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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

Common Pleas Case No.: 2018-CP-32-03103
Appellate Case No.: 2021-000658

R-Anell Housing Group, LLC, Respondent,

v.

Homemax, LLC, Petitioner.

APPENDIX

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

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

R-Anell Housing Group, LLC, Respondent,

v.

Homemax, LLC, Appellant.

Appellate Case No. 2021-000658

Appeal From Lexington County
Jocelyn Newman, Circuit Court Judge

Unpublished Opinion No. 2023-UP-289
Submitted June 1, 2023 – Filed August 9, 2023

AFFIRMED

D. Michael Kelly and Bradley Davis Hewett, both of
Mike Kelly Law Group, LLC, of Columbia; and Thomas
J. Rode, of Thurmond Kirchner & Timbes, P.A., of
Charleston, all for Appellant.

James Samuel Murray and Robert Perry Mangum, both
of Turner Padgett Graham & Laney, PA, of Augusta,
Georgia, for Respondent.

PER CURIAM: Homemax, LLC (Homemax) appeals the trial court's decision to
grant R-Anell Housing Group, LLC's (R-Anell's) a directed verdict on Homemax's

negligence claim and to award prejudgment interest. On appeal, Homemax argues the trial court erred in (1) awarding statutory prejudgment interest to Homemax; (2) finding the economic loss rule barred Homemax's negligence claims; and (3) finding email evidence regarding issues with the plastic wrapping on one of R-Anell's houses was irrelevant. We affirm pursuant to Rule 220(b), SCACR.

1. Initially, we hold Homemax's argument that the trial court abused its discretion in awarding prejudgment interest because R-Anell failed to plead prejudgment interest in its complaint is not preserved for appellate review because Homemax did not raise this argument to the trial court. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]."). Moreover, we hold the trial court did not abuse its discretion in awarding statutory prejudgment interest to R-Anell, because the amount sought was for a sum certain and the amount claimed was demandable on March 24, 2018. *See Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 435, 673 S.E.2d 448, 457-58 (2009) ("The award of prejudgment interest will not be disturbed on appeal unless the trial court committed an abuse of discretion."); *id.* at 434, 673 S.E.2d at 457 ("An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support."); S.C. Code Ann. § 34-31-20(A) (2020) ("In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum."); *Butler Contracting, Inc. v. Ct. St., LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 258-59 (2006) ("[P]rejudgment interest is allowed on a claim of liquidated damages; i.e., the sum is certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties."); *id.* at 133, 631 S.E.2d at 259 ("The proper test for determining whether prejudgment interest may be awarded is whether the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose."); *Smith-Hunter Const. Co. v. Hopson*, 365 S.C. 125, 128, 616 S.E.2d 419, 421 (2005) (holding the trial court properly awarded prejudgment interest when the sum certain was ascertainable and established by invoices); *T.W. Morton Builders, Inc. v. von Buedingen*, 316 S.C. 388, 399, 450 S.E.2d 87, 93 (Ct. App. 1994) ("On an obligation to pay money, if the sum is certain or capable of being reduced to certainty, prejudgment interest is allowed from a point when the parties agreed, or the law provides, payment was demandable."); *Dixie Bell, Inc. v. Redd*, 376 S.C. 361, 371, 656 S.E.2d 765, 770 (Ct. App. 2007) (holding that in order to recover prejudgment interest when there is no operation of law to make the sum demandable, the plaintiff must prove an

agreement existed between the parties that the sum was actually due or demandable).

2. We hold the trial court did not err in granting R-Anell's motion for directed verdict because the economic loss rule barred Homemax's negligence claim. *See Burnett v. Family Kingdom, Inc.*, 387 S.C. 183, 188, 691 S.E.2d 170, 173 (Ct. App. 2010) ("When reviewing a trial court's ruling on a directed verdict motion, this court will reverse if no evidence supports the trial court's decision or the ruling is controlled by an error of law."); *id.* ("When reviewing the trial court's decision on a motion for directed verdict, this court must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party."); *Sapp v. Ford Motor Co.*, 386 S.C. 143, 147, 687 S.E.2d 47, 49 (2009) ("The purpose of the economic loss rule is to define the line between recovery in tort and recovery in contract."); *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 54-55, 463 S.E.2d 85, 88 (1995) ("A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie."). The residential home exception to the economic loss rule does not apply here because the expectations of the parties for the delivery of the Christofoli House were set entirely by contract. *See Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 347, 384 S.E.2d 730, 738 (1989) (holding "[a] builder may be liable to a home buyer in tort despite the fact that the buyer suffered only 'economic losses' where: (1) the builder has violated an applicable building code; (2) the builder has deviated from industry standards; or (3) the builder has constructed housing that he knows or should know will pose serious risks of physical harm"); *id.* at 347, 384 S.E.2d at 737 ("The 'economic loss' rule will still apply where duties are created *solely* by contract."). Additionally, Homemax's claim does not fall within the residential home exception because it is a commercial entity, not an individual homebuyer, which is who the exception was created to protect. *See Sapp*, 386 S.C. at 148, 687 S.E.2d at 49 (explaining the residential home exception was created because a "home is typically an individual's single largest investment and is a completely different type of manufactured good than any other type of product that a consumer will buy" and "the transaction between a builder and a buyer for the sale of a home largely involves inherently unequal bargaining power").

3. We hold the trial court did not abuse its discretion by excluding the emails between R-Anell and its delivery company regarding issues with the plastic wrapping on another R-Anell house because the emails did not pertain to the

houses or the plastic wrapping issues involved in this case.¹ *See McCall v. IKON*, 380 S.C. 649, 660, 670 S.E.2d 695, 701 (Ct. App. 2008) ("The admission or exclusion of evidence is addressed to the sound discretion of the trial judge, whose decision will not be overturned absent an abuse of discretion."); *Historic Charleston Holdings, LLC*, 381 S.C. at 434, 673 S.E.2d at 457 ("An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support."); *Way v. State*, 410 S.C. 377, 382, 764 S.E.2d 701, 704 (2014) (stating the appealing party must show error as well as resulting prejudice in order to warrant reversal). The emails did not address issues with the Christofoli House or Brown House, and the unspecified problems the delivery company's drivers had with the plastic wrapping, which do not appear to have resulted in damage to the house delivered, are not relevant to the issues with the plastic wrapping on the Christofoli House. *See* Rule 401, SCRE (defining relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence"); Rule 402, SCRE (stating "[a]ll relevant evidence is admissible" while "[e]vidence which is not relevant is not admissible").

AFFIRMED.²

KONDUROS and VINSON, JJ., and LOCKEMY, A.J., concur.

¹ We hold Homemax's argument as to the relevance of the email referencing the weight of the Christofoli House is not preserved for appellate review because it did not raise this argument to the trial court. *See Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693 ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court].").

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

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

**APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas**

The Honorable Jocelyn Newman, Circuit Court Judge

**Common Pleas Case No.: 2018-CP-32-03103
Appellate Case No.: 2021-000658**

R-Anell Housing Group, LLC, Respondent,

v.

Homemax, LLC, Appellant.

RECORD ON APPEAL

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¹ Pages 194-200 of the trial transcript are labeled “Jeremy Cosby – Cross by Mr. Hewett” when it should be labeled “Albert Gurner – Cross by Mr. Hewett.”

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP3203103

R Anell Housing Group Llc
 PLAINTIFF(S)

Homemax Llc
 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:

Jury found in favor of Plaintiff R-Anell against Defendant Homemax for Breach of Contract in the amount of \$142,292.80. Plaintiff is also entitled to statutory interest pursuant to S.C. Code Ann. section 34-31-20(A), from March 24, 2018 to the date of judgment, which totals \$40,046.65.

Judgment is entered in favor of Plaintiff R-Anell against Defendant Homemax in the total amount of \$182,339.45.

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 06/10/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Lexington Common Pleas

Case Caption: R Anell Housing Group Llc VS Homemax Llc

Case Number: 2018CP3203103

Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2021-06-10 16:03:05 page 3 of 3

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
 R-ANELL HOUSING GROUP, LLC,	)	
	)	
Plaintiff,	)	ORDER ON PLAINTIFF'S
	)	MOTION FOR
vs.	)	SUMMARY JUDGMENT
	)	
HOMEMAX, LLC,	)	Case No.: 2018CP3203103
	)	
Defendant.	)	

Heard: June 22, 2020, via video conference
 Plaintiff's Attorney: Robert P. Mangum, Esquire
 Attorney for the Defendant: Bradley D. Hewitt, Esquire
 Court Reporter: Maryann Nevers

The plaintiff moves for summary judgment in its favor on its sole cause of action for breach of contract, and on the defendant's counterclaims. Due to the strict standards applicable to summary judgment motions, the court finds genuine issues of material fact exist that require denial of the motion.

Summary judgment is appropriate when there is no genuine issue of material fact, such that the moving party must prevail as a matter of law. Rule 56(c), SCRCF.

Summary judgment is not appropriate where further inquiry into the facts of the case is desired to clarify the application of the law. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000). Summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is disagreement concerning the conclusion to be drawn from those facts. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000). The court must take all evidence, and all reasonable inferences therefrom, in the light most favorable to the defendant. South Carolina follows a scintilla

standard, so the court must deny summary judgment if there is a scintilla of evidence supporting a defense or theory of recovery being pursued by the defendant.

DISCUSSION

This lawsuit arises between a manufacturer of modular homes (the plaintiff) and a dealer who formerly sold some of that manufacturer's homes (the defendant). After a period of relatively harmonious relations, problems developed over two homes, the Christofoli home and the Browns' home. Both sides have supported their positions with extensive and detailed memoranda, as well as sworn statements and documentation.

The following recitation is in the light most favorable to the defendant, as the court is required to do at this stage. There were lapses in coverage of certain written agreements, and the terms of the agreements were not detailed. The course of business had always been for the plaintiff to deliver homes from its plant in North Carolina directly to the home site, then place the home on the foundation and trim it out. Since the site for the Christofoli home was not ready upon completion of the manufacturing process, the plaintiff asked the defendant, for the first time, to allow that home to be delivered instead to the lot of the defendant because of reasons related to the plaintiff's own business/bookkeeping operations. The homes would be floor planned, with the plaintiff getting paid when installed. It is the responsibility of the plaintiff to wrap the two sections of the home with materials to keep water from intruding until the home is installed. There is evidence that there were problems with the wrapping procedure at the plant at the time that the Christofoli home was wrapped in plastic. The home sat in North Carolina for about 13 days before being transported to the defendant's lot.

When it arrived, a form was signed by a representative of the defendant indicating that the home had been inspected and was accepted, with no issues. However, it was still wrapped because it was not yet to be installed. The form listed the serial number for one section of the home, but not the other. The home sat for about 40 days on defendant's lot and remained on the plaintiff's carrier until the home was taken to the Christofoli site. The defendant contends that the plaintiff was responsible for setting up the home on site.

Upon unwrapping the plastic, water damage was discovered. Those installing the home contacted the plaintiff-manufacturer, who gave instructions to begin remedial measures, including removal of sheet rock and insulation. The plaintiff contends that this was a voluntary gesture of good will, but that action seems to create an issue of fact as to the responsibility for the condition of the home at that point. Both the plaintiff and the defendant expended funds to try to accomplish remediation of the damage.

The Browns' home was constructed in the interim between manufacture of the Christofoli home and placing the Christofoli home on site. During that time period, a meeting was held between representatives of the plaintiff and the defendant that resulted in the plaintiff sending a letter stating that the manufacturer would not be doing business with the defendant anymore. The defendant construes this letter as indicating that the relationship was to cease at that time, and though there is reference in the letter to that fact, there is also an indication that the letter was directed towards future manufacturing of homes for the defendant, not homes already in the pipeline. Recognizing that there seems to be a clear reference to future endeavors, there are issues of fact as to the relationship between these parties after the letter, and the impact of this letter on the Browns' home and the actions that took place concerning it.

In any event, there were problems with being able to place the Browns' home on the building site when the manufacturing was finished. So, that home was also taken to the defendant's lot. The home was to be delivered C.O.D., but no money was exchanged. There were misunderstandings attributable, at least in part, to the plaintiff concerning the delivery and payment provisions. The transporting company left the Browns' home with the defendant, despite there being no payment tendered.

It is the plaintiff's belief that the defendant "stiffed" the plaintiff on the payment due for the Browns' home in retaliation for the problems with the Christofoli home. The plaintiff asserts that the invoice for the Browns' home was clear in its terms, provided for payment to the plaintiff by the defendant in the amount of \$142,000, and that the defendant has kept the home, allowed it to be installed by or on behalf of the plaintiff, and acquired a profit of approximately \$42,000. The plaintiff wants the court to enter judgment for the amount owed on the home, plus prejudgment interest. The defendant argues that the plaintiff got over \$125,000 for the damaged Christofoli home and that the defendant has had to spend over \$200,000 to resolve the dispute with the Christofolis.

The plaintiff sued solely on a theory of breach of contract. Arguments of counsel and their memoranda deal with many issues of the Uniform Commercial Code (UCC). In response, the defendant has sued the plaintiff for breach of contract, negligence, and unjust enrichment.

On the breach of contract counterclaim, the plaintiff's position is that there is no genuine issue of fact that refutes the position that the defendant is in breach of contract. The primary argument concerning the negligence claim is that it is barred by the

economic loss rule. On the unjust enrichment claim, the defendant states that such a remedy is not available where there is an express written contract.

While it is the plaintiff's position that the facts are simple, the court finds that the application of the facts to the law do not appear to be so simple at this point. Further, having reviewed the evidence presented and the arguments of counsel, the court finds that there are issues of fact that need to be resolved by a fact finder. There are extensive arguments, with technical disputes about the law. In the court's view, it is unnecessary to address each one of the arguments. There appear to be issues of fact at least on the following issues: (1) the exact terms of the contractual relationship between these parties at various stages; (2) the determination of when the risks of loss shifted; (3) the effectiveness of the invoices; (4) the impact of the C.O.D. requirement and its alleged non-enforcement; (5) what caused the damage to the Christofolio home; and, (6) whether there is an express contractual remedy that prohibits recovery under unjust enrichment.

While the case may ultimately be resolved in the plaintiff's favor, and while the court understands that the defendant's position concerning the Browns' home may be tenuous, there is at least a scintilla of evidence that requires the case to be allowed to proceed to a fact finder at this point, including the consideration of the counterclaims.

THEREFORE, IT IS ORDERED that the plaintiff's motion for summary judgment is denied.

[Electronic signature follows on separate page.]



Lexington Common Pleas

Case Caption: R Anell Housing Group Llc VS Homemax Llc

Case Number: 2018CP3203103

Type: Order/Summary Judgment

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2020-06-22 16:29:40 page 6 of 6

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	Civil Action No. 2018-CP-32-_____
	)	
R-ANELL HOUSING GROUP, LLC,	)	
	)	
Plaintiff,	)	
	)	COMPLAINT
vs.	)	
	)	(Non-Jury Trial Requested)
HOMEMAX LLC,	)	
	)	
Defendant.	)	

Plaintiff, R-Anell Housing Group, LLC, (“Plaintiff”) alleges:

JURISDICTION AND VENUE

1. Plaintiff is a North Carolina limited liability company with its principal place of business in Cherryville, North Carolina.
2. Plaintiff is registered as a foreign business entity with the South Carolina Secretary of State, is in good standing, and is thus permitted to sue in South Carolina pursuant to S.C. Code Ann. § 33-15-102(b).
3. Upon information and belief, Defendant Homemax (“Defendant”) is a South Carolina limited liability corporation with its principal place of business in Lexington County, South Carolina and is thus subject to the jurisdiction of this Court.
4. Upon information and belief, venue in this Court is proper.

