fraud claim, a negligent misrepresentation claim, and an unfair trade practice claim. We had sent discovery earlier this year

asking for basically an e-discovery request and the discovery included or requested a search of and provided a series of topics, so that's the first issue is the e-discovery.

The second issue is as part of that we sent correspondence requesting an update on all mold and mildew and water claims that had been made. Your Honor, at last -- as of the middle of 2019 there are approximately 30 claims from tenants at Oyster Park about water leaks, mold, and mildew. What happened is Greystar stopped serving as the property manager, I believe, in the middle of 2019 and what appears has happened is the continuation of their list of complaints to include settlements, to include the nature of those claims and what remediation was conducted stopped when Dewberry took over as the property manager of this owned property. So that's the second prong of what we've requested is a continuation of that list. The last noted documentation of the claim was from September 2019.

Then the third prong of this is we had requested a list for the Defendants and the Defendant parent entities of lawsuits, claims, and settlements. So, Your Honor, I'd like to go back through that list, in that order, if possible. Again, turning to the e-discovery, we sent a list of search terms and requests that the relevant communications to include text messages, emails, written documentation, and we

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listed the LLC owner entity. We listed Oyster Park Apartments, Dewberry, Greystar. We tried to be as robust as possible of the -- who we were looking for. We limited the search period from May 2017 to the day we sent it, and then we came up with a list of search terms and then we asked for -- you know, obviously you'd have to document the searches and then produce it. We sent all of that, I think, in May 2016 and we never heard anything. We sent a couple of letters and never heard anything, so we filed a motion to compel. Late yesterday afternoon for the first time I received a response. What we received were 96 emails all from the same email address that is a Dewberry email address and it appears that the searches were actually conducted, the ones that they responded to, in May 2019. They sent us some screenshots of searches that were performed and on the screenshot you can tell the searches were performed in May 2019. They only searched several of the search terms. There's no documentation of what effort was made to search the server.

Your Honor, there are multiple email recipients on even the emails we received and I think they'll admit they never searched any of those emails. Furthermore, even on the limited stuff they responded to, like for instance on these screenshots, again we received 96 total communications and emails. On one of the search responses there are 250 hits,

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so I don't know what they produced. It most certainly was not responsive to our request. It was apparently done over a year ago with limited data searches, meaning they certainly didn't search the server. They searched one email address and I have no idea if they did this search in May 2019 why didn't they produce it until yesterday.

Doug and I spoke earlier today and apparently Greystar is no longer the property manager at Dewberry and I don't think any efforts have been made. Again, we sued Greystar. He is representing Greystar and I don't think any efforts have been made to do any searches with any of their communications. None. Their emails -- there have been no text messages responded to and again the testimony from the witnesses was that the property manager and the primary maintenance guys, the maintenance guy would get either a phone call or a text saying hey you need to go to cleanup on aisle three, we never received any of that.

So, to be blunt, the document production is completely insufficient, and at this point we are almost a year into this and based on this I would like to compel a third party forensic email guy to go into the server run these searches and provide a professional response with both Defendants and frankly I think they ought to have to pay for it. So that's the first piece of this. The second piece again is they stopped providing information on claims and tenant claims.

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The last documentation that they gave us was we were over 30 as of the summer of 2019. We are, approximately 18 months later, about 30 minutes ago they provided me one additional packet of information about one particular complainant. I think the only reason they sent that was because I had told Doug in my telephone call that I was aware about this claim because Thomas Prichard represents this tenant and had called me about trying to put together a class-action. I've gotten eight to ten unsolicited phone calls from irate tenants, commercial and residential, about getting the runaround from Dewberry and Greystar. So, I know that there are a number of tenants who have filed complaints since the last updated report.

And then finally, Your Honor, that third piece is that they never responded to our interrogatories until about half an hour ago and requesting all lawsuits, claims and things of that nature. They've produced one name, which is the one I just talked about, and then they objected to producing settlements and things of that nature. So, Your Honor, I think they have made virtually no effort to comply with my discovery requests and I think they are reasonably tailored. Again, we are seeking this information not only on the landlord-tenant act claim. If we can show that the landlord's conduct was willful, we're entitled to fees and costs, including attorneys' fees. I think this is highly

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relevant towards our fraud and negligent misrepresentation claim and finally it certainly relevant to an unfair trade practices claim. So, Your Honor, I know that was a very long-winded opening, but those are the three primary pieces of information that we are seeking.

Again, I think, based on what we've received, I think the only way to do this is to engage a third party to perform this search and again based on -- I think what he'll admit they'll make no efforts to search one of the Defendants. I think they should be responsible for paying for this effort. Thank you.

THE COURT: All right. Mr. Leadbitter, happy to hear from you.

MR. LEADBITTER: Thank you, Your Honor. I take issue with several of the comments that were made. We have done our searching and everything according to these -- and I told Clay this -- that according to the criteria that he put out, which actually made these searches just huge. If you search on some of these things in these business -- the emails and everything of the people that were responsible or that were involved in the lawsuits, or involved in the -- dealing with the claims that were made. We turned all that stuff over. There were some things that were attorney-client privilege that didn't go or confidential, like those settlement agreements and all that, that we

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didn't turn over, but we did turn over the hits that we got. I spoke with our General Counsel today. The searches that were done of the information that we did, he limited it through May 2020. The searches were done by him, he told me, and he turned over all that information. The searches were done in July 2020. It took a while to actually go through all that and get it all together. Obviously, after the motion to compel was done, we haven't done that.

It's our opinion that the searches asking as it's written down in the interrogatories and the request for production of documents. It's really broad. And it's becoming burdensome, trying to find out the specific person, Karolina Richardson, and all that. I think that's really obvious. These are the Plaintiffs' names and we searched that and this is the information that we got. But where the problem is coming in, I think, is our disagreement with Defendants and the Plaintiff here on what is relevant to this case. All these other issues that they had, and there are other issues Of water intrusion and what have you, that have no relation whatsoever to the apartment or to the type of water intrusion that caused the brief exposure to mold by this Plaintiff.

These discovery requests are just so - I mean, they're so wide encompassing. They've got them -- if you read them closely, they're asking for -- they're not limiting it to

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just the Oyster Park. They're trying to get information about other possible properties. They are just very broad. So, we're just trying to respond to what is relevant and what we have, based on that, rather than this huge trying to get all this other information. The damages that the Plaintiff is claiming, all this stuff about how she was treated basically at the apartment complex, that's the thrust of the entire case, basically. They are kind of sort of with this negligence claim and the landlord tenant that she's still complaining about how she was treated. This isn't a really a construction defect claim. It's not a negligence claim involving anybody else or any other water intrusion, but they want all this other information about repairs and other things, other buildings that have nothing to do with this case. We believe that what we've turned over it is relevant and it has something to do responsive to the claims that are being made, rather than this huge expanding into every type of claim. They want all this information about remediation and relief, and pain, and lawsuits. But the stuff that we turned over this morning. That was something that actually fell outside of the scope of this discovery because it happened later, so we supplemented it today. It's not like were trying to hide anything. I've been told that we provided all the information that they have.

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This issue with the Greystar, I'll admit that we haven't gone directly to them or searched their stuff because that was a separate entity. They are no longer the property manager, so there's that issue. But we are repping them through an indemnification. So yes, they are a client, but I was told in conversations that I had this morning about getting this discovery together. Actually, this is the second or third time of talk to him about that, that anything that they would've had or done on anything that was relevant to this case, especially dealing with these Plaintiffs, would have come through Dewberry. So, it would have all gone through that one process and searching the other -- into their emails and servers and stuff it's going to get way too much. It's too broad. It's getting into things that have no relevance to this case or her claims. Her claims of damage. It's a personal injury damage related to the mold, but that's not even really related to the unfair trade practices and the fraud claim. So this is -- it has gotten really, in my opinion, it's kind of trying to be exploded into a much larger place that it is and it's involving -- has nothing to do with the damages hearing.

First, I guess I'm going to say that I feel like we have complied with this discovery request as best we have, except for the issue with Greystar, and I can get in contact with them and try to see if there's anything else out there

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that we missed that didn't go through Dewberry. I acknowledged with Clay and discussed that today, that that was something that we could do. I don't think that there's anything else out there because it should -- everything that Greystar had should have been as property manager should have been going through Dewberry at the time of all this happened. In terms of the -- there's other objections that we have about the state tax returns and all that stuff. We've turned over everything that's current on that. The 2019 stuff is still pending. We don't have that yet. The request for financial statements dating back all the way to 2017, we object to that. Obviously, with the punitive damage a statement of their balance sheet, the income profit and loss, and that kind of thing, cash flow, we can get them, but the problem with this is it's so broad they're trying to go back several years on that.

Getting to the issues on the interrogatories, there are other objections to that as well. They want us to identify all these claims and it's very general. Claims complaint made by the Defendants in any litigation. Your Honor, that could be getting into all kinds of issues about contracts or about releases. I mean, it's just so broad and it's asking for a time within the last -- it says ten and then in parenthesis five years. Assuming he meant five years on that, that is a whole huge amount or could be a huge amount

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of stuff and it's just burdensome. It's getting into so much irrelevant material. If it has to do with complaints about mold, which is what we kind of limited it to, those kind of things that had to do with Oyster Park, or specifically those complaints, we can comply with that. I think we've already turned that stuff over except for the stuff that I gave him today. I believe we have it all. These people that -- he hasn't identified these people that he says, whoever it is that has come to him. Some of this stuff was probably dealt with without having emails exchanged, or whatever, at different levels. I can -- I'll admit that, because we haven't talked to the Gray star folks separately since they're no longer there, there might be something there that we can jump on and get that squared away. This "any litigation" is the big problem. This could just get into all -- just all kinds of stuff that just really has anything to do with anything.

Then, the settlement agreements. Again, he's asking for so much stuff that's way beyond anything that has to do with the Oyster Park. He's wanting to go to the other Defendant properties. That's really going outside of the scope of what it should be and we have a problem with that. We're not going to -- we don't feel like any of that stuff is relevant to the case any settlement paid on mold, or whatever, at other places. There is no reason to tie that

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into this, you know, multi-residential complex that has some issues with water intrusion. We know that that happened. There have been roof leaks and that kind of thing. I think, actually, though Ms. Richardson's claim with the mold came from a broken pipe. That's the source of the mold and she was moved out of that apartment. A lot of these other complaints -- that's another thing. There are other types of water intrusion, like from construction issues, dealing with roof leaks and there are some people that the HVAC systems were -- they weren't running those properly and they had some issues and they have dealt with all that.

So, Your Honor, what were asking the court to do today is to, you know, limit some of this so it's not so broad and huge scope of stuff. I mean, it's getting -- the requests are way too broad.

THE COURT: Mr. McCullough, why are -- I guess you are going to say it's going to go to your UTPA claim, but why are we seeking stuff outside of this, I guess, apartment complex that your client lived in? I'm sorry. You are muted. Let's hit unmute real quick. We might have done that.

MR. MCCULLOUGH: A reasonable search with Oyster Park and -- that would be a great start. You know ---

THE COURT: Well, let's do this. Because y'all are -- y'all are, like, really far apart right now. It's really

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difficult for the court to really hone all of this in and when y'all are as far apart as you are. Let me ask you this. Can we at least agree to that first narrow the searches down to her apartment complex with leave for you to file additional discovery responses based on your review of those? This is a lot of information. I mean, I'm not real familiar with Greystar, except I know that they managed an awful lot of properties. This would be just unbelievably voluminous discovery if it was so broad as to incorporate all of the properties and all the claims of mold. Is that not what you're looking for?

MR. MCCULLOUGH: It's not. Your Honor, I'm going to be super blunt.

THE COURT: Okay.

MR. MCCULLOUGH: They have ignored this since March. In every single e-discovery I have ever dealt with you hire -- you either do a real search, or you hire somebody. Then you get a bunch of clutter. You get stuff you didn't anticipate. And then you say, you know what, we need to add a search term to limit it. I have no -- I don't want to hear about what Greystar did in Texas. Okay? I don't. What we got was -- and I've got to say, what Doug said, and I know this is coming from the in-house counsel at Dewberry, these searches were performed in 2019 off of one email address, because he did the screenshot. So, they represent

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Greystar. They didn't do any searches of Greystar. They did one email address. So, let's just start -- I'm perfectly happy to start with either Oyster Park qualifier, but then you've got to come back and see -- that's why I think it's got to be by a third party, because to be super honest, I don't think Doug is in charge of these searches and I don't trust what's going on and it takes so long for this process to work. I just want somebody else to do these searches so he and I don't have to fight about it. It can be -- I mean, the search terms are very limited, and the time is limited. If we need to further limit it to Oyster Park, that's fine, but the idea that it -- I mean, what he's saying is if it came to Dewberry and it hit these search terms and we deemed it relevant, we produced it. Well, the search term hits were, like, hundreds. We got 96 emails from this one particular email address. So, I think, unfortunately, I would love to have come to you after he and I had tried to work this out over the last couple of months. They just ignored it. They have ignored my emails. They have ignored my letters. And then what we got was just garbage.

THE COURT: All right. I would like to have a third party designee conduct this search. I do want to, at least at this point, limit it to Oyster Point, or whatever it is -- what is it?

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MR. MCCULLOUGH: Oyster Park.

THE COURT: Park. Okay. I want y'all to split the cost fifty/fifty, and if you need to come back and if your discovery request needs to be expanded after that and we've argued over that, you can come back, but hopefully you won't. At this point in time get a third party. It needs to be done, I'm going to say, in the next 60 days, given the holidays coming up, and y'all are going to split the cost of it fifty/fifty.

In regards to some of these requests for all lawsuits, claims, et cetera, settlement information, I mean, that sounds pretty broad too. That's going to -- can you narrow me down a little more on what you're looking for there?

MR. MCCULLOUGH: Sure. To be honest, what might accomplish this is, they quit the update. We were over 30 as of 2019 on just Oyster Park claims. I think they need to finish ---

THE COURT: Oyster Park.

MR. MCCULLOUGH: Oyster Park, yes.

THE COURT: Mr. Leadbitter, can we just update it from whenever you dropped off as to Oyster Park?

MR. MCCULLOUGH: And I would like to include the settlement agreements and the payments, because they're all confidential. That's part of the scheme. So I want to make sure we get all of that documentation.

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THE COURT: What do you want to tell me, Mr. Leadbitter, on that?

MR. LEADBITTER: Your Honor, I'm going to say that that's pretty much what we have done, I think, here, but you know, getting a third-party person to come in and search all that I think that will probably actually solve the problem, because he's not believing my client that they can go through their emails with the people who are actually involved in this process, but you know, that's fine. In terms of the settlement agreements, I mean, we can't -- those things should be confidential on both sides. We can't waive it from the other side here.

THE COURT: Yeah, I can't -- I'm not really in agreement with producing settlement agreements. I think that's probably a bit far and I think lawsuits, claims. I don't have a problem with lawsuits.

MR. MCCULLOUGH: They've actually already produced about eight settlement agreements at Oyster Park and so all I'm asking for is a continuation of settlements. I know there have been a lot of claims since they quit documenting it, because people have called me and they've called Thomas Prichard. I know -- I'm presuming, based on prior conduct, there have been, I think, eight settlements between Greystar, Dewberry, and tenants. They pay money and they have entered into confidential agreements. They have

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produced all of that. But it ended, I think, around the time Greystar was the property manager. So, what I'm asking for is a continuation of what we've been doing today was a list of all of the water, mildew, or mold claims or complaints made to the property management company. Any of those claims that escalated to some sort of financial, either payment, or rent reduction, or something along those lines, and the documentation about it. They've produced, I think, eight of those so far.

MR. LEADBITTER: Your Honor, that was all done before I was involved in the case. My point still is that I believe that, based on what my general counsel did, that we provided what there was of that. I know he's -- he has obviously been contacted by people. I don't know -- he hasn't told me who he's contacted, so that's another issue of discovery here.

MR. MCCULLOUGH: We've listed them.

MR. LEADBITTER: If there's other people that are -- that he wants information about or that he's talked to or that have information -

THE COURT: Yeah, no need to play hide the ball. I'm with you. Mr. McCullough, if you know of some names tell him. It's only going to make you get produced them that much faster. I assume anyway

MR. LEADBITTER: That would help me.

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THE COURT: Let's do the third-party Internet search. Sorry if there's feedback. I don't know why. I understand we're under an ongoing duty to supplement discovery, so that really should resolve the other issues. We need to just go back and just remind your clients we've got to get these discovery requests updated and if you need to come back after we have this within 60 days, but hopefully we won't have to. I have a feeling most of what you're looking for will be achieved from this search.

So, Mr. McCullough if you want to draft a brief order that would be great.

MR. MCCULLOUGH: Sure. Will do.

THE COURT: Thank y'all.

*** END OF REQUESTED TRANSCRIPT OF RECORD***

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Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, held via Web-Ex, in the Circuit Court for Charleston County, South Carolina, on the 3rd day of December, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



Tara T. Scott, CVR

Circuit Court Reporter

December 6, 2021

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Ex. 2

MT. PLEASANT SQUARE ASSOCIATES, II, LLC D/B/A OYSTER PARK APARTMENTS, DEWBERRY CAPITAL CORPORATION, AND GREP SOUTHEAST, LLC'S MOTION IN OPPOSITION TO SANCTIONS

Karolina Richardson and Krista Richardson,
Plaintiffs,
v.
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC
Defendants.

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Emily Sheets

From: Clayton B. McCullough, Esquire <clay@mklawsc.com>
Sent: Wednesday, February 9, 2022 5:15 PM
To: Emily Sheets
Subject: RE: Richardson v. Dewberry et al - ESI terms

Categories: Erin not copied, Lyndsey not copied, Teresa not copied, Kirkley not copied, Scott not copied, Katherine not copied, Bobbi not copied, Phil not copied, Jeff not copied

Ok, sounds good.

Clayton B. McCullough, Esquire
Attorney, McCullough ■ Khan ■ Appel

O: (843) 937-0400 | D: (843) 937-0401 | F: (843) 937-0706
E: clay@mklawsc.com | W: www.mklawsc.com
A: 2036 eWall Street, Mount Pleasant, SC 29464

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From: Emily Sheets <esheets@rclawsc.com>
Sent: Wednesday, February 9, 2022 1:59 PM
To: Clayton B. McCullough, Esquire <clay@mklawsc.com>
Cc: Jeff Ross <jross@rclawsc.com>; Bobbi Myers <bmyers@rclawsc.com>; john@rosenltc.com
Subject: RE: Richardson v. Dewberry et al - ESI terms

Clay,

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I have no objection to adding "Oyster", "OP", or "Park" to the search terms, but I do not know if there are specific, commonly used abbreviations for the complex.

Please let me know if you have any questions or if Rosen may proceed with the search.

Best Regards,

Emily

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Emily C. Sheets
Attorney
Ross & Cristaldi, LLC
863 Coleman Blvd., Ste. B
Mt. Pleasant, SC 29464
(843) 329-4040
esheets@rclawsc.com

*Please note our email address change – our entire firm will now be "first initial, last name **@rclawsc.com**"*
Please note our firm address change

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To: Emily Sheets <esheets@rclawsc.com>
Cc: Jeff Ross <jross@rclawsc.com>; Bobbi Myers <bmyers@rclawsc.com>; john@rosenltc.com
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Thanks for the email. Two areas of questions. First, the attached vendor list seems to include lots of non-attorney folks. Second, I am limiting the search to Oyster Park, however, I am concerned about using that as a search term as I don't know if the full name would be included in the emails. Are there other ways it is designated internally (a number, OP, etc)?

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Cc: Jeff Ross <jross@rclawsc.com>; Bobbi Myers <bmyers@rclawsc.com>; john@rosenltc.com
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Clay,

I apologize for the delay in jumping into this discussion. I was out of town for a few days for a funeral.

As John prepares to do our ESI search, I wanted to make sure we were all on the same page since I know you have had a few discussions with both Jeff and me. John already has the relevant emails pulled from the parties' servers and is standing by (and cc'd here) for the greenlight.

To that end, please review the ESI terms below and confirm your understanding of the same and John can get this party started.

Best Regards,
Emily

ESI Terms:

1. Per the court's ruling, we will split the cost of the ESI search 50/50 per the court order. Initially, we will cap the time at 5 hours (at $250 per hour) and regroup if John's team needs more time.
2. Emails have been pulled from the Dewberry and GREP servers and include all email addresses that are associated with Oyster Park. John already has those emails.
3. Per our discussion, to expedite production, the ESI search will exclude the legal teams for Greystar/Dewberry. A list of those names/firms is enclosed. We will produce the production initially without these emails. Ross & Cristaldi will review the excluded emails and determine if we can produce them redacted or with a privilege log.
4. Per the court's ruling, the ESI Search will include searches of the Oyster Park Emails from the Dewberry and GREP and include the following terms:
    a. Karolina Richardson
    b. Kathlina Richardson
    c. Oyster Park AND mold
    d. Oyster Park AND mold testing
    e. Oyster Park AND lawsuit
    f. Oyster Park AND settlement
    g. Oyster Park AND remediation
    h. Oyster Park AND leak

Emily C. Sheets
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Ex. 3

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Emily Sheets

From: Emily Sheets
Sent: Friday, February 11, 2022 9:42 AM
To: john@rosenltc.com
Cc: Clayton B. McCullough, Esquire; Jeff Ross; Bobbi Myers
Subject: RE: Richardson v. Dewberry et al - ESI terms
Attachments: Copy of Vendor Names-Legal.xlsx

Hi John,

We are all set to get started with the search in this matter. A list of the search terms is below and the excel spreadsheet with the emails to be culled out of the responsive documents is enclosed. Please make a folder of the culled-out emails/documents for me to review for privilege before production. The other emails/documents responsive to the ESI search can be produced to all parties once available. We have a clawback agreement in place for anything inadvertently produced. Please bates stamp all responsive documents (including the culled out ones) DewberryGREPESI_XXXXXX.

As a reminder, the bill for services will be split 50/50 between the parties (remitted to McCullough Kahn and Ross & Cristaldi respectively). I am jumping on a zoom deposition at 10:00 am but please call my cell with any questions.

Happy Friday!
Emily
803-201-3614(c)

List of terms:

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b. Kathlina Richardson
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k. Oyster AND lawsuit
l. Oyster AND settlement
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n. Oyster AND leak
o. Park AND mold
p. Park AND mold testing
q. Park AND lawsuit
r. Park AND settlement
s. Park AND remediation
t. Park AND leak
u. OP AND mold
v. OP AND mold testing
w. OP AND lawsuit
x. OP AND settlement

y. OP AND remediation
z. OP AND leak

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Emily Sheets

From: John Akerman <john@rosenltc.com>
Sent: Wednesday, March 16, 2022 9:07 AM
To: Bobbi Myers
Cc: Emily Sheets; Clayton B. McCullough, Esquire; Jeff Ross
Subject: Re: Richardson v. Dewberry et al - ESI terms

Categories: Julie not copied, Ben not copied, Kaylee not copied, Katy not copied, Erin not copied, Scott not copied, Phil not copied

I also uploaded into the same shared folder a file list of each search result by user/email account. These list the search result email and some of the metadata about that file. It could be a start to a privilege log.

John W. Akerman, Esq.
Rosen Litigation Technology Consulting, Inc.
65 Broad St.
Charleston, SC 29401
O 843.296.4648
C 843.743.8654
rosenltc.com
.:. Evidence Presentation
.:. Litigation Graphics
.:. E-Discovery Consulting
.:. Computer & Mobile Forensics

On Wed, Mar 16, 2022 at 7:12 AM John Akerman <john@rosenltc.com> wrote:

> All,
>
> The collection is complete on everyone's email account except for Tara Fichter's. I have shared the production with Bobbi Myers and Emily Sheets - please let me know if there is anyone else that needs access to it. It is large so will take some time to download, but please let me know any questions or how we can assist. Thank you.

John W. Akerman, Esq.
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On Tue, Mar 15, 2022 at 9:56 AM Bobbi Myers <bmyers@rclawsc.com> wrote:

John,

I hope this email finds you well. I just wanted to check on the status of the ESI?

Thank you,

Bobbi Myers

Paralegal/Office Manager

Ross & Cristaldi, LLC

863 Coleman Blvd., Ste. B

Mt. Pleasant, SC 29464

(843) 329-4040

bmyers@rclawsc.com

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Subject: RE: Richardson v. Dewberry et al - ESI terms

Thanks for the update, John!

Emily

Emily C. Sheets

843-329-4040

esheets@rclawsc.com

From: John Akerman <john@rosenltc.com>
Sent: Friday, February 18, 2022 4:40 PM
To: Emily Sheets <esheets@rclawsc.com>
Cc: Clayton B. McCullough, Esquire <clay@mklawsc.com>; Jeff Ross <jross@rclawsc.com>; Bobbi Myers <bmyers@rclawsc.com>
Subject: Re: Richardson v. Dewberry et al - ESI terms

All,

I have completed the preparation, processing, and searches for the following custodians:

B.Burnett

C.Warren

D.Dewberry

K.Carpenter

K.Johnson

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Oyster Park PST

Oyster Park Maint PST

and for the USB Drive that was delivered to me

I have attached a matrix updating you to my current progress. We are making good progress and currently stand at 9 hours of work. I should be able to produce the results for the above custodians for Vendor and Non-Vendor soon. Please let me know if there are any questions or issues. Thank you and have a great weekend.

John W. Akerman, Esq.

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Emily

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j. Oyster AND mold testing
k. Oyster AND lawsuit
l. Oyster AND settlement
m. Oyster AND remediation
n. Oyster AND leak
o. Park AND mold
p. Park AND mold testing
q. Park AND lawsuit
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s. Park AND remediation
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Emily C. Sheets

Attorney

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From: Emily Sheets <esheets@rclawsc.com>
Sent: Wednesday, February 9, 2022 1:59 PM
To: Clayton B. McCullough, Esquire <clay@mklawsc.com>
Cc: Jeff Ross <jross@rclawsc.com>; Bobbi Myers <bmyers@rclawsc.com>; john@rosenltc.com
Subject: RE: Richardson v. Dewberry et al - ESI terms

Clay,

I apologize for the delayed response. On the attorney list, it includes in-house counsel for the companies. Due to the size of the company that's quite a few folks. As previously discussed and agreed to, we plan to cull the attorney folks' emails initially, produce the unculled documents, and then I will review the culled documents and produce them redacted as needed. Happy to include a privilege log also, if we deem a whole document should be withheld.

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I have no objection to adding "Oyster", "OP", or "Park" to the search terms, but I do not know if there are specific, commonly used abbreviations for the complex.

Please let me know if you have any questions or if Rosen may proceed with the search.

Best Regards,

Emily

ELECTRONICALLY FILED - 2022 Jul 17 9:07 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

Emily C. Sheets

Attorney

Ross & Cristaldi, LLC

863 Coleman Blvd., Ste. B

Mt. Pleasant, SC 29464

(843) 329-4040

esheets@rclawsc.com

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Subject: RE: Richardson v. Dewberry et al - ESI terms

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Attorney, McCullough ■ Khan ■ Appel

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To that end, please review the ESI terms below and confirm your understanding of the same and John can get this party started.

Best Regards,

Emily

ESI Terms:

1. Per the court's ruling, we will split the cost of the ESI search 50/50 per the court order. Initially, we will cap the time at 5 hours (at $250 per hour) and regroup if John's team needs more time.
2. Emails have been pulled from the Dewberry and GREP servers and include all email addresses that are associated with Oyster Park. John already has those emails.
3. Per our discussion, to expedite production, the ESI search will exclude the legal teams for Greystar/Dewberry. A list of those names/firms is enclosed. We will produce the production initially without these emails. Ross & Cristaldi will review the excluded emails and determine if we can produce them redacted or with a privilege log.
4. Per the court's ruling, the ESI Search will include searches of the Oyster Park Emails from the Dewberry and GREP and include the following terms:

    a. Karolina Richardson
    b. Kathlina Richardson
    c. Oyster Park AND mold
    d. Oyster Park AND mold testing
    e. Oyster Park AND lawsuit
    f. Oyster Park AND settlement
    g. Oyster Park AND remediation
    h. Oyster Park AND leak

Emily C. Sheets

Attorney

Ross & Cristaldi, LLC

863 Coleman Blvd., Ste. B

Mt. Pleasant, SC 29464

(843) 329-4040

esheets@rclawsc.com

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Please note our firm address change

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Ex. 5

MT. PLEASANT SQUARE ASSOCIATES, II, LLC D/B/A OYSTER PARK APARTMENTS, DEWBERRY CAPITAL CORPORATION, AND GREP SOUTHEAST, LLC'S MOTION IN OPPOSITION TO SANCTIONS

Karolina Richardson and Krista Richardson,
Plaintiffs,
v.
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC
Defendants.

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ELECTRONICALLY FILED - 2022 Jul 17 9:07 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

Emily Sheets

From: Emily Sheets
Sent: Thursday, March 17, 2022 3:49 PM
To: John Akerman; Bobbi Myers
Cc: Clayton B. McCullough, Esquire; Jeff Ross
Subject: RE: Richardson v. Dewberry et al - ESI terms

Hi Clay,

Please confirm we are good to proceed here. We are under court order to share these costs and we just want to make sure that you are still good to go forward here.

Thanks,
Emily

Emily C. Sheets
Attorney
Ross & Cristaldi, LLC
863 Coleman Blvd., Ste. B
Mt. Pleasant, SC 29464
(843) 329-4040
esheets@rclawsc.com

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From: John Akerman <john@rosenltc.com>
Sent: Thursday, March 17, 2022 11:03 AM
To: Bobbi Myers <bmyers@rclawsc.com>
Cc: Emily Sheets <esheets@rclawsc.com>; Clayton B. McCullough, Esquire <clay@mklawsc.com>; Jeff Ross <jross@rclawsc.com>
Subject: Re: Richardson v. Dewberry et al - ESI terms

Good morning,

Just checking in on a few things with ths production. So we have finished the searches, converting to PDF, and bates stamping of all of the results from all of the email accounts, except for Tara Fichter's. We are currently around 15 hours of our work.

I am working to upload the files to Nextpoint or I can get you a hard drive of the files since the sharefile is giving you issues.

Tara Fichter's email account is quite large. There are 4.8 Million email items in her account. I am starting to run the search terms, but they are going to be pretty voluminous. I will let you know when I have a number.

Please see the attached matrix to show the progress of our work and let me know if anyone has any questions. Thanks all.

John W. Akerman, Esq.
Rosen Litigation Technology Consulting, Inc.
65 Broad St.
Charleston, SC 29401
O 843.296.4648
C 843.743.8654
rosenltc.com
.:. Evidence Presentation
.:. Litigation Graphics
.:. E-Discovery Consulting
.:. Computer & Mobile Forensics

On Wed, Mar 16, 2022 at 7:12 AM John Akerman <john@rosenltc.com> wrote:

> All,
>
> The collection is complete on everyone's email account except for Tara Fichter's. I have shared the production with Bobbi Myers and Emily Sheets - please let me know if there is anyone else that needs access to it. It is large so will take some time to download, but please let me know any questions or how we can assist. Thank you.
>
> John W. Akerman, Esq.
> Rosen Litigation Technology Consulting, Inc.
> 65 Broad St.
> Charleston, SC 29401
> O 843.296.4648
> C 843.743.8654
> rosenltc.com
> .:. Evidence Presentation
> .:. Litigation Graphics
> .:. E-Discovery Consulting
> .:. Computer & Mobile Forensics
>
> On Tue, Mar 15, 2022 at 9:56 AM Bobbi Myers <bmyers@rclawsc.com> wrote:
>
> > John,
> >
> > I hope this email finds you well. I just wanted to check on the status of the ESI?

ELECTRONICALLY FILED - 2022 Jul 17 9:07 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

Thank you,

Bobbi Myers

Paralegal/Office Manager

Ross & Cristaldi, LLC

863 Coleman Blvd., Ste. B

Mt. Pleasant, SC 29464

(843) 329-4040

bmyers@rclawsc.com

*Please note our email address change – our entire firm will now be "first initial, last name @**rclawsc.com**"*

Please note our firm address change

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From: Emily Sheets <esheets@rclawsc.com>
Sent: Monday, February 21, 2022 12:12 PM
To: John Akerman <john@rosenltc.com>
Cc: Clayton B. McCullough, Esquire <clay@mklawsc.com>; Jeff Ross <jross@rclawsc.com>; Bobbi Myers <bmyers@rclawsc.com>
Subject: RE: Richardson v. Dewberry et al - ESI terms

Thanks for the update, John!

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Emily

Emily C. Sheets

843-329-4040

esheets@rclawsc.com

From: John Akerman <john@rosenltc.com>
Sent: Friday, February 18, 2022 4:40 PM
To: Emily Sheets <esheets@rclawsc.com>
Cc: Clayton B. McCullough, Esquire <clay@mklawsc.com>; Jeff Ross <jross@rclawsc.com>; Bobbi Myers <bmyers@rclawsc.com>
Subject: Re: Richardson v. Dewberry et al - ESI terms

All,

I have completed the preparation, processing, and searches for the following custodians:

B.Burnett

C.Warren

D.Dewberry

K.Carpenter

K.Johnson

Oyster Park PST

Oyster Park Maint PST

and for the USB Drive that was delivered to me

I have attached a matrix updating you to my current progress. We are making good progress and currently stand at 9 hours of work. I should be able to produce the results for the above custodians for Vendor and Non-Vendor soon. Please let me know if there are any questions or issues. Thank you and have a great weekend.

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On Fri, Feb 11, 2022 at 9:42 AM Emily Sheets <esheets@rclawsc.com> wrote:

> Hi John,
>
> We are all set to get started with the search in this matter. A list of the search terms is below and the excel spreadsheet with the emails to be culled out of the responsive documents is enclosed. Please make a folder of the culled-out emails/documents for me to review for privilege before production. The other emails/documents responsive to the ESI search can be produced to all parties once available. We have a clawback agreement in place for anything inadvertently produced. Please bates stamp all responsive documents (including the culled out ones) DewberryGREPESI_XXXXXX.
>
> As a reminder, the bill for services will be split 50/50 between the parties (remitted to McCullough Kahn and Ross & Cristaldi respectively). I am jumping on a zoom deposition at 10:00 am but please call my cell with any questions.
>
> Happy Friday!
>
> Emily

803-201-3614(c)

List of terms:

a. Karolina Richardson
b. Kathlina Richardson
c. Oyster Park AND mold
d. Oyster Park AND mold testing
e. Oyster Park AND lawsuit
f. Oyster Park AND settlement
g. Oyster Park AND remediation
h. Oyster Park AND leak
i. Oyster AND mold
j. Oyster AND mold testing
k. Oyster AND lawsuit
l. Oyster AND settlement
m. Oyster AND remediation
n. Oyster AND leak
o. Park AND mold
p. Park AND mold testing
q. Park AND lawsuit
r. Park AND settlement
s. Park AND remediation
t. Park AND leak
u. OP AND mold
v. OP AND mold testing
w. OP AND lawsuit
x. OP AND settlement
y. OP AND remediation
z. OP AND leak

Emily C. Sheets

Attorney

Ross & Cristaldi, LLC

863 Coleman Blvd., Ste. B

Mt. Pleasant, SC 29464

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Sent: Wednesday, February 9, 2022 5:15 PM
To: Emily Sheets <esheets@rclawsc.com>
Subject: RE: Richardson v. Dewberry et al - ESI terms

Ok, sounds good.

Clayton B. McCullough, Esquire
Attorney, McCullough ■ Khan ■ Appel

O: (843) 937-0400 | D: (843) 937-0401 | F: (843) 937-0706
E: clay@mklawsc.com | W: www.mklawsc.com
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Emily C. Sheets

Attorney

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Ex. 6

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v.
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ELECTRONICALLY FILED - 2022 Jul 17 9:07 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

Emily Sheets

From: Clayton B. McCullough, Esquire <clay@mklawsc.com>
Sent: Thursday, March 17, 2022 3:50 PM
To: Emily Sheets; John Akerman; Bobbi Myers
Cc: Jeff Ross
Subject: RE: Richardson v. Dewberry et al - ESI terms

Categories: Julie not copied, Ben not copied, Kaylee not copied, Katy not copied, Erin not copied, Scott not copied, Phil not copied

Can we look at what has been uncovered to date first?

Clayton B. McCullough, Esquire
Attorney, McCullough ■ Khan ■ Appel

O: (843) 937-0400 | D: (843) 937-0401 | F: (843) 937-0706
E: clay@mklawsc.com | W: www.mklawsc.com
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*Please note our email address change – our entire firm will now be "first initial, last name **@rclawsc.com**"*
Please note our firm address change

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ELECTRONICALLY FILED - 2022 Jul 17 9:07 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

From: John Akerman <john@rosenltc.com>
Sent: Thursday, March 17, 2022 11:03 AM
To: Bobbi Myers <bmyers@rclawsc.com>
Cc: Emily Sheets <esheets@rclawsc.com>; Clayton B. McCullough, Esquire <clay@mklawsc.com>; Jeff Ross <jross@rclawsc.com>
Subject: Re: Richardson v. Dewberry et al - ESI terms

Good morning,

Just checking in on a few things with ths production. So we have finished the searches, converting to PDF, and bates stamping of all of the results from all of the email accounts, except for Tara Fichter's. We are currently around 15 hours of our work.

I am working to upload the files to Nextpoint or I can get you a hard drive of the files since the sharefile is giving you issues.

Tara Fichter's email account is quite large. There are 4.8 Million email items in her account. I am starting to run the search terms, but they are going to be pretty voluminous. I will let you know when I have a number.

Please see the attached matrix to show the progress of our work and let me know if anyone has any questions. Thanks all.

John W. Akerman, Esq.
Rosen Litigation Technology Consulting, Inc.
65 Broad St.
Charleston, SC 29401
O 843.296.4648
C 843.743.8654
rosenltc.com
.:. Evidence Presentation
.:. Litigation Graphics
.:. E-Discovery Consulting
.:. Computer & Mobile Forensics

On Wed, Mar 16, 2022 at 7:12 AM John Akerman <john@rosenltc.com> wrote:

> All,
>
> The collection is complete on everyone's email account except for Tara Fichter's. I have shared the production with Bobbi Myers and Emily Sheets - please let me know if there is anyone else that needs access to it. It is large so will take some time to download, but please let me know any questions or how we can assist. Thank you.

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John W. Akerman, Esq.
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.:. E-Discovery Consulting
.:. Computer & Mobile Forensics

On Tue, Mar 15, 2022 at 9:56 AM Bobbi Myers <bmyers@rclawsc.com> wrote:

John,

I hope this email finds you well. I just wanted to check on the status of the ESI?

Thank you,

Bobbi Myers

Paralegal/Office Manager

Ross & Cristaldi, LLC

863 Coleman Blvd., Ste. B

Mt. Pleasant, SC 29464

(843) 329-4040

bmyers@rclawsc.com

Please note our email address change – our entire firm will now be "first initial, last name @rclawsc.com"

Please note our firm address change

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ELECTRONICALLY FILED - 2022 Jul 17 9:07 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

From: Emily Sheets <esheets@rclawsc.com>
Sent: Monday, February 21, 2022 12:12 PM
To: John Akerman <john@rosenltc.com>
Cc: Clayton B. McCullough, Esquire <clay@mklawsc.com>; Jeff Ross <jross@rclawsc.com>; Bobbi Myers <bmyers@rclawsc.com>
Subject: RE: Richardson v. Dewberry et al - ESI terms

Thanks for the update, John!

Emily

Emily C. Sheets

843-329-4040

esheets@rclawsc.com

From: John Akerman <john@rosenltc.com>
Sent: Friday, February 18, 2022 4:40 PM
To: Emily Sheets <esheets@rclawsc.com>
Cc: Clayton B. McCullough, Esquire <clay@mklawsc.com>; Jeff Ross <jross@rclawsc.com>; Bobbi Myers <bmyers@rclawsc.com>
Subject: Re: Richardson v. Dewberry et al - ESI terms

All,

I have completed the preparation, processing, and searches for the following custodians:

B.Burnett

C.Warren

D.Dewberry

K.Carpenter

K.Johnson

Oyster Park PST

Oyster Park Maint PST

and for the USB Drive that was delivered to me

I have attached a matrix updating you to my current progress. We are making good progress and currently stand at 9 hours of work. I should be able to produce the results for the above custodians for Vendor and Non-Vendor soon. Please let me know if there are any questions or issues. Thank you and have a great weekend.

John W. Akerman, Esq.

Rosen Litigation Technology Consulting, Inc.

65 Broad St.

Charleston, SC 29401

O 843.296.4648

C 843.743.8654
rosenltc.com
.:. Evidence Presentation
.:. Litigation Graphics

.:. E-Discovery Consulting
.:. Computer & Mobile Forensics

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On Fri, Feb 11, 2022 at 9:42 AM Emily Sheets <esheets@rclawsc.com> wrote:

Hi John,

We are all set to get started with the search in this matter. A list of the search terms is below and the excel spreadsheet with the emails to be culled out of the responsive documents is enclosed. Please make a folder of the culled-out emails/documents for me to review for privilege before production. The other emails/documents responsive to the ESI search can be produced to all parties once available. We have a clawback agreement in place for anything inadvertently produced. Please bates stamp all responsive documents (including the culled out ones) DewberryGREPESI_XXXXXX.

As a reminder, the bill for services will be split 50/50 between the parties (remitted to McCullough Kahn and Ross & Cristaldi respectively). I am jumping on a zoom deposition at 10:00 am but please call my cell with any questions.

Happy Friday!

Emily

803-201-3614(c)

List of terms:

a. Karolina Richardson
b. Kathlina Richardson
c. Oyster Park AND mold
d. Oyster Park AND mold testing
e. Oyster Park AND lawsuit
f. Oyster Park AND settlement
g. Oyster Park AND remediation
h. Oyster Park AND leak
i. Oyster AND mold
j. Oyster AND mold testing
k. Oyster AND lawsuit
l. Oyster AND settlement
m. Oyster AND remediation
n. Oyster AND leak
o. Park AND mold
p. Park AND mold testing
q. Park AND lawsuit
r. Park AND settlement
s. Park AND remediation

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t. Park AND leak
u. OP AND mold
v. OP AND mold testing
w. OP AND lawsuit
x. OP AND settlement
y. OP AND remediation
z. OP AND leak

Emily C. Sheets

Attorney

Ross & Cristaldi, LLC

863 Coleman Blvd., Ste. B

Mt. Pleasant, SC 29464

(843) 329-4040

esheets@rclawsc.com

*Please note our email address change – our entire firm will now be "first initial, last name @**rclawsc.com**"*

Please note our firm address change

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ELECTRONICALLY FILED - 2022 Jul 17 9:07 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

From: Clayton B. McCullough, Esquire <clay@mklawsc.com>
Sent: Wednesday, February 9, 2022 5:15 PM
To: Emily Sheets <esheets@rclawsc.com>
Subject: RE: Richardson v. Dewberry et al - ESI terms

Ok, sounds good.

Clayton B. McCullough, Esquire
Attorney, McCullough ■ Khan ■ Appel

O: (843) 937-0400 | D: (843) 937-0401 | F: (843) 937-0706
E: clay@mklawsc.com | W: www.mklawsc.com
A: 2036 eWall Street, Mount Pleasant, SC 29464

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From: Emily Sheets <esheets@rclawsc.com>
Sent: Wednesday, February 9, 2022 1:59 PM
To: Clayton B. McCullough, Esquire <clay@mklawsc.com>
Cc: Jeff Ross <jross@rclawsc.com>; Bobbi Myers <bmyers@rclawsc.com>; john@rosenltc.com
Subject: RE: Richardson v. Dewberry et al - ESI terms

Clay,

I apologize for the delayed response. On the attorney list, it includes in-house counsel for the companies. Due to the size of the company that's quite a few folks. As previously discussed and agreed to, we plan to cull the attorney folks' emails initially, produce the unculled documents, and then I will review the culled documents and produce them redacted as needed. Happy to include a privilege log also, if we deem a whole document should be withheld.

You'll remember that this culling is to produce the documents without the delay of me first reviewing for privilege and the understanding that we can claw back any inadvertent production of a privileged document.

I have no objection to adding "Oyster", "OP", or "Park" to the search terms, but I do not know if there are specific, commonly used abbreviations for the complex.

Please let me know if you have any questions or if Rosen may proceed with the search.

Best Regards,

Emily



Emily C. Sheets

Attorney

Ross & Cristaldi, LLC

863 Coleman Blvd., Ste. B

Mt. Pleasant, SC 29464

(843) 329-4040

esheets@rclawsc.com

Please note our email address change – our entire firm will now be "first initial, last name @rclawsc.com"

Please note our firm address change

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From: Clayton B. McCullough, Esquire <clay@mklawsc.com>
Sent: Monday, February 7, 2022 5:26 PM
To: Emily Sheets <esheets@rclawsc.com>
Cc: Jeff Ross <jross@rclawsc.com>; Bobbi Myers <bmyers@rclawsc.com>; john@rosenltc.com
Subject: RE: Richardson v. Dewberry et al - ESI terms

Thanks for the email. Two areas of questions. First, the attached vendor list seems to include lots of non-attorney folks. Second, I am limiting the search to Oyster Park, however, I am concerned about using that as a search term as I don't know if the full name would be included in the emails. Are there other ways it is designated internally (a number, OP, etc)?

Clayton B. McCullough, Esquire
Attorney, McCullough ■ Khan ■ Appel

O: (843) 937-0400 | D: (843) 937-0401 | F: (843) 937-0706
E: clay@mklawsc.com | W: www.mklawsc.com
A: 2036 eWall Street, Mount Pleasant, SC 29464

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From: Emily Sheets <esheets@rclawsc.com>
Sent: Friday, February 4, 2022 4:11 PM
To: Clayton B. McCullough, Esquire <clay@mklawsc.com>
Cc: Jeff Ross <jross@rclawsc.com>; Bobbi Myers <bmyers@rclawsc.com>; john@rosenltc.com
Subject: Richardson v. Dewberry et al - ESI terms

Clay,

I apologize for the delay in jumping into this discussion. I was out of town for a few days for a funeral.

As John prepares to do our ESI search, I wanted to make sure we were all on the same page since I know you have had a few discussions with both Jeff and me. John already has the relevant emails pulled from the parties' servers and is standing by (and cc'd here) for the greenlight.

To that end, please review the ESI terms below and confirm your understanding of the same and John can get this party started.

Best Regards,

Emily

ESI Terms:

1. Per the court's ruling, we will split the cost of the ESI search 50/50 per the court order. Initially, we will cap the time at 5 hours (at $250 per hour) and regroup if John's team needs more time.
2. Emails have been pulled from the Dewberry and GREP servers and include all email addresses that are associated with Oyster Park. John already has those emails.
3. Per our discussion, to expedite production, the ESI search will exclude the legal teams for Greystar/Dewberry. A list of those names/firms is enclosed. We will produce the production initially without these emails. Ross & Cristaldi will review the excluded emails and determine if we can produce them redacted or with a privilege log.
4. Per the court's ruling, the ESI Search will include searches of the Oyster Park Emails from the Dewberry and GREP and include the following terms:

    a. Karolina Richardson
    b. Kathlina Richardson
    c. Oyster Park AND mold
    d. Oyster Park AND mold testing
    e. Oyster Park AND lawsuit
    f. Oyster Park AND settlement
    g. Oyster Park AND remediation
    h. Oyster Park AND leak

Emily C. Sheets

Attorney

Ross & Cristaldi, LLC

863 Coleman Blvd., Ste. B

Mt. Pleasant, SC 29464

(843) 329-4040

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esheets@rclawsc.com

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Please note our firm address change

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Ex. 7

MT. PLEASANT SQUARE ASSOCIATES, II, LLC D/B/A OYSTER PARK APARTMENTS, DEWBERRY CAPITAL CORPORATION, AND GREP SOUTHEAST, LLC'S MOTION IN OPPOSITION TO SANCTIONS

Karolina Richardson and Krista Richardson,
Plaintiffs,
v.
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC
Defendants.

ELECTRONICALLY FILED - 2022 Jul 17 9:07 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

ELECTRONICALLY FILED - 2022 Jul 17 9:07 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

Emily Sheets

From: Bobbi Myers
Sent: Wednesday, May 4, 2022 11:20 AM
To: Alicia Terwilliger Ph.D.; Clayton B. McCullough, Esquire
Cc: Erin Welk; Emily Sheets; Jeff Ross
Subject: RE: Karolina Richardson, et al. v. Mt. Pleasant Square Associates, II, LLC, et al. - Case No.: 2018-CP-10-3286
Attachments: 4,500 RLTC #36430001.pdf

Categories: Julie not copied, Ben not copied, Kaylee not copied, Katy not copied, Scott not copied, Phil not copied

Clay,

Attached please find Rosen Technology's invoice in the amount of $4,500.00 for the ESI search. We are placing the thumb drive with the documents in the mail to you today. Please remit $2,250.00 directly to Rosen.

Thank you,

Bobbi Myers
Paralegal/Office Manager
Ross & Cristaldi, LLC
863 Coleman Blvd., Ste. B
Mt. Pleasant, SC 29464
(843) 329-4040
bmyers@rclawsc.com

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Please note our firm address change

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From: Alicia Terwilliger Ph.D. <Alicia@mklawsc.com>
Sent: Monday, May 2, 2022 5:01 PM
To: Alicia Terwilliger Ph.D. <Alicia@mklawsc.com>; Emily Sheets <esheets@rclawsc.com>; Jeff Ross <jross@rclawsc.com>; Philip Cristaldi <pcristaldi@rclawsc.com>; Joshua.Bennett@rogerstownsend.com; Clayton B. McCullough, Esquire <clay@mklawsc.com>; Amanda Castellano <Amanda.Castellano@rogerstownsend.com>; Bobbi Myers <bmyers@rclawsc.com>; Erin Welk <ewelk@rclawsc.com>
Subject: Karolina Richardson, et al. v. Mt. Pleasant Square Associates, II, LLC, et al. - Case No.: 2018-CP-10-3286

Good afternoon,

I hope this finds you well. Attached for service in the above-referenced matter, please find the following documents:

- **Karolina Richardson's Third Supplemental Responses to First Set of Requests for Production from All Defendants**
- **Krista Richardson's First Supplemental Responses to First Set of Requests for Production from All Defendants**

The responsive documents can be found at the following link:
https://www.dropbox.com/sh/5qet5mz8jjg0pf8/AABUcG5hc2OOPpJ-VLG5KqSla?dl=0

Please note that these documents will expire in 30 days.

Also note that only an electronic copy of these documents is being sent. Thank you.

Alicia Terwilliger Ph.D.
Paralegal, McCullough ■ Khan ■ Appel

O: (843) 937-0400 | F: (843) 937-0706
E: Alicia@mklawsc.com | W: www.mklawsc.com
A: 2036 eWall Street, Mount Pleasant, SC 29464

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Ex. 8

MT. PLEASANT SQUARE ASSOCIATES, II, LLC D/B/A OYSTER PARK APARTMENTS, DEWBERRY CAPITAL CORPORATION, AND GREP SOUTHEAST, LLC'S MOTION IN OPPOSITION TO SANCTIONS

Karolina Richardson and Krista Richardson,
Plaintiffs,
v.
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC
Defendants.

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ELECTRONICALLY FILED - 2022 Jul 17 9:07 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

Emily Sheets

From: Bobbi Myers
Sent: Wednesday, May 4, 2022 11:20 AM
To: Alicia Terwilliger Ph.D.; Clayton B. McCullough, Esquire
Cc: Erin Welk; Emily Sheets; Jeff Ross
Subject: RE: Karolina Richardson, et al. v. Mt. Pleasant Square Associates, II, LLC, et al. - Case No.: 2018-CP-10-3286
Attachments: 4,500 RLTC #36430001.pdf

Categories: Julie not copied, Ben not copied, Kaylee not copied, Katy not copied, Scott not copied, Phil not copied

Clay,

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Thank you,

Bobbi Myers
Paralegal/Office Manager
Ross & Cristaldi, LLC
863 Coleman Blvd., Ste. B
Mt. Pleasant, SC 29464
(843) 329-4040
bmyers@rclawsc.com

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Please note our firm address change

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From: Alicia Terwilliger Ph.D. <Alicia@mklawsc.com>
Sent: Monday, May 2, 2022 5:01 PM
To: Alicia Terwilliger Ph.D. <Alicia@mklawsc.com>; Emily Sheets <esheets@rclawsc.com>; Jeff Ross <jross@rclawsc.com>; Philip Cristaldi <pcristaldi@rclawsc.com>; Joshua.Bennett@rogerstownsend.com; Clayton B. McCullough, Esquire <clay@mklawsc.com>; Amanda Castellano <Amanda.Castellano@rogerstownsend.com>; Bobbi Myers <bmyers@rclawsc.com>; Erin Welk <ewelk@rclawsc.com>
Subject: Karolina Richardson, et al. v. Mt. Pleasant Square Associates, II, LLC, et al. - Case No.: 2018-CP-10-3286

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- **Krista Richardson's First Supplemental Responses to First Set of Requests for Production from All Defendants**

The responsive documents can be found at the following link:
https://www.dropbox.com/sh/5qet5mz8jjg0pf8/AABUcG5hc2OOPpJ-VLG5KqSla?dl=0

Please note that these documents will expire in 30 days.

Also note that only an electronic copy of these documents is being sent. Thank you.

Alicia Terwilliger Ph.D.
Paralegal, McCullough ■ Khan ■ Appel

O: (843) 937-0400 | F: (843) 937-0706
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Ex. 9

MT. PLEASANT SQUARE ASSOCIATES, II, LLC D/B/A OYSTER PARK APARTMENTS, DEWBERRY CAPITAL CORPORATION, AND GREP SOUTHEAST, LLC'S MOTION IN OPPOSITION TO SANCTIONS

Karolina Richardson and Krista Richardson,
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Defendants.

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ELECTRONICALLY FILED - 2022 Jul 17 9:07 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

Emily Sheets

From: Emily Sheets
Sent: Wednesday, May 4, 2022 2:52 PM
To: Clayton B. McCullough, Esquire; Bobbi Myers
Cc: Jeff Ross; Alicia@mklawsc.com
Subject: RE: Richardson v. Dewberry et al - ESI terms
Attachments: Re: Richardson v. Dewberry et al - ESI terms; RE: Karolina Richardson, et al. v. Mt. Pleasant Square Associates, II, LLC, et al. - Case No.: 2018-CP-10-3286; Re: Richardson v. Dewberry et al - ESI terms

Clay,

Thanks for the call today. As discussed, you will be splitting the $4500 invoice 50/50 with us, sans the charge for my administrative telephone call with Rosen. In addition, Bobbi may have already forwarded it to you but enclosed is the 2/18 email where John gave a preview of the 'hits'. You were cc'd on the email but to my knowledge did not follow up with adjustments. I have also included John's 3/17 progress update with progress hits which you are also copied on. Again, to my knowledge, there was also no follow-up or adjustment to the search by you at that time.

As discussed, if you want the search terms to change or want a different course of action you must be the one who communicates that to John Akerman. We are under court order to facilitate the search as orderedand we have no control outside of that order on what gets searched for or how.

I believe this matter is resolved for now according to our call. Please let me know if you have any additional questions.

Best Regards,

Emily

Emily C. Sheets
Attorney
Ross & Cristaldi, LLC
863 Coleman Blvd., Ste. B
Mt. Pleasant, SC 29464
(843) 329-4040
esheets@rclawsc.com

*Please note our email address change – our entire firm will now be "first initial, last name **@rclawsc.com**"*
Please note our firm address change

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ELECTRONICALLY FILED - 2022 Jul 17 9:07 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

From: Clayton B. McCullough, Esquire <clay@mklawsc.com>
Sent: Wednesday, May 4, 2022 1:40 PM
To: Emily Sheets <esheets@rclawsc.com>; John Akerman <john@rosenltc.com>; Bobbi Myers <bmyers@rclawsc.com>
Cc: Jeff Ross <jross@rclawsc.com>
Subject: RE: Richardson v. Dewberry et al - ESI terms

This was my last communication.

Clayton B. McCullough, Esquire
Attorney, McCullough ■ Khan ■ Appel

O: (843) 937-0400 | D: (843) 937-0401 | F: (843) 937-0706
E: clay@mklawsc.com | W: www.mklawsc.com
A: 2036 eWall Street, Mount Pleasant, SC 29464

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From: Clayton B. McCullough, Esquire
Sent: Thursday, March 17, 2022 3:50 PM
To: Emily Sheets <esheets@rclawsc.com>; John Akerman <john@rosenltc.com>; Bobbi Myers <bmyers@rclawsc.com>
Cc: Jeff Ross <jross@rclawsc.com>
Subject: RE: Richardson v. Dewberry et al - ESI terms

Can we look at what has been uncovered to date first?

From: Emily Sheets <esheets@rclawsc.com>
Sent: Thursday, March 17, 2022 3:49 PM
To: John Akerman <john@rosenltc.com>; Bobbi Myers <bmyers@rclawsc.com>
Cc: Clayton B. McCullough, Esquire <clay@mklawsc.com>; Jeff Ross <jross@rclawsc.com>
Subject: RE: Richardson v. Dewberry et al - ESI terms

Hi Clay,

Please confirm we are good to proceed here. We are under court order to share these costs and we just want to make sure that you are still good to go forward here.

Thanks,
Emily

Emily C. Sheets
Attorney
Ross & Cristaldi, LLC
863 Coleman Blvd., Ste. B
Mt. Pleasant, SC 29464
(843) 329-4040
esheets@rclawsc.com

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ELECTRONICALLY FILED - 2022 Jul 17 9:07 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

From: John Akerman <john@rosenltc.com>
Sent: Thursday, March 17, 2022 11:03 AM
To: Bobbi Myers <bmyers@rclawsc.com>
Cc: Emily Sheets <esheets@rclawsc.com>; Clayton B. McCullough, Esquire <clay@mklawsc.com>; Jeff Ross <jross@rclawsc.com>
Subject: Re: Richardson v. Dewberry et al - ESI terms

Good morning,

Just checking in on a few things with ths production. So we have finished the searches, converting to PDF, and bates stamping of all of the results from all of the email accounts, except for Tara Fichter's. We are currently around 15 hours of our work.

I am working to upload the files to Nextpoint or I can get you a hard drive of the files since the sharefile is giving you issues.

Tara Fichter's email account is quite large. There are 4.8 Million email items in her account. I am starting to run the search terms, but they are going to be pretty voluminous. I will let you know when I have a number.

Please see the attached matrix to show the progress of our work and let me know if anyone has any questions. Thanks all.

John W. Akerman, Esq.
Rosen Litigation Technology Consulting, Inc.
65 Broad St.
Charleston, SC 29401
O 843.296.4648
C 843.743.8654
rosenltc.com
.:. Evidence Presentation
.:. Litigation Graphics
.:. E-Discovery Consulting
.:. Computer & Mobile Forensics

On Wed, Mar 16, 2022 at 7:12 AM John Akerman <john@rosenltc.com> wrote:

> All,
>
> The collection is complete on everyone's email account except for Tara Fichter's. I have shared the production with Bobbi Myers and Emily Sheets - please let me know if there is anyone else that needs access to it. It is large so will take some time to download, but please let me know any questions or how we can assist. Thank you.

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John W. Akerman, Esq.
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.:. E-Discovery Consulting
.:. Computer & Mobile Forensics

On Tue, Mar 15, 2022 at 9:56 AM Bobbi Myers <bmyers@rclawsc.com> wrote:

John,

I hope this email finds you well. I just wanted to check on the status of the ESI?