FACTUAL ALLEGATIONS

5. On September 1, 2017, Plaintiff received a signed order from Defendant for a pre-fabricated home, model number RJ551-A38 (“Home”). Plaintiff also received a copy of the order form signed by Defendant’s customer, the intended purchaser of the home.

6. The Home was scheduled to be completed during the third week of December, 2017. Plaintiff finished production of the Home on December 14, 2017.

7. After production of the Home was completed, Defendant informed Plaintiff it could not accept delivery of the Home.

8. One-hundred days after the completion of the Home on December 14, 2017, Defendant scheduled for Plaintiff to ship the Home on March 24, 2018.

9. At the time of delivery, Plaintiff submitted an invoice to Defendant for the cost of production and delivery, to wit: \$142,292.80.

10. Defendant accepted delivery of the Home but refuses to pay the invoice.

11. As of July 28, 2018, Defendant's failure to pay the invoice caused interest to accrue in the amount of \$3,486.17; interest continues to accrue at a rate of 7% per annum.

**CAUSE OF ACTION
(BREACH OF CONTRACT)**

12. The preceding paragraphs 1-11 are incorporated by reference herein as fully as if repeated verbatim.

13. Plaintiff and Defendant entered into a valid contract for the production and shipment of the Home ("Contract").

14. Defendant breached the Contract by refusing to pay for the Home as obligated.

15. As a result of Defendant's breach of the Contract, Plaintiff has incurred and continues to incur actual damages.

16. Plaintiff is entitled to an award for actual damages, with interest thereon, for Defendant's breach of contract.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Court without a jury hear this matter and award judgment in favor of Plaintiff and against Defendant in the amounts stated above with updated interest plus costs and such other and further relief as may be just and proper.

Augusta, Georgia

September 10, 2018.

s:/James S. Murray

James S. (Jeb) Murray

Attorney for Plaintiff

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	Civil Action No.: 2018-CP-32-03103
R-ANELL HOUSING GROUP, LLC,	)	
	)	
Plaintiff,	)	
vs.	)	ANSWER AND COUNTERCLAIM OF
	)	DEFENDANT
HOMEMAX, LLC,	)	(Jury Trial Demanded)
	)	
Defendant.	)	

Defendant Homemax LLC hereby answers the Plaintiff's Complaint, Counterclaims against Plaintiff, and would allege and show as follows:

1. Except as specifically admitted, qualified, or explained, Defendant denies the allegations and demands strict proof of each allegation.
2. Defendant admits Paragraph 2 upon information and belief.
3. Defendant admits Paragraph 3.
4. Defendant admits Paragraph 4.
5. Defendant denies it has knowledge or information sufficient to form a belief as to the allegations of Paragraph 5 and therefore denies the same and demands strict proof thereof.
6. Defendant denies it has knowledge or information sufficient to form a belief as to the allegations of Paragraph 6 and therefore denies the same and demands strict proof thereof.
7. As to Paragraph 7, Defendant admits only that it informed Plaintiff it could not accept delivery of the Home. Defendant denies the remainder of Paragraph 7 and demands strict proof thereof.
8. Defendant denies it has knowledge or information sufficient to form a belief as to the allegations of Paragraph 8 and therefore denies the same and demands strict proof thereof.

9. Defendant admits only that Plaintiff has submitted an invoice to Defendant for the Home. Defendant denies it has knowledge or information sufficient to form a belief as to the allegations of Paragraph 9 and therefore denies the same and demands strict proof thereof.

10. Defendant denies Paragraph 10 and demands strict proof thereof.

11. Defendant denies Paragraph 11 and demands strict proof thereof.

12. Defendant realleges and reasserts its responses to paragraphs one (1) through eleven (11) of the complaint, in response to paragraph twelve (12), as if fully reiterated herein verbatim.

13. Defendant denies Paragraphs 13, 14, 15 and 16.

14. Defendant denies that Plaintiff is entitled to the relief sought in the paragraph beginning with "WHEREFORE."

AS A FIRST DEFENSE

15. Defendant incorporates by reference to responses contained in paragraphs 1-14 above as if fully set out herein.

16. Plaintiff's claims are barred by the doctrine of unclean hands.

AS A SECOND DEFENSE

17. Defendant incorporates by reference to responses contained in paragraphs 1-16 above as if fully set out herein.

18. Plaintiff's claims are barred by the doctrine of waiver and/or estoppel.

AS A THIRD DEFENSE

19. Defendant incorporates by reference to responses contained in paragraphs 1-18 above as if fully set out herein.

20. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Plaintiff's allegations. Defendant intends to act as best as it can to inform itself of the pertinent facts and prevailing circumstances surrounding any damages as alleged in Plaintiff's Complaint, and gives notice of its intent to assert any further affirmative defenses that the information gathering process may indicate are supported by fact and law. These defenses may include, but are not limited to, a defense that the action is barred in whole or in part by any applicable statute, contract, equitable doctrine, acts of third parties, or the Plaintiff's own conduct. Defendant thus reserves the right to amend this Answer and assert such defenses.

AS A FOURTH DEFENSE

21. Defendant incorporates by reference to responses contained in paragraphs 1-20 above as if fully set out herein.

22. Defendant would show that any damages sustained by the Plaintiff were the result of the sole negligence of the Plaintiff and therefore, Plaintiff cannot recover any sum whatsoever from the Defendant.

AS A FIFTH DEFENSE

23. Defendant incorporates by reference to responses contained in paragraphs 1-22 above as if fully set out herein.

24. Defendant would show, upon information and belief, that Plaintiff's claims are barred by the doctrine of equitable estoppel/estoppel.

AS A SIXTH DEFENSE

25. Defendant incorporates by reference to responses contained in paragraphs 1-24 above as if fully set out herein.

26. Defendant pleads the statute of frauds as a defense.

AS A SEVENTH DEFENSE

27. Defendant incorporates by reference to responses contained in paragraphs 1-26 above as if fully set out herein.

28. Defendant is entitled to a set-off for any amount recoverable by Plaintiff.

FURTHER ANSWERING AND BY WAY OF COUNTERCLAIM AGAINST PLAINTIFF

(Negligence)

29. Defendant reiterates each and every prior paragraph of this Answer and Counterclaim as fully and completely as if set forth herein verbatim.

30. In 2016, Defendant entered into a Purchase Agreement with customers for the sale of a modular home unit manufactured by Plaintiff and delivered to 917 Nature Lane, Gilbert, SC 29054, Unit No. 40876.

31. Unit No. 40876 was delivered to the purchaser in a damaged and defective condition. Plaintiff failed to properly manufacture, ship, deliver, and/or protect Unit No. 40876, thus resulting in significant damages to the unit.

32. As a result of Plaintiff's failure to properly manufacture, ship, deliver and/or protect Unit No. 40876, Defendant has been unable to complete a real estate closing with the purchasers, and has incurred expenses in efforts to repair and remediate the damages to the Unit caused by Plaintiff. Defendant is continuing to incur expenses associated with Unit No. 40876.

33. Plaintiff, its agents, contractors, officers, subcontractors, employees and/or servants, had a duty to construct, deliver, ship, and protect Unit No. 40876 in a good and workmanlike manner. Plaintiff, their agents, contractors, officers, employees and/or servants

constructed, delivered, shipped, and/or protected Unit No. 40876 in a negligent, careless, reckless, and grossly negligent manner.

34. The deficient work, acts, and/or omissions by Plaintiff, its agents, officers, contractors, subcontractors, employees and/or servants caused the damage to Unit No. 40876, resulting in financial harm to the Defendant.

35. That the damages to Unit No. 40876 were due to, caused by, and were the direct and proximate result of one or more of the following acts of negligence, carelessness, recklessness and gross negligence of Plaintiff, its agents, contractors, subcontractors, officers, employees and/or servants, as more fully described herein below:

- a) In failing to construct Unit No. 40876 in a workmanlike manner;
- b) In performing substandard work on Unit No. 40876;
- c) In failing to implement and/or adhere to policies and procedures that would have prevented the damages to Unit No. 40876;
- d) In failing to exercise the degree of care required by its profession;
- e) In failing to use due care in the construction, shipment, delivery, and/or protection of Unit No. 40876;
- f) In failing to adequately supervise the work, construction, delivery and/or protection of Unit No. 40876;
- g) In constructing the subject unit in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices;
- h) In such other and further particulars as may be ascertained during the course of discovery or trial of this case.

36. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness and wantonness of Plaintiff, its officers, employees, contractors, subcontractors, agents and/or servants, Defendant has suffered actual, direct, incidental, and consequential damages.

37. Plaintiff is vicariously liable for the actions of their employees, agents, contractors, subcontractors, officers, members and/or servants under the doctrine of respondeat superior. Defendant demands a jury trial for the adjudication of this cause of action.

FURTHER ANSWERING AND BY WAY OF COUNTERCLAIM AGAINST PLAINTIFF

(Unjust Enrichment/Quantum Meruit)

38. Defendant reiterates each and every prior paragraph of this Answer and Counterclaim as fully and completely as if set forth herein verbatim.

39. Defendant conferred a benefit upon the Plaintiff in the form of payment provided to Plaintiff for the proper manufacture, delivery, shipment, and/or protection of a modular home, Unit No. 40876.

40. Plaintiff accepted payment for Unit No. 40876, but failed to properly manufacture, deliver, ship, and/or protect Unit No. 40876, causing significant financial damages to Defendant as the dealer that contracted with the purchasers for Unit No. 40876.

41. Plaintiff has been unjustly enriched by the receipt of payment for Unit No. 40876, although causing damages and defects to the subject unit. Plaintiff has retained the benefit of payment for Unit No. 40876 under conditions that make it unjust to retain the benefits.

42. Defendant is informed and believes that it is entitled to relief from Plaintiff for benefits Plaintiff received without properly rendering the services or Unit.

43. Defendant demands a jury trial for the adjudication of this cause of action.

FURTHER ANSWERING AND BY WAY OF COUNTERCLAIM AGAINST PLAINTIFF**(Breach of Contract as to Unit No. 40876)**

44. Defendant reiterates each and every prior paragraph of this Answer and Counterclaim as fully and completely as if set forth herein verbatim.

45. Plaintiff and Defendant entered into a binding contract, supported by consideration, in which Defendant agreed to properly manufacture, deliver, ship, and/or take protective measures for Unit No. 40876.

46. Although Defendant arranged for the purchase of Unit No. 40876 and Plaintiff received payment for Unit No. 40876, Plaintiff breached the contract by failing to properly manufacture, deliver, ship and/or take necessary measures to prevent damage and water intrusion to Unit No. 40876.

47. As a direct and proximate result of Defendant's breach of contract, Plaintiff has incurred and will continue to incur actual damages, pecuniary loss, consequential damages, and other financial harm.

WHEREFORE, having fully answered, Defendant prays that this Court dismiss the Complaint, prays for judgment against Plaintiff in a sum sufficient to adequately compensate it for actual damages, punitive damages, attorneys' fees, the costs of this action, prejudgment interest, post-judgment interest, any relief a jury may award, and to grant such other and further relief as this Court deems just and proper.

MIKE KELLY LAW GROUP, LLC

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Columbia, South Carolina
September 28, 2018

E X H I B I T S

Plaintiff's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Receipt		X	331
2	Unclear Deposit		X	331
3	Signed Quote Order		X	75
4	Invoice and Interest		X	78
6	Delivery Inspection		X	82
7	Fautley Email		X	88
11	State Responsibility Form		X	337
12	Christofoli Invoice		X	172
13	Assignment Foundation		X	340
14	Delivery Inspection		X	143
15	Email-Vapor Barrier		X	230
17	Email-Hathcock		X	146
18	Email-BioTech		X	149
19	TAG Lending Letter		X	346
20	Deed-Homemax		X	347
22	Closing Disclosure		X	350
23	Deed to Mattingly		X	347
24	Claimed Expense		X	351
26	Billing Overview		X	239
27	Building Solution Invoice		X	242
28	Invoice Building Solution		X	242
29	Invoice-Cochrane		X	242

E X H I B I T SPlaintiff's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
30	Expense-Floyd Smith		X	242
31	Expense Floyd Smith		X	242
32	Expense Floyd Smith		X	242
33	Expense-Floyd Smith		X	242
34	Expense Floyd Smith		X	242
35	Expense Julian Carter		X	242
36	Expense Kevin Grieninger		X	242
37	Expense Kevin Grieninger		X	242
38	Expense Mid-State		X	242
39	Expense-Rose		X	242
40	Expense-Treadway		X	242
41	Expense-Treadway		X	242
42	Expense-Treadway		X	242
43	Expense-Treadway		X	242
44	Donnie Norwood Parts		X	242
45	Weather Data		X	342

Defendant's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Dealer Agreement		X	319
2	Christofoli Invoice		X	287
3	Termination Letter		X	318
5	Christofoli Inspection		X	123
10	Floor Plan Christofoli		X	125
11	Wall Panel Christofoli		X	126
13	Nature Lane Photos		X	289
14	Email Hathcock		X	120
16	ABS Invoice		X	276
17	BioTech Invoice		X	276
18	Bickley Invoice		X	276
19	Jackson Invoice		X	276
20	Southern Crane Invoice		X	276
21	Patriot Invoice		X	276
22	Smooth Waters Invoice		X	276
23	TLK Invoice		X	276
24	Barnhills Invoice		X	276
25	H&H Invoice		X	276
26	MacCon Invoice		X	276
27	K&L Invoice		X	276
28	Cutters Invoice		X	276
29	Fit Home Invoice		X	276

E X H I B I T SDefendant's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
30	North Point Payment		X	302
31	Settlement Agreement		X	305
32	TAG Letter		X	310
33	TAG Letter		X	311
35	Closing Disclosure		X	314
36	Final Account Report		X	307
37	Final P&L		X	315

E X H I B I T SCourt's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Deposition-Hathcock	X		161
2	Deposition-Cosby	X		184
3	Note-Foreperson	X		477
4	Jury Note	X		476

1 State regulations?

2 A It's IRC State regulations actually. Much different.

3 Q So I kind of want to turn the page here on the
4 R-Anell internal stuff. But generally speaking, how does
5 -- how does a dealer like HomeMax place an order with
6 R-Anell?

7 A Well, basically, HomeMax, they'll turn in, they
8 become, about the same time, actually, today is my six
9 year anniversary with R-Anell, work anniversary. And
10 basically HomeMax become a builder of ours probably within
11 a couple of months, it had already started that
12 relationship. Basically what happens is our salesperson
13 will go out and they'll set up a builder. And when I say
14 set up a builder, they go over all of what we do. We
15 basically have three different lines of product to go for
16 specs, the floor plans, how they are built. What our job
17 is. What their job is. And then it creates what you call
18 an order, and an order basically is -- is just basically
19 the contract of when they get that order out and send it
20 in and sign it, that's the contract to us saying that we
21 want you to build this.

22 Q So you've kind of touched on this. But is there ever
23 a full written contract, you know, with 10 pages of terms
24 or is it something less simple than that?

25 A No, sir. It's less simple. When they sign that

1 order, that is the contract.

2 Q Okay. And to your knowledge does R-Anell ever sell
3 directly to the consumer client?

4 A No, sir. We can't do that. We're licensed to sell
5 directly to our builders, retailers. And right now we
6 have approximately 35 retailers that we sell to in five
7 states. North Carolina, South Carolina, Virginia, West
8 Virginia and Tennessee.

9 Q And, you know, between Mr. Hewett and myself and you,
10 we've used the term builder and dealer, but would you
11 understand that to be the same thing?

12 A Yes, builders and dealers. And again, I'm not going
13 to get into that, but there are a difference in a builder
14 and dealer. So a builder usually is a person I feel like
15 that's more on a site built. They'll order a house and
16 they know a lot more about the back ends, because a lot
17 more has to do -- has to go in to a lot more on the back
18 end has to go as far as, you know, you're talking about
19 foundations. Some people put them on basements. Some
20 people put them on crawl spaces. I put one up a couple of
21 years ago on pallets. I mean, there's so much more to do
22 on the back end on the modular houses than there are the
23 HUD houses. HUDs are pretty simple.

24 Q And so, let me ask you then. Would you consider
25 HomeMax to be a dealer or a builder or both?

1 A More of a dealer. Yes, sir.

2 Q Okay. On a typical deal, you've kind of touched on
3 this. But what kind of service does R-Anell provide
4 beyond creating the modulars themselves? Is there
5 anything else that are --

6 A -- yes. Our expertise is the modulars. Fill in the
7 floors, you know, to floor plan specs. That's our
8 expertise. But we have some dealers or builders, but
9 mostly dealers, that don't know the back end. So we do
10 offer a service that's called set, that we'll go in and
11 set the home, which we -- they don't -- not employed by
12 us, but we contract them to do that. And it's not local
13 contractors in this area. It's more toward our areas.
14 But we contract that to be done. The expert -- expertise
15 in the set, because it's much different. Once it's set,
16 then you got to trim the house out on the inside. So we
17 do offer that service, but it's only on about five percent
18 of the houses that we sell. Most of all of our builders
19 and dealers set and trim their own houses. Again, our
20 expertise is manufacturing of houses. Filling the
21 modulars and floors.

22 Q And when you say set, what goes into doing the set?

23 A Well, normally the foundation. All that work is the
24 responsibility of the builder. The foundation's got to be
25 put in. It's got to be graded properly. So we'll show up

1 Q Where is your facility at?

2 A It's in Crouse, North Carolina.

3 Q And after R-Anell gets an order from a dealer or
4 builder like HomeMax what happens next on R-Anell's end?

5 A When we get a signed order from a dealer basically it
6 goes into our sales manager. He'll schedule it. And then
7 once it's scheduled the salesperson that sold the house,
8 we'll call the builder and say, here's the date this house
9 is scheduled. Here's when it goes online. This is when
10 it comes online. This is very important, too. We all --
11 that salesman also asks every dealer we have, this house
12 is coming off line on this date. Will you be ready to
13 take that house? And they have the option then not --
14 when the house five months later, not when they are, they
15 have the option then to move the house. If they see
16 anything -- any problems, here's when the house is going
17 to come off the line. We ask them if you can't take it at
18 that date let us know and we'll bump it back. We can bump
19 it back a month, six months, a year. It's up to them.
20 But we do ask. When a house comes off a line we expect
21 for it to ship. That's just the expectation. That's set
22 up front. That's set with all 35 of our builders. They
23 know three to five days of that off line date, which is
24 communicated way in front of when that's going to happen.
25 That's what the expectation is. And the same thing here.

1 Q And, you know, once you've gotten through the
2 building process and the inspection along the way --
3 you've talked about this a little bit. But what does
4 R-Anell do on the back end as far as scheduling with their
5 dealers or builders?

6 A Well, two to four weeks before the house comes off
7 line they will actually call the builder, or their dealer
8 up and say your house is coming off the line this date.
9 They usually talk about payment or whatever to make sure
10 the payment is secured. And from that date on they set
11 the schedule. They set the delivery date. That's two to
12 four weeks before it comes off line. She starts that
13 process then.

14 Q And you say she. Who is that?

15 A Melissa Allen. She will be testifying here.

16 Q And what's her job title?

17 A Transportation coordinator. I mean, she's --
18 transportation -- 80 percent of her job is transportation.
19 She also puts the production schedule together once the
20 sales manager hands it to her of how the houses go online.

21 Q And I want to talk about -- so at what point does
22 R-Anell do wrapping? We know already that's going to come
23 up. What is the wrapping process on-site for R-Anell?

24 A Well, you've got a couple different stages of
25 wrapping. You've got one that covers the roof. And this

1 is what I want to explain a little difference in a
2 manufactured house and a modular. A manufactured house
3 normally you don't have a raised roof. It's just a set
4 roof that's got shingles. So it's waterproofed on the
5 top. Okay. And a modular has to be a minimum of a 512.
6 That's part of the IRC code. So it's hinged. So it's set
7 down when it's built in a factory and it has to be raised
8 up. So we have to plastic over that area to make sure no
9 water gets in it. So that's one part of it. And that's
10 one part of it. And that's a much thicker plastic that's
11 put on that roof, it's a 10 mil. Now, what goes on the
12 side, now, this is a roof. Now, understand then you got
13 the side of the house where the actual house is two boxes,
14 in this case two boxes merged together. That's what you
15 call the side plastic. It's a, it's a thinner mil. A
16 house is not going to get wet if something's wrong with
17 the side plastic. You know, we -- you know, it just is
18 not. Rain don't go this way. Normally what the issue is
19 if it comes in from the roof. Everybody understands if
20 you've got site built house it rains straight down. If
21 you don't have it dried in it's going to get wet. Right?
22 So you got two different plastics that go on the house.
23 And one is done over in -- about midway through. The one
24 that goes on the roof is done about midway through. And
25 the very last thing is it is draped, (phonetic), that's

1 done after the shingles are put on the house. And then
2 the second part of the plastic is done toward the end of
3 the line which is the side plastic.

4 Q And so, once we've gotten all this done where does
5 R-Anell typically deliver homes just in the general sense?

6 A When you say typically deliver?

7 Q You know, we've heard in this case one was delivered
8 to the homesite. One was delivered to the lot.

9 A Well, I heard that R-Anell always wants to deliver
10 them to the homesite. Now, that's, we can't dictate where
11 the house is delivered. That's up to the builder. The
12 builder tells us where to deliver them. And we got a
13 builder that -- one builder that gets over a hundred
14 houses a year. They're a \$15 million cap -- and 80
15 percent of what goes, goes to the site. But they also
16 want 20 percent that goes to the lot. So we don't dictate
17 where it goes. They tell us where they want it. But we
18 do want out houses shipped three to five days when they
19 come off line. But they tell us where it goes. They
20 dictate that. And I would say to -- if I was a builder
21 I'd want it to go directly to the site, if I was a
22 builder, because, you know, you have less cost. You know,
23 if you go hookup and unhook, and hookup and unhook again
24 you've got more cost involved. But that's up to the
25 builder. They tell us do you want -- they tell us where

1 they want it, either a site delivered drop it off at the
2 sales location. And we have people that drop it off.
3 Just like I said, our number one builders, 20 percent of
4 what they do goes to our sales location. Big builder.

5 Q And let me ask you just to kind of tie a bow on that.
6 Does it matter whatsoever to R-Anell whether it's
7 delivered to the builder's commercial lot or to the
8 job-site?

9 A Absolutely not. I mean, sometimes a builder -- I
10 mean, the cost of the transportation company's charged,
11 you know, by what a permit cost and by miles. So, you
12 know, the cost might go up or it might go down depending
13 on how many miles the site is versus where the lot is.
14 But we don't preference where they want it. We just want
15 it to ship three to five days when it comes off a line.

16 Q And that's -- that brings me to another point. Why
17 does R-Anell want the houses out three to five days after
18 they come off line?

19 A Well, the plastic -- I mean, there's a lot of
20 reasons. But the plastic, you know, it's a temporary
21 plastic and, you know, we don't want a house sitting
22 around. You know, I heard in open arguments about sitting
23 around for four, six, eight weeks. I mean, normally
24 people -- when they pick our house up it goes straight to
25 a foundation as quick as it can to set down where you

1 don't have any issues. Because unfortunately when a house
2 is delivered things can happen. Things can happen on a
3 lot. Storms can come up. It can blow. I mean, I don't
4 know, delivering a house down it could catch a bridge or
5 anything can happen. That's why we have -- it's a three
6 step process. We check it before it leaves the plant. We
7 check it to make sure nothing's wrong with that.

8 Twenty-four hours before it's shipped we check it to make
9 sure nothing's wrong. We require a truck driver when he
10 picks it up -- because we're handing it off to the truck
11 driver. When he picks it up, then he's checking it to
12 make sure there's nothing wrong with it. And then when
13 it's delivered to the builder, the builder signs off on
14 I've got this house. There's nothing wrong with it. It's
15 my responsibility. So we've handed it off the way we're
16 supposed to. There's no way that I can control what goes
17 on with a house two days less of six weeks on-site. I
18 can't, I don't know. You know, if it rains it should be
19 checked. We want it took to site early as possible,
20 placed on-site and dried in.

21 Q And you've kind of touched on this. But does R-Anell
22 actually deliver the homes themselves or is there a third
23 party that takes care of that delivery?

24 A There's a third party. Let me explain that a little
25 bit. And I believe I said in a previous conversation or

1 question, eight out of 10 are delivered at what we call
2 dealer pickup. So the dealers pick them up on their own.
3 They have their own trucks, or they hire their own
4 trucking come in and get them. Only two out of 10 that's
5 on the invoice did we deliver, have delivered, and -- but
6 we hire another, we hire a company. We don't have our own
7 trucks. A couple of companies of those are Bennett
8 Transportation, White Transportation. We have a couple of
9 builders -- or, excuse me, transportation companies we use
10 where the builder don't pick them up their self. It's
11 only two out of 10.

12 Q So in that two out of 10, once R-Anell hands it off
13 to that delivery company what happens next?

14 A Well, they -- when we hand it off to them -- are you
15 talking about that's on the invoice?

16 Q Just, you know, when R-Anell's done with it at the
17 factory --

18 A -- yeah.

19 Q -- and you hand it off to the delivery company.

20 A Yeah. The delivery company will -- again, they'll
21 come in and check it out. They just -- they don't just
22 check inside to make sure the house is -- they also check
23 to make sure -- they got to put brake wire on it. There's
24 axles. There's running gear on these houses. They've got
25 to make sure everything's tort. So they've got a

1 checklist that they do. And then they then take it to the
2 lot and it'll get signed off. The lot or the builder lot
3 or the site and it's signed off by a retailer that they've
4 accepted it.

5 Q And you say signed off. What did they sign?

6 A They sign a piece of paper that says this house is in
7 good condition. There's absolutely nothing wrong with it
8 and I take the responsibility of it.

9 Q And when you say I, do you mean the builder or --

10 A Yeah, the builder. Yeah. Basically, you know, the
11 driver takes -- he takes responsibility of it when he
12 picks it up. Hey, it's good. There's nothing wrong with
13 it. And then when he takes it to the lot, whether it's
14 the lot or the builder's site, and he hands it off to the
15 builder and he takes responsibility of it. There's no way
16 that I could take full responsibility to see it all the
17 way through the process.

18 Q And once you're past that point and the home's
19 delivered how does R-Anell get paid for its typical home?

20 A We get paid COD, certified funds, or a small portion
21 of our business is floor plan. But most of it's certified
22 funds.

23 Q Could you explain floor planning for the members of
24 the jury?

25 A Basically floor planning is a lending institution

1 that normally our builders or dealers have a line of
2 credit with. So when we get -- normally when we get that
3 home in, before it goes online which is floor plan source
4 we'll call and get an approval number before we even put
5 it online. So it's a lending institution that -- that the
6 builder has or the dealer has a contract with to borrow
7 money to pay us for the house.

8 Q And in most modular sales I think you said this, but
9 I just want to be clear. Are most floor planning or COD,
10 certified check?

11 A Most of them are certified checks.

12 Q Why might R-Anell be paid by floor planning for
13 certified check? What are the other -- do you have any
14 inclination for why there might be a preference?

15 A Not really. You know, some people pay certified
16 funds up front if they got the funds up front. If they
17 don't, depending on construction loans -- they have to
18 have something to tie them over. So the floor plan source
19 kind of puts that money and helps them, you know, to pay
20 us for the house.

21 Q And just to kind of tie back to what we were talking
22 about earlier, once R-Anell gets paid, does it have any
23 responsibility whatsoever on those modular homes?

24 A No.

25 Q Okay. Let's go specifically to the Brown house

1 order.

2 A Okay.

3 Q Are you familiar with what I'm talking about when I
4 say that?

5 A Yes.

6 Q And would you explain what that -- kind of just give
7 the jury a little bit of an overview of what happened in
8 that Brown situation?

9 A As far as the order?

10 Q All of it.

11 A Well, basically as I know it, the order would come
12 in. I don't have the exact dates, but it was sometime in
13 '17 the order came in. There was two orders there
14 together within a two week period, just like Brown. We
15 built a couple of houses for them in that period. It was
16 a customer named Mixon and a Brown house, and one was
17 ordered, I'm going to say, on 9/11. For some reason I
18 remember that number. It's not -- not a good day to
19 remember, especially back in 2001. Right? But we had
20 Brown, and then the Mixon house. And it was two houses
21 there ordered pretty close together. It was -- they were
22 sent in, and I know -- I think actually the sales person,
23 Jeremy Cosby, actually went to the lot and helped them get
24 that order, sat down with the customer to get those
25 orders. So those both, all the specs were done and we got

1 the signed orders back. In fact, one was 9/11 and one was
2 a couple of weeks later in October.

3 Q Phillip, I'm going to bring in an exhibit here. This
4 is marked as Plaintiff's Exhibit 3.

5 MR. MANGUM: Your Honor, I don't think Brad has any
6 objection to the authenticity or admissibility, so we'll
7 just go ahead and move to have it admitted assuming that's
8 the case.

9 MR. HEWETT: No objection to the exhibit, Your Honor.

10 THE COURT: Are there a series of them that the
11 parties stipulate to or do we need to do them one by one?

12 MR. MANGUM: There's a few, but some of them are just
13 authenticity. Some are authenticity and admissibility and
14 some are neither. So it might be best if we just do them
15 individually unfortunately.

16 THE COURT: All right. So Plaintiff's --

17 MR. MANGUM: This is marked just 3. I've marked them
18 chronologically. So we may be jumping around number-wise.

19 THE COURT: Okay. That's fine. Plaintiff's 3 is
20 admitted without objection.

21 (Whereupon, Plaintiff's Exhibit number 3 was admitted
22 into evidence.)

23 Q Phillip, if you haven't already, just take a brief
24 look at that and you can tell me when you've looked at it.

25 A I've looked at it.

1 Q Okay. What is this?

2 A This is a signed order on customer Brown house from
3 HomeMax, signed off with them to, ready to build, ready to
4 put in the schedule.

5 Q And this is just kind of your standard quote?

6 A Yes. It starts out as a quote. But how we know it's
7 an order, if you go to the last page and it's got a sign
8 off on it from the builder or dealer.

9 Q And you have sort of anticipated one of my questions.
10 Can you say with certainty that this is signed by somebody
11 with HomeMax in this situation?

12 A Absolutely.

13 Q And how would R-Anell get this signed quote back?
14 What's the process?

15 A Our sales person would work with all the options and
16 everything to do to make sure this is what the customer
17 Brown wanted, and then once it's one-hundred percent they
18 sign and then they either email or fax it in to us.

19 Q And when you say they, you mean the builder?

20 A The HomeMax, in this case HomeMax. The builder turns
21 it in to actually our salesperson, which in this case was
22 Jeremy Cosby.

23 Q And so, this is at the bottom of every page, but you
24 can go to page one. Would you read where it starts
25 confirmation of order.

1 A Confirmation of order. Check all specifications
2 thoroughly. If correct, sign and return of the
3 confirmation and fax to R-Anell Homes.