Thank you,

Bobbi Myers

Paralegal/Office Manager

Ross & Cristaldi, LLC

863 Coleman Blvd., Ste. B

Mt. Pleasant, SC 29464

(843) 329-4040

bmyers@rclawsc.com

Please note our email address change – our entire firm will now be "first initial, last name @rclawsc.com"

Please note our firm address change

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ELECTRONICALLY FILED - 2022 Jul 17 9:07 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

From: Emily Sheets <esheets@rclawsc.com>
Sent: Monday, February 21, 2022 12:12 PM
To: John Akerman <john@rosenltc.com>
Cc: Clayton B. McCullough, Esquire <clay@mklawsc.com>; Jeff Ross <jross@rclawsc.com>; Bobbi Myers <bmyers@rclawsc.com>
Subject: RE: Richardson v. Dewberry et al - ESI terms

Thanks for the update, John!

Emily

Emily C. Sheets

843-329-4040

esheets@rclawsc.com

From: John Akerman <john@rosenltc.com>
Sent: Friday, February 18, 2022 4:40 PM
To: Emily Sheets <esheets@rclawsc.com>
Cc: Clayton B. McCullough, Esquire <clay@mklawsc.com>; Jeff Ross <jross@rclawsc.com>; Bobbi Myers <bmyers@rclawsc.com>
Subject: Re: Richardson v. Dewberry et al - ESI terms

All,

I have completed the preparation, processing, and searches for the following custodians:

B.Burnett

C.Warren

D.Dewberry

K.Carpenter

K.Johnson

Oyster Park PST

Oyster Park Maint PST

and for the USB Drive that was delivered to me

I have attached a matrix updating you to my current progress. We are making good progress and currently stand at 9 hours of work. I should be able to produce the results for the above custodians for Vendor and Non-Vendor soon. Please let me know if there are any questions or issues. Thank you and have a great weekend.

John W. Akerman, Esq.

Rosen Litigation Technology Consulting, Inc.

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Charleston, SC 29401

O 843.296.4648

C 843.743.8654
rosenltc.com
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ELECTRONICALLY FILED - 2022 Jul 17 9:07 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

On Fri, Feb 11, 2022 at 9:42 AM Emily Sheets <esheets@rclawsc.com> wrote:

Hi John,

We are all set to get started with the search in this matter. A list of the search terms is below and the excel spreadsheet with the emails to be culled out of the responsive documents is enclosed. Please make a folder of the culled-out emails/documents for me to review for privilege before production. The other emails/documents responsive to the ESI search can be produced to all parties once available. We have a clawback agreement in place for anything inadvertently produced. Please bates stamp all responsive documents (including the culled out ones) DewberryGREPESI_XXXXXX.

As a reminder, the bill for services will be split 50/50 between the parties (remitted to McCullough Kahn and Ross & Cristaldi respectively). I am jumping on a zoom deposition at 10:00 am but please call my cell with any questions.

Happy Friday!

Emily

803-201-3614(c)

List of terms:

a. Karolina Richardson
b. Kathlina Richardson
c. Oyster Park AND mold
d. Oyster Park AND mold testing
e. Oyster Park AND lawsuit
f. Oyster Park AND settlement
g. Oyster Park AND remediation
h. Oyster Park AND leak
i. Oyster AND mold
j. Oyster AND mold testing
k. Oyster AND lawsuit
l. Oyster AND settlement
m. Oyster AND remediation
n. Oyster AND leak
o. Park AND mold
p. Park AND mold testing
q. Park AND lawsuit
r. Park AND settlement
s. Park AND remediation

t. Park AND leak
u. OP AND mold
v. OP AND mold testing
w. OP AND lawsuit
x. OP AND settlement
y. OP AND remediation
z. OP AND leak

Emily C. Sheets

Attorney

Ross & Cristaldi, LLC

863 Coleman Blvd., Ste. B

Mt. Pleasant, SC 29464

(843) 329-4040

esheets@rclawsc.com

*Please note our email address change – our entire firm will now be "first initial, last name @**rclawsc.com**"*

Please note our firm address change

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From: Clayton B. McCullough, Esquire <clay@mklawsc.com>
Sent: Wednesday, February 9, 2022 5:15 PM
To: Emily Sheets <esheets@rclawsc.com>
Subject: RE: Richardson v. Dewberry et al - ESI terms

Ok, sounds good.

Clayton B. McCullough, Esquire
Attorney, McCullough ■ Khan ■ Appel

O: (843) 937-0400 | D: (843) 937-0401 | F: (843) 937-0706
E: clay@mklawsc.com | W: www.mklawsc.com
A: 2036 eWall Street, Mount Pleasant, SC 29464

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From: Emily Sheets <esheets@rclawsc.com>
Sent: Wednesday, February 9, 2022 1:59 PM
To: Clayton B. McCullough, Esquire <clay@mklawsc.com>
Cc: Jeff Ross <jross@rclawsc.com>; Bobbi Myers <bmyers@rclawsc.com>; john@rosenltc.com
Subject: RE: Richardson v. Dewberry et al - ESI terms

Clay,

I apologize for the delayed response. On the attorney list, it includes in-house counsel for the companies. Due to the size of the company that's quite a few folks. As previously discussed and agreed to, we plan to cull the attorney folks' emails initially, produce the unculled documents, and then I will review the culled documents and produce them redacted as needed. Happy to include a privilege log also, if we deem a whole document should be withheld.

You'll remember that this culling is to produce the documents without the delay of me first reviewing for privilege and the understanding that we can claw back any inadvertent production of a privileged document.

I have no objection to adding "Oyster", "OP", or "Park" to the search terms, but I do not know if there are specific, commonly used abbreviations for the complex.

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Please let me know if you have any questions or if Rosen may proceed with the search.

Best Regards,

Emily



Emily C. Sheets

Attorney

Ross & Cristaldi, LLC

863 Coleman Blvd., Ste. B

Mt. Pleasant, SC 29464

(843) 329-4040

esheets@rclawsc.com

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From: Clayton B. McCullough, Esquire <clay@mklawsc.com>
Sent: Monday, February 7, 2022 5:26 PM
To: Emily Sheets <esheets@rclawsc.com>
Cc: Jeff Ross <jross@rclawsc.com>; Bobbi Myers <bmyers@rclawsc.com>; john@rosenltc.com
Subject: RE: Richardson v. Dewberry et al - ESI terms

Thanks for the email. Two areas of questions. First, the attached vendor list seems to include lots of non-attorney folks. Second, I am limiting the search to Oyster Park, however, I am concerned about using that as a search term as I don't know if the full name would be included in the emails. Are there other ways it is designated internally (a number, OP, etc)?

Clayton B. McCullough, Esquire
Attorney, McCullough ■ Khan ■ Appel

O: (843) 937-0400 | D: (843) 937-0401 | F: (843) 937-0706
E: clay@mklawsc.com | W: www.mklawsc.com
A: 2036 eWall Street, Mount Pleasant, SC 29464

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From: Emily Sheets <esheets@rclawsc.com>
Sent: Friday, February 4, 2022 4:11 PM
To: Clayton B. McCullough, Esquire <clay@mklawsc.com>
Cc: Jeff Ross <jross@rclawsc.com>; Bobbi Myers <bmyers@rclawsc.com>; john@rosenltc.com
Subject: Richardson v. Dewberry et al - ESI terms

Clay,

I apologize for the delay in jumping into this discussion. I was out of town for a few days for a funeral.

As John prepares to do our ESI search, I wanted to make sure we were all on the same page since I know you have had a few discussions with both Jeff and me. John already has the relevant emails pulled from the parties' servers and is standing by (and cc'd here) for the greenlight.

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To that end, please review the ESI terms below and confirm your understanding of the same and John can get this party started.

Best Regards,

Emily

ESI Terms:

1. Per the court's ruling, we will split the cost of the ESI search 50/50 per the court order. Initially, we will cap the time at 5 hours (at $250 per hour) and regroup if John's team needs more time.
2. Emails have been pulled from the Dewberry and GREP servers and include all email addresses that are associated with Oyster Park. John already has those emails.
3. Per our discussion, to expedite production, the ESI search will exclude the legal teams for Greystar/Dewberry. A list of those names/firms is enclosed. We will produce the production initially without these emails. Ross & Cristaldi will review the excluded emails and determine if we can produce them redacted or with a privilege log.
4. Per the court's ruling, the ESI Search will include searches of the Oyster Park Emails from the Dewberry and GREP and include the following terms:

    a. Karolina Richardson
    b. Kathlina Richardson
    c. Oyster Park AND mold
    d. Oyster Park AND mold testing
    e. Oyster Park AND lawsuit
    f. Oyster Park AND settlement
    g. Oyster Park AND remediation
    h. Oyster Park AND leak

Emily C. Sheets

Attorney

Ross & Cristaldi, LLC

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(843) 329-4040

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esheets@rclawsc.com

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Ex. 10

MT. PLEASANT SQUARE ASSOCIATES, II, LLC D/B/A OYSTER PARK APARTMENTS, DEWBERRY CAPITAL CORPORATION, AND GREP SOUTHEAST, LLC'S MOTION IN OPPOSITION TO SANCTIONS

Karolina Richardson and Krista Richardson,
Plaintiffs,
v.
Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC
Defendants.

ELECTRONICALLY FILED - 2022 Jul 17 9:07 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

Emily Sheets

From: Emily Sheets
Sent: Friday, July 15, 2022 12:35 PM
To: Clayton B. McCullough, Esquire
Cc: Alicia@mklawsc.com; Jeff Ross; Bobbi Myers
Subject: Richardson
Attachments: 2022.07.15 Supp Production Chart.pdf

Emily C. Sheets
Attorney
Ross & Cristaldi, LLC
863 Coleman Blvd., Ste. B
Mt. Pleasant, SC 29464
(843) 329-4040
esheets@rclawsc.com

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ELECTRONICALLY FILED - 2022 Jul 29 11:29 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Karolina Richardson and Krista Richardson, Plaintiffs, v. Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, GREP Southeast, LLC Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Case No.: 2018-CP-10-03286 **MT. PLEASANT SQUARE ASSOCIATES, II, LLC D/B/A OYSTER PARK APARTMENTS, DEWBERRY CAPITAL CORPORATION, AND GREP SOUTHEAST, LLC'S JUDGEMENT NOTWITHSTANDING VERDICT**

DEFENDANTS MT. PLEASANT SQUARE ASSOCIATES, II, LLC D/B/A OYSTER PARK APARTMENTS, DEWBERRY CAPITAL CORPORATION, AND GREP SOUTHEAST, LLC'S TO EXCLUDE EVIDENCE AT TRIAL.

COMES NOW Defendants Mt. Pleasant Square Associates, LLC D/B/A Oyster Park Apartments, Dewberry Capital Corporation, and GREP Southeast, LLC's (collectively "Defendants"), by and through their attorneys, hereby move this Court for a Judgment Notwithstanding Verdict ("JNOV"), pursuant to Rule 50(b) of the South Carolina Rules of Civil Procedure for the jury verdict to be set aside and the verdict reduced or in the alternative, a Motion for a New Trial pursuant to Rule 59 of the South Carolina Rules of Civil Procedure.

II. BACKGROUND

This matter arises out of a personal injury case where Plaintiffs allege their apartment at Oyster Park had mold that caused or exacerbated multiple health issues. Defendant Oyster Park Apartments is an apartment complex in Mount Pleasant owned by defendant Mt. Pleasant Square Associates II, LLC d/b/a ("Oyster Park") and developed by Dewberry Capital Corporation ("Dewberry"). During the time the Plaintiffs lived at Oyster Park, it was managed by defendant GREP Southeast, LLC ("Greystar").

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Plaintiffs moved into Unit 101 at Oyster Park on May 26, 2017, and on July 10, 2017, Plaintiffs notified Greystar that they observed mold growing in their apartment. Oyster Park offered Plaintiffs accommodations in another apartment at the Oyster Park complex the same day on July 10, 2017, which Plaintiffs initially refused, but accepted on July 11, 2017. Oyster Park management relocated Plaintiffs, free of charge, from unit G-101 to G-102 on July 12, 2017 – a larger ground floor apartment as Plaintiff demanded to be on the ground floor due to her Meniere's disease and having dogs. Kathlina Sampson, the property manager personally helped facilitate the move. During this time Plaintiff Karolina Richardson ("Plaintiff"), continued to state that she intended to hold Oyster Park liable for her health issues and any damage to her personal property. On July 14, 2017, Belfor came to the apartments to inspect and begin repairs. It was determined that a plumbing leak on the third-floor apartment over the Richardson's unit was the moisture source. Throughout the repair process, Plaintiff refused entry to her unit, unit, delaying repairs and investigation. Plaintiff informed the property manager, Kathlina Sampson, on July 17, 2017, that her physician ordered her to move out due to "stress" and stated multiple times that Plaintiff and her daughter had to "retreat" to their NC home or Folly Beach home due to the stress of exposure to mold. Plaintiff also informed Oyster Park that during this timeframe she was actively seeking other apartments to live in as Plaintiff did not wish to continue living in Oyster Park. The offer to remain in unit 102 expired on July 21, 2017, as the repairs to unit 101 had been completed. It is unclear why Karolina and Krista did not return to unit 101 after repairs were completed.

The Plaintiffs did not pay rent on Apartment 101 or 102. On August 8, 2017, Plaintiffs began complaining they were suffering upper respiratory problems and began threatening to notify local businesses and government officials of Greystar's alleged mishandling of the situation. Plaintiff also informed Defendants that she had removed all her possessions from unit 101. On

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August 10, 2017, Plaintiff was offered by way of Counsel to relocate to unit 104 or 106 as well as a rental concession of $1,675 and moving expenses of $300 to relocate. Alternatively, they offered to allow her to terminate her lease early without penalty so long as Plaintiff provided 60 days' notice of termination. They also offered to allow her to stay in apartment 102 with a rental concession of $1675 so long as Plaintiff paid her remaining balance, and the normal rental payments would resume September 1, 2017. Otherwise, Plaintiff was informed that Plaintiff would be evicted due to her failure to pay rent. Plaintiff ultimately moved out over Labor Day weekend 2017.

Plaintiffs' alleged causes of action against Defendants for Negligence/Negligence per se pursuant to a violation of South Carolina Residential Landlord Tenant Act, Section 27-40-10 et. seq. Code Laws of South Carolina ("LTA"), South Carolina Unfair Trade Practices (SCUTPA), Negligent Misrepresentation, Fraudulent Misrepresentation, and Civil Conspiracy.

When the Plaintiffs rested, the Defendants moved for directed verdict and the Court granted directed verdict as to the SCUTPA and Civil Conspiracy Claims. The Court took the directed verdict motion as to Negligent Misrepresentation and Fraudulent Misrepresentation under advisement[1].

At the trial by jury, conducted the full week of July 18, 2022, the claims remaining at verdict were: Negligence/Negligence per se pursuant to a violation of South Carolina Residential Landlord Tenant Act, Section 27-40-10 et. seq. Code Laws of South Carolina ("LTA"). On July 22, 2022, after 6 hours of deliberation, the jury returned a verdict in favor of the Plaintiffs

[1] The evening of July 21, 2022, Plaintiffs' counsel emailed the court to say that the Negligent Misrepresentation and Fraudulent Misrepresentation claims were being withdrawn and as such only claims for Negligence and Gross Negligence as to LTA remained when Defendants began its case in chief.

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concerning the Negligence/Negligence Per Se as to the LTA cause of action and awarded the Plaintiffs' an amount of $1,000,000.00.

When Defendants rested on Friday, July 22, 2022, Defendants' counsel renewed their directed verdict motions as to Negligence and Gross Negligence on the same grounds argued on July 21, 2022, there is no evidence of a violation of the Residential Landlord Tenant Act by any Defendant[2]. This JNOV motion is made pursuant to the July 22, 2022, directed verdict motion.

II. ARGUMENT

A Judgment Notwithstanding the Verdict is proper because no Reasonable Jury Could Have Reached the Challenged Verdict as to the Negligence/Negligence *per se* violation of the South Carolina Residential Landlord Tenant Act, §27-40-10, et. Seq., CODE OF LAWS OF SOUTH CAROLINA)

A motion for JNOV is merely a renewal of the directed verdict motion…See *Roland v. Palmetto Hills,* 308 S.C. 283, 417 S.E.2d 626 (Ct. App. 1992). In ruling on a motion to set aside a verdict, the trial court is concerned with the existence of evidence, not with its weight. *State v. Gunter,* 273 S.C. 347, 256 S.E. 2d 317 (1979).

A. Landlord Tenant Act

The LTA SECTION 27-40-440 provides as follows:

(a) A landlord shall:
(1) comply with the requirements of applicable building and housing codes materially affecting health and safety;
(2) make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;

[2] Counsel for Defendants incorporates all arguments raised in its Directed Verdict Motions and open court at trial, which properly preserved its ability to file the immediate Motion. *See Grooms v. Zander,* 246 S.C. 512, 514, 144 S.E.2d 909, 910 (1965) (post-trial motion for judgment notwithstanding the verdict is authorized only when a motion for a directed verdict has been made at the trial and a verdict has been returned against the movant).

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(3) keep all common areas of the premises in a reasonably safe condition, and, for premises containing more than four dwelling units, keep in a reasonably clean condition;
(4) make available running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;
(5) maintain in reasonably good and safe working order and condition all electrical, gas, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied, or required to be supplied by him. Appliances present in the dwelling unit are presumed to be supplied by the landlord unless specifically excluded by the rental agreement. No appliances or facilities necessary to the provision of essential services may be excluded.

The South Carolina Supreme Court has held "…that the relationship of landlord and tenant imposes no legal duty on the part of the former to keep the leased premises in repair, in the absence of a valid contract on the part of the lessor to do so. The parties, however, may vary the legal obligations imposed by law from the relationship of landlord and tenant and agree that the landlord shall make necessary repairs, "but an agreement to repair as a part of the letting is an agreement to make repairs on notice, and failure to comply will, as a general rule, give rise merely to a right of action for breach of contract, under which damages are not recoverable for personal injuries sustained by reason of the defective condition of the premises". *See Connor v. Farmers and Merchants Bank, 243 S.C. 132, 132 S.E.2d 385 (S.C. 1963) citing Timmons v. Williams Wood Products Corp*., 164 S.C. 361, 162 S.E. 329; and *Pendarvis v. Wannamaker*, 173 S.C. 299, 175 S.E. 531.

B. NEGLIGENCE

The Plaintiffs have failed to present any evidence to support their claim for Negligence. In order to succeed on a claim of negligence for Violation of the South Carolina Residential Landlord Tenant Act, a plaintiff must prove the following five elements:

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1) The LTA requires that a landlord comply with the requirements of applicable building and housing codes materially affecting health and safety; no evidence was presented that any defendant violated a building or housing code. That testimony would require an expert. The Plaintiffs did not put up any evidence by any expert stating that building or housing codes were violated at all, but even more significant, any violation that affected the Plaintiffs. *See,* Section 27-40-440 (a)(1) CODE OF LAWS OF SOUTH CAROLINA.
2) The LTA requires that a landlord make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition. *See* Section 27-40-440 (a)(2) CODE OF LAWS OF SOUTH CAROLINA. The Plaintiff and Defendants both put up copious amounts of evidence on how Plaintiffs' first and second apartments were immediately repaired after incident. Likewise, the Plaintiffs put up no evidence that the units (the initial Unit 104 or Unit 101) continued to have issues after they were repaired by the Defendants.
3) The LTA requires a landlord keep all common areas of the premises in a reasonably safe condition, and, for premises containing more than four dwelling units, keep in a reasonably clean condition. *See* Section 27-40-440 (a)(3) CODE OF LAWS OF SOUTH CAROLINA. Here again, the Plaintiffs put up no evidence of common area issues associated with these Plaintiffs and/or casually related to Plaintiffs' injuries. Instead, Defendants showed pristine pictures of a beautiful pool and event space, showing its safe and clean condition.
4) The LTA requires a landlord make available running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the

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dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection. *See* Section 27-40-440 (a)(4) CODE OF LAWS OF SOUTH CAROLINA. Here again there was no evidence that the water in Plaintiffs' multiple units at the project did not run and no evidence that hot water and reasonable heat were not provided.

5) The LTA requires a landlord maintain in reasonably good and safe working order and condition all electrical, gas, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied, or required to be supplied by him. Appliances present in the dwelling unit are presumed to be supplied by the landlord unless specifically excluded by the rental agreement. No appliances or facilities necessary to the provision of essential services may be excluded. *See* Section 27-40-440 (a)(5) CODE OF LAWS OF SOUTH CAROLINA. Here again, no evidence was provided to show that any of these items were not functioning.

Plaintiffs provided absolutely no evidence of a violation of the LTA by any Defendant. Plaintiffs' counsel did however provide ample evidence that Oyster Park (the Landlord) hired a well-qualified property management team in Greystar, and that Dewberry (the Developer) left their project manager on site well after the entire property received its Certificate of Occupancies to address punch list items which are not only customary but expected on new construction.

In addition to no evidence of a violation of LTA, it is worth noting that in *Conner* there was a question about the adequacy of repair undertaken by the landlord. While there was no duty for the landlord to complete the repair in that case, the fact that it did the repair, and it did not work was an issue of negligence. *Conner* at 319. Here the Plaintiffs have provided evidence that a repair

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was needed but no evidence that Defendants undertook it themselves. In fact, the record in this case is that professionals were hired to fix it. Moreover, there is no complaint of an improper fix on Unit 101 or Unit 104. Where there is no duty, there can be no breach and in the absence of any evidence showing a breach the Plaintiffs cannot prevail.

III. Conclusion

The Defendants were required to act as a reasonable person would have acted under the circumstances. Again, Oyster Park hired a qualified property manager, Greystar, to operate and maintain the apartments, Dewberry Capital left its project manager, Douglas Germain, on site to handle punch list items after the buildings' Certificate of Occupancies were issued. In addition, the evidence only leads to one conclusion and shows that Greystar responded to the plumbing leak in Unit 301 that lead to water intrusion and mold in Unit 101 promptly and that it was addressed and repaired. The evidence also shows that the Plaintiff was moved to a Unit that was not experiencing issues and the Plaintiff provided no evidence, outside of speculation and innuendo, to suggest the final unit, unit 102, had any issues similar to the ones complained of in Unit 101.

Due to the lack of evidence supporting any of Plaintiffs' remaining claims of Negligence/Negligence Per Se, the Defendants pray that this Honorable Court either adjust the verdict in favor of the defense or provide for a new trial.

(Signature Page to Follow)

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Mt. Pleasant, South Carolina

July 29, 2022

ELECTRONICALLY FILED - 2022 Aug 11 11:06 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Karolina Richardson and Krista Richardson, Plaintiffs, v. Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, and GREP Southeast, LLC, Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-3286 **MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT NOT WITHSTANDING THE VERDICT**

Plaintiffs offer this Memorandum in Opposition to Defendants' Motion for the jury verdict to be set aside and/or the verdict reduced or, in the alternative, a motion for a new trial.

Defendants' motions should be denied. There was extensive evidence in support of each element for the cause of action of negligence. The jury clearly relied upon the extensive testimony, exhibits, and expert opinion evidence, all in support of the Plaintiffs' negligence claim. As stated in Defendants' motion, "[I]n ruling on a motion to set aside a verdict, the trial court is concerned with the existence of evidence, not as weight." *State v. Gunter*, 273 S.C. 347, 256 S.E. 2d 317 (1979). Here, there was substantial evidence in support of Plaintiffs' claims; therefore, this motion must be denied.

Additionally, there is no basis for granting a new trial pursuant to Rule 59. Again, there is substantial evidence in the record in support of Plaintiffs' claims; therefore, this motion must be denied.

Based on the foregoing, Plaintiffs ask this Honorable Court to deny Defendants' motion.

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McCULLOUGH ▪ KHAN ▪ APPEL

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August 11, 2022
Mount Pleasant, South Carolina

ELECTRONICALLY FILED - 2022 Dec 19 4:57 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON**	)	**IN THE COURT OF COMMON PLEAS**
Karolina Richardson and Krista Richardson, Plaintiffs, v. Mt. Pleasant Square Associates, II, LLC d/b/a Oyster Park Apartments, Dewberry Capital Corporation, and GREP Southeast, LLC, Defendants.	)	Civil Action No. 2018-CP-10-3286 **NOTICE OF MOTION AND MOTION TO ALTER OR AMEND ORDER AND/OR MOTION TO RECONSIDER**

TO: THE HONORABLE JENNIFER B. McCOY

CLAYTON B. McCULLOUGH, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants will move before the Honorable Jennifer B. McCoy at such time and place as may be set by the Court, for an Order, pursuant to Rule 59(e), SCRCP, altering, amending, and reconsidering the Order Granting Plaintiffs' Motion for Sanctions Pursuant to Rule 37(b)(2)(C), SCRCP, filed on December 8, 2022. The Defendants' counsel received written notice of entry of the Order on that same date.

The Defendants' motion is based upon the following grounds:

1. In its Order Granting Plaintiffs' Motion for Sanctions Pursuant to Rule 37(b)(2)(C), SCRCP, the Court does not address the defenses asserted by the Defendants in

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opposition to the Plaintiff's Motion for Sanctions.[1] With the opposition memorandum filed on July 17, 2022, together with the exhibits filed with that memorandum, the Defendant explained that the documents at issue in the Motion for Sanctions had been previously produced during other document productions including the production of approximately 136,000 of ESI discovery. While the Plaintiffs argued that the new production included an additional 50 to 60 mold complaints by residents at Oyster Park that had not been previously produced, the Plaintiffs presented no evidence to support that assertion. The record simply includes the argument of counsel, and of course, the assertions or arguments of counsel are not evidence. *See*, *McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E.2d 473, 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered"); *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127, 129 (Ct. App. 1991) ("Arguments of counsel are ... not evidence"); *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986). Before awarding discovery sanctions of $25,200.00, the Court should have required the Plaintiff to present admissible evidence that there were documents produced on July 15, 2022, that had not been previously produced and available to Plaintiffs' counsel. In addition, the Court ruled that the Defendants had violated the Form Order entered January 11, 2021, but the Court did not cite to any specific ruling in that Form Order that was violated or how it was violated by the production made on July 15, 2022.

2. In addition, in its Order Granting Plaintiffs' Motion for Sanctions Pursuant to Rule 37(b)(2)(C), SCRCP, the Court correctly sets forth that standard for determining whether a discovery issue warrants sanctions and what an appropriate sanction would be. *See*, *Laney v. Hefley*, 262 S.C. 54, 202 S.E.2d 12 (1974) (in determining the appropriateness of a sanction, the

[1] While in its order the Court references twelve exhibits submitted in support of the Motion for Sanctions, no exhibits were filed with the motion and no exhibits are filed in the trial court record.

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court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice"). However, despite setting forth the proper factors to be considered and weighed, the Court never makes findings that address each of those factors nor provides any analysis that demonstrates that the Court has appropriately exercised its discretion. It is well settled that a failure to exercise discretion amounts to an abuse of that discretion. *Fontaine v. Peitz*, 291 S.C. 536, 354 S.E.2d 565, 566 (1987) ("[w]hen the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred."). *See also*, *State v. Smith*, 276 S.C. 494, 280 S.E.2d 200, 202 (1981) ("the mere recital of the discretionary decision is not sufficient to bring into operation a determination that discretion was exercised. It should be stated on what basis that discretion was exercised"). In particular, the Court does not address specifically whether the Defendants produced new documents on July 15, 2022, what those new documents were, or the prejudice that resulted to the Plaintiffs. Even if the Plaintiffs have sufficiently shown that there were new documents of 50 to 60 mold complaints by other residents, they have not shown that there was any new admissible evidence provided which had any impact on the Plaintiffs' case or trial strategy. To the contrary, none of the mold complaints which formed the basis for the Motion for Sanctions was admissible evidence at trial. In effect, there is no discussion in the Court's Order of the prejudice that resulted to the Plaintiffs that warranted the award of monetary sanctions.

3. On the amount of the attorney's fees awarded, the Court outlined the factors to be considered in an award of attorney's fees, but the Court made no findings as to those factors. In a conclusory manner, the Court states only that the "fees and costs requested by Plaintiffs are reasonable." Moreover, the Court failed to make any findings to show that the fees and costs

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claimed for the ESI document productions that the Plaintiffs had previously sought are causally related and therefore properly awarded as sanctions for the July 15, 2022 production at issue.[2]

4. Of the $25,200 in sanctions awarded, $11,700 was in reimbursement of paralegal fees billed at a rate of $195 per hour. The Court made no findings that a reasonable paralegal rate in the Charleston market is $195 per hour nor was there any evidence provided to support that rate. Moreover, the Court erred generally in awarding any non-attorney's fees. In *O'Shields v. Columbia Automotive, LLC*, 435 S.C. 319, 867 S.E.2d 446 (Ct. App. 2021), the Court of Appeals provided direction on remand for the trial court to redetermine its award of attorney's fees and specifically directed that "[t]he circuit court should eliminate any redundant fees, improper cost, and *paralegal fees* as it had in the previous award." 867 S.E.2d at 457. (Emphasis added). Thus, as this Court has ruled in *O'Shields*, the award in the case at bar should not have included non-lawyer time, including fees for paralegals, legal assistants, and any other non-professional staff members.[3]

5. In its Order Granting Plaintiffs' Motion for Sanctions Pursuant to Rule 37(b)(2)(C), SCRCP, the Court ordered that the award of $25,200 in fees and costs be paid within five days of the date of the Order. The Court, however, has no authority under Rule 37 or any statutory authority to place a time limitation on the Defendants' payment. Instead, the award should be entered as a judgment and should be treated as any other judgment is treated under South Carolina law. Moreover, the Court has no authority to circumvent the Defendants' ability to appeal that judgment by placing a time limitation on the Defendants' ability to satisfy the

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[2] The Court's Order makes reference to the Plaintiffs' filing of an Affidavit of Clayton B. McCullough; however, there is no entry on the Public Index showing that such an affidavit was ever filed or is part of the trial court record.

[3] The Defendants recognize that the *O'Shields* case involved claims on which North Carolina substantive law was applicable. In ruling that paralegal fees are not recoverable, the Court of Appeals did not reference a specific North Carolina case for that proposition. At any rate, the premise that an attorney's fees award should not include paralegal fees unless authorized by statute is a valid premise, and one the *O'Shields* decision supports.

judgment. That time-payable provision in the Order is an abuse of discretion and respectfully should be stricken.