4 Q And is that what happened here?

5 A Yes, sir. You've got actually the signature on the
6 very last page. The actual amount of the house was
7 \$142,660.80.

8 Q Okay. And you'll see Dealer Rep, Jay. That's near
9 the top. Is that a HomeMax employee to your
10 understanding?

11 A Yes, I believe it is. I mean, Mr. Cosby can tell you
12 more. But I think his name was Jay Collins. I'm not
13 sure, but that was the guy that signed a lot of stuff for
14 HomeMax.

15 Q And so, like you told us in the general part earlier,
16 this is the document that you would need to get a home on
17 line?

18 A Yes. This is the document -- yes, that would --
19 every 35 -- all the 35 builders we got, when they send
20 this in and it's signed off on, that's when we put it in
21 the production schedule.

22 MR. MANGUM: And, Your Honor, again, this is one that
23 I think Mr. Hewett has stipulated to both the
24 admissibility and authenticity.

25 MR. HEWETT: No objection. What exhibit is this?

1 MR. MANGUM: This is 4.

2 Q And I'm handing you Plaintiff's Exhibit 4 here and
3 you can take a quick look at that.

4 THE COURT: Plaintiff's Exhibit 4 is admitted without
5 objection.

6 (Whereupon, Plaintiff's Exhibit number 4 is admitted
7 without objection.)

8 Q And you can let me know when you've got a good look
9 at it.

10 A Okay.

11 Q So what are we looking at here, Phillip? What is
12 this?

13 A This is the invoice for the Brown house.

14 Q Okay. And when is this invoice sent out?

15 A It's sent out when it's shipped. The day of
16 shipment.

17 Q And if you'll look at the bottom of this page, would
18 you read that total invoice price?

19 A \$142,292.80.

20 Q Do you know what -- the other one that was like
21 \$142,600, do you know what might have caused that
22 difference?

23 A I'm not familiar with that. Sometimes there can be
24 some change sheets done on it that could be, you know,
25 something minor. It could be a miscalculation in taxes,

1 South Carolina taxes, or anything. But there's a little
2 miscalculation there.

3 Q Nonetheless, the invoice is for actually less than
4 the --

5 A -- yeah. The invoice is -- what it is invoiced for
6 is less than what the actual order showed.

7 Q So if you look towards the top of this it says,
8 financed through COD certified check. Now, we've heard a
9 little bit about that, but what does that mean?

10 A Well, what that means is whenever a house is ordered
11 we don't tell a builder how to -- or a dealer how to pay
12 for it. They tell us how they want to pay for it. So if
13 there is COD up here in the upper right-hand corner, that
14 was asked by HomeMax for us to COD. And to my
15 understanding, when it got time to deliver, which it was
16 originally supposed to deliver in December -- December
17 17th which HomeMax was called and said, hey, the deliver
18 date is this time, will you accept it. Yes, I'll be ready
19 for the house. And then when our transportation
20 coordinator called for delivery on the house just said,
21 hey, you need to have this amount ready when our driver
22 shows up. And then at that point in time he says, well,
23 I'm not going to be ready for the house. And by the way,
24 change it from COD to floor plan. So that was changed.
25 That's not dictated by us. We can't tell somebody how to

1 pay for a house. That's dictated by the builder, HomeMax.

2 Q Okay. And in this case was payment made by certified
3 check?

4 A No, because he changed it to floor plan.

5 Q Right.

6 A And what happened here was the floor plan went
7 pending. So when he asked to change it to floor plan, the
8 floor plan went pending. And in the past this was a
9 mistake made with my transportation person. She was used
10 to when a floor plan went pending then it would
11 automatically go to approval within a couple of days. So
12 she was assuming when it went pending, when this house was
13 shipped, then it would get approved in a couple of days
14 which that -- she just didn't -- unfortunately she thought
15 it would go approved, and it never did.

16 Q Just remind the jury. The floor planning is
17 essentially like a credit service. Is that right?

18 A Yes, a credit serve. It's a lending institute. I
19 mean, it's much different than a certified check. We
20 would not have unhooked that house if it would -- the
21 certified check was what was supposed to be on-site. We
22 wouldn't have unhooked from it. So HomeMax made a request
23 to -- they didn't want to COD it because evidently they
24 didn't have the funds to COD it. So they wanted us to go
25 to floor plan and when it went to floor plan it went

1 that are not communicated at the time of delivery or
2 pickup.

3 Q And how about that one right below it?

4 A Right below it says, please thoroughly inspect this
5 unit upon delivery for any exterior or interior transit
6 damages and list them below. R-Anell will not be held
7 responsible for any transit damage that is not reported on
8 this -- on this form.

9 Q And it looks like on this one there's two signatures.
10 Do you know who's signatures these are?

11 A Johnny Cole, he was the driver. I think he was from
12 Bennett Transportation. And this looks like -- again, not
13 a hundred percent. This looks like Jay with HomeMax. Not
14 a hundred percent.

15 Q Okay. And is there any evidence in either of these
16 two pages that someone inspected as far as the Brown house
17 goes?

18 A Yeah. Actually on this one it looks like the driver.
19 It says, John went on roof, inspected, taping any holes on
20 -- and taped any holes on roof and plastic. So the driver
21 actually inspected it there.

22 Q And was there any complaint whatsoever on the Brown
23 home after they taped this plastic on it?

24 A No. I didn't hear anything on the Brown home. But
25 that's what this form is supposed to do. We hand it off

1 to the truck driver at the plant. And then the truck
2 driver hands it off to the -- to the dealer at the site,
3 either site or the sales center. They've got to take
4 responsibility of it. So this is -- this is just our
5 standard procedure.

6 Q And let me ask you. On this one was it delivered to
7 the -- to the job site directly or was it delivered to
8 HomeMax's lot?

9 A This is delivered to -- if I'm not badly mistaken, to
10 the homeowner's site three plus months later than it was
11 supposed to be delivered. Because it was -- it was agreed
12 upon that they would take delivery before the end of '17,
13 December of '17.

14 Q And when you say it was agreed upon, who agreed upon
15 that?

16 A Mr. Cosby will testify, but he called actually Dave
17 himself and it was agreed upon.

18 Q Do you know, once this is signed is it considered
19 accepted by HomeMax, the delivery -- I mean, R-Anell?

20 A Yes.

21 Q Strike that question. Can I start over? Once
22 something like this form is signed does -- does R-Anell
23 consider that an acceptance of the delivery of those?

24 A Absolutely.

25 Q And did HomeMax ever notify you, or to your knowledge

1 anyone else, that they were rejecting the Brown home?

2 A Absolutely not.

3 Q Did they ever notify you or anyone else, like, we
4 don't want this. Come -- come back and pick it up?

5 A Absolutely not. Because we call them every month
6 wanting them to take delivery on the house. So if they
7 would have said -- and we could have resold it. There's
8 no doubt about it. Definitely -- that's what we'd like to
9 have happened and we would have got paid for it.

10 Q And to your knowledge was HomeMax able to provide
11 this home to the end customer, here the Brown's, without
12 any issue?

13 A As far as I know, yes. I've heard no issue about
14 that from our end.

15 Q And so, you sort of testified to this effect, but
16 when did R-Anell realize that it hadn't gotten paid yet
17 for this Brown house?

18 A Unfortunately I didn't get it until my controller,
19 from my understanding -- I'm going to say two to three
20 weeks, maybe three weeks after it delivered. Usually a
21 floor plan source takes 10 to 14 days from delivery to pay
22 us. And I think it got to about a three week period and
23 my controller seen that we hadn't been paid for the house.
24 So then he got with the salesperson. Which the
25 salesperson's is responsible also for collecting if -- you

1 know, calling the person up. Because he's got the
2 relationship with HomeMax, not me, but he does. So they
3 called up and asked them where payment was.

4 Q And you say salesperson. Who was that?

5 A Jeremy Cosby.

6 Q Okay. And he's an R-Anell employee?

7 A Yes. He's the one that actually sold the house to
8 them.

9 Q So did you ever personally get involved in attempting
10 to collect payment from HomeMax?

11 A Unfortunately when I got involved it was a little too
12 -- too late, I say, because the controller and Jeremy
13 attempted to collect and they was told several times that
14 they were going to get paid. And then once we figured out
15 that it wasn't going to pay, once the customer got into
16 the house, then they let me know about it. But then it
17 was too late. So then when I called -- well, actually I
18 called and left a message for Dave, then he called me back
19 and basically says I'm not going to pay you for the house.
20 That's when I found out that -- you know, contact my
21 lawyer.

22 Q When you say too late, what do you mean when you said
23 it was too late? Why was it too late?

24 A Well, basically what happens, you know, if something,
25 if we go into a contract with someone, let's say they're

1 THE COURT: Back up on the stand.

2 (Whereupon, the witness returned to the witness
3 stand.)

4 THE COURT: And we can bring the jury.

5 (Whereupon, the jury came into open court at
6 approximately 11:38 a.m.)

7 THE COURT: We are going to resume Mr. Hathcock. It
8 is time for cross-examination.

9 MR. HEWETT: Yes, Your Honor. May it please the
10 Court?

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 By Mr. Hewett:

14 Q Mr. Hathcock, good morning.

15 A Good morning.

16 Q Nice to see you again.

17 A Yes, sir.

18 Q We're in tight quarters, so I'm going to stand right
19 beside you instead of being over there, but --

20 A That will be fine.

21 Q -- if you can't hear me at some point let me know.
22 All right?

23 A Sure.

24 Q I thought I heard you say in your testimony earlier
25 that R-Anell didn't really care whether a house was

1 delivered straight from the site to -- from the factory to
2 the building site. Did I hear you right?

3 A That is correct. We don't have a priority of that.
4 That's up to the builder himself.

5 Q I understand. Isn't it true that you said something
6 different than that earlier than today?

7 A Not that I know of.

8 Q Do you recall giving a deposition in this case?

9 A Absolutely.

10 Q I had to drive up to your factory in Crouse and I sat
11 in a conference room there in your factory with your
12 lawyer. Do you remember that?

13 A Absolutely.

14 Q And you remember how you were, you know, put under
15 oath to tell the truth --

16 A Uh-huh. (Affirmative.)

17 Q -- just like you were today?

18 A Uh-huh. (Affirmative.)

19 Q And you were -- I think you were actually being
20 offered as a -- as a company witness --

21 A That's correct.

22 Q -- for R-Anell.

23 A That's correct.

24 Q And you also gave some -- some deposition --

25 A That's right.

1 Q -- in your individual capacity?

2 A That's correct.

3 Q And I asked you some questions about these houses and
4 everything that happened and you responded to those
5 questions truthfully, right?

6 A Yes.

7 Q Isn't it true that you said before the ultimate goal
8 for R-Anell is to deliver a house from its factory
9 directly to a building site?

10 A It was took out of context, because I don't determine
11 if it goes to the site or to the sales location. I said
12 earlier today that I would honestly think that the builder
13 himself would want it taken directly to the builder's
14 site. But that's not my decision, that's up to the
15 builder himself. If I was a builder I would want it to go
16 directly to the site. But we have some builders that take
17 it to their locations. But that's not dictated by
18 R-Anell. That's dictated by the builder himself.

19 Q Well, I don't want to take what you said out of
20 context. I don't want to do that. Okay?

21 MR. HEWETT: So if I may, Your Honor, I've got the
22 original transcript of R-Anell and Mr. Hathcock when he
23 testified in this case. I'd like permission to unseal it.

24 THE COURT: All right. This is the original sealed
25 transcript of the deposition of Mr. Hathcock 30(b)(6)

1 deponent for R-Anell Housing.

2 MR. HEWETT: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 Q All right. Mr. Hathcock, what I'm going to do is
5 turn to page 17 of the transcript of testimony --

6 A Uh-huh. (Affirmative.)

7 Q -- that you gave when we were at the factory. And I
8 was asking you about shipping the houses straight from the
9 site to a sales lot --

10 A Uh-huh. (Affirmative.)

11 Q -- in connection to what I just asked you. Now, I
12 want to make sure I get you at the right spot. I'm going
13 to read from page 17. Okay?

14 A Yeah.

15 Q Let me know if I'm going too fast if you can't see
16 it. At the top I started a question with this. It says,
17 What are the responsibilities of the retailer in this
18 specific transaction? Do you see that? You might need
19 your reading glasses.

20 A Yes, I'll definitely need my reading glasses.

21 Q I want to make sure I read it right.

22 A Okay.

23 Q I asked you that question. Okay? And you responded
24 by answering the following. Well, in this specific
25 transaction we build the house. We get the house ready

1 for shipment. We ship the house to -- our ultimate goal
2 is always to ship the house to the site. Right? Did I
3 read that correctly?

4 A That's exactly right.

5 Q Okay.

6 A That is our ultimate goal, but we don't -- again, my
7 testimony is that's our goal but we don't dictate where it
8 goes.

9 Q Yeah, I was asking you about preference.

10 A Okay.

11 Q Whether it dictates or not --

12 A Okay.

13 Q I thought you said earlier it didn't matter to
14 R-Anell where the house went. But we've established the
15 goal was to send it directly to the builder's site.

16 A Well, yes. The goal was to send it there. But he's
17 the one that tells us where to send it. Okay? That's
18 what -- that's what I want -- that's what I want to get
19 cleared up.

20 Q I got you.

21 A He tells us where it goes. Our goal is to get it --
22 when it gets out of that plant to get it directly to the
23 site as soon as possible.

24 Q I see. And I was trying to follow along as best I
25 could and make some notes.

1 A Sure.

2 Q I seem to remember you saying that after -- assuming
3 it's a floor plan deal and R-Anell gets paid on the house,
4 after that point did you say you didn't have any
5 responsibilities as far as a particular house when it's
6 already been paid?

7 A As far as -- as far as what? There's a lot of things
8 that go on. I don't have no responsibility to do anything
9 to do with the foundation, the electrical, the plumbing,
10 the hookup or anything like that, no. Now, if set and
11 trim's on the invoice then, of course, we're responsible
12 for that.

13 Q Right.

14 A But anything other than that, no. We're not
15 responsible. Other than our one year warranty.

16 Q And the Christofoli house still had to be set and
17 trimmed after it was finally delivered to the building
18 site, correct?

19 A That is correct.

20 Q Right.

21 A Yes.

22 Q And R-Anell handled that part of the process. It
23 contracted a setup crew --

24 A Yeah.

25 Q -- to put the house together and set it up, right?

1 A Yeah. It wasn't a local set up crew, but it was a
2 set up crew.

3 Q It was Mid-State Modular, was it not?

4 A Yes, that's correct.

5 Q And after the house was dropped off, since you were
6 giving us some information about how that process should
7 go in setting up and trimming out, R-Anell will take the
8 setup after the house is set on the foundation, right, and
9 trim -- and then when the trim and the setup is done it's
10 going to turn the house back over to the retailer. That's
11 how that works, isn't it?

12 A Well, he's got things going on during that process,
13 too. I mean, he's got a lot of things going on, too. But
14 we -- we do -- it's not like everything stops until we set
15 and trim it. He could be doing a lot of other things
16 there, too, while we're -- while we're trimming the house
17 out. He could be doing -- he could have his HVAC
18 contractor. He could be doing his final grading. He
19 could be doing a lot of things there. So it don't stop.
20 But that's just part of the process.

21 Q Right, yeah. The dealer's still got some
22 responsibilities, correct?

23 A Absolutely.

24 Q But after the house is set up, trimmed out and all of
25 that you just mentioned is done --R-Anell is going to turn

1 the house back over to the retailer, right?

2 A Yes.

3 Q Okay. The jury heard about an email you sent to Mr.
4 Fautley where you had tried to be in contact with my
5 office about the issue with the Brown house, right?

6 A Yes.

7 Q And we saw an email that had a specific date on it.
8 Isn't it true that you had left me a voice mail the day
9 before to give you a call on that issue?

10 A Just to recall, I can't recall that. But I would
11 like -- I do recall trying to get in contact with you.
12 Whether it was one day, two days, I cannot -- I don't know
13 that.

14 Q Well, I just want to make sure we're on the same
15 page, because what I heard is that I never called you back
16 or got in contact with you. That's not true, is it?

17 A Up to that date you didn't.

18 Q And the first time you had actually tried to reach
19 out to me was just the afternoon before where you left me
20 a voice mail, right?

21 A No, I said when I responded back in that email you
22 had not got in contact with me. That was between those
23 three days and that's it. Now, you did after that.

24 Q Sure. Yeah, you sent an email the next day. In
25 fact, the next the morning after you left me a voice mail,

1 that afternoon, right?

2 A I do, yeah, I think that's right.

3 Q And at some point within, I think, a day or two after
4 that I sent you an email back and --

5 A Yes, sir. Yes, yeah. But to that point I hadn't
6 heard nothing.

7 Q Okay. I just -- and that was over about a day,
8 right? I just want to make sure that I wasn't ignoring
9 you. The jury doesn't think that I wasn't --

10 A Oh, no. Oh, no. That wasn't nothing intended to
11 you. I just reached back out to Dave, yeah.

12 Q You were giving the jury some information about how
13 all this process works with the house getting wrapped,
14 sent to a site. Some of that process between R-Anell and
15 a local dealer, right?

16 A Okay, right.

17 Q Okay. Isn't it true you've never physically been
18 hands-on in assembling or doing the labor or putting
19 together a modular home, have you?

20 A Yes, I have.

21 Q You have?

22 A Yes.

23 Q Okay. Again --

24 A Not -- let me say this. Modular home, no. A
25 manufactured home, yes.

1 Q Okay. We're talking about modular homes.

2 A Modular, no. Not on a modular, no.

3 Q All right. And you actually never inspected the
4 wrapping on this Christofoli house, did you?

5 A No.

6 Q And you don't -- you don't have any firsthand or
7 personal knowledge about how the Christofoli house was
8 wrapped, do you?

9 A No, I don't know exactly, but it's wrapped just like
10 all the other ones. We've got a 20 year man that wrapped
11 that house just like he did all the other ones that we
12 sent out there.

13 Q I'm just talking about this house.

14 A No, not that specifically.

15 Q And you never made a trip down to Gilbert to take a
16 look at the Christofoli house, did you?

17 A No, I didn't need to. I had a sign off from Mr.
18 Fautley saying he took full responsibility on it when we
19 shipped it, so I didn't need to. That was his home then,
20 not my home.

21 Q So is it your testimony that Mr. Fautley, HomeMax,
22 took full responsibility of the Christofoli house the day
23 that R-Anell shipped it out? Is that your testimony?

24 A When he signed off, yes. When he took responsibility
25 of making sure that he received that house in good

1 condition. That's what -- that's what the document says,
2 and then he's responsible for keeping an eye on that home
3 to make sure it maintains -- until it gets properly set or
4 whatever. So, I mean, he took full responsibility of it
5 that day, yes.

6 Q And you mean a hundred percent full responsibility.
7 Is that what you're saying?

8 A I believe I read out whatever that document said.
9 That's -- not a hundred percent. But of the shipping,
10 that house not getting water. It said R-Anell had no
11 responsibility for water damage from here on, because he's
12 supposed to inspect the house, make sure it was in good
13 condition. And then he was -- it was in his hands from
14 there on, that part of it.

15 Q But we can agree, R-Anell still had some
16 responsibilities on that house even after it shipped out,
17 right?

18 A Absolutely.

19 Q The Christofoli house?

20 A Yeah. I mean, we had to set the trim on the invoice,
21 right.

22 Q Yeah.

23 A So we had some responsibility.

24 Q Right. Now, you personally never wrapped a house,
25 have you? A modular house?

1 A No, not a modular. I probably have a HUD house but
2 not a modular. And like I said, it's two different
3 wrappings.

4 Q And am I right in saying you've never served as any
5 part of like quality assurance team, anything like that?
6 At least on the construction of a modular house?

7 A No. I've never been on a quality assurance team on
8 that.

9 Q And understanding what your responsibilities are at
10 R-Anell, you never had the responsibility to inspect a
11 house -- a modular house to make sure it was wrapped
12 properly, have you?

13 A No, not wrapped, but I have inspected modular housing
14 before. We do walk-through's where we look at houses as a
15 team.

16 Q And it's established, you know, R-Anell manufactured
17 -- it built this Christofoli house, not HomeMax, right?

18 A That's correct.

19 Q And it was responsible in manufacturing to make sure
20 that was done properly?

21 A And it was, and it was.

22 Q And R-Anell is supposed to be a partner with HomeMax
23 --

24 A Absolutely.

25 Q -- correct?

1 A Absolutely.

2 Q And it's ultimate goal is to provide a good house and
3 a good experience to the customer. Is that right?

4 A And we did.

5 Q And when we're talking about the Christofoli house --

6 A Uh-huh. (Affirmative.)

7 Q -- R-Anell had a contract with HomeMax on the
8 Christofoli house, right?

9 A Absolutely.

10 Q And that contract included properly manufacturing and
11 delivering the house, right?

12 A Yeah. Yeah. The same as the Brown house.

13 Q And properly wrapping it as well?

14 A Absolutely. The same as the Brown house.

15 Q And if I remember correctly, R-Anell is one of six
16 factories for Commodore Corporation that's building
17 modular houses, right?

18 A Not modular. They build both.

19 Q Okay.

20 A We have two that strictly build nothing but mods.
21 That would be us and the Pennwest facility, and the other
22 four. You got two that does nothing but manufactured
23 homes and one and two that kind of does both. So all
24 across the board.

25 Q That's right. Between the six, they're doing modular

1 and manufacturing?

2 A Yes, absolutely.

3 Q Okay. And I think you've told me that they're about
4 3,600 individual parts that go into a modular house. Does
5 that sound about right?

6 A Yeah, approximately some -- ours was about 36, 3,700.
7 I know Pennsylvania has about 5,000 parts that go into
8 them, yes.

9 Q And those parts are all coming from different States,
10 and even sometimes internationally, aren't they?

11 A Absolutely.

12 Q And we can agree that mistakes can happen on the
13 manufacturing end when houses are being built by R-Anell,
14 right?

15 A Absolutely.

16 Q And sometimes mistakes can happen in the wrapping
17 process as well by R-Anell, can they not?

18 A Not that I know of. Anything can happen, but not
19 that I know of, no.

20 Q Well, because of those mistakes isn't it true that
21 R-Anell issues a warranty on the modular houses it
22 constructs?

23 A Yeah, on our defects.

24 Q Right. To manufacture, a warranty is good for at
25 least one year?

1 A Yeah. On materials and our defects. But there's no
2 defect in this case.

3 Q No defect on the Christofoli house?

4 A Yes.

5 Q And I think a part of it is licensure in South
6 Carolina to sell a modular home just kind of issue a
7 warranty on a house, right?

8 A Yes.

9 Q And all that being said, it had a warranty, R-Anell
10 is, on the house that it constructed for the
11 Christofoli's. Is that right?

12 A Absolutely. Not for negligence on the builder's part
13 though.

14 Q I understand. And R-Anell, when it's wrapping that
15 house, it's got to make sure it wraps it in such a way
16 that it's watertight?

17 A Absolutely.

18 Q Because it knows if it's not and water gets in the
19 unit can be damaged?

20 A Absolutely.

21 Q And I think you told me earlier that when they're
22 being wrapped, these modular houses, some mechanical
23 fasteners are being used to apply the wrap instead of just
24 tape all the way around?

25 A Yes.

1 Q And talking about being watertight. I mean, these
2 houses, when -- once they're in line for construction and
3 once they're done, they're put outside at the factory yard
4 for R-Anell, right?

5 A Yes.

6 Q And they got to be watertight while they're at
7 R-Anell's facility --

8 A Right.

9 Q -- in addition to being in the shipping process and
10 once delivered?

11 A Absolutely. Absolutely.

12 THE COURT: Mr. Hathcock, I'm going to interrupt you
13 and ask you to make sure you let him finish his question
14 before you begin to answer. I know we sort of commonly
15 talk over each other and you kind of know where he's
16 going. But if you wait for him to finish completely and
17 take a breath, and then answer, it'll be much easier for
18 the court reporter to take down your testimony.

19 THE WITNESS: Yes, ma'am.

20 MADAM COURT REPORTER: Thank you.

21 Q And we know --

22 MR. HEWETT: That you, Judge -- and I'm sorry. I
23 should have caught that.

24 Q We know R-Anell wrapped the Christofoli house. It
25 wasn't HomeMax, was it?

1 A R-Anell wrapped it.

2 Q Right. And R-Anell can't tell the jury the date that
3 the Christofoli house got wet, can it?

4 A No. But R-Anell can tell you it was not wet when it
5 left the facility. It was not wet when HomeMax signed off
6 on it. I can tell you that.

7 Q But you don't have personal knowledge of that, do
8 you?

9 A I have knowledge that my team walks that house before
10 it -- 24 hours before it ships. And I have knowledge that
11 the transportation company checks it before it ships. And
12 -- and, of course, then the builder should check it when
13 it arrives there. So if it was wet it should have been
14 noted those three days, or however long it took.

15 Q Sure. Again, I'm just asking about what you know.
16 You don't know that this house ever got inspected
17 personally, do you, because you didn't do it, right?

18 A Oh, I didn't do it.

19 Q Okay. And as far as you know, there wasn't any
20 training that R-Anell provided to its employees about how
21 to wrap a house, right?

22 A The guy that wrapped that house had been doing it 20
23 years. So I never did it personally. Ask him or -- you
24 didn't ask him, but I'm sure he knew how to wrap houses.
25 He'd been doing it for 20 years.

1 Q Yeah. And I know sometimes you're answering a
2 question that I'm not asking. I'm just asking you
3 specifically --

4 A Okay.

5 Q -- if R-Anell -- you might of had a guy with some
6 on-the-training, right? He'd been doing it for a while.
7 Isn't that right?

8 A I don't know. He'd been -- he'd been employed 20
9 years doing the same job. So I don't know if he had any
10 training or not. So I don't know.

11 Q And that's what I'm -- I don't work there. I'm not
12 in the modular housing industry.

13 A Okay. Okay.

14 Q But R-Anell didn't provide any training to its
15 employees about how to properly wrap a house, did it?

16 A I can't say one way or the other, because I've been
17 there six years. He's been there 20. Not during my six
18 years.

19 Q Yeah. During your tenure, your experience you're not
20 aware of any training given by R-Anell to employees on
21 wrapping a house, right?

22 A No.

23 Q And isn't it true R-Anell should have made sure that
24 this house -- the Christofoli house was wrapped properly
25 knowing that it wasn't going to the building site, it was

1 going to go sit on HomeMax's sales lot for some period of
2 time?

3 A To my knowledge it was wrapped properly. To anybody
4 at R-Anell's knowledge it was wrapped one-hundred percent
5 properly.

6 Q Right. And that's important, too, knowing that the
7 house is going to have to sit somewhere else other than
8 the building site for some period of time, right?

9 A Yeah. I -- I don't -- if I may answer?

10 Q Sure.

11 A I don't think we treat it any different than any
12 other because, again, I mean, we wrap them all the same
13 way.

14 Q Okay.

15 A Whether they're going to sit for a day, a week or a
16 month or two months. We don't know how long it was going
17 to sit at HomeMax's lot, had no idea.

18 Q In this case I thought I heard you say the house sat
19 out in R-Anell's yard for about 13 days before it got
20 shipped down to HomeMax sales lot?

21 A To my understanding, yes.

22 Q And R-Anell didn't have anything documenting that it
23 inspected the plastic wrap at any point in time while the
24 unit sat outside to make sure it was still in good and
25 proper condition before shipping it to HomeMax sales lot,

1 right?

2 A No, we don't have nothing documented.

3 Q And even -- you talked about some quality assurance
4 and a third party that's brought in to go through a
5 checklist to make sure it's built up to code --

6 A Uh-huh. (Affirmative.)

7 Q -- and meets certain standards?

8 A Uh-huh. (Affirmative.)

9 Q Is that right?

10 A Yes.

11 Q Okay. Even on those quality control forms there's
12 not any line item to be checked off to ensure that the
13 plastic is in good integrity and applied properly, is it?

14 A No. It's only code related items. There's a lot of
15 things that's not on there that we do that's not on those
16 sheets.

17 Q You said earlier you weren't aware of -- I think I
18 heard you say you're not aware of a house getting wet
19 because it wasn't wrapped properly, right?

20 A Not that I know of.

21 Q Okay. But you personally know of several houses, say
22 one to two dozen, that have gotten wet in the last 10
23 years, do you not?

24 A Yeah. Yes. It could be several different things,
25 but yes.

1 Q And do you know if that was due to the wrapping or
2 not?

3 A No, I don't know that. Have no idea.

4 Q Did anybody -- while these units were outside the
5 factory did anybody ever get up on a ladder and look at
6 the wrap, look at the roof and make sure it's properly
7 applied?

8 A No. We've not never had any reason to do that.

9 Q Whether they did or didn't have a reason to, it just
10 wasn't done, was it?

11 A No.

12 Q I asked you just a second ago. I want to make sure
13 we're all clear on these one to two dozen houses you said
14 you personally know of getting wet in the last 10 years.
15 Isn't it true that you told me that the reason those
16 houses got wet, those one to two dozens, in those
17 situations, was due to the wrapping?

18 A I mean, it had something to do with the wrapping. I
19 don't know if it was because of improper wrapping. It
20 could be the cause of several different things. But
21 different things happen to wrappings. That's why I said
22 earlier it's the responsibility of three people. It's the
23 manufacturer, the driver and the builder working together
24 to keep a house -- to keep a house dry. And when one of
25 those break down then you have a -- you could have an

1 opportunity for a wet house. So I don't -- I can't tell
2 you if it was the wrapping or whatever. But you asked me,
3 I think, in my deposition had I ever experienced any and I
4 said yeah, in the 10 years, yes.

5 Q Sure. And I think at least for this house, and maybe
6 back in 2017 R-Anell was using Bennett Transportation to
7 ship some of it's houses, right?

8 A They were one of our contractors. But I think that's
9 specifically who shipped the Christofoli house.

10 MR. HEWETT: Your Honor, I'm handing the witness
11 what's marked as Defendant's Exhibit 12. Again, some of
12 these are just taken out of sequence. But it has been
13 marked. And I believe that opposing Counsel has not
14 objected to the authenticity of the email, but may have
15 objected as to the admissibility and perhaps on the
16 relevance. So just -- just for the record that's what the
17 witness has been handed. And, Your Honor, since you can't
18 see the TV screen would you like a copy?

19 THE COURT: Yes, please. Do you object?

20 MR. MANGUM: We do object to admissibility, so we'll
21 see how that goes here.

22 THE COURT: All right. Let's lay some foundation.

23 Q You see here what we're looking at, Mr. Hathcock?
24 It's two separate emails. Do you see that on the
25 document?

1 A Yes.

2 Q And it actually carries over to a third email on the
3 back. The first email we see is a response from Melissa
4 Allen to Carol Gentry dated May 17th of 2017, right?

5 A Uh-huh. (Affirmative.)

6 Q Is that right?

7 A Yes.

8 Q And Melissa Allen, as you mentioned earlier, is the
9 transportation coordinator for R-Anell?

10 A That's correct.

11 Q And Carol Gentry was somebody with Bennett
12 Transportation, right?

13 A Yes.

14 Q Okay. And the second email is again an exchange
15 between Carol Gentry and Melissa Allen dated the same day,
16 May 17th of 2017, is it not?