The Defendants' motion is based upon the pleadings filed in this case; the Order Granting Plaintiffs' Motion for Sanctions Pursuant to Rule 37(b)(2)(C), SCRCP, filed on December 8, 2022; the Defendants' Opposition Memorandum and exhibits filed July 17, 2022; the rules of court; and such other matters as may be properly presented to the Court at the time of the hearing.

LINDEMANN & DAVIS, P.A.

BY: *s/ Andrew F. Lindemann*

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Counsel for Defendants

December 19, 2022

ORAL ARGUMENT REQUESTED

ELECTRONICALLY FILED - 2022 Dec 19 4:57 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1003286

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF CHARLESTON 2018-CP-10-03286

Karolina Richardson)

) TRANSCRIPT OF RECORD

-vs-)

) July 18, 2022 - Vol 1 of 5

Mt. Pleasant Sq. Ass.)

) Charleston, South Carolina

B E F O R E:

The Honorable Jennifer B. McCoy, Judge

A P P E A R A N C E S:

Clayton B. McCullough, Esquire
Attorney for the Plaintiffs

Jeffrey A. Ross, Esquire
Emily Sheets, Esquire
Attorneys for the Defendants

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
Ninth Judicial Circuit

THE COURT: Thank you. Please be seated. Okay, I think we are ready to proceed, if the attorneys are. I'm happy to take up any motions in the order most appropriate.

MR. MCCULLOUGH: Your Honor, if it's okay, I would like -- Clay McCullough on behalf of the Plaintiff, and I would like to start with the motion for sanctions that we filed on Friday, if that's okay.

THE COURT: Yeah, let's talk about that for sure.

MR. MCCULLOUGH: Thank you, Your Honor.

THE COURT: Okay. And I've got -- just going through the document that I have so I could follow along. I've got the motion and 12 exhibits that were attached; is that right? All right. The motion has already been filed; is that right? Okay. Happy to hear from you.

MR. MCCULLOUGH: Thank you so much. May it please the Court. Again, I'm Clay McCullough, and I am here on behalf of the Plaintiffs, the Richardson family, right here behind me. And just quickly, because I know you know a little bit about the case, this is a lawsuit arising out of -- my clients lived in Oyster Park Apartments in Mount Pleasant that's owned and managed by the Defendants. She moved in, in May of 2017,

and I think everything I'm saying now is undisputed.

Shortly after moving in, there was a flood in the unit she was in, and she moved to a second unit. She lived in the second unit -- or they lived in the second unit for about six weeks, and she had complained about some smelling and some mildew and things of that nature. And then, I believe, on July the 10th, saw mold in several areas, and began some e-mail communications with the staff of Oyster Park.

It was subsequently tested, confirmed to be mold. The Defendants hired a mold remediation company to come in, and she was moved to a third unit. While in the third unit, continued to complain about smells and things of that nature and told them about the concerns about mold. Ultimately, Labor Day weekend moved out.

THE COURT: Okay, a whole complex of stuff.

MR. MCCULLOUGH: Correct.

THE COURT: Okay.

MR. MCCULLOUGH: The evidence will show a tremendous amount of early-on medical issues associated with the exposure of mold for both of the Richardsons. There's a lot of medical data and documentation that will be forthcoming.

So, I was retained, and we filed a lawsuit

in 2018. We sent normal discovery and started the process, and the lawyer that was in Greenville for the Defendants, a gentleman by the name of Jamie Akerman, came in to defend, and we started the normal process of document production. And early on, we had tussled over what information to produce. They produced some records directly associated with the Richardsons and directly associated with an e-mail communication, very little communications, between the Richardsons and the Defendants.

We continued to expand what we were asking. And to be honest with you, at that point, I was completely unaware of other issues out there. It shortly became obvious that there were ongoing problems, systemic problems, at Oyster Park. This building leaks in every way I can think that something would leak. It's flooded from the ground. They have multiple roof leaks; they have window leaks; they have plumbing leaks; they have HVAC issues causing excess humidity.

Testimony and the documents will show numerous dehumidifiers that have permanently and temporarily been installed. Lots and lots of mold tests, lots and lots of remediation companies coming in. I'm going to fast forward to Friday, and then

I'm going to back up.

THE COURT: Okay.

MR. MCCULLOUGH: The reason I'm fast forwarding to Friday is I've been before Your Honor on several occasions, but I just want you to know two things. One, I've never filed a motion like this before in my career. And, two, everything that I am saying and every blunt assertion I will make is no way, no way aimed at these folks. Emily responded the way she should have responded, on time, and was, like, sorry.

THE COURT: Okay.

MR. MCCULLOUGH: All right.

THE COURT: Right.

MR. MCCULLOUGH: So, I went through a frantic on Friday just trying to pull as much as I could.

THE COURT: Okay.

MR. MCCULLOUGH: All right. We sent a bunch of discovery. Almost immediately, we started to tussle, as I mentioned, in late 2018, 2019. We took some depositions, and at every deposition of the Dewberry, GreyStar folks, it became obvious there's more information that's not forthcoming. There's lengthy pages of testimony -- not testimony, conversations between Mr. Akerman and I, about go to Oyster Park,

gather these documents, give me the information. We stopped the deposition of the onsite property managers so they can do just that.

THE COURT: Okay.

MR. MCCULLOUGH: The information dribbled in. The entire year of 2019 was spent fighting over these issues. They would submit three because I told them about those three, and then we would get some more. And then I would send another letter. We sent discovery they didn't respond to. The first exhibit that I e-mailed is a letter saying, guys, give me these other mold reports, give me -- I mean, there's a whole system in place. We got very little.

Exhibit 2, February of 2019, guys, again, let's quit playing games. Send me the information. So as you'll see, this is kind of a recurrent thing -- theme. Exhibit 3 is a motion to compel. We sent -- and said, here's the discovery, you haven't given me the documentation. Somewhere in this process, Mr. Akerman was no longer at the firm, some guy named Doug Leadbitter took over. There were promises made to gather information, and information was forthcoming.

At some point, we got up to 30 to 35 people that complained of mold. While this is going on, I have tenants, unsolicited, calling me because

I have a lawsuit filed, saying, hey, this is what I know, I heard this, hey, what's happening. A lawyer in his office is right around the corner calling me, trying to put together a class action against Oyster Park. I said, no, I've got my hands full with the lawsuit that we've got.

So again in December of 2019, I'm now communicating with Mr. Leadbitter, and again, guys, please, give me this information. The last response we got is -- this is April 30th, 2019. Now we're in December of 2019. So there's always, to be honest, some level of -- you didn't ask this, you didn't ask that. So we have more conversations until I send another round of discovery. This is Exhibit 5. Now we're in 2020, please, send me the information that I keep requesting. You won't send it without being browbeaten. I think Mr. Leadbitter is gone at this point, I'm not quite sure.

Exhibit 6, from a paralegal at Gower, Wooten and Darneille saying we're working on it, we're pulling stuff together, we'll provide additional information.

Finally, because more stuff never was forthcoming, I filed a second motion to compel, and this one was scheduled -- filed July 30, 2020, and it was again asking for several things. The first

thing is I kind of gave up, and I sent a request -- there's nothing in this world I hate more than electronic discovery. It is an ending well of resources and money, but there's nothing else I can do. So, I sent together a list of search terms and searches I wanted to have happen.

What also happened here in this time period is GreyStar no longer was working at Oyster Park on behalf of Dewberry. And Mr. Leadbitter basically told me he never asked GreyStar for any information because -- although they were a Defendant and a property manager.

So, I filed a motion. And then in September, I wanted to follow up, and so I again wrote another letter, and this is pretty important because I think this is kind of why we're here today, and this is Exhibit No. 8. "Doug, you need to respond to the ESI discovery. But, more importantly, you need to provide me these mold complaints and the order of infiltration complaints made by the residents."

And again they have a whole system. They fill out forms; it's documented. And it's not like we're talking of millions of people. This is an apartment complex. Give me your old complaints. You've got to have a notebook somewhere; you've got

to have documentation of this somewhere. So we have this here. We filed a motion, and then we come before Your Honor.

THE COURT: Starting to sound familiar. Okay.

MR. MCCULLOUGH: This was in December 3 of 2020, and I'm just going to read from the transcript. And, Your Honor, the transcript of this was actually submitted by the Defendants in opposition of the motion for sanctions. So, I'm just going to read it. I'm not going to read it all because I'm sure you've read parts of it, although, it was a long time ago. This is what I'm asking for.

The second issue is part of what we sent in correspondence requesting an update on all mold and mildew and more claims that have been made. Your Honor, at last, as of the middle of 2019, there were approximately 30 claims from tenants to Oyster Park about water leaks, mold and mildew. What happened is GreyStar stopped serving as the property manager I believe in the middle of 2019. And what appears has happened is the continuation of the list of complaints to include settlements, to include the nature of the claims and what remediation was conducted, stopped when Dewberry took over as the property manager.

The last noted documentation of the claim was from September of 2019. And then we're talking about the electronic searches that they had performed. It was apparently done over a year ago with limited data searches, meaning they certainly didn't search the server. They searched one e-mail address and had no idea they did this search in May 2019. And why they didn't produce it until yesterday? They produced an e-mail from one particular person.

The last documentation they gave us were 30 mold complaints as of summer of 2019. Here we are 18 months later, and about 30 minutes ago they provided me one additional packet of information with one particular complainant.

Your Honor, I think they've made virtually no effort to comply with my discovery request. And then you say, Mr. McCullough, I guess you're going to say it's going to go to your UTPA claim. So, I respond further, what I'm asking for is a continuation of what's been going on until today. There was a list of all the water, mildew and mold claims, or complaints made to the property management company. And you said, yeah, no reason to hide the ball. I'm with you. Mr. McCullough, if you know of some names tell him. It's not going to make you -- it's only going to make

them produce them that much faster.

And then, Your Honor, I entered an order stating a claim to file a motion to compel on July 30, 2020, which was heard in this court on December 3, 2020. Upon careful consideration of the argument and submissions, this Court grants Plaintiff's motion to compel.

So then, Your Honor, we proceed with some ESI searches, and the ESI -- actually, I'm sorry. We kind of carried on. We don't get a supplemental document. The law firm that had been handling the case up to that point I believe had -- was fired. And the current law firm took over, and the lawyer handling it was -- Jones. Sorry. And they have moved for summary judgment.

So now we're before Judge Young in November of 2021. And this is me again talking to Judge Young, so what's happened is we had depositions in my office about two and a half years ago, and those depositions, the primary point person, the property manager, essentially the day before had come to a conclusion and told Jamie Akerman that they had never gotten an e-mail search, there were photographs missing, they had a notebook with mold-related claims but never was provided. I've sent motions; I've sent discovery

requests. We have not received, it goes on, texts, photographs. To be blunt, there's an active effort to hide mold-related claims at Oyster Park.

Even from the discovery that I have received, we've gotten over 45 written complaints that were submitted by tenants of Oyster Park, and we got virtually no internal e-mails, no text messages, no photographs.

My last conversation about all of this is they didn't represent GreyStar anymore because Dewberry either didn't retain or fired GreyStar. Judge Young stated, all right, let's get that settled. Y'all have to provide responses to his discovery.

Next, Your Honor, we started on an ESI process. I will tell you that this ESI was unnecessary. We didn't need to do it, but we had to do it because this appeared to be the only way to get this information. They have never produced the documentation that you had ordered, or that Judge Young ordered.

And so the next document, Exhibit 10, is with Kirkley [ph.] White, the lawyer at Jeff and Emily's firm, basically trying to talk me out of doing ESI searches, is the way I read it. And she states, "We anticipate anywhere between 150 to 500 hours for review, 50 e-mails per hour, as a rule of thumb,

at approximately 100 hours per hour, contracted terms on hourly rate to be determined. This cost will range anywhere between $15,000 to $50,000 depending on the volume of e-mails that are returned. At a minimum, we need you to deposit $5,500 for me to proceed with the collection and search. This equates to half the cost of the anticipated search."

She goes on to write, "Also please keep in mind we already produced on two separate occasions the file for all the mold-related complaints, kept on hard copy or electronically at Oyster Park, and separate search hits from all the e-mails related to mold claims and complaints from tenants of Oyster Park. And I have updated these as our clients received them, so we expect the results of these searches to duplicate what your client had already received in discovery. However, given the court order, we will not be de-duplicating documents from the prior production in an abundance of caution in case anything was inadvertently missed in the first collection."

The searches were run. We got -- I don't remember what the document was called, but a tremendous response of stuff. This poor woman spent a month or two of her life going through it, and it essentially substantiated the mold claims we had up until that date.

So we were pretty confident that they had been told that the problems were resolved, and the problems were -- Oyster Park does not have any problems anymore.

So from our perspective, it made sense that the materials that we got on the ESI search matched the material we have been provided because the problems were solved.

THE COURT: Okay.

MR. MCCULLOUGH: And then going through this, we came across an e-mail talking about a mold book. I e-mailed Ms. Sheets asking, what's the mold book? And this is Exhibit 11, and she says, as far as I know we produced everything, but I'll verify. This e-mail will suffice.

And I will say one more time I have no doubt that she believed that when she wrote that, because when you're having a lawsuit with two motions to compel that have been granted, and you're spending thousands and thousands of dollars, certainly if there are notebooks with mold claims that had been requested about a thousand times sitting in your office, you're going to produce them.

THE COURT: Yeah.

MR. MCCULLOUGH: They weren't, until Friday. And so we got another thousand documents on Friday

with about 50 more mold claims.

THE COURT: Okay.

MR. MCCULLOUGH: So, Your Honor, we are asking for an extremely rare thing, which is this honorable Court to sanction the Defendants because I believe the Defendants are the ones that were not being responsive to their lawyers, or they ignored this honorable Court's order. And the assurances, frankly, I think they were not being truthful with counsel.

We cite to the case of *McNair v. Fairfield County*, which was 665 S.E.2d 830, that states Rule 37(b)(2)(c), South Carolina Rules of Civil Procedure, "When a party fails to comply with a discovery order, the trial court has the discretion to impose a sanction it deems just, including an order dismissing the action. Absent an abuse of discretion, the trial court's imposition of discovery sanctions will not be reversed on appeal, and the party appealing from the order of sanction carries the burden of proving an abuse of discretion occurred. Severe sanctions, such as the dismissal of an action, should only be imposed in cases involving bad faith, willful disobedience or gross indifference to the opposing party's rights."

Finally, "In determining the appropriateness

of a sanction, the court considers -- should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness and degree of prejudice."

Your Honor, we believe this is a willful disobedience and gross indifference to the opposing party's rights. We believe that these notebooks were sitting in the offices of Dewberry, probably at Oyster Park, for the last two and a half years. There's no rational reason this information was not produced. They're going -- have said, there's no prejudice, we gave it to them. They were able to cram some more stuff into documents that we object to.

Well, I hadn't talked to 50-plus people. I don't know what's out there. I will tell you we are -- we've been up for trial three times, and we're not going to push it off anymore. But if there's ever been a situation where the Defendants had intentionally, intentionally, not provided information, they can fight and kick and scream about whether or not it's admissible, but it's definitely discoverable. It's been ordered to be discovery.

And this wild goose chase that they sent us on, the ESI, because they didn't produce it means that the lawyers on both sides have spent countless

hours -- and the only thing that we can do at this point, respectfully, is something significant. So we're asking you to strike the pleadings; we're asking you to hold them in default; we're asking this to be turned into a damages hearing.

THE COURT: Happy to hear from defense counsel.

MS. SHEETS: Your Honor, good afternoon. May it please the Court. Emily Sheets for the Defendants. Your Honor, I'm ---

THE COURT: For the record, I don't envy your position today, Ms. Sheets, but I'm happy to hear from you.

MS. SHEETS: I appreciate Your Honor's courteousness, and I appreciate Plaintiffs' counsel's grace as well. I am not going to rehash the history here. I don't dispute the history; the history is what it is. I do want to qualify that -- because I think qualification is especially important.

Here's the bottom line. The question is, first, what's the posture of discovery been like, and here's the posture. The reality is that you have a large entity, GreyStar, that is the property manager of Oyster Park when discovery first started in this case. They managed hundreds to probably thousands

of apartments. Their servers are immensely populated with tens of thousands of pages of documents. And so to sit here and say, oh, gosh, it will just be so easy, just open your Oyster Park folder, and, you know, just poof and make it appear.

Well, the reality is that's just not how large corporations operate. There's stuff everywhere. It's not just one folder here; it's one folder and 25 folders in here. So that's where the case started, that's where discovery began. And as this case kind of went on in time, you got other entities being involved, Dewberry Capital took over the property management of this apartment.

At the point where they took it over, there's sort of a relationship, if you will, between, to the extent that there was one, between Dewberry Capital and GreyStar, ended. And GreyStar went on their way, they were managing other apartments. They had no involvement with Oyster Park. Dewberry Capital takes over.

At that point, Dewberry Capital has no control over getting the documents from GreyStar. Those people are gone; those people don't work at Oyster Park anymore. And to some extent, the documents went with them, so now you have a communication gap, right?

You've got a corporation over here that needs things from a corporation over here, but then you've got the people in the middle that are sort of no longer there.

And so, you know, for better or worse, it takes time. It's not an unwillingness; it's not an inability; it's not a lack of desire. It's just it takes time to sort of -- for one entity to figure out who they should be talking to now that the relationship has changed.

So, you know, to the extent that the first year and, you know, even two years, we all know how litigation works. It's slower than it should be, for better or worse, for everyone, right? And so as time went on, there was active consideration of these elements. There were actively folks trying to figure out what everyone had. And as that happened, this is really key, that information is produced.

And so as we go in time, we admittedly have this hearing to order an ESI search. That ESI search is done. My office coordinated it, and I can assure you that was not an easy or a quick process. But we were able to find the people that needed to be found and coordinate between GreyStar and Dewberry over a terabyte of data. It was taken down from the GreyStar servers and the Dewberry servers and provided to the

ESI manager.

My office worked very closely with Mr. McCullough's office. We made sure that, even despite before, that we had the exact sort of tailored list of terms, because we didn't want to document dump them. I mean, let's be clear. We were trying not to document dump them; we weren't trying to conceal. And I think that's really important because I think that goes to the heart of the sanctions. What was the conduct? What was the desire, the intention behind that conduct? And it simply was I don't want to document dump them, and so we undertake the ESI search.

Even after the ESI search, I think to our credit, Mr. McCullough and I did a great job trying to tailor that. I think we did. Even after that though, 136,000 documents were produced, but there's more. We actually stopped the ESI search a little over three-fourth of the way through because it was getting extensive.

Our fears and Ms. White's fears from the e-mail that Mr. McCullough read to you, come to realize, right, that this is going to be thousands of man hours. And so Mr. McCullough and I agreed together that we would stop that search, and that instead of us hand reviewing each of those documents, we would immediately

turn them over so that we can both simultaneously search them under a callback agreement, and if a privileged document is in there, we would call it back.

And to Mr. McCullough's office's credit, we've had to do that a couple of times. We've had to send an e-mail and say, hey, you need to call us back, and they have been willing to do that. But there's still more out there. And I point that out to you because I think it goes to the heart of what our intent and our willingness was, that there are still documents out there.

So why does that matter? Why does that matter in relation to these notebooks? Your Honor, I don't know how long those notebooks have been around; I don't know who created them. I haven't had time to figure that out. I only know they exist, and I only know that at the moment we figured out they exist, we immediately produced them. There's a telephone call; there was an active effort to get those to him within hours.

So what's the story there? The story is this: When you talk to Dewberry Capital, and you talk to Oyster Park, and you talk to GreyStar, in their mind we have done the most extreme thing that we can do. Each of our entities have spent countless hours making

sure we pulled everything we needed to pull off our servers to make sure that we spent the thousands of dollars we were ordered to spend in both company hours and attorney hours to pull together those documents, to getting the ESI search done and to get those over to the Plaintiff.

And, Your Honor, the bottom line here is, you know, we're talking about sanctions and arguably next to being held in contempt. I can't think of a higher penalty that can be issued here today, and it's a big deal. I think it's just really, really important here for us to focus on whether or not there's a concerted effort.

Your Honor, the evidence just doesn't bear that out. There's no concerted effort to conceal. If anything, there's a concerted effort not to frustrate the process. There's a concerted effort to make sure that discovery responses are pointed, they're targeted, they matter to the actual case.

And, Your Honor, we simply would submit to this Court that sanctions just aren't warranted here. You know, is the fact that we had to produce documents on the eve of trial unfortunate? It sure is. It was unfortunate for everybody. Our office and Mr. McCullough's office certainly had better things

to do than to look through 800 pages of extra documents at the eleventh hour. But the reality is they were produced. They were produced timely.

And, Your Honor, the information that we have today on the notebooks is everyone assumed that everyone had the information in there because the information came off the servers that we pulled the information from to begin with. And, Your Honor, honestly, we have not had time to cross-reference those notebooks to the 136,000. We haven't.

But we've had time to peruse, and what we found is, Your Honor, the vast majority of the information in those notebooks is contained in the 136,000-page ESI search, which has been sitting in Mr. McCullough's office for months. Your Honor, I understand the frustration; I think we can all understand the frustration.

The reality is this unfortunate event on the eve of trial simply does not rise to the level of a severe penalty of sanctions. And if certainly sanctions somehow are warranted, it's certainly doesn't mean that the pleadings in this case and that our clients would have an inability to defend in this court based on their constitutional rights and to have their case heard out by members of the jury in its entirety.

And, Your Honor, so we would respectfully submit to you, and I have a written copy of the memo in our exhibit, so I'm certainly happy to pass it up to you if Your Honor doesn't have it available. Your Honor, sanctions just simply aren't warranted here, and certainly it would be hardly -- inequitable to strike the pleadings from this case.

THE COURT: I need to really have a clear idea of where these notebooks are. So we need to go back, if you don't mind.

MS. SHEETS: Sure.

THE COURT: A couple more questions of you. And I know you're -- I mean, I appreciate your difficult position. I'm just asking you to kind of explain to me a little bit more thoroughly how the -- how that came to light on Friday.

MS. SHEET: Sure.

THE COURT: To the extent you can, tell me how it came to your attention.

MS. SHEET: I need to be a little careful here, so I'm going to try to be careful and also try to give you a full answer at the same time.

THE COURT: Right.

MS. SHEETS: On Thursday, I was having a conversation with the current manager sitting

at Oyster Park.

THE COURT: Physically, is the manager there?

MS. SHEETS: Yes.

THE COURT: Okay.

MS. SHEETS: She was physically sitting in the office. I was having a conversation with her, I was asking for clarification on a point. She asked for me to hold for a moment, and she was going to look at something, and I said sure. And as she was looking at something, I could hear pages rustling. And so at that moment, I did what most lawyers would have done, and I said, hey, whatcha looking at? And that was the moment that it was revealed to me that it was a notebook.

Again being careful, I probed that question again because I thought -- I was fearful that something might have been missed. I said, are there more than one notebook? The answer was yes. And I said, well, someone from my office is going to be at your office within the hour, I need them ready. And within the hour, someone from my office was standing in their office collecting notebooks. Within that hour, then coming back to my office, we had four people looking through those notebooks because at that moment I really

didn't know what they were, and I thought, well, maybe this is a work product, maybe in-house counsel has, you know, asked them to keep these in their place because it's just easier for them to do so.

But as we began to look through the notebooks, what we found is those notebooks are tabbed, they have a unit number on them, and essentially any time a resident contacted the complex, you know, that contact would go into the tab. And so as we're flipping through, that's what we found. This is a notebook of resident contacts.

THE COURT: I assume it's some sort of form that someone is sitting in the office taking the complaint.

MS. SHEETS: So some of the tabs, not all of the tabs, contained forms. Some of the tabs just had e-mails; some of the tabs have pictures. It really just depends on what it was. I mean, if we're talking about my bicycle got stolen, then the tab looks different. If we're talking about my mailbox key doesn't work, the tab looks different. If we're talking about my washing machine broke, the tab looks different, and so on and so forth.

So these notebooks are not -- let me be very clear. Here's what these notebook are not. These

notebooks are not a compilation of the complaints that are listed in the pleadings of this case. These notebooks are printings of what is on the apartment system so that when Ms. Suzy that lives down the hallway comes in, instead of having to search through all of our records, we pull a tab. That's what they are.

THE COURT: Okay. So it's all sorts of complaints.

MS. SHEETS: All sorts of ---

THE COURT: These are not, like, the mold notebooks.

MS. SHEETS: These are not the plumbing, pipe leak notebooks.

THE COURT: Okay.

MS. SHEETS: They're not the HVAC notebooks; they're not a roof notebook.

THE COURT: And how many are there? How many notebooks?

MS. SHEETS: Your Honor, I honestly can't remember the number. But I can tell you that I remember that when Pro Copy copied it for us, it was two large binders.

THE COURT: Okay.

MS. SHEET: It is what it comes out to.

THE COURT: Is there a timeframe? Past five

years, past three years?

MS. SHEETS: Your Honor, the first record in the notebook begins -- and someone is welcome to correct me if I'm wrong, but the first record in the notebook starts in late 2018. The next record in the notebook is 2020.

THE COURT: Okay. Okay. And if you don't know, that's fine, you just tell me I don't know, I guess. This transpired, you said, late Thursday.

MS. SHEETS: Thursday afternoon, I believe, about 3:30. And so I believe at 4:15 -- our project manager arrived at the office at 4:30.

THE COURT: And then turned over to Plaintiff.

MS. SHEETS: We called Pro Copy that night, late, and asked them to please be available for us if they could. We needed them first thing Friday morning. Unfortunately, they were a couple of hours off of that timeframe just, you know, taking time to collate the copy. We provided both a hard copy in the exact manner they were produced to us and an electronic copy that's searchable because again, Your Honor, we're not trying to make it hard.

In fact, if anything, we're trying to make it as easy as we possibly can, and certainly we're going

to get to the relevancy of this information here when Mr. Ross has an opportunity to speak. But the question here -- you know, and we agree it was discoverable. Hence, why when we were in possession of it, we handed it over.

And again, Your Honor, I can't stress to you enough I did not get the impression on Thursday that anyone thought they had withheld anything. If anything, several folks were called, both sitting in that apartment complex and sitting in other places. The impression I got was, well, we produced those. Obviously, as we found out, there was different information out there.

There -- Your Honor, I represent to this Court I do not have an understanding that there was a concerted effort. I think there's truly just a -- somewhere between lack of understanding and ---

THE COURT: Okay. All right. Okay.

MS. SHEETS: Your Honor, thank you.

MR. MCCULLOUGH: Briefly.

THE COURT: Sure.

MR. MCCULLOUGH: And I will reiterate again, but I think it's important. She picked up the -- she called me. She goes, yikes, she got it to me quickly. So she handled it exactly the way I would want somebody

to handle it.

That being said, the idea -- first of all, Dewberry is a very sophisticated organization. They have in-house counsel; they have claims managers; they have lots and lots and lots of people in Atlanta and locally working for them. The idea that they weren't aware that there's a lawsuit that's going to trial today is asinine. The e-mails that we have going back from 2017 when this first happened included in-house counsel, claims managers dealing with the situation. They've had two courts order that they produce this information.

The entire ESI process was unnecessary. The only reason we had to do it is because they absolutely intentionally were hiding the ball for three and a half years. And I can't be more -- they were intentionally hiding the ball for three and a half years. And every time I would call and say, hey, I had another call from another tenant. Oh, here it is, here's that document production.

The vast majority of the thousand documents that we got were mold and work claims. The vast majority. It's the same people that were dealing with the ESI. These are Dewberry employees that are going through, and they know that we're spending

thousands and thousands of dollars in man hours to get all the mold complaints, and they're searching e-mails from the people at Oyster Park, and they're gathering information from the people at Oyster Park, that they're actually going to tell you with a straight face it never occurred to them to turn over the notebooks that contain all these mold complaints sitting in the office next to the computer that we're spending thousands of dollars to have searched. That's just not plausible, I'm sorry.

Your Honor, again, I've never done this before, but this is willful disobedience and gross indifference to the opposing party's rights. The Richardsons have been through a lot as a result of the Defendants' conduct. And to be blunt, they shouldn't have to go through this trial. We should proceed to a damages hearing. This is inexcusable, and it was intentional.

MS. SHEETS: Your Honor, I just want to leave -- the question on the law here is what's the posture of discovery and what prejudice there is to the Plaintiff. Your Honor, all three of the Defendants in this case have produced information, responses to interrogatories, lots of information. I would honestly, and this might be a little bit dramatic, but at this point we're approaching something like 108,000 pages

of documents, and here's the reality. To strike the pleadings at this late stage we would be punishing the very conduct we're being accused of committing.

The reality here is that the Defendants are behaving the way the Defendants should behave. You know, if Mr. McCullough wants to take a deposition, happy to facilitate that. If Mr. McCullough wants to see a specific person or talk to a specific person because he thinks there's something else out there, happy to facilitate that. We need to do that at 8:00 p.m. tonight, we'll try to work that out.

Your Honor, there just simply is not a level of -- that needs to be here to issue a stern punishment of striking the pleadings in this case. You know, if we want to talk about punishment, we can talk about, you know, bills being paid or something to that extent. But certainly, Your Honor, not to prejudice our client for behaving the way that they should have behaved. And, Your Honor, we thank you for your time.

THE COURT: You know, sometimes I feel like in this world of technology and, you know, big corporate America, sometimes the most basic things tend to get overlooked, and, you know, not the attorneys' fault. It seems like, you know, it would have been the most obvious step to go to the physical office location

of the apartment complex on day one when you're sued and say, hey, I need all your records of complaints. That's pretty basic lawyering 101 discovery procedure.

So it's baffling, frankly, that it's gotten to this point after this many years, that literally on the eve of trial these are produced. I haven't seen them, and I'm going off of the lawyer's description of these notebooks. I do appreciate your candor. And again, I appreciate your position today, Ms. Sheets. You've done an impeccable job presenting the issues on your client's behalf.

I do think that striking the pleadings in this particular case, while I have considered it, I think it is a step -- a bit too far. And it is for lots of reasons, some of those include the fact that there was obviously a change of hands in the corporation at some point in time. I'm not excusing the fact that this is some big corporation. That's not an excuse. I don't want my ruling to be in any way some sort of, like, oh, well, the company is big enough, like, they can pretty much get out of whatever discovery procedure they can. That's not the case.

But I think absent a specific showing of the willful disobedience or the gross indifference, I think I have a hard time -- that's a really -- that

is the most extreme sanction, and I have a hard time applying that to this particular set of facts, given everything I've heard. I think it's close, but I don't think we're quite there.

I will, however, consider sanctions. And, you know, Mr. McCullough, I know you probably -- you haven't had time to even probably represent what kind of sanctions to seek, potentially, as a plan B. But financial -- Lord knows, all the money and time that your office had to spend going through the ESI search would be something I would be happy to consider.

I know -- and I appreciate your client's position, that you've come all this way, I don't -- from what I understand, you don't necessarily seek a continuance at this point in time. But if it's something you want to talk about, again I'm happy to consider that as well, if it's something you feel like you need to do. So, I'm happy to hear from you on some alternative sanctions, but I do think it's sanctionable. I don't think it's strike pleadings sanctionable.

MR. MCCULLOUGH: Your Honor, the next two that I would think would be the -- the most obvious would be the financial piece of it, which I can put together. To be honest, I haven't prepared that.

And then with discovery rulings, you know, a lot of the stuff is the property manager no longer is there. I've asked for -- Ms. Sampson, who is the property manager, for half the stuff. My plan is to go through it with her tomorrow afternoon.

But to be honest, I feel like a lot of this stuff should be admitted into evidence without jumping through a lot of hoops because I think a lot of this was unnecessary. And, you know, I know there's got to be a motion in limine on whether or not this stuff is admissible on relevance, and I understand that piece of it. But as to sort of hearsay or -- frankly, all of that at this point I think should be readily admitted into evidence without any necessary evidentiary case.

THE COURT: Okay. I mean, you know, I guess we'll have to go to the next motion and sort of deal with that, you know, specifically. I would just ask that you, you know -- I know you're in the middle of a trial. If this is something that needs to be done after trial is over, that's fine too, when you go back to your offices tonight. But, you know, get together, you know, what you would seek and costs associated with the -- sort of the extra effort based again on what I'm hearing that will really specifically work.

MR. MCCULLOUGH: Okay. Thank you.

necessary.

And so from there, you know, we'll get started with our witnesses. You guys can hear the facts, you make a determination, and we'll talk to you probably close to the end of the week. Thank you.

THE COURT: All right. Thank you very much. Mr. McCullough, are you ready to call your first witness?

MR. MCCULLOUGH: Your Honor, with the Court's permission, we're going to take the witnesses a little out of order. We will start with the video of Mr. Cyrus Higgs, a video deposition that we took, and I believe ---

THE COURT: Okay. You've got it cued up and ready to go? Let us know what you need. Is it going to play on the TV screen?

MR. MCCULLOUGH: Please.

THE COURT: Okay.

MS. SHEETS: Your Honor, real quick.

THE COURT: Go ahead.

MS. SHEETS: Before this video starts, we're going to play it through for speed. There were a few objections made during the course of the deposition.

THE COURT: Okay.

MS. SHEETS: These objections are now

waived, so the video can play.

THE COURT: Thank you for that. Okay.

MS. SHEETS: So we can speed it up a little bit.

THE COURT: Perfect. Tell me when this was taken.

MR. MCCULLOUGH: Last Thursday.

THE COURT: Okay. Mr. Higgs, Cyrus Higgs.

MR. MCCULLOUGH: Cyrus Higgs.

THE COURT: All right. Ladies and gentlemen, real quick before this is played, let me explain to you what this is. This is a video of a deposition of someone named Cyrus Higgs, ladies and gentlemen. This happens from time to time, especially these days post-COVID. Instead of someone testifying live here in the courtroom, from time to time a video deposition is taken and then -- for use to play during the course of a trial.

A deposition is sworn testimony. It takes place somewhere else at some prior time. This took place last week as you can see, July 14, 2022. The person giving the testimony is Cyrus Higgs. He's sworn in, and then he gives testimony, and he answers questions from the lawyers who were present at the time of the deposition. You are to give it the same weight

and effect as if this person was here in the courtroom testifying live today. Okay, go ahead.

(Video deposition of Cyrus Higgs played in open court.)

MR. MCCULLOUGH: Your Honor, at this time, we've marked Exhibits 2 and 3.

THE COURT: Sure. Give it to the court reporter, kind of hand it to her.

MR. MCCULLOUGH: I hope I can publish these to the jury so they can see them and pass them around.

THE COURT: All right. Any objection to that?

MS. SHEETS: No objection, Your Honor. Thank you.

THE COURT: Okay.

(Plaintiff's Exhibit Nos. 2 and 3 were entered into evidence.)

MR. MCCULLOUGH: Your Honor, can the three of us approach for a second?

THE COURT: Yeah, of course.

(Off-the-record conversation held at sidebar.)

(Back on the record.)

THE COURT: Yeah, that's fine, if you want to hand it. Y'all can feel free to pass that around. When you're finished, just hand it back to the bailiff. Normally, ladies and gentlemen, when a witness is in

the courtroom, that's something that potentially would be put up on a projector or something of that nature. So it will be passed around to you at this time instead. All right. So, Mr. McCullough, are you ready to call your next witness?

MR. MCCULLOUGH: We are, Your Honor, and we are going to show one more witness by video. This is Debra Baumgartner.

THE COURT: All right, ladies and gentlemen, once again a video deposition, sworn testimony taken outside of the courtroom for use in court today. You are to give it the same weight as you would if the person was here live testifying in the courtroom. All right. Cue it up whenever you're ready.

(Video deposition of Debra Baumgartner played in open court.)

MR. MCCULLOUGH: Your Honor, while this is playing, we have a series of exhibits, similar to the other one. It may take a little longer, and we're going to admit them as soon as we're done with this. And I was going to ask if we can publish this while they're listening to this. If they can be reviewing the exhibits that she's testifying about.

THE COURT: Okay. What are the numbers for the record?

MR. MCCULLOUGH: Yes, Exhibit -- Plaintiff's Exhibits 4, 5, 6, 7, 8, 9 and 10 and 11. And they're the ones where she had testified was aware of them and knew about them, including the ones she has testified she was not...

THE COURT: Okay. Do you want to look at it and ---

MR. ROSS: No, Your Honor, we agreed to let them in.

THE COURT: Okay.

MR. ROSS: I was going to suggest actually, we kind of need to take a comfort break.

THE COURT: Yeah, let's do that. I was actually going to ask about how much longer because I think we're all on the same page. Okay. Can we do that at this time?

MR. MCCULLOUGH: Of course.

THE COURT: Is that okay with you, we can hit pause?

MR. MCCULLOUGH: Yeah, absolutely.

THE COURT: Let's do it. Yeah. All right, ladies and gentlemen, we'll take a quick morning break anyway right now, about ten minutes. We'll be at ease for about ten minutes and let you use the restroom, check your phones, and we'll see you back after that.

method?

MR. ROSS: No, Your Honor.

THE COURT: Okay. Thank you so much. We'll do that.

(Plaintiff's Exhibit Nos. 4 through 11 were entered into evidence.)

MR. MCCULLOUGH: We're trying to be efficient.

THE COURT: That's fine. You can hit play, and we can keep going.

(Video deposition of Debra Baumgartner continued to be played in open court.)

MR. MCCULLOUGH: That's the conclusion of this, Judge.

THE COURT: Okay. All right. Excellent. Ladies and gentlemen, at this point in time, we will be taking our lunch break. Let's stretch out and wake up a little bit, as needed. It's 12:05. I'm going to give you about an hour and 15 minutes, ask that you be back about at 1:20 or so and turn you loose to the bailiffs. Once again, please don't discuss the case. We'll see you at about 1:40, 1:30, somewhere in there. Okay? Thank you very much.

(The jury exited the courtroom at 12:06 p.m.)

THE COURT: Excellent. All right. We're

y'all very much. See you at about 1:30.

(Recess taken.)

(Back on the record.)

THE COURT: Please be seated. All right. Are we ready to resume this afternoon? All set?

MR. MCCULLOUGH: Plaintiff is ready.

MS. SHEETS: Defense is ready.

THE COURT: Great. Okay, we'll -- we can have the jury come in whenever they're ready. All right.

(The jury enters the courtroom at 1:42 p.m.)

THE COURT: All right. Thank you so much. I hope everybody had a good lunch break. Ready to get started this afternoon. Mr. McCullough, call your next witness.

MR. MCCULLOUGH: Thank you, Your Honor. Plaintiff calls Karola Richardson.

THE COURT: All right.

THE CLERK: Please place your left hand on the Bible, raise your right hand.

MS. KAROLINA RICHARDSON was called as a witness, being duly sworn, was examined and testified as follows:

THE CLERK: State your full name, spell your last name.

THE WITNESS: Karolina, it's Karola for short, Richardson, R-I-C-H-A-R-D-S-O-N.

DIRECT EXAMINATION

BY MR. MCCULLOUGH:

Q. How are you doing?

A. Hanging in there.

Q. Nervous?

A. Yes.

Q. You were supposed to testify this morning?

A. I'm sorry?

Q. You were supposed to be our first witness?

A. Yes, sir.

Q. Why didn't you testify this morning?

A. Definitely not -- feeling pretty bad today.

Q. We'll come back to that. Tell -- introduce yourself to the jury.

A. Karola Richardson.

Q. And you're the Plaintiff in this lawsuit?

A. Yes.

Q. And who is this lovely lady sitting here at the table?

A. That is my sweet daughter, Krista Richardson.

Q. And does she live with you?

A. Yes.

Q. And did she live with you at Oyster Park

Apartments?
A. Yes.
Q. Are you currently married?
A. No, sir.
Q. You're divorced. What's your ex-husband's name?
A. Jay Richardson.
Q. And do you have another daughter?
A. Yes.
Q. What is her name?
A. Karola Richardson.
Q. Let's dive into why we're here. In the spring of 2017, did you move into the Oyster Park Apartments, located in Mount Pleasant?
A. Yes.
Q. Why did you move to Mount Pleasant?
A. We are natives of the state, got a little displaced after the divorce, so wanted to get back to the state. In particular, we chose Mount Pleasant because my daughter and I wanted to start a business. She -- my daughter has special needs. She has two brain malformations and in the past worked with Special Olympics. It's very important for us to have a community that supports individuals with special needs, so Mount Pleasant definitely scored very, very high on that, so that was high on the list, also a great place

to start a business.

So we wanted to start over, we wanted a fresh start in Mount Pleasant, just seemed like the perfect place for us to do that. And no town offers more for special needs individuals than Mount Pleasant; that's number one. A beautiful place, just thought it would be a perfect place for my daughter and I to start over.

We wanted to start an ice cream shop that my daughter and I named -- it was going to be Double Dipping. We fought a little bit about that name, but she won out. So we actually did the demographics and researched the area to make sure that it would support the concept that we both thought we would enjoy doing, which was ice cream/coffee shop. We had talked to some lenders that were willing to back our concept. I had previously owned a restaurant, so I knew I had a little bit ---

Q. We'll get to that.

A. Okay.

Q. How did you end up at Oyster Park?

A. We wanted a -- number one, a nice, safe -- number one was safe. Number two, also walkability. There's sidewalks. My daughter is not able to drive, so having sidewalks was very important and somewhere that she might at least be able to go to a store on her own.

Krista has disabilities under her brain malformations, those being the umbrella. She has something called motor apraxia, so she's not able to safely navigate around a community. So the sidewalks, the safety, her being able to possibly go to a store by herself, maybe a dress shop or a grocery store for things.

Q. I know you're suing them now, but at first Oyster Park was great, right, you were excited?

A. Yes, sir.

Q. Who showed you around before you actually entered into a lease?

A. That was Omar.

Q. And did he walk you around the facility?

A. Yes, sir.

Q. And was it new?

A. Yes, sir.

Q. They were still finishing up construction and stuff on some of the buildings?

A. Yes.

Q. Did Omar -- he was the acting property manager or employee, onsite leasing agent for Oyster Park?

A. Yes.

Q. And he showed you around?

A. Yes.

Q. Did he tell you it was a new building?
A. Yes.
Q. Did he tell you it was a safe building?
A. Yes.
Q. And did he tell you it was what you two needed, which is a safe, comfortable place to live in Mount Pleasant?
A. Right.
Q. Did you also have an opportunity to deal with a lady called Kathlina Sampson while at Oyster Park?
A. Yes.
Q. And was she the onsite property manager?
A. Yes, sir.
Q. Did you sign a lease while you were at Oyster Park?
A. Yes.
Q. Okay. I'm giving you a stack of documents in front of you, and I'm going to put these up on the screen. I'm going to try to anyway to see if it works. Now is this a lease for Oyster Park, dated May 26, 2017, for unit 101?
A. Yes.
Q. All right. Now, in fact, this wasn't the first unit you lived in, correct, at Oyster Park?
A. That's correct.

Q. All right. The first unit was unit 104?
A. Yes, sir.
Q. All right. Where was unit 104 located?
A. It was at the end -- 104?
Q. Yes, ma'am.
A. It was the end of -- behind a unit.
Q. Okay. And it says here, it looks like it did -- this is a lease for the second unit, but the lease term for this document begins May 17, 2017, and that's the date that you would have moved into the first unit at Oyster Park?
A. Yes.
Q. All right. And you moved into 104 on or about May 17, 2017?
A. Right.
Q. And you moved into unit 101, May 26, about nine or ten days later?
A. That's right.
Q. Why did you move?
A. The first apartment flooded.
Q. A little bit or a lot?
A. It was a lot. Flooded from the -- in from the front door, even came from under the walls, just any -- I remember it wasn't -- it really wasn't substantial rain, and it just kept pouring, pouring and pouring in.

Q. Had you complained, prior to the flood in 104, about odd smells in unit 104 to Oyster Park staff?
A. Yes, sir.
Q. And that was before the first flood?
A. Yes, both units.
Q. Okay. And did you make a -- did you notify Oyster Park as you were supposed to do about the fact that, hey, I've got a flood, we've got a problem?
A. Yes, sir.
Q. And further called -- this is a property incident report, and this is the first page of Exhibit 20. It says, "G-104 called in and notified the office that their apartment was flooding. Our service manager, Travis Harmon, confirmed their apartment and the apartments along G-102 to G-106 were having issues, and that the service supervisor has been reminded to complete the mold/water response report." Did I read that right?
A. Yes.
Q. Is that what happened? You got flooded, flooded your unit and units 102 through 106 as well?
A. Yes, sir.
Q. And so as a result of this, did they transfer you from one unit to a second unit?
A. Yes, sir.

Q. And that second unit was unit 101; is that right?
A. That's correct.
Q. Where was unit 101?
A. 101 was right down the breezeway from 104, also on the bottom.
Q. Ground floor?
A. Yes, sir.
Q. And so we heard a minute ago about testimony from Belfor about units 201 and 301. Were those two units directly above you on the same ---
A. Yes, sir.
Q. And so you moved in on May 26, 2017; is that right?
A. Yes, sir.
Q. All right. Now when you go into these units, they make you -- they let you walk through them; is that right?
A. Yes.
Q. And so you can -- does Dewberry own Oyster Park?
A. Yes.
Q. And GreyStar manages -- is the property manager?
A. That's right.
Q. All right. And so when we see GreyStar up here, you move in, you got an inspection form, that's just one of the forms, like your lease and other documents,

generated by the property manager, right?
A. Yes, sir.
Q. All right. And it looks like this is a move-in inspection form for unit 101 at Oyster Park, that's your name, and that's the address of this unit; is that right?
A. Yes.
Q. And so you went in, and it looks like everything was okay in the unit when you got there because there's okay written in all the boxes; is that right?
A. Yes, sir.
Q. Now at the bottom, is this your handwriting?
A. Starting with water, yes.
Q. And so I'm going to read the whole thing. Who wrote -- whose handwriting is the resident -- is that you, or is that somebody else?
A. That is somebody else.
Q. All right. And that would have been whoever was walking through that inspection, filling out the report?
A. Right.
Q. So that person, the Oyster Park person, states "Resident pointed out that the breezeway looked like as if it may flood as well." What did you mean by that?
A. Well, the way that it was sloped, and this is unit number two, it just was easily visible to see that

if it came in the first one, it also -- and the water, it rained a couple of times throughout that. Of course, it's summertime throughout that period.

I mean, you could just easily see it was coming right down. So the first unit was down this way, so that was one breezeway. And so when we get to unit number two, we were sort of in a corner in another breezeway. All of it was slanted so that the water had nowhere to go but toward all of the units.

Q. Water runs downhill, so ---

A. Right.

Q. And then it also says, water smells like sewer. Also 101 looks like it may eventually suffer water penetration and mold?

A. Right.

Q. When you say water smells like sewer, was that a condition that had been there since you moved into the first unit?

A. Yes, sir. We reported that right away.

Q. All right. And then you wrote on here, "101 looks like it may eventually suffer water penetration and mold." Why would you write that? And again you write that 5/27/17, right?

A. Yes, sir.

Q. Why did you write that?

A. Well, the first unit already flooded, so, like I said, the way that the concrete breezeways were slanted, I mean -- and God knows I'm no expert on this, but just seemed like anyone could have seen the water was pouring right in. Enough water penetrates these things, I mean, one plus one is two.

Q. So you move in, and walk the jury through your -- you were in unit 101 for approximately six weeks; is that right?

A. Yes, sir.

Q. All right. Tell the jury about your time in unit 101.

A. Unit number two?

Q. Unit two. We'll simplify.

A. Right. Well, right away, just like the first one, we noticed the sewer smelling, and when you turn on the kitchen faucet and you literally would smell sewer -- and I'm not great with dates or remembering that stuff anymore. But as far as dates, it was pretty shortly after, and also it smelled musty. We both smelled must in the apartment, so we did let them know that as well.

And it wasn't -- I want to say maybe three weeks in, that we started seeing the toxic black mold on the walls starting with the bathroom, the bathroom

ceiling. And, of course, at that point, I'm quite panicked. As I said, my daughter does have a brain malformation, so Mom went into panic mode. We, within a day or two, then noticed the toxic mold also in the utility room, a lot of it behind the washer area, and I believe also on the ceiling in the utility room and again -- so, I definitely panicked.

Q. So we'll look at the e-mails. It's pretty clear that on July 7, 2017, you sent some e-mails and a lot of communications about finding the mold on the walls and behind the appliances, right?

A. Yes, sir.

Q. So that's July 10th?

A. Yes, sir.

Q. So between May 23 or 26, 27 when you move and July 10, were you and Krista noticing odd smells, musty smells and things like that in the unit?

A. Yes.

Q. Were you starting to have physical issues, meaning, bronchitis, nasal issues, things that feel like, you know, a head cold, or symptoms of something going on?

A. Yes, sir. Both of us started experiencing major allergy symptoms, upper respiratory. I would wake up sometimes with my eyes swollen closed. Krista ended

up being diagnosed with bronchitis, sinusitis, later -- early in -- I want to say, maybe the first week or so, we're already starting experiencing allergic symptoms.

Q. So on July 10, you actually saw mold and called it in as you were supposed to do by notifying, I think by a call and an e-mail, to the Oyster Park folks that you discovered mold in your apartment; is that right?

A. Yes, sir.

Q. And so this is another GreyStar document dated 7/10/17, again unit 101, the second unit, "Occupant of apartment 101 notified management via e-mail her concern with black mold in her apartment that is seriously affecting the health of herself and her daughter." Was that a truthful statement you made at that time?

A. I'm sorry?

Q. Was that true?

A. Yes, sir.

Q. And it says in the bathroom. The mold was in the bathroom and the laundry room wall?

A. Yes, sir.

Q. Did the Oyster Park folks -- we'll look at the e-mails, but there's a lot of e-mails back and forth. What did you ask them to do for you and Krista after you discovered the mold?

A. I had asked them immediately to -- I had asked

them to put us in a different complex at that point. I pleaded with them. They are quite large, and they have many, many apartment complexes that are available all over Mount Pleasant and Charleston. They easily could have placed us somewhere else. But, you know, I definitely wanted out of that unit. And I was quite fearing for Krista. In panic mode, I wanted out. I just, you know, pleaded and pleaded, please, you know, get us out of here now.

Q. Did Oyster Park hire a company at your insistence to come and actually perform a mold test?

A. I'm sorry?

Q. At your insistence, did Oyster Park ---

A. Yes, yes.

Q. And that's the first deposition -- testimony we heard this morning, Mr. Higgs, the mold tester, right?

A. Yes, sir.

Q. And results of that showed what?

A. That the apartment was full of toxic mold.

Q. And you -- and we'll get to it in a minute, but actually were moved -- they wouldn't move you to a different apartment complex, they sent you to a third apartment within the Oyster Park complex; is that right?

A. Yes, sir. After quite some push, we were told that -- in the same building that we were in at Oyster

Park, we were told that even Oyster Park had no vacancies, and there was only ten of us living there.

Q. Okay.

A. So ---

Q. Did that seem odd to you that there were no vacancies at Oyster Park?

A. Yes, sir.

Q. Why?

A. Well, because we knew there were.

Q. There were open apartments all over the place, right?

A. Right, yes, sir, all around us.

Q. Did they provide the results of that mold test to you for weeks and weeks?

A. No, sir, I had to get quite insistent on that as well.

Q. So you asked them to do it, you opened your apartment to allow them to do it, but they wouldn't give you the results showing elevated levels of mold in the apartment; is that right?

A. That is correct.

Q. All right. So they moved you around the corner to a third unit, unit 102, is that right, the third unit?

A. Yes, sir, unit three.

Q. All right. And it wasn't that far away from unit 101?
A. That's right.
Q. So did you observe, or were you able to watch the nice lady that we heard from a minute ago from Belfor perform the remediation process?
A. Yes. And, unfortunately, when they came our personal belongings were still in there, so I was worried about that as well, you know, trying to make sure that the door was locked appropriately for us and that kind of thing. Yes, it was what I would say looked like a war zone.
Q. And when you watched Debra, Ms. Baumgartner, go in and out of that unit, did you observe her putting on one pair of gloves, a Hazmat suit, tape it up, second pair of gloves, goggles, masks before she entered that area?
A. Yes, sir.
Q. Were you aware when she was doing the work on unit 101 that units 201 and 301 had flooded?
A. No, sir, though the units above me -- no, sir, I didn't know what caused it at that point.
Q. They did tell you -- and you were talking to the folks at Oyster Park a lot, is that fair?
A. Yes, sir.

Q. We'll look at some e-mails, but is it fair to say that you went into full momma mode and ---

A. Absolutely.

Q. Okay. Were you told that they had discovered a leak above you prior to you telling them that your second unit had mold on the walls?

A. Did they tell me that there was a leak above me prior? I had no knowledge. No, sir, they absolutely did not.

Q. And did you know until the deposition a minute ago before lunch that the Belfor company, the folks at Oyster Park sent out this remediation work to provide them with an estimate to fix units 201 and 301 that, for some reason, never performed that work?

A. No, sir, I had no knowledge of that.

Q. Were you aware that two weeks and three days after you moved out of unit 101, the second apartment, that it flooded again, the roof leaked?

A. No, sir.

Q. Were you aware that Belfor had to go back in there again and fix it all ---

A. No, sir.

Q. --- the second flood? How long were you in unit 102, the third unit?

A. A few weeks.

Q. When you moved out of the second unit, how was your -- how did you feel about that?

A. Physically, I mean, like hell, if it's okay to say that. It seemed like every day my -- unit number two, right, unit number two, every day I just felt worse and worse, not able to concentrate. I just -- a plethora of things I had never dealt with before; asthma, severe allergies.

Q. Did it get better when you moved to the third unit?

A. No, sir.

Q. We're going to look at some e-mails and dive into your healthcare, okay?

A. Okay.

Q. Let's look at -- and these are communications between you and the Oyster Park folks. And I'll start with -- all of this is in front of you. It's been admitted. I knew I was going to get so organized, I became disorganized.

Let me borrow this, please. And this is Defendant's Exhibit No. 4 that I'm going to hand to you, pull up on the screen for you. This was before the flood in the first unit. This is dated June 5 -- actually, I'm sorry. You're in the second unit now after the first flood. You're writing to Omar.

Omar is the guy that showed you around when you first got there?

A. Yes, sir.

Q. And you say, "I watched you guys deliver new washers to empty apartments as I sit here with a broken one. Needless to say, I am more than frustrated at this point. No one seems to care about the existing tenants. I will not spend another week lugging my laundry around. I have had much more than normal new rental issues. I still await reimbursement for the electronics I lost in the first flood."

Is it fair to say you were growing frustrated with the way you had been treated at Oyster Park at this point?

A. Yes, sir. It seemed like every day it was something. We were locked in, locked out, the washer wasn't working. The first unit flooded, we had flooding issues in the second unit. It was something every day.

Q. And then on the morning of the 10th, we'll talk about this while I show you the e-mail. Again, you're e-mailing Omar. "For the past couple of weeks, we have smelled mold/mildew, but have assumed it was innocent. At the same time, my daughter and I have been suffering from severe allergy symptoms. As of yesterday, I noticed black mold on the bathroom ceiling, assume

to be from upstairs. Today, we notice black mold from behind washer. I need this addressed today."

Is that accurate that you had smelled mold and mildew for a couple of weeks?

A. Yes.

Q. And that you had just noticed mold in your unit for the first time in July of -- July 10, 2017?

A. Yes, sir.

Q. And that it looked -- you noticed that it was coming from the ceiling which appeared -- and above you as unit 201, correct?

A. That's right.

Q. Did Omar, did Ms. Sampson, did whoever run GreyStar, or John Dewberry himself, ever come and tell you, I'm sorry, we've had a flood in units 201 and 301, that it's called water leaks, we found mold, we should have told you something about that, any of that happen?

A. No, sir.

Q. You write a letter and you're pleading, "Get me out of this apartment tomorrow. My daughter has a brain malformation and cannot be subjected to allergens, certainly not mold." Is it fair to say at this point you were very nervous and very scared and very worried about the health of your daughter?

A. Absolutely.

Q. So, I want to talk to you a little bit about a couple of things on this. First, you mentioned that you were asking to be moved to a sister property, and this is an e-mail from you to the Oyster Park folks. And it says, "In my previous message, I asked to be moved to a sister property," and they state, "At this time we're unable to offer arrangement in our sister community due to unavailability."

So you were told in the expansive GreyStar world that they didn't have anywhere for you to move into?

A. Yes, sir.

Q. Did you find that at the time hard to believe?

A. Yes, sir, hard to believe. Disheartening that they could be that dismissive to what was happening.

Q. Now you heard in Mr. Higgs's deposition some questioning about, or quarreling, with you having the windows open in unit 101, the second unit, when they came to test for mold. Do you remember that?

A. Yes, sir.

Q. Were the windows open?

A. Yes.

Q. Why?

A. The smell, number one, but my biggest thing is I was scared to death for Krista. I felt like we needed something coming to exhaust what was happening

inside that building.

Q. Windows weren't opened until you saw the mold, and at that point, you opened the windows to try to get some fresh air?

A. Right, trying to get some sort of ventilation. And we were running the A/C as well. And, of course, certainly, normally didn't have the windows open in that kind of heat.

Q. Now did you know anything about an e-mail from Oyster Park and the Dewberry folks talking about unit 101, your unit? This is that same day. It says, "This is a pretty intense case. Travis informed me that there was some communication regarding a plumbing issue that was going to be handled by construction in a unit that was directly above this unit, in 301, that has not been resolved as of this morning. It seems that the water leak is settling in 101." Did they ever tell you that?

A. No, sir, not at all.

Q. And so we've got a leak in 301 that leaked bad enough to come through 201, that leaked bad enough to come through to 101 and cause mold to grow in the exterior of your walls to the point where it was deemed a hazard by a mold technician, and none of that was disclosed to you?

A. None of it.

Q. Before, during or after?
A. No, sir.
Q. What we did get is an e-mail from the senior regional manager that says, and I'll read, "This is the same resident that had the foundation issue in her initial apartment. Can you confirm that unit number? This sounds fishy to me. She has already moved once. We should certainly loop in legal counsel on this one." Do you know why -- is there anything fishy about your first unit flooding?
A. That building seemed -- it's just flooding and leaking from the roof, the floors, the walls, the -- so definitely, you know, seems fishy today, and it seemed fishy upon unit two.
Q. Now while this is all going on, while they're calling it fishy, while they're getting legal involved, while they're getting construction involved to deal with flooding in units 301 and 201, you two are still living in the apartment with mold in it, right?
A. Yes, sir.
Q. So while -- again, this is the next day. While all of this is happening, they haven't moved you into a unit within Oyster Park, much less a unit outside of Oyster Park?
A. That's right.

Q. Here's another e-mail from you. This is Exhibit 15. This is the next day, the 12th, and you're writing, "The smell is worsening and very difficult to tolerate." Are you still two days later asking them for some accommodation to help you get out of there?

A. Yes, sir.

Q. Then this is in August after you've been moved to the third unit, and you write, "As of right now, my daughter is experiencing major upper respiratory symptoms and has been since the mold. This is aggravating my disease, the nonstop stress." Was that a true statement in August of 2017?