17 A Yes.

18 Q Okay. And May 17th, 2017 is the same day that the
19 Christofoli house was shipped, correct?

20 A That's correct.

21 Q And within these emails, without disclosing the
22 specific exchange, it looks like that there's an issue
23 being raised from Bennett Transportation and R-Anell about
24 the plastic wrap on certain houses, right? There's an
25 issue that's coming up in these emails?

1 A It was brought up in about the middle of the emails,
2 but it all started by that they had a person that was
3 complaining that a house was too heavy on one side.

4 Q That's part of the complaint, right?

5 A Well, that's the start of the complaint.

6 Q But there's a complaint about one house being
7 overloaded, and there's a complaint also about the plastic
8 wrap on their houses, right?

9 A We never had a complaint until this email, that's
10 correct.

11 Q I'm just talking about this email.

12 A Yeah.

13 Q And Bennett Transportation, like you just mentioned,
14 is the same company that carried the Christofoli house
15 from R-Anell to HomeMax's lot?

16 A That is correct.

17 MR. HEWETT: Your Honor, we would move to admit this
18 email. Opposing Counsel has already agreed to the
19 authenticity. It's an email dated the exact same day that
20 the Christofoli house was shipped by a representative of a
21 company for the -- somebody from the company that actually
22 carried the Christofoli house and concerns the quality of
23 plastic wrapping being done on houses that they are
24 picking up the same week as the Christofoli was completed
25 and being shipped out. So again, the authenticity has

1 been agreed to. We believe it is relevant as
2 circumstantial evidence of --

3 THE COURT: Let me hear the objection first.

4 MR. MANGUM: We still object, Your Honor. You know,
5 if you look at this temporally, okay, 4876 is the
6 Christofoli house order. This one --

7 THE COURT: All right. You all approach.

8 (Whereupon, a bench conference was held in the
9 presence of the jury but out of the hearing of the
10 jury.)

11 THE COURT: The Plaintiff's objection to Defendant's
12 Exhibit 12 is sustained. It is not admitted. Mr. Hewett,
13 if you want to put something on the record at the next
14 break I'm happy to hear you.

15 MR. HEWETT: Thank you, Your Honor.

16 Q Now, we were talking -- I think you mentioned there
17 was this three part responsibility process during the
18 shipping and the wrap, right? You had the transport
19 company at R-Anell, and then you also had the dealer,
20 right?

21 A Yeah, except R-Anell, transportation and then dealer
22 last. In that order, yes.

23 Q And R-Anell doesn't have any information that HomeMax
24 disturbed plastic wrapping once the units were dropped off
25 and stationed at their sales lot, does it?

1 Hathcock what's premarked as Defendant's Exhibit 14.

2 Again, I don't believe that there's any objection to
3 authenticity, but I have a copy for the Court and opposing
4 Counsel as well.

5 MR. MANGUM: I don't have any objection to this, Your
6 Honor.

7 THE COURT: All right. So Defendant's 14 is admitted
8 without objection.

9 (Whereupon, Defendant's Exhibit number 14 was
10 admitted into evidence.)

11 Q All right. Mr. Hathcock, I don't know if you've seen
12 that document before, but let me take your attention to
13 the middle part of the document. Do you see an email that
14 you sent to Mr. Fautley?

15 A Yes.

16 Q I'm going to show it up on the screen, too, and as
17 best I can try and enlarge it for the members of the jury.
18 So it looks like that email was sent September 21st of
19 2017, right?

20 A Yes.

21 Q And in this case you were sending it to Mr. Fautley,
22 were you not?

23 A Yes.

24 Q And isn't this about the time that HomeMax was
25 wanting to bring in another, you know, mold assessment or

1 mold remediation company to take a look at the house?

2 A Yes. After we had -- after we had hired -- per what
3 they wanted to do to begin with, we had hired a mold
4 remediation company to come out. And we'd paid a large
5 sum of money to come out and do the mold remediation on
6 that.

7 Q And this other company that was being requested to
8 come out is located here in South Carolina. It's ABS
9 Environmental. Does that ring a bell?

10 A Are you talking about the one that Mr. Fautley got?

11 Q Yes, sir.

12 A Yes.

13 Q And it wasn't Mr. Fautley's idea to bring this other
14 company out. That was coming through the lawyer for the
15 Christofoli's, and the Christofoli's, they were demanding
16 it, right?

17 A I don't know that a hundred percent. But I was told
18 that, yes, by Mr. Fautley, yes.

19 Q Well, we can look at the top part of that document.
20 Mr. Fautley responded back to you --

21 A Yes.

22 Q -- right?

23 A Okay.

24 Q Saying, you know, the attorney --

25 A The attorney and customer insisted. But at that time

1 the terms and payments as COD and changed it from floor
2 plan to COD?

3 A No. Changed it from COD to floor plan. The original
4 order had COD on it.

5 Q Got you.

6 A When my lady called -- the transportation lady, which
7 she'll testify, she called up two to four weeks prior to
8 delivery and said this home is going to be delivered in
9 the year of 2017. You've agreed to take delivery on it.
10 And then he said and then you need a certified check for
11 this amount. He said no, I don't want a certified check.
12 I want to switch it to floor plan, and plus I'm not taking
13 the house --

14 Q -- all right. But you never personally talked to Mr.
15 Fautley about the Brown house, did you?

16 A No, I didn't. Just going off of what Ms. Allen
17 communicated.

18 Q Okay. And we know that the amount that you had --
19 R-Anell had on the quote was actually different than the
20 invoice price?

21 A Yeah, it was actually more than the invoice. The
22 invoice was less.

23 Q And since it was COD on the invoice, once R-Anell had
24 shipped that house to the building site and didn't get a
25 check at the time it was dropping it off, you could have

1 put in that house for trim out, sales tax, things like
2 that, right?

3 A Well, trim out, yes.

4 Q R-Anell still had some money it had to put in that
5 house for trim out, sales tax, things like that, right?

6 A Well, trim out, yes.

7 Q And some sales tax as well on the sale itself, right?

8 A I guess, yes. I don't know all that -- I don't know a
9 hundred percent on how all that works.

10 Q But we can agree, since the invoice is COD, the house
11 was brought to the site, there's no check. R-Anell could
12 have canceled the deal, taken the house back, sold it to
13 somebody else, couldn't it?

14 A No, sir. Because there was no COD. Melissa Allen at
15 that time said it was a floor plan. As I said earlier,
16 the floor -- when she went to the floor plan source. The
17 floor plan source said it went pending. In her mind,
18 pending meant it was going to get approved in the next
19 couple of days. That's where the mistake happened. She
20 should never have shipped it with it pending. But it was
21 floor plan supposed to pay for it, not COD. So there
22 wouldn't have been no cash exchanged at the site. We were
23 waiting on the floor plan. If you remember, I said floor
24 plan pays us 10 to 14 days after. Then when we weren't
25 paid 10 to 14 days after the controller brought it up, and

1 THE COURT: Any redirect?

2 MR. MANGUM: I don't know if you want to go forward
3 with this or not. It might be rather long.

4 THE COURT: Might it be lengthy?

5 MR. MANGUM: Yeah, because now I've got to go through
6 the whole counterclaim. So I don't want to hunger an
7 angry jury.

8 THE COURT: Well, I'm fine, but I hate to keep the
9 jurors. So let's go ahead and take a lunch break. Be
10 back in your jury room at two o'clock. Don't discuss the
11 case amongst yourselves or with anyone else. Don't do any
12 research about the case. Just go and have a good lunch
13 and be back at two o'clock.

14 (Whereupon, the jury was excused from open court for
15 a lunch break.)

16 THE COURT: Mr. Hathcock, you are not permitted to
17 discuss your testimony with anyone. Do you understand?

18 MR. HATHCOCK: Yes, ma'am.

19 THE COURT: Take a lunch break and see you at 2:00
20 o'clock.

21 MR. HEWETT: Your Honor, to the extent, do I need to
22 put anything on the record.

23 THE COURT: Yes, did you want to, yes.

24 MR. HEWETT: I did. Obviously Plaintiff, I am sorry,
25 Defendant has moved the emails between Melissa Allen,

1 Carol Gentry into evidence. They have already been
2 stipulated to, it's authenticity. We believe they are
3 relevant because these emails take place the exact same
4 day the Christofoli house was delivered, between the exact
5 same company that delivered the house. It mentions in the
6 email that a tape is being provided to the drivers instead
7 mechanical fasteners which Mr. Hathcock says is what is
8 used to fasten plastic to the houses. So we think it is
9 circumstantial evidence and is relevant as to R-Anell's
10 wrapping of its houses during that particular time period.
11 During this week we are receiving complaints from drivers
12 about the houses not being properly wrapped. So we
13 certainly believe that that email should go into evidence
14 as admissible but I also understand the Court's ruling.

15 THE COURT: And my ruling sustaining the Plaintiff's
16 objection is based on the fact, I don't believe it is
17 relevant to the ultimate issue in this case, the emails we
18 are discussing, Defendant's exhibit number 12. These
19 emails refer to another house, something that happened the
20 day before and there between someone at the shipping
21 company and Melissa Allen who is --

22 MR. HEWETT: -- transportation coordinator for
23 R-Anell.

24 THE COURT: Right. But regarding a different house,
25 although it appears as though these emails at some point

1 began discussing the Christofoli home, the emails
2 presented, what is actually in Defendant's exhibit 12, is
3 about another home and something that happened at a prior
4 date with a different home. And so therefore it is not
5 relevant to the ultimate issue in this case. All right,
6 see y'all at 2:00 o'clock.

7 (Whereupon, a lunch break was taken.)

8 THE COURT: Let's get Mr. Hathcock back on the stand.
9 And we will bring the jury in.

10 (Whereupon, the jury came into open court at
11 approximately 2:10 p.m.)

12 THE COURT: Y'all can have a seat. Welcome back,
13 Folks. I hope you enjoyed your lunch. We have been
14 through direct examination and cross-examination of Mr.
15 Hathcock. The Plaintiff now gets an opportunity to do a
16 redirect examination followed by a recross if we get there
17 or if Mr. Hewett finds it necessary. So that is where we
18 are. I call Mr. Mangum for redirect.

19 MR. MANGUM: Yes ma'am, we are ready.

20 REDIRECT EXAMINATION

21 By Mr. Mangum:

22 Q First I am going to address a couple of points you
23 talked with Mr. Hewett about. First is, there was a lot
24 of talk about inspection and wrapping. And you said that
25 you don't do the inspecting or wrapping but do you

1 supervise the people who do that?

2 A I don't supervise the people, no. My direct report
3 supervises the people.

4 Q Okay. But you supervise the people --

5 A -- yes, sir.

6 Q And in fact, is it true that you supervise
7 essentially everyone in the plant?

8 A Yes.

9 Q Do you understand the job responsibilities in those
10 wrappers?

11 A Absolutely.

12 Q And inspectors as well?

13 A Absolutely.

14 Q So, are you confident that they have performed those
15 tasks on a regular basis?

16 A Yes, sir.

17 Q And along that same topic of the wrap, I kind of
18 wonder if the jury has got it correct, a mental impression
19 on it. Is that wrap, is it all encompassing on the houses
20 or only on a specific part?

21 A Well, you have got and as I have tried to explain, I
22 know it is kind of hard for anybody to know our industry.
23 There are two different wraps there. You have got one on
24 the top which is -- all of it is important but that is the
25 most important one. That is how a house, you know, if it

1 rains down it can get into the top. That's the part that
2 will really damage houses. It ain't going to blow in the
3 side plastic. So you have got the top plastic which is a
4 thicker mil plastic and then you have got the side
5 plastic.

6 Q Okay. And when you, I say you, but when R-Anell puts
7 that plastic wrap on, is that meant to be a permanent
8 plastic?

9 A That's a temporary plastic.

10 Q And when you say, temporary, what do you mean?

11 A Until it gets -- there is no set date on it but we
12 want the house to get, when it comes off line, that is why
13 we really push three to five days, get off the production
14 line for the builder to pick it up and then him get it on
15 his site as quick as possible. I can't sit here and tell
16 you, I do know it has got UV rays on it, if it sits out in
17 the sun a certain amount of time it could deteriorate and
18 crumble. I can't tell you if that is four months, six
19 months or one month.

20 Q Do you think that is, is that industry standard?

21 A Yes.

22 Q Okay. I am going to show you what has been
23 previously marked and admitted as Defense exhibit 14 and
24 it is this email that, between you and Dave Fautley.

25 MR. HEWETT: What exhibit is that?

1 But, yes, he still has the foundations, you know, all the
2 grading, all the clearing grading, the electrical, the
3 HVAC. If there is any porches, a lot of customers are,
4 builders do garages. There is a lot of ad-on's that could
5 be done at the site. And, again, some builders will let
6 the customers do some of that work.

7 Q And so it is true then, in Christofoli as well as in
8 the general case, that those would have been the
9 responsibility of someone other than R-Anell?

10 A Yes.

11 Q Okay. Let me show you Plaintiff's exhibit 14. I
12 have got copies of it but this is actually Defense exhibit
13 5 as well. It is already admitted.

14 MADAM COURT REPORTER: Are you still going to use 14
15 then?

16 MR. MANGUM: No, you can use the Exhibit 5 number on
17 it.

18 THE COURT: Just to be clear for the record, you do
19 not plan to offer this as Plaintiff's 14?

20 MR. MANGUM: Well, you know, let's go ahead and put
21 it in since we have stipulated to it. We will go ahead
22 and put it in as Plaintiff's exhibit 14 as well.

23 MR. HEWETT: No objection, Your Honor.

24 THE COURT: Okay. All right, so Plaintiff's 14 is
25 admitted without objection.

1 (Whereupon, Plaintiff's Exhibit 14 was admitted into
2 evidence.)

3 Q Phillip, tell me what you have got in front of you
4 there?

5 A We have got the delivery inspection form for 40876A,
6 the house, the floor that got wet, the Christofoli house.

7 Q Okay. And this essentially is the same form that we
8 looked at earlier on the Brown home?

9 A It is the exact same form. Yes, it is.

10 Q And I know you have already done this once. But
11 since we are talking about a different house, why don't
12 you go ahead and read those two paragraphs again to the
13 jury.

14 A Okay. On the Christofoli house it says, please note,
15 marriage line and over the roof plastic must be checked at
16 the time of delivery or pickup. R-Anell homes assumes no
17 responsibility or liability for any damage due to water
18 leaks, through shipping plastic that are not communicated
19 at the time of delivery or pickup. Please thoroughly
20 inspect this unit upon delivery for any exterior or
21 interior transit, damages and list them alone. R-Anell
22 homes will not be held reasonable for any transit damage
23 that is not reported on this form.

24 Q And let me ask you, are there signatures here on the
25 signature line for dealer signature and driver signature?

1 volume dealer agreement between HomeMax and R-Anell
2 necessarily bind R-Anell to produce homes or bind HomeMax
3 to purchase homes?

4 A No.

5 Q So as we talked about earlier. What are the
6 documents that constitute the agreement between R-Anell
7 and HomeMax on a given home?

8 A The actual signed order.

9 Q Okay. I think that is all I have got for you. Just
10 one more. Let me ask you, on the wrapping for
11 Christofoli, you know, can you access the doors to the
12 home to get in them to inspect them once they are wrapped?

13 A Yes.

14 Q Okay.

15 A You can go in through the entry doors, anywhere from
16 two to three doors on a house. At least one in each
17 house, but, yes, you can enter. And in this home you
18 could too.