A. Yes, sir.

Q. Eventually, did you move out of Oyster Park Apartments?

A. Yes, sir.

Q. When?

A. I believe that was on Labor Day.

Q. Labor Day 2017?

A. Yes, sir.

Q. Describe for the jury how you felt Labor Day 2017.

A. Awful. I mean, as I said earlier, at first I was more worried about my daughter and hoped and -- we eat healthy. I've always probably -- been very healthy,

Q. Okay.
A. Is that correct?
Q. That's G-101 that we've got circled. Does that look correct to you?
A. I think so.
Q. Okay. But you were by the pool, your unit was by the pool?
A. Yes.
Q. All right. We've got that up on the screen. All right. You testified that when your first unit flooded that was due to a typical rain. Do you recall that?
A. I'm sorry?
Q. All right, let me back up. You've given your deposition three times in this case, haven't you?
A. Quite a bit.
Q. Okay. And you won't disagree with me, I'll represent that it was June 5th, 2019, June 6th, 2019, and March 16, 2020. Does that sound about right?
A. Yes, sir.
Q. Okay. And do you recall that a deposition was the time for the attorneys to ask you questions, your lawyer was present, there was a court reporter present, you were sworn in by the court reporter, and you swore to tell the truth, the whole truth and nothing but

the truth. Do you remember that process?
A. Yes, sir.
Q. Okay. And during your deposition, you testified that 104, which is the first unit you were in, flooded as a result of what you referred to as a typical rain. Do you recall that?
A. Can you repeat that, please?
Q. Sure.
MR. MCCULLOUGH: Your Honor, if I may? If he could just ask her the question. We don't need to get into the deposition, it's not proper. I understand the purpose of it, but it's not ---
MR. ROSS: Okay.
MR. MCCULLOUGH: Ask the question ---
THE COURT: Yeah, it might go a little faster.
MR. ROSS: That's fine.
BY MR. ROSS:
Q. Was the rain event that caused the flooding in 104, was that a heavy rain event or a light rain event? Can you characterize it?
A. Well, in my opinion, of course I'm not a meteorologist, and based on my recall, I certainly don't remember it being a heavy rain.
Q. Okay.

A. I mean, I remember being surprised that that type of rain -- that there was certainly no tropical storm or anything that I recall, that that type of rain could have flooded the unit.

Q. All right. Would it surprise you to know that the amount of rain immediately before 104 flooded was more than half of the rainfall for the entire month?

A. In an hour or -- I mean, what I'm saying, sir -- you're saying it's more than, but are we talking about days, weeks? I certainly do not remember a torrential rain. I do not remember that ---

Q. All right.

A. No.

Q. I'm sorry. I didn't mean to cut you off.

A. Sorry.

Q. No, that was on me. Do you remember it raining for three days immediately before your unit flooded?

A. I do not remember any substantial rain. In fact, I remember that the sun was out also during those days. There was not -- not to my memory, do I recall anything that would support a building flooding from the walls, the doors, every possible avenue.

MR. MCCULLOUGH: Your Honor, we're testifying it rained. I'm not sure the proper ---

THE COURT: Can I speak to counsel just

for a minute?

(Off-the-record conversation held at sidebar.)

(Back on the record.)

BY MR. ROSS:

Q. All right. So following this rain event, you complained to Oyster Park, and they moved you out of your unit immediately, right? They moved you into unit 101; is that correct?

A. I'm sorry. So, yes, the first unit and the first flood we're still referring to, correct? Yes.

Q. Okay. And you had said something earlier, your concern with Oyster Park is that they were I think uncaring, slow to respond, right?

A. Yes.

Q. All right. And you testified multiple times that there was toxic mold in your unit. Do you recall?

A. Yes.

Q. And this was based on your own research?

A. No, sir.

Q. Okay. What makes you say it's toxic mold?

A. The reports of the company that -- it's in the reports from the -- sorry, the mold inspection.

Q. And have you ever seen mold like that before?

A. Not that I could recall.

Q. Okay. And you never saw any mold in unit 102,

which is where you were moved in, after they moved you out of 101, correct?

A. The third unit?

Q. Yes, ma'am.

A. I don't think so.

Q. Okay. Prior to Oyster Park, you were working out five to seven days a week and sometimes twice a day. Does that sound right to you?

A. You said prior to Oyster ---

Q. Prior to Oyster Park, yes, ma'am.

A. Prior to Oyster Park, yes, sometimes I would workout twice a day.

Q. And you were working out five to seven days a week?

A. I would certainly try. I can't say that that's the case every single day or every single week, but that was my goal, yes.

Q. All right. Has any doctor told you not to drive?

A. No, I had been cautioned, you know, to be careful of course, but not told not to drive.

Q. All right. So we will move on once that gets up. Do you recall Dr. Rizk telling you that you could not drive anymore in a report of 2017?

A. Can you repeat that?

Q. Sure. Do you recall Dr. Rizk telling you not

Q. So you sent ---
A. --- but I just didn't change it. I eventually did, but it's not reflecting that here.
Q. Okay. But you sent this e-mail?
A. Yes.
Q. All right. And, importantly, it says that -- I'm assuming this is you because you sent it. "I work nights and ask to be contacted after one o'clock." Right?
A. Yes.
Q. What were you working nights doing?
A. Well, I believe at the time I was still trying -- excuse me. I testified earlier that I consistently traded stocks over the course of my adult life, and it's something that I certainly did pre mold. So, I would do studying to try -- I was still trying to hang on to that and hoping to do well with that before, or as we tried to get our business. So, I'm a night owl, and I often did studying late nights.
Q. All right. So you studied -- is that what you mean by when you say I work nights?
A. Yes. Well, I was trying.
Q. All right. Exhibit 14. This is an e-mail chain from July 11, 2017. This is from -- now that I know who K. Dellmann is, this is you going back and forth

with Oyster Park about your apartment; is that correct?

A. I'm sorry?

Q. This is you going back and forth with Oyster Park. It's from K. Dellmann ---

A. Yes.

Q. --- on July 11th?

A. Yes, lots -- I sent lots of e-mails, yes, sir.

Q. Right. "Kathlina, as far as you acting with haste, I must be missing something. All I know is that we remain in a mold-infested apartment sucking up the vapors, smell, danger. The only contact I receive is retorts to my contact or no response at all. Furthermore, humor me and stop lying that none of your sister properties are available." Do you recall sending that?

A. Yes.

Q. And then the next e-mail -- well, the prior e-mail, "Kathlina, I so apologize that you, once again, were/are lacking understanding of my e-mail. No ill will exists, just a simple notation that I wish the same concern you have offered us to come back on you. Therefore, if you find your people skills and empathy in order, the same shall follow. I loudly and clearly," in all caps, "stated that I would accept a short-term answer to this stressful situation. However,

acknowledge that I stated long term, I would not wish to remain in Oyster Park. I regret that you failed to see the family behind this stress. Ask Omar or Travis of our history with Oyster Park. So long as you sleep well, Kathlina, all should be good. Your only concern here seems to be creating, belittling, robotic rejoinders. Kudos to that." Signed Karola. Do you remember sending this?

A. I mean, I'm sure I sent it because I see it, and it sounds like something that was in order. This was a lot, and no one from Oyster Park, anyone that represented that building knowing that it was leaking above us, no one cared. No one cared. I had to beg to be moved; I had to beg for every single action that they would finally do. So, yes.

Q. And who is Kathlina on this e-mail?

A. I know she worked for Oyster Park. I guess it was the manager.

Q. Do you remember what she looks like?

A. No, sir.

Q. Do you recognize -- I'll just take a shot here. Do you recognize this young lady in the back?

A. No, sir.

Q. I'm trying to clean this up a little bit too. Do you drive every day?

(Recess taken.)

(Back on the record.)

(Plaintiff's Exhibit Nos. 12, 14-19, 26, 29, 55 were marked for identification.)

(Plaintiff's Exhibit 20 was stipulated to and entered into evidence.}

(Plaintiff's Exhibit Nos. 56-58 were marked for identification.)

(Plaintiff's Exhibit Nos. 56-58 were stipulated and entered into evidence.)

(Plaintiff's Exhibit Nos. 12, 14-19, 26 and 29 were stipulated to and entered into evidence.)

MR. MCCULLOUGH: We have everything in evidence that's been admitted without objection.

THE COURT: That sounds good. Okay. Yeah. All right. Anything else before we bring the jury back in?

MR. MCCULLOUGH: Not from the Plaintiff.

MS. SHEETS: Not from the defense, Your Honor. Thank you.

THE COURT: All right. Yeah, thank you all. Okay. Bring the jury back in. Thank you.

(The jury entered the courtroom at 10:02 a.m.)

THE COURT: All right. Thank you so much. Thank you, ladies and gentlemen, for your patience this

morning. We were trying to take care of a few things on the front end so we can streamline the rest of the day, hopefully. So we will resume. Mr. McCullough, you can call your next witness.

MR. MCCULLOUGH: Thank you. May it please the Court. We call Oba Mubarak.

THE CLERK: Place your left hand on the Bible, raise your right hand.

MR. OBA MUBARAK was called as a witness, being duly sworn, was examined and testified as follows:

THE CLERK: You can be seated and state your full name, spell your last name.

THE WITNESS: My name is Oba Mubarak.

MR. MCCULLOUGH: Thank you for coming in this morning. I appreciate it.

DIRECT EXAMINATION

BY MR. MCCULLOUGH:

Q. Were you a resident with your family at Oyster Park Apartments?

A. Yes, we were, four years ago.

Q. All right. And did you sign a lease with Oyster Park to live there?

A. We did.

Q. Was this when GreyStar was still managing the property?

A. Yes.
Q. Did you pay monthly rent while you lived at Oyster Park?
A. Yes, we did.
Q. Did you have issues while you were at Oyster Park related to health and safety of you and your family?
A. Yes, we did. Probably about halfway through our lease, my wife would get headaches, and I would have issues with my asthma. Now, I had asthma when I was a kid, probably when I was, like, ten years old. But, unfortunately, when I was living there that was the first time in over a decade that I had to use an albuterol inhaler. And, more importantly, we had our daughter, our first daughter, who was about six months at the time, would wake up with inflamed eyes and nasal congestion.
Q. Did you talk to the folks at Oyster Park about it?
A. We did, we did. We sent an e-mail.
Q. Did you also -- did you talk to some neighbors and others in the community at Oyster Park about what they were experiencing?
A. Yes. So we definitely did some digging when we started to notice these health issues, one of which I spoke to our next-door neighbor who was living,

you know, wall to wall, our neighbor to the right. Her name was Kate. I don't remember her last name, but she was telling us that ---

MR. ROSS: Your Honor.

THE COURT: Yeah.

MR. ROSS: We object. This is hearsay.

THE COURT: Sustained.

BY MR. MCCULLOUGH:

Q. I'm going to hand you Exhibit 23. Is this a series of communication between you and Oyster Park?

A. Yes, it is. We sent this e-mail.

Q. And the first e-mail is dated January 19 -- 16, 2019; is that correct?

A. Yes.

Q. And you were a tenant at -- a resident at Oyster Park at that time, right?

A. Yes.

Q. And you lived in the apartment with you and your daughter?

A. Yes, and my wife.

Q. Okay. Thank you. And you write, "We appreciate you all providing our family with accommodations over the last year; however, I am writing you with concern and disappointment regarding what's been going on

with the mold issue. After speaking with Kate Rawlings and her mother and hearing her situation, and on top of that, hearing that there have been multiple cases throughout the year of residents' apartments being infested with mold on all levels, I'm shocked as to why no one informed the residents that this was an issue. Mold is an extreme health risk. That's jeopardizing the health of all your residents. We have a seven-month-old to worry about on top of our own health."

Was that a true statement when you wrote it in January of 2019?

A. One hundred percent.

Q. Was the mold in your apartment impacting your health?

A. Yes. Like I said, this is the first time in years that I had to use an albuterol inhaler due to breathing issues. And, you know, as heartbreaking as it is -- I love my children to death. We now have two other daughters, but at the time, being our first daughter, it scared us seeing her like that.

Q. Is this a photograph of your child?

A. Yes.

Q. And did you e-mail that photograph to the folks at Oyster Park?

A. Yes.

Q. Why?
A. Because as a father it's my responsibility.
Q. Were you worried about your child?
A. Yes, we were.
Q. Was your child suffering the effects of mold exposure?
A. Yes.
Q. Were you scared and worried for your child?
A. Yes.
Q. Is this another photograph that you sent to them showing mold in your apartment?
A. Yes, it is. That's a -- my shelf, behind it is mold.
Q. Okay. And did you write several days later, "Good morning, I apologize for the late response. We've been aggressively looking for a place to live for the last couple of weeks. Unfortunately, we have to part ways with Oyster Park. As a husband and parent, I refuse to put my family's health at risk. My wife has had headaches daily. Our baby girl wakes up with inflamed eyes and nasal congestion. And for the first time since I was young, I've had to use an albuterol inhaler daily. For me, it's no question that we have to move out. I've spoken to some of the maintenance gentlemen that worked on Kate's apartment. Fortunate

enough for me, I've been trained by the state in Hazmat operations, and I can assure you installing humidifiers in these apartments is not going to fix the issue here. Oyster Park is a new development. That should tell you that there's a structural issue within. Installing humidifiers is a temporary fix and will eventually fail."

What did you mean by that? Why did you think the humidifiers won't work?

A. At the time, I spoke with a couple of maintenance guys and Kate as well, and they told me that it was there as a means to fixing the problem, installing humidifiers, and they painted over the mold.

Q. They weren't fixing the issue; they were painting over it?

A. It was just a band-aid to fix -- to "fix the problem." As a new development, you've got to understand the structural ---

Q. They weren't -- were they fixing what was causing the mold?

A. No.

Q. They were painting over it?

A. Yes.

Q. They're putting dehumidifiers in these units?

A. Yes.

Q. And they're renting them to other folks without telling them what was going on?

A. Yes, and I want to add to that. Had we had not spoken to our next-door neighbor, we would have not have known that there was a problem in that apartment. Period. So the fact that they swept that under the rug for all of the residents shows lack of responsibility and accountability.

Q. So the fact that you and your daughter and your wife were sick, you wouldn't have had any idea what was causing you to be sick had you not figured it out from your neighbor?

A. Absolutely not.

Q. And based on your testimony, you were far from the only one who was having these issues at Oyster Park?

A. Yes.

Q. And, to your knowledge, have they ever fixed any of these issues?

A. Not to my knowledge. I will say that was four years ago, so I hadn't stepped foot in there since.

Q. Thank you.

MR. MCCULLOUGH: I have no further questions. We can move Exhibit 23 into evidence.

THE COURT: All right. Any objection to 23?

MS. SHEETS: So stipulated, Your Honor.

THE COURT: Okay.

(Plaintiff's Exhibit No. 23 was entered into evidence.)

CROSS-EXAMINATION

BY MS. SHEETS:

Q. Mr. Mubarak, good morning. Thank you for your testimony here today. We certainly all appreciate you joining us. A couple of questions for you here. I heard you testify that you found some mold issues, right?

A. Yes.

Q. And I heard you testify that in response to those mold issues that the apartment complex was installing dehumidifiers in the units that were expressing those concerns; is that correct?

A. Yes.

Q. And, correct me if you think I'm wrong here, but they were actively sort of responding to and investigating -- to your knowledge, with your direct conversations with Ms. Rawlings, they were investigating this issue, correct?

A. Yes.

Q. And were the walls in your unit repainted while you lived there? I got confused.

A. They were -- so Kate's, our next-door neighbor, was. She allowed us into the apartment to see it.

Q. And prior to -- and if you don't know, that's great. But prior to Ms. Rawlings' walls being repainted, were they also cleaned, or do you know?

A. To my knowledge, I don't know.

Q. Okay. You weren't there for the process of sort of both the observing and then the remediation of the issues in Ms. Rawlings' unit; is that correct?

A. Correct.

Q. Okay. We've had a photograph up here before, and I believe that it showed a wooden shelf with some type of black residue in the corner of it. Did you have that shelf tested for the black residue that was in the corner?

A. I did.

Q. Okay. Other than that shelf that we just saw a photograph of a while ago, did you ever see or locate another area or item in your home that had that same black substance on it?

A. No.

Q. Okay. Did you ever ask for, or yourself, get a mold test on your unit?

A. No, we didn't.

Q. Okay. When you left your unit, how long before -- I believe you said you, your wife and your young child all experienced symptoms; is that correct?

A. Yes.
Q. How long after you left your unit those symptoms resolved?
A. For my daughter, days.
Q. During the time period when your daughter first started exhibiting some symptoms that you discussed today, did you see a physician with her?
A. We did not.
Q. Okay. Are you or your wife a physician or a healthcare professional?
A. No.
Q. Did you offer your daughter any type of therapeutic, whether -- you know, sometimes there's herbal remedies for young children, and sometimes there's more therapeutic remedies like, you know, Tylenol versus melatonin, for instance. Did you offer your daughter any type of medication to help the symptoms that you were seeing?
A. Yeah, we don't really do medication. We do essential oils. So tea tree oil is a good one for mold, elderberry. We have a strict vitamin regimen for her, so vitamin D. Also ascorbic acid, vitamin C, we would give to her.
Q. How -- once you left your apartment, how much longer did you need your albuterol inhaler?

A. Like I said, it was four years ago. It might have been maybe a couple of weeks.

Q. Okay. How about your wife? Did your wife see a physician for any of the symptoms that she was experiencing while you were living at Oyster Park?

A. We didn't see a physician; we saw the chiropractor.

Q. Okay. Do you know, and if you don't, that's fine. Do you know whether or not your wife took any therapeutic or herbal remedies for the symptoms that you described today that she was experiencing while in Oyster Park?

A. Like I said, we stick to the same herbs and essential oils, basically, all-natural remedies through vitamins and minerals.

Q. What are those essential oils that you use?

A. Tea tree, Eucalyptus, lavender, lemon, orange, Melaleuca.

Q. All right. Mr. Mubarak, thank you so much for your time today. I appreciate it.

REDIRECT EXAMINATION

BY MR. MCCULLOUGH:

Q. If you had a large, fancy apartment, and you're a big company, and you've got lots and lots and lots of tenants complaining about mold in their apartments,

do you think you as a resident are the one that should be going to pay for mold tests, or do you think that's something that the owner or manager should be doing?

MS. SHEETS: Objection. Facts not in evidence.

THE COURT: Sustained.

BY MR. MCCULLOUGH:

Q. Did the owner or the manager of that apartment complex do anything to tell you about the mold issues?

A. No.

Q. Did they do anything to help you with those mold issues?

A. No.

Q. Did they do anything to help the other tenants where they paint over it, put a dehumidifier and then rent to somebody else?

A. All they did.

Q. Thank you.

MS. SHEETS: Nothing further, Your Honor.

THE COURT: Any objection to this witness being excused?

MS. SHEETS: No objection.

THE COURT: All right. Sounds good. You're free to leave. Thank you, sir. Have a good day. All right. Call your next witness.

MR. MCCULLOUGH: We call Ms. Sampson.

THE CLERK: Place your left hand on the Bible, raise your right hand.

MS. KATHLINA SAMPSON was called as a witness, being duly sworn, was examined and testified as follows:

THE CLERK: You can be seated. State your full name, spell your last name.

THE WITNESS: My name is Kathlina Sampson, S-A-M-P-S-O-N.

MR. MCCULLOUGH: Be right there, trying to get organized. May I approach?

THE COURT: Um-huh.

MR. MCCULLOUGH: May it please the Court.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. MCCULLOUGH:

Q. Good morning.

A. Good morning.

Q. Good to see you again. We met in my office several years ago at your deposition.

A. Yes, sir.

Q. Ms. Sampson, do you still work for GreyStar?

A. I do.

Q. And are you still a regional manager?

A. Yes, sir.
Q. And do you -- and GreyStar is the property manager, among other things; is that right?
A. Yes, sir.
Q. And we've been driving in to the courthouse, up Meeting Street. Is that GreyStar's corporate headquarters on Meeting Street, the big tan door?
A. It's located on Meeting Street.
Q. Do you work in that building?
A. Sometimes.
Q. And I looked, it looks like, tell me if this about sounds right, GreyStar manages, according to the website, more than 768,000 multi-family units. Does that sound right?
A. It does. I don't know the exact number.
Q. Big company?
A. It is.
Q. Says that GreyStar manages about 2,700 communities. That sounds about right?
A. Sure.
Q. And it also does investment management, and it says has assets under its management -- it says it has under its management more than 58 building knowledge and resources under its management. Does that sound about right?

A. I would have to believe you.
Q. And then under development and construction, it says that it's got more than 24 billion in global development assets. Does that sound right?
A. I'm not in that department.
Q. Okay. GreyStar was the property manager for Oyster Park in Mount Pleasant when it opened in 2017; is that right?
A. That sounds about right.
Q. And you were the onsite manager for about two years; is that right?
A. Just about.
Q. Okay. And so I believe your testimony was, I think it opened maybe in April or May, and you started there in June of '17, and actually had been the onsite person for Oyster Park?
A. Correct.
Q. And would Omar, I'm not sure of his last name, be one of the folks that's either there before you or with you that would also be onsite, showing folks around and doing things on behalf of Oyster Park?
A. Yes, Omar was there whenever I was there.
Q. Now do you know this to be true, that Oyster Park was finishing construction, punch out on some of the buildings while there were tenants living

in Oyster Park?
A. Yes, sir.
Q. And LandSouth was the general contractor?
A. Yes, sir.
Q. And so LandSouth was in and out doing punch out work and finalizing the construction while tenants lived there?
A. Yes, sir.
Q. And Douglas German is a Dewberry -- was a Dewberry employee who was in charge of finalizing that construction and working with LandSouth; is that right?
A. That was my understanding.
Q. And Dewberry Capital Corporation, who is the developer of Oyster Park, oversaw the construction of Oyster Park, right?
A. That's my understanding.
Q. And then a Dewberry controlled entity called Mount Pleasant Square Associates, II, LLC, is the owner of the physical construction known as Oyster Park?
A. That's my understanding.
Q. All right. I know this is cumbersome. I'm just trying to get this ---
A. I understand.
Q. And then a GreyStar entity called GREP Southeast, LLC, was the actual, technical contractual property

manager?
A. Correct.
Q. And so I don't want to say -- that entity and the entity, the owner, entered into a property management agreement whereby GreyStar would serve as the property manager on behalf of the owner?
A. Yes, sir.
Q. And so you've got GreyStar's policies and procedures as the property manager operating on behalf of the owner, as the owner's representative onsite?
A. Yes, sir.
Q. All right. And that's the way it normally works?
A. Yes, sir.
Q. GreyStar is no longer working out of Oyster Park, correct?
A. Correct.
Q. When did that relationship end?
A. To my recollection, it was either May or June of 2020. It was shortly after COVID happened.
Q. Okay. And you have met the Plaintiffs?
A. Yes.
Q. And we have some e-mails back and forth, you e-mailed with them, had verbal conversations, coming to the office, you would go by the units, y'all communicated?

A. Yes, sir.
Q. All right. And one of the folks that we won't hear from at trial, the maintenance supervisor at Oyster Park, was a nice guy named Travis Harmon, right?
A. That's correct.
Q. All right. And so some of the materials that we see were signed by Mr. Harmon as the guy who actually if there was an issue in the building, a lot of times Mr. Harmon would be the one that would check it out?
A. Yes, sir.
Q. He's the maintenance supervisor, is that what it's called?
A. That's the term, yes, sir.
Q. Okay. And so when we see documents where he's going in, and he's photographed stuff or documented stuff, he's just following the process and the protocol of GreyStar?
A. Yes, sir.
Q. And he's with GreyStar?
A. Yes, sir.
Q. Now when you were there, you would have leasing associates working on your behalf to show and promote and to lease units at Oyster Park?
A. Yes.
Q. And so if I showed up and said I'm moving to

Mount Pleasant, I would like a one-bedroom, ground-floor unit, somebody in your office would have shown me around, promote that building, and then following enter into a lease and dealt with that process and got the lease signed. Is that the way that works?

A. That's the typical standard.

Q. Okay. And GreyStar paid a management fee or certainly bonuses if certain thresholds were met on a monthly or annual basis; is that correct?

A. Yes, those fee incentives were involved.

Q. Okay. So -- right. I mean, there's lots of pieces to that. But one of those things in the way you got paid and the way that folks got paid was leasing apartments at Oyster Park; is that fair?

A. Yes, sir.

Q. Do you remember -- this is before you got there. So when unit 104 flooded, the first unit the Richardsons were in, is that before you had arrived at Oyster Park?

A. It was prior to my arrival.

Q. And so you probably know they were moved from 104 into unit 101; is that correct?

A. Yes, sir.

Q. All right. And you did arrive while they were in unit 101?

A. Yes, sir.

Q. Okay. And we've got e-mails that we've already entered into evidence. But there was a lot of e-mail traffic starting July 10, 2017, through August between your office, the Plaintiff and others at GreyStar and Dewberry, as a result of the situation in unit 101; is that fair?

A. The leak, yes.

Q. Okay. And it's my understanding that there was mold discovered in unit 101 on July 10, 2017, correct?

A. That's my understanding.

Q. Okay. And that Oyster Park, I'm just going to use that term to included those three entities I talk about, hired Mr. Higgs' company to come out and perform a mold test analysis?

A. That's correct.

Q. And you, I'm sure, have seen Exhibits 2 and 3 that have that mold test analysis Mr. Higgs performed where he found elevated mold inside unit 101?

A. Yes, I believe so.

Q. All right. And as he testified yesterday, seemed like longer than yesterday, on the interior, one of the relative mold was 120 on the outside and 2,400 on the inside, which he believed to be elevated. Are you aware of that?

A. I would have to see the report.

Q. Sure. That is absolutely fair. This is Exhibit 3. I am referencing Page 3 of 4, and it's the one that has 120 on the graph and then 2,400. Do you see that?

A. Yes, I do.

Q. Okay. And that information was provided to you because you had hired them, and you had paid for that report, correct?

A. Yes, sir.

Q. All right. And as a result of receiving that report, you hired another vendor, Belfor, to come in and perform a mold remediation in unit 101?

A. Yes, sir.

Q. And several days after, I think it was July 12th or 13th, the Richardsons were moved from unit 101 into, I think, unit 102; is that correct?

A. I don't remember how long it had been, but it was fairly quickly.

Q. Okay. And then Belfor came in and remediated unit 101?

A. Yes.

Q. Okay. And we've got -- and I'm not trying to trick you. We've got documents and pictures?

A. Yeah.

Q. Okay. We also have some e-mails -- I'm already getting out of order. I apologize. But if you look

at the second e-mail -- the second document in front of you, which is -- do you mind? I'm just trying to -- not this one. That document -- actually not that one. It's actually this one; it's Exhibit 13. I really just want to focus on the second page. This is July 10, 2017, and this is an e-mail from you to Mr. German about unit 101; is that correct?

A. Correct.

Q. You described it as a "pretty intense case." And I believe you testified in your deposition that, you know, there's no dispute there was mold in there, and that y'all needed to react properly; is that fair?

A. Right. It was gross.

Q. Okay. And Travis is Mr. Harmon; is that right?

A. Yes, sir.

Q. Okay. And the testimony from Belfor yesterday, there's documentation that shows that there was leaks in units 301, 201 and 101. Are you aware of that?

A. My understanding is the leak occurred and originated in 301. There was no one occupying 201, so to say that that was leaking too, I don't know if that was established or I can't recall.

Q. Okay. If Belfor actually went in, and I can show you photographs where they went in and took pictures of leaks in 301, 201 and 101 and documented

mold in 201 and 101, you wouldn't quarrel with it?
A. No.
Q. All right. And we'll look at it in a minute. But during the process and timing of when this was going on in July, the owner was still working with LandSouth in coming back and doing warranty work and punch out work, right?
A. That's correct.
Q. And starting to look at e-mails, if you haven't already, in February of 2017 and March and April and May and June, now into July, there were communications between Dewberry and LandSouth that there are roof leaks, right?
A. I would have to rely on your information.
Q. Okay. And part of what's happening during this time period is the owner asking the contractor to come back and do warranty work to fix issues at Oyster Park, right?
A. Yes.
Q. And so one of the things that's mentioned here, it says, "Travis informed me that there was some communication regarding a plumbing issue that was going to be handled by construction in a unit that is directly above this unit in 301 that has not been resolved as of this morning. It seems that the water leak is settling

at 101."

I think that to mean that Mr. Harmon has been communicating, and by construction based on the other e-mails that I've seen, that seems to be referring to LandSouth warranty claims, that they need to come back and fix a leak in unit 301 that had leaked into 2; is that correct?

A. Yes, sir.

Q. Okay. And that has apparently been known and communicated and discussed before July 10, 2017, because it says it has not been resolved as of this morning?

A. I believe so. It's my recollection that the leak throughout Travis's investigation was not found until after we had seen what was occurring in the laundry room from Ms. Richardson's apartment. And so through our investigation by Travis, he was able to determine the leak was from 301.

Q. On the tenth you're writing there had been communication about plumbing that has still not been resolved as of then. How would all of that have occurred if he had just discovered it in the Richardson's?

A. I -- if there was a different plumbing issue -- again, my recollection is that the leak related,

that I understood, is to be responsible for the water settling to 101, and it was related to an issue that was found the day of the mold being reported to us.

Q. But we've got thousands of documents, and I can't find anything from Mr. Harmon, from you, or Mr. German about units 101, 201 or 301 requesting warranty work, performing any work or any repair. We have lots of documents after that. Do you know where that information would be?

A. For repair on that unit?

Q. At least communications -- so we can figure out the timing of it.

A. Do you have the original e-mail that Ms. Richardson did send over to say, hey, something is in my apartment, must get it checked out?

Q. Yeah, it's actually in here, and it says that -- let me pull that out. This one is dated July the 10th, and it's sent to just Oyster Park, to Omar, it says -- yeah, July 10th, 2:30 in the morning, Defendant's Exhibit 4, and it states, "For the past couple of weeks, we have smelled mold/mildew, but have assumed it was innocent. At the same time, my daughter and I have been suffering from severe allergy symptoms. As of yesterday, I noticed black mold on the bathroom ceiling, assume to be from upstairs. Today, we notice black mold

from behind washer." Got it?

A. And that was that morning?

Q. Uh-huh.

A. So, I think what happened was that because of the urgency and the seriousness of which we were taking this matter, Travis communicated that construction needed to get out there and to get it fixed. So, I think it that morning it was reported, it looks like the time of this e-mail was at 5 o'clock. And so my communication with Douglas was we had an understanding construction was coming to fix this, they haven't fixed it as of this morning.

Q. So, again, we've got all these warranty documents. Where's the warranty claim with information to LandSouth or to Dewberry or to anybody about the need to get them fixed. Where's that documentation?