19 Q And, you know, let me ask you. Do you recall in sum
20 how much money was spent remediating the Christofoli home
21 on R-Anell's end?

22 A I think it was a little more than \$44 thousand. And
23 that's, you know, we had a professional company come out
24 there for mold remediation. We didn't know nothing about
25 it, they are the experts. So we did what they said to do.

1 A Not under warranty for water damage, it was not
2 caused by R-Anell.

3 Q You and I might not agree on what the warranty
4 applies to, but nevertheless, there was a warranty on that
5 house, right?

6 A Yes. The warranty, let me make sure you understand.
7 The warranty applies from the day the customer moves in
8 until one year from that.

9 Q R-Anell doesn't have anything in writing where
10 HomeMax agreed to reimburse R-Anell or pay R-Anell back
11 for any money that R-Anell spent on the Christofoli house,
12 right?

13 A No.

14 Q And Mr. Fautley never told you that HomeMax would be
15 responsible for those costs that R-Anell was spending on
16 the Christofoli house, right?

17 A No.

18 Q And isn't it true, that R-Anell was actually
19 selecting contractors and paying those invoices without
20 clearing any of that with Mr. Fautley?

21 A I think it was discussed and I can't tell you but
22 when the initial conversation come about that, for me and
23 Mr. Fautley and Bob Hasenauer, that the date that we found
24 out that house was wet and we are going to take care of
25 the customer and then we will figure out the rest later.

1 At that time I had no idea about what happened. All we
2 were trying to do is get the customer under control and
3 get them at ease. So that is basically, I didn't say I
4 was going to pay. I said we would do whatever we need to
5 do to get the customer took care of.

6 Q I got you. But before incurring these expenses for
7 whatever the contract was going to charge you, you didn't
8 clear that with HomeMax, did you?

9 A No, nothing other than he wanted us to get it done as
10 soon as we could and do it the right way. He does know
11 that and he asked for that to be done. No, I didn't get
12 any invoice approved by Dave on this, no.

13 Q In September of 2017, when you sent an email that
14 HomeMax needs to, one-hundred percent responsible for the
15 home, the Christofoli's hadn't moved into that house, had
16 they?

17 A No.

18 Q Closed on it, right?

19 A No.

20 Q They never did --

21 A -- not that I know of.

22 Q And they never did move in?

23 A I did not know that.

24 Q Well, you know that now?

25 A Well, I knew it at, when we had, I guess at

1 received that signed --

2 A -- absolutely correct, we would never build a house
3 without having the builder confirm it is okay to build.

4 Q Do you ever have a builder sign for a specific house,
5 a contract that looks different from that quote?

6 A No. I mean, this is pretty much what we have got to
7 okay to build the house.

8 Q Let me ask you. While you have been a salesman for
9 R-Anell, have you ever sold a modular home directly to the
10 client?

11 A Not since I have been with R-Anell.

12 Q On a typical deal, once you get an order back like on
13 that Brown order you are holding there, what happens next
14 in the manufacturing process?

15 A Once we get the signed off quote we figure out how we
16 are going to get paid for the house. If there is anything
17 that needs to be cleaned up we will go through and make
18 sure we have got everything we have, our I's dotted, T's
19 crossed as far as the order to make sure the colors and
20 all of that is in place. Once I get it I will give it to
21 my sales manager, he will review the house to make sure
22 everything is in order. From there he will give the order
23 to Melissa, Melissa Allen so she can release the copies
24 for it to go to the plant to be built. From there we will
25 submit for stamped plans, it goes to our corporate office

1 for stamped plans. And then once they get done with the
2 stamped plans, we will send those to the builder. And in
3 this case we did, we sent them the stamped plans because
4 they bought the house, of course. And then from there our
5 productions engineer will draw the house. Once it is
6 timely filled then they will build the house.

7 Q And from your perspective, how does a house go, you
8 weren't in here but Phillip Hathcock talked about a house
9 going on-line and off-line. What is the scheduling
10 process for putting a house on-line?

11 A When the house is released, we schedule the houses as
12 the release. They are scheduled months in advance.
13 Before the house goes on-line we always make sure that the
14 builder is going to be ready to take the house because
15 that is one our department's, to make sure they are ready
16 to go with the house or ready for the house. Once we
17 confirm that my job is to, you know, make sure all of that
18 is in order. And then once that is we will continue to
19 progress with the house and then I believe Melissa Allen,
20 she will make sure we have got our payment terms in order.
21 And then from there the house will be built.

22 Q So you said you make sure the builder is ready. How
23 do you do that?

24 A Usually a phone call.

25 Q And who would make that phone call?

1 A It would be me or Melissa possibly.

2 Q About what, and what would be the timeline as far as
3 making that phone call?

4 A We usually want to make sure within a month because
5 we don't want to have any hiccups to make sure the house
6 is ready to be, you know, built and we are not going to
7 have issues.

8 Q Sure, okay. And do you recall making that phone call
9 to either Dave Fautley or someone at HomeMax in this Brown
10 case?

11 A Yes. With HomeMax we always had to make sure because
12 they were, a lot of times, not ready for the house, the
13 other houses we had built for them. So it was always an
14 issue. So I know for a fact my boss required me to make
15 sure I was calling these guys to make sure they were ready
16 for the house.

17 Q Can you estimate how many times they were not ready
18 for the house on your scheduling?

19 A A few but I can't guarantee it exactly.

20 Q To your knowledge, has R-Anell ever paid for that
21 Brown house that was ordered on that form you have got in
22 your hand?

23 A Say that, R-Anell?

24 Q Was R-Anell ever paid for the Brown house that you
25 have got an order for in your hand?

1 A No sir, we were not.

2 Q And did you have any conversations with either Dave
3 Fautley or someone else at HomeMax about R-Anell getting
4 paid for the Brown house?

5 A Multiple times. I can't say how many times I have
6 talked to Dave. I cannot say how many times I have talked
7 to Terry. I know I talked to them multiple times about
8 getting paid for this house. It got shipped and obviously
9 we didn't get paid for it.

10 Q And you said, Terry, who is that?

11 A Terry Patoka.

12 Q Do you know what his role was at HomeMax?

13 A He came in after, he was a salesperson at HomeMax and
14 he was handling the Brown deal after he came to work
15 there.

16 Q Okay. So let me ask you this. You said you talked
17 to HomeMax about getting paid. Was it before, if you
18 remember, was it before the Brown house was delivered,
19 after it was delivered or both?

20 A Myself was after it was delivered.

21 Q And do you remember about what month or year that
22 was?

23 A It has been so long but it was around that 2000,
24 middle of 2018, somewhere in that range. But, again, it
25 has been so long I couldn't give you an exact time.

1 Q Sure. So needless to say, in all of your
2 conversations with HomeMax, whether it was, you know,
3 whatever number, did they ever, I say they, did HomeMax or
4 anyone at HomeMax ever indicate to you that they did not
5 plan to pay the money for the Brown house?

6 A No. Not until after, it was at the very end and that
7 is when this all came about, that we figured out they
8 weren't going to pay for the house.

9 Q And has anyone, whether it was David Fautley or
10 anyone else, has anyone ever explained to you why HomeMax
11 has not paid for the Brown house?

12 A No.

13 Q Okay. Do you have any idea why they haven't paid for
14 the Brown house?

15 A I am assuming it is because we, we had multiple
16 issues with, just their building practices and not keeping
17 up with things the way they should. And we actually ended
18 up deciding to stop doing business with them because of
19 the issues we were having. And I am assuming that is the
20 main reason.

21 Q To your knowledge, was there any complaint about the
22 Brown house whatsoever that would have justified HomeMax
23 not paying for it?

24 A No, sir.

25 Q I want to turn quickly and ask you about, we are

1 or someone else at R-Anell, would they have authorized
2 that delivery?

3 A Yes.

4 Q I have got no further questions for you, Mr. Cosby.

5 THE COURT: Mr. Hewett?

6 CROSS-EXAMINATION

7 By Mr. Hewett:

8 Q How are you doing, Mr. Cosby?

9 A I'm good.

10 Q To speak on what you just said last. I think you
11 said the Christofoli house got extremely wet while sitting
12 on the sales lot?

13 A It got wet, yes.

14 Q You don't have any personal knowledge of when the
15 house got wet, do you?

16 A No, sir.

17 Q You were the salesman on the Christofoli house, I
18 think I heard that?

19 A Yes.

20 Q And after all that was going on at the Christofoli
21 and water damage, you never made a trip down to look at
22 the house or meet with the Christofoli's about any of
23 that, did you?

24 A No, it is not my job to travel down there and look at
25 the house once the dealer takes delivery of it.

1 Q Well, you had traveled down before to make a pitch on
2 the sales of the Christofoli house with Mr. and Mrs.
3 Christofoli, right?

4 A Yes, I met with the Christofoli's, yes.

5 Q Even though you are the salesman you didn't think was
6 necessary for you to follow back up to, about everything
7 that was going on?

8 A No, sir.

9 Q Once these houses are ordered doesn't R-Anell usually
10 have a backlog, about four to six months from the time
11 they are ordered until the time they get built?

12 A Yes.

13 Q And it was R-Anell's goal to deliver the house
14 directly from the factory to the building site, right?

15 A Yes.

16 Q And sometimes, even though he might take four to six
17 months for R-Anell to build a house, sometimes they can
18 only give, the builder may get a couple of weeks or so
19 heads up, the house is going to be ready and shipped out?

20 A We always give them enough notice to know the house
21 is coming so they have the choice to take it to their
22 sales center, to the customer's lot. Usually we like to
23 take it to the customer's lot and have it set immediately
24 but if the builder is not ready that's their choice.

25 Q And typically only a couple of weeks that you

1 actually may give the builder some advanced notice?

2 A Usually a month, usually a month is what I would like
3 to say it was. But I don't have an exact date, I can't
4 say an exact date.

5 Q When I met you before I had asked you some questions
6 on the record what y'all's factory is about, your
7 involvement and knowledge of Christofoli and Brown house,
8 right?

9 A Yes, sir.

10 Q And isn't it true that you put under oath and you
11 told me that usually you only give a couple of weeks
12 notice to the builder?

13 A I can't say that I did or didn't. I don't remember,
14 that has been a year ago, I don't know the exact timeline
15 or dates. I would have to look at my deposition to see
16 exactly what I said.

17 Q I can show it to you but would you disagree that it
18 might be a couple of weeks and sometimes it might be a
19 month, somewhere in that?

20 A I can't say it is always a month, it may be a few
21 weeks, it could be two months. I mean, we usually give
22 the builder ample notice. I just don't know the exact
23 time or date, we don't note that in any way.

24 Q And in this case, on Christofoli, you don't know the
25 exact date that you gave heads up to Mr. Fautley, that the

1 units were going to be done and ready to be shipped out,
2 right?

3 A Not an exact date, no.

4 Q And wasn't it in this case, it was R-Anell that was
5 asking HomeMax to take shipment of the units even though
6 it knew that the Christofoli building site wasn't ready?

7 A We give, every single -- it was always, I am not
8 ready for it, I am not ready for it, but we always try to
9 make sure they are ready for it. And once it is built our
10 job is to make sure that house is delivered, that is part
11 of the requirement of R-Anell and the builders know that.
12 So it is their decision to take it to the sales center.
13 But, yes, that is exactly what we did.

14 Q Well, my question is, on the Christofoli house, isn't
15 it true that R-Anell knew that the building site wasn't
16 ready when it contacted HomeMax and let them know you want
17 to ship out the units?

18 A I didn't know the reason, if the homesite was ready.
19 I just know they couldn't take it to the sites so they
20 made the decision that, HomeMax made the decision to bring
21 it to the sales center.

22 Q But you knew the site wasn't ready, right?

23 A I don't know that the site wasn't ready or not. I
24 just know they made the decision to take it to the sales
25 center. But that is usually the reason.

1 Q You talked about how that on every house that R-Anell
2 sold HomeMax that the site was never ready. You said
3 something like that, right?

4 A Yes, sir.

5 Q Isn't it true that R-Anell and HomeMax only had about
6 four or five houses that it did business on all together?

7 A That's correct.

8 Q All right.

9 MR. HEWETT: If I can have permission from the Court
10 to unseal the original transcript of Mr. Cosby.

11 THE COURT: Yes, sir.

12 Q Since it has been a couple of years or at least since
13 you and I talked on the record, I would like to show you
14 your responses to some of these questions I mentioned
15 about you knew when the building site was ready or not. I
16 am going to read it, I want to make sure I am reading it
17 right and you can tell the jury I read it right. Let me
18 get you to the right page. All right.

19 The question was, Did you ever make any
20 representation to Mr. Fautley to the extent that you
21 wanted this house to go ahead and be transported even
22 though the Christofoli site was not ready to receive it.

23 And you responded, I am sure I did, yes.

24 Right, did I read that correct?

25 A Yes, we wanted the house to ship. That was the

1 requirement we set forth, if we ever released it or put it
2 on-line, yes.

3 Q And the reason for that was, there is some budgeting
4 or accounting purposes of R-Anell, right, on when the
5 house shipped?

6 A That is just my job requirement to make sure that
7 house, before we put it on-line to make sure it is ready
8 to be built and shipped.

9 Q Well, when the house shipped made a difference in
10 terms of R-Anell's budget, did it not?

11 A Yes, that is how R-Anell is set up.

12 Q Now, there wasn't any floor plan approval that you
13 are aware of on the Brown house before R-Anell shipped it
14 out, right?

15 A No. The Brown house was COD at the time of release
16 from HomeMax.

17 Q Maybe at some point it was suppose to be the floor
18 plan but we know a COD, like you just said, when it went
19 out, right?

20 A The Brown house, yes. We are not talking about the
21 Christofoli now, right?

22 Q No. The Brown house?

23 A The Brown house.

24 Q And I think you didn't even realize the Brown house
25 hadn't been paid for until months after it had shipped,

1 right?

2 A That's correct.

3 Q Isn't it true that the only thing Mr. Fautley ever
4 talked to you about in terms of payment on the Brown house
5 was that y'all would get it worked out?

6 A I know when it was released it was COD and then from
7 there, there is some, I don't know the exact conversations
8 between him and Melissa Allen, that is something she will
9 have to discuss. But I know at some point it changed to a
10 floor plan source after, or right before it was built.
11 And then from there I can't answer the question any
12 different. I don't know.

13 Q Well, my question is, any conversations you had with
14 Mr. Fautley about getting paid on the Brown house? Isn't
15 it true that the only thing he ever said directly to you
16 was that y'all would get it worked out?

17 A No. Once the house was shipped and I didn't realize
18 it was not paid for, I know I called Dave and I talked to
19 Terry Patoka multiple times about getting paid for that
20 Brown house. I don't remember ever, we will work it out.

21 Q Did Mr. Fautley ever send you a letter, an email, a
22 text, anything like that saying that HomeMax was going to
23 pay for the Brown house?

24 A Just conversation. I don't remember an email or
25 text.

1 Q Nothing in writing, right?

2 A No.

3 Q And as far as you know, those other four or five
4 houses, I don't know if you were the salesman?

5 A I was.

6 Q HomeMax never, in any one of those houses, ever
7 contacted R-Anell when it is putting in the order and
8 saying, hey, this is going to be a COD transaction, pull
9 out a check when the house is dropped off. Mr. Fautley or
10 HomeMax never said anything in that sort to you?

11 A We have never had a COD house with HomeMax other than
12 that one.

13 Q Thank you, Mr. Cosby, I don't have any other
14 questions.

15 THE COURT: Any redirect.

16 MR. MANGUM: I have got a couple, it will be short.

17 THE COURT: Yes, sir.

18 REDIRECT EXAMINATION

19 By Mr. Mangum:

20 Q Now, Mr. Cosby, you said with Mr. Hewett just a
21 second ago that you didn't travel to inspect this house
22 but had you ever traveled to inspect a house?