A. I can't -- I don't recall at this time if it's not in the document that have been filed.

Q. Let's look at your -- I think we touched on this, but GreyStar has three policies and procedures; is that fair?

A. Yeah, I would say so.

Q. All right. So we've got premarked and I believe admitted. Do y'all have a mold and moisture claim; is that right? GreyStar?

A. Yes.
Q. And I'm just going to -- do you have that in front of you?
A. Is that Exhibit 12?
Q. Yes, yes, ma'am. Thank you. On the top it says, "The best method of mitigating mold growth in buildings is to address water and moisture issues quickly and perform repairs necessary to control moisture." Do you agree with that?
A. I would agree.
Q. And then y'all have training, every member of your team, to include Mr. Harmon and others, to take on how to respond as to mold; is that correct?
A. Are you referring to the training here?
Q. That -- I'm just asking if GreyStar representatives have been trained to deal with mold complaints from residents.
A. Yes.
Q. And this is a little further down. GreyStar has kind of a system or a protocol where its own service team, to include Mr. Harmon, can repair or remediate mold growth if it's smaller than 25 square feet. If it's larger than 25 square feet, you need to outsource it; is that correct?
A. Yes, sir.

Q. And so in this case, it was larger than 25 feet, so Belfor came in and remediated?
A. Yes, sir.
Q. And although Belfor produced an estimate and photographs and package to remediate 201, Oyster Park did not retain Belfor to remediate; is that correct?
A. That I'm not sure of.
Q. The same for 301. Belfor put together a package to remediate and repair 301, but Oyster Park did not retain Belfor to remediate 301?
A. Again, I'm not sure of that.
Q. It also says in Paragraph 1, bold, underlined, "Under no circumstances are we to engage an environmental company for any sort of testing without the prior written consent of the community owner, senior managing director, and the risk management department." Did I read that correctly?
A. Yes, sir.
Q. So before you can hire Mr. Higgs or anybody else to come out and do a mold test, you've got to get written authorization from the community owner, the senior managing director, and the risk management department; is that correct?
A. That's what the policy reads.
Q. And so without one, two, three, you're not

authorized to allow protocols to hire somebody like Mr. Higgs to come see if your tenants have problems?

A. That's what the policy states.

Q. It also says -- I just want to make sure I get this right, Paragraph 3, "Always ensure proper verbiage is used. Discoloration should be used if it is not known to truly be mold. Take photos of all affected areas before, during and upon completion of the moisture/mold event." Did I read that right?

A. Yes, sir.

Q. So GreyStar is telling every team member don't use the M word, call it discoloration; is that right?

A. If there's suspicion of it when we write up a work order, discoloration is used.

Q. Okay. And the only way to get -- to make sure is to go back and have number one, two and three sign a document that allows Mr. Higgs to come in and test, right?

A. That's what the policy states.

Q. Okay. So until you get signatures one, two, three and retain somebody to come in and perform a mold test, get the mold test, pay for the mold test and the mold test comes back, at that point you can start calling it mold?

A. That could be one way, yes.

Q. Okay. It also references a moisture meter, and that's referenced in here a number of times. Do you know what a moisture meter is?

A. In very rudimentary terms.

Q. Yeah, I mean, you jam a device into the wall, and it gives you a reading to tell you if it's wet. That's basically it, right?

A. That's my understanding, yeah.

Q. Okay. And it said -- it's referenced in here a number of times other equipment needed onsite, it references on No. 4 right here, a moisture meter must be used. I want to ask Mr. Harmon, but he's not here. Are you aware that Oyster Park didn't own or have a moisture reader onsite?

A. I am not aware.

Q. If you would, go to Exhibit 14. Let me ask this -- there's a big stack of stuff in front of you. We're going to bounce around a little bit.

A. Okay.

Q. Nobody wants us to go through all of those. And this is Exhibit 20, which is in front of you, and we'll get into it in a minute. Have you had an opportunity to look at Exhibit 20? Have your folks shown you this, which is a list of water and mold complaints at Oyster Park?

A. No.
Q. Okay. Are you aware that Exhibit 20 is a packet of the mold and moisture complaints by residents at Oyster Park since it was opened in '17? Do you know that's what Exhibit 20 is?
A. I don't know that.
Q. Would you agree with me that Oyster Park has had an issue with excess humidity in apartments?
A. That's been reported at Oyster Park.
Q. And y'all have had -- Oyster Park has had a series of roof leaks, correct?
A. Yes, sir, it's been reported.
Q. There have been window leaks?
A. Yes, sir.
Q. There have been plumbing leaks?
A. Yes, sir.
Q. The excess humidity because of HVAC issues has caused issues throughout numerous buildings, correct?
A. Yes, sir.
Q. It's flooded?
A. Yes.
Q. All right. So we've got water coming in from the ground; we've got water coming in from the side; we've got water coming in from the top; and we have water growing from within -- moisture from within?

A. More or less, yes.
Q. Okay. Exhibit 14 -- again, we're not going to spend days on this, but I just want to hit a couple of things. Exhibit 14 is an e-mail. Do you remember Ryan Fennick?
A. That name sounds familiar.
Q. Okay. And there are a ton of e-mails at Oyster Park Leasing and Oyster Park manager. You're the Oyster Park manager, right, at that time period?
A. Yes, sir.
Q. Okay. And so he writes, "I was in D.C. this weekend, and when I got home, there was mold all over my clothes and all over the bathroom. My A/C has never been off. I am very health conscious and cannot live in these conditions."
And then in response, you wrote, and you're sending this to others within GreyStar. "This makes number seven for this type of growth. I went ahead and reached out to Rob Knight with Pivotal Restoration and will be meeting with him and Carolina Sun HVAC Systems tomorrow afternoon to have a professional assessment performed for these units" and are seeing what the activity -- I'm sorry. "That we are seeing the activity in."
And then it says, "One particular unit has had

recurring issues, even after installing the vent over her bedroom door. We placed one of our portable dehumidifiers in her unit, and it has to be emptied on a daily basis." Did I read that right?

A. Yes, sir.

Q. All right. So you wrote that, right?

A. Yes, sir.

Q. All right. So -- and there are a bunch of attachments; there's photographs. But this was -- you wrote seven of this type of growth in Oyster Park; is that right?

A. Yes, sir.

Q. And so we've already talked to Belfor, but is Pivotal Restoration another restoration company that comes in and does mold and water remediation?

A. Yes, sir, they do remediation.

Q. Okay. There's some more e-mails from October 2018, and this is an e-mail you wrote to a couple of Dewberry folks. It says, "All of the units presenting this growth are identical in appearance, white, dust-like, textured. Majority of the units have presented the majority of the growth within the bedroom closet of the unit and most appear to be within the first two junctions from the HVAC system. Residents also are reporting the atmosphere as wet and papers have

been limp when left out on the counters. Upon the first remediation and unit to report the growth concerns, the mold technician disclosed that this presented like another community in the area. Upon further investigation to that maintenance team and manager, it was disclosed that their studio floor plans were calling in with repeated issues of growth in the units, and a term called 'supercooling' was used to describe what was going on."

And then a little further down, "They ultimately had to install dehumidifiers in each of these units with a separate control system the resident is responsible for controlling. Oyster Park maintenance attempted to manage this process by reducing the blower speed and installing an additional ventilated grill over the bedroom door to further permit air circulation within the closet. To date, the oldest report, occupied unit has not experienced success with these efforts. This unit is on the top floor and 704 square feet. Only after the property dehumidifiers was put in the unit to assist with humidity control has the resident reported favorable results now going on three weeks. Other occupied units have implemented damp-rids and/or personal dehumidifiers to help manage these conditions. We now have five different floor plans among the nine

that have been reported to date since August."
Did I read that correctly?
A. You did.
Q. All right. So as of this date, you had issues from multiple residents in five of the type -- of nine types of units telling you they have mold in their apartments, correct?
A. Yes.
Q. And is being caused by excess humidity in the apartments, right?
A. To my understanding, yes.
Q. Okay. And the folks that you're talking to or getting help from are saying it's probably HVAC related and using the term "supercooling." Is that what they're saying -- telling you?
A. Yes, sir.
Q. And you are talking to Dewberry about the situation, right?
A. Yes, sir.
Q. You are getting your maintenance folks to do what they can to remedy the situation?
A. Yes, sir.
Q. You are installing dehumidifiers in multiple units?
A. Yes, sir.

Q. You've got permanent dehumidifiers, portable dehumidifiers, right?
A. Yes, sir.
Q. But this problem is continuing, at least as of the date of this e-mail, correct, with no solution?
A. Are you referring to the problem from Ms. Richardson's apartment, or the problem related to these units?
Q. These units.
A. Oh, yes.
Q. All right. If you would take a look at this e-mail, and this is an e-mail from a tenant, unit 206, and it's addressed to you, and it referenced mold in 206. And you obviously had talked to her yesterday about apartment 206, about the mold issue. Do you recall that?
A. Vaguely.
Q. All right. And she described the timeline, and I just highlighted she keeps talking about mold on September 27, 28, 29, October 14, October 17, October 18. Do you see all that?
A. Yes, sir.
Q. And go up a little bit, and then Mr. German responds, "With all due respect, given previous experiences with Courtney and Elliot, they both are

extremely quick to over-exaggerate and stretch the truth without question." That was Dewberry's response to this complaint; is that correct?

A. I can't represent whether or not that was a formal response to this. I can see it's written here on the e-mail, but clearly they -- "Hopefully we can get to the bottom of this soon." I mean, they were working with us as well to get it taken care of, if there is an issue.

Q. Again in another response, it says, can we provide a dehumidifier, which seems to kind of be the go-to, right?

A. For immediate response, yes.

Q. So a dehumidifier doesn't fix whatever is causing excess humidity; it just sucks some of the humidity out of the air, right?

A. The way I understand a dehumidifier to work, it removes humidity from the air.

Q. You couldn't provide the dehumidifier too, could you?

A. Because this was so long ago, I don't know if ---

Q. You were out of them, they were already all in use, right?

A. It states that in the e-mail. But because there are local vendors and providers in the area,

the opportunity could have been there to go and purchase another one ---

Q. Okay.

A. --- to have it in place, yes, sir.

Q. Now this is where it gets interesting. I counted -- I just want to make sure. I think Courtney used the term mold, like, nine or ten times, and the e-mail chain that we just went through is titled mold in unit 206. So she's referencing mold, y'all are bouncing e-mails back and forth saying mold, and then you kind of snapped back into following GreyStar policies and procedures, right? You called it mildew?

A. And looking at the timeline, the e-mail on October 18th, the subject line is Oyster Park mildew - new unit number 11, and then her recount of the conversation on October 19th is when she then starts to use the mold subject line and gave her recap, you know, with her kind of recognizing it, seeing a few things here that may be odd. And then on September 27th and then finally on October 18th, she came in and spoke with me.

Q. Because you can't call it mold until you had signatures one, two, three, hire a vendor, pay the vendor, have him come test to get the results, and check the test, correct, per your own policies and procedures?

A. Correct.
Q. And then if you go down, at least as of this date, we have 11 active units with mildew, correct?
A. Correct.
Q. And we don't know how many of those 11 active units with mildew or mold because y'all didn't have them tested because you didn't have signatures one, two and three to hire Mr. Higgs, have him come out, pay for them, wait for the test results and confirm the test results, correct?
A. I'm sorry? What was the question?
Q. You can't call it mold, pursuant to your own policies and procedures, unless you followed, at least, all of the steps necessary to have it tested, correct?
A. That is correct.
Q. At one point, you guys got -- you got your claims department, legal department, involved, correct?
A. That's correct.
Q. So in 2019, you e-mailed Mr. Matt White, and you state, "Oyster Park has been experiencing several complaints from residents of their personal belongings being damaged by mold in their apartment." Now, I'm going to stop you there. You say several complaints. For me, several is, like, two, three, maybe four. What is your definition of several?

A. Well, from another e-mail that you've already -- we talked about already, I think there was 11 by the time that, you know, Courtney -- or Courtney made number 11, so that would constitute several for me.

Q. Okay. Again, are you aware that those 11 were specific to the then active growth caused by excess humidity by the HVAC unit?

A. That was speculation, I believe.

Q. Okay. That didn't have anything to do with mold caused by plumbing leaks, roof leaks, window leaks or floods, correct?

A. Correct.

Q. All right. So when you're saying several complaints of mold in their personal belongings, this is only those complaints associated with excess humidity caused by HVAC?

A. Yes.

Q. All right. "We are working with the client's legal and development team." The client is Dewberry; is that correct?

A. Yes, sir.

Q. So at this point, you're "Working with their legal and development team to figure out what is going on in these units causing this growth to happen. At this point, we have several residents cite unsafe

living conditions with the expectation for no further lease obligations at the time of their abandonment."

And is that what ultimately happened? You have folks getting out of their leases early and leaving as a result of these issues?

A. Yes, sir.

Q. All right. So in August of 2019, there appears to be a negative review rating on an apartment rating website that states, "Warning. Serious mold issue here. I lived here last year" ---

MS. SHEETS: Objection. And may we approach?

THE COURT: Yeah.

(Off-the-record conversation held at sidebar.)

(Back on the record.)

THE COURT: Ladies and gentlemen, we'll take our morning break now anyway. We've got to pull up a few papers. We'll break about ten minutes, and then we'll come back. Just for planning purposes also, we are going to order lunch in for you all today, if you didn't already know, and that's to kind of cut our lunch break a little short, but also to give you lunch.

You're not going to be held hostage here, by any means, during the lunch break, but it will be a shorter break, like, half an hour, 45 minutes,

as opposed to, like, an hour and a half just so we can keep things rolling, so just kind of plan accordingly. All right. Thank y'all. We'll see you back in a few minutes.

(The jury exited the courtroom at 11:04 a.m.)

(Recess taken.)

(Back on the record.)

THE COURT: Okay. Y'all ready to bring them back in? Okay. When the jury is ready, you can bring them back in.

(The jury entered the courtroom at 11:20 a.m.)

THE COURT: Please proceed.

BY MR. MCCULLOUGH:

Q. All right. I'm going to hand you a document premarked for identification purposes only. Do you remember while you were the manager of Oyster Park discovering or being told that a negative review had been lodged against Oyster Park?

A. Yes.

Q. And it referenced serious mold issues at Oyster Park?

A. Yes.

Q. And it stated that whoever posted was a resident at Oyster Park and warning others not to live there because of serious mold issues?

A. Yes.
Q. And this next document, again we're on Exhibit 18, this is an e-mail from you to the risk management department stating that Oyster Park recently received this review, and you're asking for guidance on how to respond appropriately to the allegations there's ongoing litigation on the property; is that right?
A. Yes, sir.
Q. Then if you go down, Andrea Davis writes, "Can we have reviews removed on Apartment Ratings if there is ongoing litigation?" Do you have that, right?
A. Yes, sir.
Q. And then all the way up we're "Looping in Jaemi as she heads up everything with reputation." Does GreyStar have a reputation department?
A. No.
Q. Okay. Is somebody in charge of making sure that the reputation for the apartments are appropriately out there within the universe?
A. That could be one aspect of the marketing hookup.
Q. Okay. Well, she writes, "She submitted the review to Apartment Ratings abuse team and will update us all with their next steps after they review the request." Apartment Ratings abuse team appears

to mean when all -- when it's capitalized seems to mean that there's an actual GreyStar team created for apartment rating abuse; is that right?

A. No. What I can infer from this would be that Mike Dougall [ph.], Apartment Ratings, has their own report or team, if you would, and he would report someone under suspicion, or someone not using it correctly.

Q. If you have a tenant who has lived in Oyster Park and has encountered mold and truthfully puts out on a rating, don't live here, there's serious mold issues, why is that an abusive rating?

MS. SHEETS: Objection.

THE COURT: Overruled.

THE WITNESS: I think the abuse would be that the review, as you've shown me here, shows it was posted from anonymous, and there was no way to know or determine that's someone -- this person actually lived at Oyster Park, or experienced this matter.

Q. So GreyStar's team stepped in and sort of scrubbed that negative review, or tried to scrub that negative review from Apartment Ratings, correct?

A. It was reported, if I had to guess, because it was from an anonymous person.

Q. Okay. And again -- this next one was intended for Mr. Harmon. He testified that the way he, as the head of GreyStar's maintenance at Oyster Park, dealt with mold claims by residents -- oh, I'm sorry, mildew or discoloration claims, was that he used these three items, and only those three items, in response. Are you aware of that?

A. I'm not aware of his deposition.

Q. Are you aware that this was the sum total of Oyster Park's response available to resident complaints for mold, mildew or discoloration in their apartment?

MS. SHEETS: Objection.

THE COURT: What's your objection?

MS. SHEETS: Facts not in evidence.

THE COURT: She can answer to the best of her knowledge and recollection.

THE WITNESS: To the best of my knowledge and recollection, I honestly don't know.

MR. MCCULLOUGH: Okay.

BY MR. MCCULLOUGH:

Q. You don't know if you have a mold meter -- a moisture reader, right?

A. I can't say with certainty, no.

Q. You don't know what training your staff took as to mold remediation, correct?

A. I cannot say with certainty, no.
Q. You have no idea of Mr. Harmon's capacity to designate what was discoloration, what was mildew, and what was mold, right?
A. He wasn't expected to designate that.
Q. Okay. He was expected if it was less than 25 square feet to clean it up?
A. If the discoloration was less than 25 square feet, yes.
Q. Okay. And he used those three little squirt bottles to clean it up?
A. Mold Stat Mildew and Mold Protector -- Cleaner, yes. He also used that to clean people's tub grout. Sometimes the realtor would want that too.
Q. Are you aware, as you sit here today, of anything else that was being used at Oyster Park to respond to resident complaints to clean the surfaces in those apartments with discoloration, mildew or mold, other than what's shown on that document?
A. I can't recall; it's been so long.
Q. If you would pull Exhibit 26, which is a series of warranty claim requests that have been admitted into evidence. And do you have that in front of you?
A. Yes, sir.
Q. Okay. Now these appear to be warranty claim

requests submitted to LandSouth Construction for Oyster Park Apartments; is that correct?

A. Yes, sir.

Q. Okay. And just to confirm, LandSouth Construction is the entity that built Oyster Park?

A. Yes, sir.

Q. And so when you wanted a vendor to come and fix something -- I say vendor, I apologize, either the contractor or the subcontractor, you would use, or Oyster Park would use, this document to make that request; is that right?

A. Yes, sir.

Q. So the very first one is dated August 2017. It's dealing with unit 105. This is to J.A. Croson, who is the plumber, and it's about "Water leaking at fitting above water heater." Did I read that right?

A. Yes, sir.

Q. And so -- and submitted by Mr. Harmon; is that correct?

A. Yes, sir.

Q. And so this process whereby Oyster Park would notify LandSouth that it needed to either get itself or a subcontractor, a vendor, or whoever did that work, to come in and fix something?

A. Yes, sir.

Q. And that's normal if you're building a house or building an apartment complex, you have some warranties, and you have them come in and fix them, right?

A. Yes, sir.

Q. All right. Now, I asked you this earlier. I will tell you that this is the first warranty claim that I could find. We looked at some e-mails earlier about issues, roof leaks, and we looked at some stuff about the water leaking in 301, 201 and 101 which was on July 10 or earlier in 2017. There should be a warranty claim on that as well, correct?

A. You would think, yes. I can only speculate sometimes the policies or warranty processes don't get established right offhand. And so if something is missing, I can only speculate that was because of the delay in establishing a formal process.

Q. We're not going to go through all of these. I just want to -- the next one is 8/22/17, and this is Baker Roofing, and this is about a roof leak; is that right?

A. Yes, sir.

Q. And this is D-404. That's a different building than the one before; is that right?

A. Yes, sir.

Q. And if you go to the next one, this is the next

one on 9/27/17, and this is for F-401, looks like the window is leaking; is that correct?

A. Yes, sir.

Q. And go to the next one. This is also September of '17. These are more leaks on the back left corner, and this is in D-314; is that right?

A. Yes, sir.

Q. And then the next one is A-1400. This is in October of '17. The tub spout is leaking; is that correct?

A. Yes, sir.

Q. And the next one is unit G-312, also that same month. We've got water intrusion in the hallway; is that right?

A. Yes, sir.

Q. And I'm not going to go through the rest of them because we don't need to. It's fair to say that Mr. Harmon, on behalf of Oyster Park, was making routine and regular requests to LandSouth to come back and fix all kinds of stuff that was leaking at Oyster Park?

A. Yes, sir.

Q. And at least some of that, not all of it, but some of that, is documented in Exhibit 26?

A. Yes, sir.

Q. All right. I promise you we're going to try

to be super efficient with this one. Pull out Exhibit -- do you have Exhibit 20?

A. Yes.

Q. All right. If you would go to the first page of Exhibit 20 for me.

A. Yes.

Q. All right. This is about, and we're not going to go through all of them, but this is about 240 pages of complaints submitted by residents at Oyster Park, okay? Would you agree with me that when you looked at Exhibit 12, Exhibit 12, which is your policies and procedures, create a process when somebody makes a complaint how Oyster Park staff, GreyStar staff, is supposed paper that complaint; is that right?

A. That's correct.

Q. All right. We've got a couple of different types of documents in here. One of them is a property damage incident report, and it's on GreyStar letterhead.

A. Yes.

Q. Is that one of the ways that they document issues?

A. Yes.

Q. All right. And if you zoom in just a little bit, this is before your time. It looks like on 5/23/17, this is my client calling in to notify in G-104 that

the apartment is flooding. Mr. Harmon has come in to confirm that not only her apartment, but apartments G-102, 103, 104, 105, and 106 are having issues, and that the service supervisor has been reminded to complete the mold/water response report. Did I read that right?

A. Yes, sir.

Q. All right. So that's an appropriate documentation of what's going on when issues are called by a resident; is that right?

A. Yes, sir, as she stated.

Q. All right. And so the mold/water response report was supposed to be submitted and filled out from 104 and presumably 102, 103, 104, 105 and 106, correct?

A. From what she's writing here, I can't tell whether she was referring to -- which of the units. So, I don't know if all of them are reported unoccupied. That can make a difference.

Q. So you only fill out a mold/water response report if it's an occupied unit?

A. Generally, yes.

Q. Okay. So, for instance, if units 102, 103, 104, 105 and 106 are not occupied, if they're flooded, there's not a mold/water response report generated?

A. No.

Q. Okay. So if we have close to 100 complaints, those are only the complaints generated as a result of having a tenant in the unit?

A. Yes.

Q. So the 100 complaints, that wouldn't include the ones we know about at 102, 103, 104, 105 and 106, among others?

A. Well, to clarify, if it's not occupied there wouldn't be a complaint.

Q. All right.

A. And, yes, complaints can range in the documents filed here for a number of reasons. And over the course of those three years that we were there, they would -- they documented, or could have been documented, in the incident reports.

Q. Okay. If you can go to the next document, please. And again, we're just kind of flipping through here. This is a -- I'm sorry. One more down. Thank you. Now this is a different-looking document, and it says work completed. What is this document?

A. This appears to be a work order.

Q. Okay. And so this is a leak in 421, looks like Kamden Huckabee is the one that called this in, and it says, "Ceiling is dropping water now. Water spots have not gone away from last report. Now there

is water dripping from the spots, and it is not raining." Did I read that correctly?

A. Yes.

Q. All right. So, I will tell you we put these in chronological order, and it references the water spots have not gone away from the last report. Do you know what happened to that report? Was there not a written report generated, or was it just lost?

A. Because construction was still onsite, residents have been known to stop them and ask them to make repairs or do something of that nature. And since construction is not employed with GreyStar directly, they wouldn't have gone through doing a work order. I don't know why this particular one, but that could have been the reason.

Q. Okay. You had contractors onsite, they would come in and fix it?

A. They could have.

Q. Okay. And that would explain why there were no warranty requests from May, June, July as well.

A. It could explain that.

Q. Okay. So we also know based on that, there are -- we've established that non-resident water issues and mold issues and mildew issues aren't reported. It could also be that there is somebody onsite to fix

it, and those were not recorded as well?

A. If a resident chose to stop somebody, and we didn't know about it, no, it wouldn't have been reported.

Q. She said from last report. She's telling you from last report?

A. Right. Sorry, I may have misunderstood when you asked me, like, if this is a scenario or this is facts, you know. They could have a resident that stopped and asked people to do stuff for them, like, construction providers. In this particular situation, I don't know where or why there is not a report.

Q. Okay. And we don't have any evidence that Kamden Huckabee has a direct line of communication with LandSouth to get them to come in and remedy issues in her apartment, right?

A. I don't have any evidence, no.

Q. Okay. And this is another where she -- it says work completed. This is her talking about more leaks, and it's not raining; is that right?

A. Which one is this?

Q. Exhibit 20, the next page.

A. Okay.

Q. Why don't we do this. Go to the next document, which is property damage incident report.

A. I'm sorry. I just -- one was submitted at 2:45, and one was submitted at 2:46.
Q. Okay.
A. Okay. I was just -- again it could have been -- one could have been referenced in the other report.
Q. Okay. Go to the next page, please.
A. Yes, sir.
Q. Now this is the report associated with unit 101, the second unit where the Richardsons were living, and it states, and again this is -- alleged incident detail, it says pollution, mold. It's written 7/10/2017. "Occupant of apartment of 101 notified management via e-mail of her concerns for black mold in her apartment that is seriously affecting the health of herself and her daughter." Did I read that right?
A. Yes, sir.
Q. And then down, it says, "Inside resident, apartment 101, location in bathroom and laundry room wall." Did I read that right?
A. Yes, sir.
Q. All right. Now there is not a -- and we'll get into this, we haven't seen one yet. There's not a mold/water response report generated from this complaint either. Why not?
A. Not seeing it here. Again trying to guess

because it was so long ago. I think because of the seriously -- serious level that we were taking her report, one did not get filled out, also due to how large the area was outside the scope of what we normally determine are in-house numbers. But primarily, if I had to guess, it's because we were very urgent in taking the matter very seriously as soon as we were made aware of the problem.

Q. Okay. And I appreciate that, but your policy says fill out the report, you document it, you photograph it, so there's evidence on every step everybody has taken, correct?

A. It did.

Q. It also says to document -- it doesn't say just residents who just document situations where there's water infiltration and discoloration, mildew and mold, correct?

A. Yes. Looking back through it, it doesn't specify between occupied or not occupied, no.

Q. So if you've got a water leak that started in 301, has leaked into 201 long enough to have created mold growth in 201, and then moving to 101 long enough to have created significant mold growth in 101, there should be a report, pursuant to GreyStar policies and procedures and steps taken, photographs, documentation

for all three units, correct?
A. Unit 201 was unoccupied, but, yes, per the policy, there would have been -- we would have needed to do a water intrusion or moisture report. But again because of the urgency and the seriousness in which we were taking it, all three were not completed, or my immediate reaction, Travis' immediate reaction, was to mitigate and take care of it as soon as possible, with concern for the residents primarily.
Q. Would you go down to January 22, 2018. Now this is actually the first mold/water response report that I have found, and this is January 22, 2018. And this is the appropriate report, pursuant to GreyStar policies and procedures, that GreyStar staff is supposed to fill out when there's an issue associated with water infiltration or mold or mildew, correct?
A. That's correct.
Q. And it goes through -- there's the property name, the apartment and the date. It says "vacant," and in this case, this is F-314. Did I read that right?
A. Yes, sir.
Q. And this is a vacant unit, correct?
A. No, sir.
Q. So the resident name is vacant?
A. Well, it does say resident name vacant on there.

If I had -- again, this is speculated from being so long ago. This could have been related to a different unit also affected by it, but it also could have been from a resident who moved out and it's no longer vacant. During the turn process, we would have found that issue.

Q. And you have residents moving out, we already established, because they were fed up with the conditions at Oyster Park, right?

A. Yes, residents had started to move out for a number of reasons.

Q. And in this, it states, "Cracked stack pipe from building settling behind the washer and dryer." Is that right?

A. Yes, sir.

Q. And Mr. Harmon checked pursuant to a water leak, and it's a mold concern; is that right?

A. Yes, sir.

Q. And it looks like Mr. Harmon cut open a wall behind the washer and dryer, found a cracked tee pipe and fixed it himself; is that right?

A. It states the leak was at a tee, and it was repaired with a rubber boot. It doesn't say whether Travis repaired it himself or not, so I don't know if it's Travis that did it.

Q. Now it also describes, and we can pull it up

if we need to, a process where it's self-help and the GreyStar staff do a remediation themselves, presumably, you use all three squirt bottles, so that's -- they're supposed to go back and check later to confirm that the repair has been successful, right?

A. That would be yes.

Q. Okay. I mean, I can find that, but the policy says come back, like, maybe a week later, or a month later ---

A. Follow up.

Q. Yeah. I think three times was to come back and follow up, right?

A. I don't know if there's three, but if the policy states it, yes.

Q. Okay. And where's that documented, the follow up?

A. I don't have -- I don't see a document here in discovery -- or evidence, whatever the right term is.

Q. Okay. And I really don't want to pull it back out, but you're not disputing that your policy says you're supposed to go back and check it, I think, three times, right?

A. I have to see the policy. I would hate to waste the Court's time, but.

Q. Okay. Regardless, it's supposed to be

documented, and it's not.
A. I'm looking through it.
Q. Okay.
A. So from the paperwork, I don't see that there was remediation that they -- that Travis returned back to the unit and inspect it.
Q. Okay. And I'm going to read for you because I found it, and you could pull it out if you want to. This is from Exhibit 12, which is your policies and procedures, Paragraph 9, "Follow-up inspections are mandatory to confirm the effectiveness of remediation work and should be scheduled with the resident immediately upon completion, at two weeks, and at six weeks following the initial remediation. Use a moisture meter to confirm that the repaired area is dry. Readings should be in line with samples taken in areas that are known to be dry."
Does that sound familiar? You found it. Did I read that right?
A. I'm trying to find it.
Q. Yes, ma'am. It's Paragraph 9.
A. On page -- page number? I'm sorry. Okay.
Q. You're supposed to go back upon completion in two weeks and then six weeks, right?
A. Yes, number nine does state follow-up inspections

are mandatory to confirm effectiveness and should be scheduled with the resident immediately upon completion in two weeks and six weeks.

Q. Okay. And you're supposed to use a moisture reader that doesn't exist, correct?

A. You keep saying it doesn't exist; I can't confirm if it did or didn't.

Q. Go all the way down -- you would flip forward to 8/28/18; it's in chronological order.

A. Okay.

Q. Thank you so much.

A. Okay.

Q. You got it?

A. Yes, sir.

Q. Great. And I'll be honest with you, I literally just flipped and then found this because I don't want to sit here and go through all of them, all right.

A. I understand.

Q. If you could go up one page. This says work completed, and this is for unit 315, and then I'm just going to read it. It says, "Problem description: Over the past two weeks, we had enough humidity in our entryway and bedroom closet that we have had a few pairs of shoes and garments mold enough to throw them away, but not enough to keep the mold from growing.

Yesterday, I noticed in the closet that we now have mold actively growing on the wall near the ceiling and HVAC register, and we noticed that the carpet seems almost damp to touch."

Now at the bottom, it says "Cleaned with mold cleaner." Do you see that?

A. Yes.

Q. All right. And so if you go to the next page, 2/18 -- 8/28/18.

A. Yes, sir.

Q. This is unit 315, and this is Mr. Harmon documenting his efforts. It says, "Mold concerns. Growth on some shoes and garments, also likely speckled on wall in foyer and closet." Did I read that right?

A. Yes, sir.

Q. All right. So this is another issue where you get a resident complaining, you send Mr. Harmon in, and he says he cleaned it with the mold cleaner, which is those three spray bottles we looked at earlier. He submits this report, and that's the sum total of documentation and efforts at Oyster Park responsive to this complaint; is that correct?

A. From the documentation I see here, yes.

Q. Go to 9/26/18. All right. This is another one from -- this one is a little later, 9/26/18. This is

from Ryan Fennick. We looked at some of his information earlier, and this is a report, "Mold reported on clothes in closet and in bedroom." And then there is -- and he says on the next page, he sprayed it twice. I mean, I guess he came through, and the first time he sprayed it, didn't work, so he came back and sprayed it twice. Do you see that?

A. Yes, it does say sprayed twice.

Q. Okay. Now, I think we have some photographs from this unit that have been marked. I think we've agreed already to admit 57. I'm going to hand you this. It looks like ---

A. I will say also in the adjoining report, it does say that he's used a moisture meter, so it looks like we did have one.

Q. Okay. So if he testified he didn't have one, and we'll designate that deposition in a bit, and so if he testified under oath that there's no moisture meter at Oyster Park and checked that box, presumably, it's sworn testimony, it would be accurate, wouldn't it?

A. I could think of one particular instance if he was asked if there was a moisture meter at the time this leak occurred, and there might not have been one since this is almost two years -- over a year later, there could have been one purchased.

Q. Maybe y'all got one after I deposed him. Let me hand you Exhibit 57, take a look at that. Would you agree with me that's a photograph submitted on that particular apartment showing the mold growth?

A. So it's stapled and -- yes, they e-mailed us, saying it's from Ryan Fennick, yes.

Q. Okay.

MR. MCCULLOUGH: Your Honor, may I publish these?

THE COURT: Any objections?

MS. SHEETS: No objection, Your Honor.

THE COURT: All right. Without objection. Go ahead.

BY MR. MCCULLOUGH:

Q. While we're going through this process, I'm going to show you two other packets. Exhibit 56, we've admitted without objection, are photographs from Ms. Richardson at unit 101, and then we have from unit G-302 photographs as well. Would you look at these and confirm that these are photographs of those units showing mold growth submitted?

A. So for the packet that's stapled with unit 101 identified in front of it, I don't see any correspondence of an e-mail type, so I can assume that this is also related to that situation.

Q. Okay.
A. Again, I don't see it the same way that Ryan Fennick had it attached on an e-mail.
Q. Okay.
A. I would have to say the same for 302, stapled there, I assume that's related.
MR. MCCULLOUGH: May I publish these as well?
THE COURT: Any objection -- what was it, 20?
MR. MCCULLOUGH: These are Exhibits 56 and 58.
THE COURT: 56 and 58.
MS. SHEETS: Without objection.
THE COURT: All right. Without objection.
BY MR. MCCULLOUGH:
Q. All right. I'm going to do this because I promise we'll get you finished before lunch. I think we've hit four complaints so far, right, maybe five?
A. There's been enough.
Q. Okay.
A. More than a couple.
Q. Okay. Honestly, I have -- there's about 100 in here.
A. Okay.

Q. All right. And these are complaints of water, excess humidity, with some concern of mold, okay?
A. Okay.
Q. With the last one being about two weeks ago?
A. Okay.
Q. All right. Would you agree with me that that's a lot of complaints of water leaks and mold concerns in this size apartment building over this time period?
A. I can't agree with that.
Q. So the fact that they've got issues with water coming in from the ground, through windows, from the roof, from plumbing leaks and inside with HVAC issues, you don't consider that to be a systemic problem with this building?
A. You asked me -- please correct me if I misunderstood the question, but you said roughly 200.
Q. About 100, and those are the ones that were actually documented, yes, ma'am.
A. So about 100 over the past five years?
Q. Yes, ma'am.
A. That's about 20 a year. I would not say that would be a greater issue. So, I don't know the nature of whether or not someone was complaining that their tub spout was leaking. That's a pretty standard matter with a water faucet.

Q. So it's -- so the e-mails back and forth about ongoing HVAC issues and your testimony about tenants moving out over mold concerns, from GreyStar's perspective and your perspective, that's just business as usual, that is normal?

A. I did not say that.

Q. Did you have issues with Dewberry paying vendors, to include Baker Roofing?

A. I didn't handle Dewberry's accounts or payments on their behalf. We only managed payments billed to the property.

Q. Pull out Exhibit 30, please.

A. You said Exhibit 30?

Q. Yes, ma'am.

A. Is that -- I don't think I have 30. I've got 20 here, 13, 12. There we go. I've got it. Sorry about that.

Q. No worries. Did you write in June of 2019 in response to queries about unpaid invoices, "Our previous warranty-related roof leaks and repairs were not paid by Oyster Park?"

A. Give me a second to read it.

Q. If you want to go down to an e-mail from you to Mr. German on June 10th, you stated, "It is my understanding that Baker is refusing work at any

of the property, commercial or residential, until these invoices are resolved?"

A. Yes, I see that.

Q. So you are basically expressing the fact that Baker, who's a roofing contractor, was not coming back and doing more work until they get paid?

A. Yes, that's my understanding as written on here.

Q. Thank you. I appreciate you being here today.

A. Yes, sir. Thank you.

CROSS-EXAMINATION

BY MS. SHEETS:

Q. Ms. Sampson, good afternoon now. I have the pleasure of going here right before lunch. I am going to try to keep it as snappy as possible. I know everybody has other places to be than here. Mr. Harmon, he was here in the courtroom yesterday for roughly about two and a half hours prepared to testify, correct?

A. Yes, ma'am.

Q. And unfortunately late yesterday evening, he had a medical incident. He was not able to be with us here today. Is that your understanding?

A. That's correct.

Q. But again ready, willing and able, absent that unfortunate event, to be here with us today?

A. Absolutely.

Q. You worked with Mr. Harmon in maintenance the whole time you were at Oyster Park, correct?
A. That is correct, yes.
Q. Did you find him to be vigilant in addressing concerns that he was notified about?
A. Yes.
Q. Can you think of a time ever when Mr. Harmon refused to look at something or refused, to the best of his ability, to remediate it, if he could?
A. No, ma'am.
Q. Can you think of a time when Mr. Harmon ever came across an issue that he could not remediate himself and did not notify you or Mr. German or anyone else connected with Oyster Park that, hey, we're going to need to call somebody in here to address it?
A. No.
MR. MCCULLOUGH: I'm going to object to, first of all, leading. And, two, if Mr. Harmon is not here to testify, she's not going to be able to testify.
THE COURT: To the best of her knowledge and recollection of the situation, I will allow her to testify. In the interest of time -- all right. Go ahead. Repeat the question. Keep going.
BY MS. SHEETS:
Q. Ms. Sampson, to the best of your ability,

did G-101 ever experience an HVAC issue during Ms. Richardson's tenure there?

A. Not that I can recall.

Q. To the best of your recollection, to the extent that there was some HVAC issues, and I think we talked about that here today, were those HVAC issues confined to smaller units on the property.

A. It appeared so.

Q. Do you recall whether a vast majority of those complaints had to do with folks leaving their fan in the on position on their thermostat?

A. Yes.

Q. Do you recall whether -- when that's corrected when folks switched the fan to auto, whether their humid conditions, and to the extent that may have created some mold on surfaces, resolved?

A. Yes.

Q. When you talked earlier, and I'm happy to pull up the document, but I'm trying to speed it up. We talked a great deal earlier about apartment 206. Do you recall that?

A. I would have to hear the name.

Q. Sure. It was Ms. Courtney Vorachek.

A. Yes.

Q. Are you aware -- did Ms. Vorachek rent a unit

in the apartment and a retail space?
A. Yes.
Q. Once the humidifiers were placed in her unit, did she remain there?
A. Yes.
Q. And when you left the apartment complex some time after that, was she still there?
A. Yes.
Q. Are you aware at any time whether or not after the humidifiers were placed in her apartment, whether she ever expressed a desire to leave or vacate her retail space?
A. Not that I can recall.
Q. I'm happy for you to look at it if you want to. Exhibit 26 is a set of warranty claims, I believe. Happy for you to look at it if you would like.
Was there ever a time when you, Mr. German, Mr. Harmon, saw something and didn't do something about it?
A. No.
Q. Was the purpose of those warranty claims that they were part of a punch list of a new building?
A. That was part of it, yes.
Q. Okay. And with every new building -- I think you managed enough properties, we've established that here today, every new building has some growing pains,

correct?
A. Correct.
Q. And is it fair to say that you all were quite vigilant in observing them and taking care of them?
MR. MCCULLOUGH: Objection. Leading.
THE COURT: Sustained.
BY MS. SHEETS:
Q. Ms. Sampson, when you were notified of an issue on the warranty claim, what did you do about it?
A. It would be our goal to get it taken care of as soon as possible, contact the appropriate vendors or contractors to get that repaired, or whatever the issue is, taken care of.
MS. SHEETS: Your Honor, I'm going to approach the table.
THE COURT: Sure.
BY MS. SHEETS:
Q. Ms. Sampson, this is Exhibit No. 20. Again, you're welcome to pull it out. In fact, I would like you to. You spent some time here today going through Exhibit No. 20. Would you flip through just briefly here, just through kind of the top pages of this packet, just for a brief moment. That packet includes a different document, yes?
A. Yes.

Q. Different types of documents, yes?
A. Yes.
Q. Do you observe in that packet that there are different types of documents on specific units, meaning, not every single one of these documents is about a different unit, correct?
A. Correct.
Q. Okay. Ms. Sampson, we are going to look through some stuff you haven't seen before. And the first thing we're going to look at is what's been previously marked as Defense Exhibit No. 4. It will populate on your screen here for a minute. Let me ask you something about it. Is it your recollection that Ms. Richardson notified Oyster Park of a mold issue at apartment 101 in the wee hours of Monday, July 10th?
A. As best I can recall, yes.
Q. Okay. I'm going to hand you -- since we're waiting here for population, I'm going to ---
MS. SHEETS: If I may approach, Your Honor?
THE COURT: Yes.
BY MS. SHEETS:
Q. I'm going to hand you Exhibit No. 4. If you would look at the bottom of that page. Do you see in the highlighted portion that it was Monday, at 2:31 a.m.?

A. That's correct.
Q. Okay.
MS. SHEETS: Your Honor, at this time, we would move to move Exhibit No. 4 into evidence. I believe it's been stipulated to.
THE COURT: Is that correct? Any objection to 4? All right, no objection.
(Defendant's Exhibit No. 4 was entered into evidence.)
BY MS. SHEETS:
Q. Ms. Sampson, we are now going to move to Defendant's Exhibit No. 9. Did you respond to Ms. Richardson on Monday, July the 10th, about her 2:31 a.m. complaint?
A. I recall, yes.
MS. SHEETS: Your Honor, if I could approach again?
BY MS. SHEETS:
Q. I'm going to hand you Defendant's Exhibit No. 9, and I am going to hand this up to you.
A. Thank you.
Q. If you would look at the highlighted portions. Are you responding to her during business hours on July the 10th?
A. Yes.
MS. SHEETS: Your Honor, if I can approach

again?

THE COURT: Uh-huh.

BY MS. SHEETS:

Q. Ms. Sampson, I'm going to hand you what's been previously marked as Defense Exhibit No. 11.

A. Thank you.

Q. Is that document also dated Monday, July the 10th?

A. No, it's dated Tuesday, July 11th.

Q. Okay. And that document, is it discussing activities that took place on the 10th and the 11th?

A. Yes.

Q. Is it your recollection that the same day that the mold condition was reported is the same day that you all came to inspect?

A. Yes.

Q. It's also the same day you decided to have the unit tested for mold, correct?

A. Yes.

MS. SHEETS: Your Honor, at this time, we move Exhibit No. 11 and Exhibit No. 9 into evidence. I believe they are also stipulated to.

THE COURT: All right. 11 and 9; is that correct? Great. Without objection, they'll be admitted.

(Defendant's Exhibit Nos. 9 and 11 were admitted into evidence.)

BY MS. SHEETS:

Q. Ms. Sampson, in the course of July 10th, July 11th, did you have an opportunity to speak with Ms. Richardson about her leaving unit 101?

A. As best as I can recall, yes.

Q. What was that conversation?

A. Um, so my recollection, we discussed moving to another apartment as an option, and then also other available units at neighboring sister communities also managed by GreyStar to either a permanent home there and/or a guest suite, if it would have been available, or even a hotel.

Q. Okay. And so you -- fair to say you immediately offered her alternative housing while you all are inspecting?

A. Yes.

Q. There's some testimony earlier about reports not being in your stack. Was there a reason that there might not be the exact form or checklist as it involves the report on Ms. Richardson's unit in 101?

A. To say the exact reason, because it's been so long, I don't know. I do distinctly remember once I got -- I was informed and made aware of the situation

of trying to act with the utmost urgency, and that included, as shown in the e-mails, you know, contacting remediation and mold testing companies as well, and mostly just trying to get it taken care of as soon as possible and taking care of the Richardsons.

I do realize that because of our haste and urgency to get it rectified, there could have been the possibility that we did not fill out the appropriate reports, or go through the proper protocol or channels, per se, as the policy state to contact, you know, the senior managing director, risk management and the owner.

Q. Ms. Sampson, during your communications with Ms. Richardson on the date that she reported, on the 10th, the day after on the 11th, were you conscious that her daughter had some special needs that needed to be attended to?

A. I cannot say with definition, but I do know that Ms. Richardson had made us aware of her daughter's special needs.

Q. Did that increase your urgency?

A. If I knew about it, it certainly would have.

Q. Okay.

MS. SHEETS: Your Honor, I'm going to approach the witness.

BY MS. SHEETS:

Q. Ms. Sampson, let me hand you what's been premarked as Defendant's Exhibit No. 13. This is a communication between you and Ms. Richardson about finding her a new home. If you could first read the highlighted section in the middle of the page.

A. From my e-mail back to Karola?

Q. Yes, please.

A. As she's identified on here.

Q. Okay.

A. "Hi, Karola. I recognize that there has been some misunderstanding. The communication in your apartment was that we had other apartments here for you to relocate to. But you were clear to say that you do not want to stay at this community, referencing that that was the third strike. If you position -- if your position has changed to now be agreeable to a different apartment here at Oyster Park, we can accommodate that change. The e-mail below was to clarify that we do not have availabilities at sister communities for their guest suite." Do you want me to keep reading?

Q. Please do.

A. "I do not -- I do understand that the verbiage did not specify the guest suite, and I do apologize for that absence. Other communities do have vacancies

for their apartment homes. They also have different requirements for approval, so you would have to submit your application to make sure that you meet their requirements, if you would like to seek a permanent relocation."

Q. Were you doing everything in your power at this point to help Ms. Richardson?

A. Yeah. If I could just finish this last part.

Q. Yes.

A. It indicates how she had started personally speaking towards me and my office in understanding her stress, and I did respond. "Your personal feelings toward me are recognized, and I wholeheartedly am saddened to read them. I do not intend to come across as robotic, but as professional. I apologize for it to be received any differently. Please know that your ill-will towards me will not affect our commitment to get this matter taken care of with haste."

Q. At this point in time, have you, anyone at the corporate level at GreyStar, or anyone at Dewberry refused to use any available asset to help Ms. Richardson?

A. No.

MS. SHEETS: Your Honor, at this time, we would move to admit Defense Exhibit No. 13 into

evidence. I believe it's also been stipulated to.

THE COURT: Is that correct?

MR. MCCULLOUGH: No objection.

THE COURT: All right. Thank you.

(Defendant's Exhibit No. 13 was entered into evidence.)

MS. SHEETS: I'm going to approach the witness again.

THE COURT: Uh-huh.

BY MS. SHEETS:

Q. Ms. Sampson, I'm going to hand you what has been previously marked as Defendant's Exhibit No. 15. I'm again going to ask you to read the bottom highlighted section here. If you could also note the date and time of that.

A. All right. This appears to be an e-mail sent to Karola, as identified in the e-mail, on Wednesday, July 12th, 9:37 a.m. "Hi, Karola, we have unit 102, directly behind you, that would be available to reside in temporarily, if that works for you. I just inspected it this morning, and it does need some housekeeping, so we are going to have our cleaners come out today." That was the end of that e-mail.

MS. SHEETS: Your Honor, at this time, we would move Defense's Exhibit No. 15 into evidence. I believe it's also previously stipulated to.

MR. MCCULLOUGH: No objection.
THE COURT: All right. Without objection.
(Defendant's Exhibit No. 15 was entered into evidence.)
BY MS. SHEETS:
Q. Ms. Sampson, we are at July 12th, correct?
A. Yes, ma'am.
Q. Two days after you were first notified of an issue with Ms. Richardson's apartment, correct?
A. Yes, ma'am.
Q. You were actively helping her, correct?
A. Yes, ma'am.
Q. You are actively and urgently helping her, correct?
A. Yes, ma'am.
Q. Did you personally go into unit 102 to help ready that for her?
A. Yes, ma'am.
Q. Did you personally go into unit 101 where the complaints are originating from to help her move her things?
A. I believe so. We definitely tried to assist as much as we could, Travis and myself and the rest of the team.
MS. SHEETS: Your Honor, I'm going to approach the witness again.

BY MS. SHEETS:

Q. Ms. Sampson, I'm going to hand you what's been marked as Exhibit No. 16. Ms. Sampson, I am going to ask at this time that you read the top section of this e-mail. If you could please start with the date and the time.

A. The e-mail is dated Monday, July 17th, 2017, at 11:21 p.m. This was sent from myself to Karola. "Hi, Karola, I'm very grateful that you were able to speak with the technician and see the efforts that they make to prevent as much disturbance as possible. I have had to work with them in the past, and they have never fallen short on expectations and professionalism for their jobs. Travis will be there tomorrow at the pre-determined time to attend to the work order items listed below. I cannot reiterate how appreciative I am for the efforts from you and Krista have extended thus far to myself, Omar and Travis to bring this matter to a close."

Q. You have yet to stop helping?

A. Correct.

Q. Seeking repair?

A. Correct.

Q. Seeking to be there for the Richardsons, correct?

A. Correct.

MS. SHEETS: Your Honor, at this time, we would move Defendant's Exhibit No. 16 into evidence. I believe it's been previously stipulated to.

THE COURT: Okay. Without objection, correct?

MR. MCCULLOUGH: No objection.

THE COURT: All right.

(Defendant's Exhibit No. 16 was entered into evidence.)

MS. SHEETS: Your Honor, I am going to approach the witness again.

BY MS. SHEETS:

Q. Ms. Sampson, I'm about to hand you what has been marked as Defendant's Exhibit No. 19. I am going to ask that you draw your attention to this e-mail here, that you please note the date and the time and the contents of that e-mail.

A. Okay. So this is from myself to Karola -- yes, sent on Monday, July 17th, at 9:21 a.m. "Thank you for your e-mail. As discussed on Friday afternoon, appropriate actions will be taken to cover any areas that may be affected in the event that third party efforts will result in displaced construction dust beyond the containment area. You are more than welcome to take additional precautionary measures that meet your standards, if you choose to do so. A member

of management will be present with the third party in unit G-101 while these repairs are made. We are glad to put these work order items in for the home in 102. Travis will be able to get them taken care of today and provide a call ahead before entering."

Q. Ms. Sampson, are you continuing to comfort, protect and remediate the situation that was first reported to you on July the 10th?

A. Yes.

MS. SHEETS: Your Honor, at this time, we would move to admit Defendant's Exhibit No. 19. I believe it's been stipulated to.

THE COURT: Is that correct?

MR. MCCULLOUGH: No objection.

THE COURT: Okay.

(Defendant's Exhibit No. 19 was entered into evidence.)

BY MS. SHEETS:

Q. Ms. Sampson, you've shown some emotions here today.

A. Yeah.

Q. Is it safe to say that you care about your work?

A. Yes.

Q. Is it safe to say that you care about the people that reside in units that you manage?

A. Yes.

Q. During your time working at Oyster Park, for GreyStar, Dewberry hired you all, correct, to manage that apartment?
A. Yes.
Q. Was there ever a time when something was reported to be wrong with the unit where you or GreyStar refused to act?
A. No.
Q. Was there ever a time where you or someone else working at GreyStar refused to remediate?
A. No.
Q. Was there ever a time that you or GreyStar refused to investigate a resident's issues?
A. No.
Q. During your time working at Oyster Park, were you ever instructed by someone working at the Dewberry not to investigate a resident's complaint?
A. No.
Q. Were you ever told by someone with Dewberry not to remediate a unit occupant's complaints?
A. No.
Q. During your time working at Oyster Park, did you ever get an indication that either GreyStar or Dewberry Capital only cared about the money?
A. No.

Q. Is it your experience that GreyStar and Dewberry Capital is in the business of providing housing because they care?

MR. MCCULLOUGH: Your Honor, I'm going to object. Leading and ---

THE COURT: I'm going to sustain. It's improper.

MS. SHEETS: I will withdraw it, Your Honor. Ms. Sampson, thank you so much for your time here today.

THE WITNESS: Thank you.

THE COURT: Okay. Any redirect?

MR. MCCULLOUGH: Very briefly.

REDIRECT EXAMINATION

BY MR. MCCULLOUGH:

Q. We looked at e-mails previously where there were ongoing issues with humidity in the building that were not remedied, correct?

A. Yes.

Q. And nobody is quarreling with your best efforts, but those issues were not remedied, and multiple units were experiencing issues with mold at Oyster Park, correct?

A. We were trying everything that we could.

Q. Absolutely.

A. And as the patterns were starting to show,

consultants were called in, different vendors were called in to investigate different options that can be done. I do believe that there was a remedy that was found eventually, but to say that it was found one day and fixed the next, no.

Q. Okay. And you were having the roofer trying to fix the roof leak, you hired a consultant to look at what was going on with the HVAC, you got a window guy to fix the window issues, you got a plumber to come in and repair the flood that's caused by the plumbing, you got the site issues causing floods in the unit, right?

A. Yes.

Q. But you never told anybody, you didn't walk around and tell the residents we've got systemic issues with mold in this apartment, you need to be careful. You never did that, did you?

A. There would not have been an opportunity to do so because we didn't know for sure if an apartment had it until it was had.

Q. You had an opportunity to market the heck out of Oyster Park, right?

A. Yes.

Q. I mean, when you show up at Oyster Park, this is what you're presented, this beautiful structure

with a pool and have great communal space, right?
A. Yes, sir.
Q. And so when folks like Omar, your leasing agents, and yourself are showing folks around, this is what you are selling, right?
A. Yes, sir.
Q. This would be an opportunity to tell somebody when they're coming in, hey, be careful, we have systemic mold issues. Make sure to tell us if there's excess humidity. You don't have to use the M word, right? You can do that?
A. We will actually talk about how wonderful our maintenance team is and the benefit of living in a multi-family apartment community, and that we offer 24-hour maintenance, and so should an issue come up, A/C stops working, should you see an issue with pest control even, we want you to bring those things up and offer them solutions for it.
Q. So if you're selling an automobile, you're telling them we'll get you an ambulance there super quick, but the car is dangerous, basically?
MS. SHEETS: Objection.
THE COURT: Sustained. Don't answer the question.
MR. MCCULLOUGH: Okay.

BY MR. MCCULLOUGH:

Q. You have every opportunity to tell your tenants that there are ongoing mold issues, and you don't do it?

A. Again, whenever an issue was brought to our attention, and it was with the resident, if it was repaired and taken care of, like, found with the humidity situation, the dehumidifier instillations took care of the issue. So it would be safe to assume it would not be recurring for someone new to move in.

There were additional documents that were provided and also within the lease contract because of how humid it is here in the south to encourage and educate residents about how to operate the HVAC systems, reference to the fan on auto switch. And also, you know, the importance of making sure to use it.

Sometimes people would -- like Mr. Fennick, I think he said the A/C had gone out, and there have been situations where he would not use the HVAC. He likes to enjoy the weather, the humidity would come in and create a little bit more of an issue if they're not running the HVAC properly.

Q. Unit 101 flooded two weeks after it had been remediated, correct?

A. Unit 101 had flooded?

Q. Yes, ma'am.
A. I can't recall if that was accurate or not.
Q. I'm going to hand you Exhibit 8, which is a document -- it's a Belfor document. It's already in evidence. It's in apartment 101, "Roof leak. Leaking into apartment below. Need repairs to the roof and possibly drying out apartment ceiling and walls."
A. Thank you.
Q. Did you tell -- well, first of all, I just want to make sure. So the unit that had a flood or leak, had mold, was remediated, and it leaked and flooded in an entirely different way two weeks later?
A. So a couple of things just with my history on this. Again, it's been quite some time. The job name is apartment -- Oyster Park Apartments G-101, the lead creation date was 7/21, date of loss is 7/21. This e-mail was sent on July 25th. Whether or not they were associating G-103, G-102 or even G-104 into this entire job, because there were multiple repairs that they were doing in all three apartments, that could have been the situation.
Q. If the Belfor document shows that it had already been repaired and they were gone before that date, and that document references roof leaks, whatever that was is incorrect, right? That says roof leak, right?

A. It does say roof leak, but there's no roof over it. There's a ceiling above 101; the roof would be over 401, so that's where my confusion comes in.

Q. And so that's a -- so you don't even remember if Belfor had to come back into 101 to do remediation a second time?

A. I can't recall with certainty. I know they were in there for quite some time.

Q. Okay. So if Belfor is in unit 101 once, maybe twice based on what Belfor has put into evidence, I am certain there's documentation of the next person -- you didn't shut 101 down, right? 101 was in the rental after it got checked a second time by Belfor, right?

A. Ms. Karola -- Ms. Richardson had maintained occupancy in both units for an extended period of the time. It was not re-rented and available to be re-rented until after she departed 102.

Q. Exactly. And so after Belfor finishes its restoration work, it was put back in the rental pool, correct?

A. It would have been after it was completed, yes.

Q. All right. And I think you said you did everything you could do for the tenants, correct?

A. We tried.

Q. Okay. You certainly didn't tell whoever

is living in 101 that there has been a complaint and a lawsuit and somebody suffering from horrible mold exposure in that unit and it flooded multiple times. You didn't tell them that, did you?

A. We would not let someone know that there was a leak in their apartment. It was fixed; there is no longer a threat.

Q. And when somebody had the audacity to put a negative review online ---

MS. SHEETS: Objection.

MR. MCCULLOUGH: --- the GreyStar team swept in to ---

THE COURT: Sustained, objection at this time. Just ask the question, if you don't mind.

BY MR. MCCULLOUGH:

Q. We know, based on your own testimony, that the appropriate paperwork and reporting was not done for unit 104 after it was flooded, correct? That's the first document in Exhibit 20.

A. Okay. The incident report was filed, yes.

Q. Yeah. And a report was not done for units 102, 103, 104, 105 and 106, correct?

A. They're not provided here.

Q. And there was no report done after, which was clearly made for unit 101, correct?

A. That's correct.
Q. And there's no report for 201 or 301, correct?
A. They're not provided here.
Q. So do you had any idea how many issues you had at Oyster Park while ---
MS. SHEETS: Objection.
THE COURT: I will allow. Overruled.
THE WITNESS: You're right. There are things whenever residents are in a home, as shown by Ms. Vorachek in her e-mails, sometimes they don't ever say anything to us until the day they move out, we find out, or we walk into some very interesting surprises.
BY MR. MCCULLOUGH:
Q. What about the ones you do know about, where it's referenced to do a mold report -- you won't even do reports for those, do you?
A. We do, to the best of our ability.
Q. Okay. Thank you.
A. Again, sometimes urgency can cause us to forgo a report for the sake of getting action done.
MS. SHEETS: Your Honor, very briefly.
THE COURT: Yeah.

RECROSS EXAMINATION

BY MS. SHEETS:

Q. Ms. Sampson, did you charge the Richardsons any rent for 101 and 104 after the report on July the 10th?

A. I can't say with certainty. I know there were several concessions that were made.

Q. You certainly didn't require her to pay rent on the 102 unit she was moved into, correct?

A. Correct. Again, getting her moved over, rent collection was not a priority for us.

Q. Ms. Sampson, that's all I have. Thank you so much.

THE COURT: All right. Ladies and gentlemen, we'll take our lunch break now. I believe your lunch is here. As I stated earlier, we'll be taking an abbreviated lunch break today in the interest of trying to get this trial done this week. And so I would ask that while you're enjoying the lunch we provided, even if you leave or walk around or whatever, you be back no later than 2:15 -- I'm sorry, 1:15. Be back at 1:15. Thank you very much. We'll be adjourned and at ease until then.

(The jury exited the courtroom at 12:37 p.m.)

(Recess taken.)

(Back on the record.)

MR. MCCULLOUGH: We are ready, Your Honor.

THE COURT: Okay. Bring the jury in.