23 A Not on a dealer's lot after they had taken delivery.
24 I have looked at houses after they have been set up at the
25 customer's site but that is a whole different --

1 THE COURT: You are free to go. Thank you.

2 (Whereupon, Court's Exhibit 2 was marked for
3 identification only.)

4 THE COURT: Who is your next witness.

5 MR. MANGUM: I think it might be 30 to 45 minutes
6 endeavor. I don't know if you want to break or not.

7 THE COURT: We will take a fifteen minute break.

8 Ladies and gentlemen, please return to your jury room,
9 don't discuss the case amongst yourselves.

10 (Whereupon, the jury was excused from open court for
11 a break.)

12 THE COURT: We will take fifteen minutes.

13 (Whereupon, a short break was taken.)

14 THE COURT: Let's have our jury.

15 (Whereupon, the jury came into open court at
16 approximately 3:30 p.m.)

17 THE COURT: All right. The Plaintiff can call their
18 next witness.

19 MR. MANGUM: The Plaintiff calls Albert Gurner to the
20 stand.

21 ALBERT GURNER, being
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 By Mr. Mangum:

25 Q Mr. Gurner, where are you from?

1 A Salisbury, North Carolina.

2 Q Is that where you live right now?

3 A Yes, sir.

4 Q Do you know why you are in court today?

5 A Yes, sir.

6 Q What is that?

7 A A lawsuit that is going on between HomeMax and
8 R-Anell concerning a non-payment of a house.

9 Q Are you connected with either of those entities?

10 A R-Anell.

11 Q What is your connection with R-Anell?

12 A I am the sales manager there.

13 Q What are your day-to-day job responsibilities as a
14 salesman?

15 A Order intake, product development, marketing,
16 delivery, payment, schedule shipping.

17 Q And I think a lot of those are going to have some
18 relevance here but tell me what you do on the payment end?

19 A There are a few different ways our customers pay for
20 houses. Some are floor plan, floor plan like a 21st
21 Mortgage Financial Institution or a Triad Institution or a
22 Transamerica Institution which they don't do that anymore.
23 And a lot of them are COD.

24 Q We have heard that COD term several times in here but
25 you haven't been in here, what does that mean to you?

1 A Certified funds on delivery.

2 Q And what does that mean?

3 A That means when a house is delivered to a job site or
4 a builder's lot, that the driver receives a certified
5 check before the driver's unhook.

6 Q And I think you said you had some scheduling
7 responsibilities too in your job, is that correct?

8 A Not actual scheduling responsibilities but I have a
9 delivery transportation woman that drives deliveries. And
10 then I have got four or five, six sales associates that, I
11 am just kind of there to make sure they are getting their
12 houses scheduled for delivery.

13 Q When you say she drives it. Does she actually drive
14 the houses specifically to lots or you just --

15 A -- no, she is just a, like a transportation
16 coordinator. She does all the invoicing, she works with
17 the permit offices and the drivers to make sure that they
18 get all the information they need to take up houses.

19 Q So in total how many employees do you oversee in your
20 role as sales manager?

21 A Probably seven, seven or eight at the most.

22 Q And could you name them for us?

23 A I have got Jeremy Cosby, Craig Thompson, Steven
24 Gillespie, those are my senior account managers. And I
25 have got Weston Rogers, Jake Richards and I am missing

1 somebody, Robert Williams. They are my junior account
2 managers. And then I oversee Melissa Allen, she is the
3 transportation coordinator; and I have got an off site
4 sales rep up in Danville, Virginia, Debbie Watkins.

5 Q Okay. And I am going to go back to payment now.
6 Thank you for that. How exactly does R-Anell secure
7 payment when it is listed as COD?

8 A Typically when it is COD, it is a certified check on
9 delivery. So when that house packet is taken with the
10 driver to deliver the house it says certified funds on
11 delivery and the driver is suppose to get the funds before
12 he unhooks the house.

13 Q Okay. And on the other hand, if a house is floor
14 planned, how does R-Anell secure payment on that?

15 A The floor plan sources and they all work very
16 similar, they all take ten to fourteen days to pay. And
17 sometimes they work off a purchase order approval and
18 sometimes, depending on the floor plan source, they just
19 want the customer name and the house invoice amount and
20 they will reach out to the builder that it is for just to
21 confirm that, yes, it is okay to floor that house.

22 Q Okay. And, you know, you kind of mentioned the
23 builder or the dealer there. Who makes the ultimate
24 decision whether it is R-Anell or the builder or dealer to
25 choose whether the house is floor planned or COD payment?

1 A It is always the builder's responsibility. You know,
2 we have got, I don't know, 45 or 50 different retailers.
3 We can't tell them how to pay, they tell us how they
4 intend to pay.

5 Q I am going to show you an exhibit quickly. This is
6 already admitted as Plaintiff's exhibit 4. Would you just
7 take a quick look at this and tell me what it is?

8 A It is a house invoice.

9 Q Okay. And who is the customer listed on that?

10 A The customer is HomeMax in Lexington, South Carolina.

11 Q What is the ship date on that?

12 A 12/14/17. No, that is the manufactured date. I
13 can't, I don't see the ship date off the top of my head.

14 Q We will move on from it. I want to turn to this
15 order specifically. Are you aware of what occurred with
16 what we have been calling here, the Brown house?

17 A Yes, I am.

18 Q And could you explain to the jury what you know about
19 that situation?

20 A What is very clear in my memory is that approximately
21 four to five weeks before the Brown house went on-line it
22 was specifically asked of Jeremy Cosby, the contact, the
23 owner of HomeMax, to make sure that he would be ready for
24 the house, delivery in mid to late December because now
25 was the time to bump it back in the schedule if he wasn't

1 going to be able to take it. And he said that, no, I am
2 good, I am going to be ready. And then that did not
3 happen. You know, the house delivery got bumped back from
4 December to January to February to March.

5 Q And it is interesting you say that. Did you ever
6 have a conversation with anyone at HomeMax, whether it was
7 Dave Fautley or someone else in that time period from
8 December to March?

9 A The only time I had a conversation with, I think,
10 Dave Fautley, maybe Jay Collins or Terry Patoka was in
11 February when a decision was made by R-Anell to
12 discontinue our business relationship with HomeMax and we
13 met in person. But I had never talked to them on the
14 phone because that is not really one of my
15 responsibilities, that is more the salesman responsibility
16 to go through all of those things.

17 Q So when you went and had that conversation, what was
18 said to Dave or Terry Patoka or whoever it was in the
19 room?

20 A You know, it was little pins and needles because, you
21 know, telling someone you want to discontinue a business
22 relationship isn't easy. But it went very well. I told
23 him that, you know, we are really just not a good business
24 fit, you know. Houses are more complex than what you are
25 used to on the manufacturing and the HUD side. You know,

1 houses are harder to finish on the back-end than they are,
2 you know, than you are used to with the manufactured on
3 the HUD side. And we thought it in our best interest if
4 we discontinued the relationship, no hard feelings, best
5 wishes, there was no confrontation, there was no, no back
6 and forth banter or argumentation for anything. And then
7 when I got back in the office I think I followed with a
8 hard copy letter within a couple of days just to make sure
9 it was on paper.

10 Q And you say you discontinued the business
11 relationship that day. Did the Brown house ever come up?

12 A Yeah, I believe it did because, you know, we knew we
13 are kind of, you know, we were going to cancel the guy
14 that has a house sitting in the yard. So it is kind of
15 touching but we said, house is already ordered, it is
16 already built, it has been in the yard since the middle of
17 December. So, you know, we would discontinue the
18 relationship but we in no way intended to have the
19 opportunity to abandon the Brown house. It was a
20 commitment and an obligation that we had entered into and
21 he had entered into, you know, before we came to the
22 agreement to discontinue the relationship.

23 Q And like you said, that house was already complete,
24 is that right?

25 A It was built in December.

1 Q So nonetheless, whether it was Dave Fautley or anyone
2 else that was in that meeting, no one at HomeMax ever came
3 to you that they did not want the Brown house at that
4 time?

5 A No, not at all.

6 Q In fact they still wanted delivery on the Brown
7 house, to you knowledge, is that right?

8 A Well, we started talking about deliveries, you know,
9 in December when it came off line and they were working
10 through some on-site issues and, you know, there was no
11 abandonment of that house obligation.

12 Q Sure. If you look at the top it says finance
13 through, COD, certified check. We have already talked
14 about this generally. But specifically is it your
15 understanding that this was going to be a COD payment?

16 A Yes. When the house was originally ordered, it was
17 ordered as a COD. It came off line as a COD. And then
18 when we started talking about shipments it was still a COD
19 but then when we really started narrowing down, you know,
20 in January, maybe in February or even March it was
21 requested to change it from a COD to a floor, one of his
22 couple of floor plans institutions.

23 Q Was there any reason ever given for that?

24 A If there was it was not to me.

25 Q Okay.

1 A Other than he didn't want to pay COD, you know.

2 Q Sure.

3 A Obviously.

4 Q So what happened with the floor planning financing in
5 this case, if you know?

6 A I am intimately familiar with it. Obviously this
7 being the last house for HomeMax, you know, it was
8 important that we had our payment secured. She had
9 secured, at the owner's, HomeMax, request, I believe he
10 requested with this floor plan first and then if that
11 didn't work then go to this one. And I won't say which
12 one is which. I guess it doesn't matter. The first one
13 would not, said we don't floor anything model homes, we
14 don't floor retail sales anymore or something like that.
15 And then the second one, it went pending at the, I am
16 going to say 21st Mortgage but I think that is who it was
17 with. So it went pending and this was, I don't know,
18 maybe a week prior to the house physically shipping in
19 March. So and I would go back into my transportation
20 coordinator's office every day or every other day
21 following up to find out, do we have this approval, do we
22 have this approval, do we have this approval. And I knew
23 the house was shipped only within a couple of days. I
24 went in there, she said, yes, we have got the approval.
25 And I said, halleluiah, let it rip. And then, as I said,

1 floor planning companies take ten to fourteen days to get
2 paid. So when I look at it in AR that I got, you know, I
3 get AR's at least once a month, I see this house that has
4 not been paid. And I ran into her office and said, hey,
5 find out why we are not getting paid. And what my
6 coordinator had done, it was purely by accident. There
7 was a house that HomeMax had floored prior, just a few
8 months before that had a similar serial number that, when
9 she seen that approval she just thought it was, she
10 thought it was the approval for that house. And she let
11 it go without a full approval from the floor plan
12 institution.

13 Q And you used one term, I just want to make sure the
14 jury understands, AR, what is an AR?

15 A Accounts receivable.

16 Q So essentially that would tell you whether or not
17 R-Anell has been paid on a given house?

18 A That's right.

19 Q Did R-Anell ever expect, whatsoever, that HomeMax
20 would not pay for the Brown home?

21 A Absolutely not.

22 Q Was there any understanding that this was a
23 gratuitous gift?

24 A No.

25 Q Do you have any idea why HomeMax never paid for the

1 Brown home?

2 A I can only speculate. You know, I think, you know,
3 it may have something to do with the other house that is
4 in this period and part of the reason because we
5 discontinued the business relationship with them.

6 Q So needless to say, no one from HomeMax, whether it
7 was Mr. Fautley or somebody else, none ever explained to
8 you why R-Anell was not paid for that house?

9 A I only heard through my sales rep and someone of the
10 stories that we weren't getting paid.

11 Q To your knowledge, was there anything wrong with the
12 Brown home whatsoever as far as condition or anything else
13 that would have caused HomeMax to not pay for it?

14 A Absolutely not. We delivered the house, we set and
15 trimmed the house which is an extension far beyond the
16 delivery of the house. So we, in full cooperation, were
17 executing what we sold on that particular house.

18 Q That is all the questions I have for you.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 By Mr. Hewett:

22 Q Good afternoon, Mr. Gurner.

23 A Yes, sir.

24 Q Now, you didn't have any involvement with the other
25 house you mentioned, the Christofoli house, right?

1 A No sir, not at all.

2 Q And you noted that the Brown, whether or not house
3 was delivered directly from the factory of R-Anell to the
4 homeowner's building site, right?

5 A At the builder's request, yes sir.

6 Q And you mentioned you are the sales manager?

7 A I am.

8 Q Okay. And one of your responsibilities is to make
9 sure that orders on houses are clean, right?

10 A Yes.

11 Q To make sure also that you knew how R-Anell was going
12 to get paid on that house, that was one of your
13 responsibilities as well?

14 A When you say, clean, can you define that for me?

15 Q You used that terminology before when I have asked
16 you what your responsibilities are as a sales manager at
17 R-Anell?

18 A Clean being not physically clean but ordering the
19 house and making sure everything makes sense and release
20 it very clean.

21 Q I think we are on the same page.

22 A Okay.

23 Q And you also, as a sales manager, needed to make sure
24 you knew how the house was going to get paid for before it
25 got shipped, right?

1 A Yes.

2 Q And Melissa Allen was one of your direct reports, she
3 was an employee that worked for you?

4 A Yes, sir.

5 Q And she was also responsible to make sure the houses
6 were floor planned before they got shipped out, right?

7 A Yes, sir.

8 Q And when you are talking about a floor plan
9 agreement, that is more or less where R-Anell will get
10 paid up front on a house from a lender and then later on
11 the retailer like HomeMax would pay back that floor plan,
12 right?

13 A A floor plan is an approved source that the builder
14 has, the builder is approved and he has the credit line
15 with the financial institution. When we floor a house
16 with that floor plan institution we are first in line to
17 get paid within ten to fourteen days on the invoice that
18 we submit.

19 Q Right. So R-Anell will get paid up front and then
20 HomeMax may pay that floor plan lender back?

21 A That's correct.

22 Q And you mentioned R-Anell can also get paid through a
23 COD?

24 A Yes.

25 Q Certified check on delivery?

1 A Yes.

2 Q And if that is the case the transport driver should
3 pick up that check at the time that they are delivering
4 the house to the site?

5 A That's correct.

6 Q And you mentioned that at some point the business
7 relationship between R-Anell and HomeMax was terminated?

8 A Yes.

9 Q And I believe you participated in that decision to
10 terminate the business, right?

11 A I did.

12 Q And you signed the termination letter that was sent
13 to Mr. Fautley in February of 2018?

14 A February, yes.

15 Q And the Brown house had not yet been delivered to the
16 building site at the time that R-Anell terminated its
17 business relationship with HomeMax, right?

18 A No, it was built and sitting in the yard in December
19 and shipped in March.

20 Q I think you mentioned that there may have been some
21 conversations about the Brown house being floor planned at
22 some point, maybe through 21st Century?

23 A I think it went pending at 21st Mortgage.

24 Q And it never changed from pending to confirmed or
25 anything like that?

1 A I don't believe, she got the serial number mixed up
2 with the house that previously shipped for HomeMax.

3 Q And R-Anell never reached back out to the floor plan
4 lender that was pending with to confirm one way or the
5 other, whether if you go ahead and process and get paid on
6 the house?

7 A I think she just keeps looking to see if it goes from
8 pending statute to approved. And at some point, if we get
9 close to a delivery date I don't know if she can email or,
10 I am not sure what her procedure is but sometimes we can
11 find out if a dealer is over line or there is a reason why
12 they are not approving something.

13 Q Okay. And in this case R-Anell never reached back
14 out?

15 A I don't know that for sure, I didn't. I am not sure
16 if Melissa Allen had done that or not.

17 Q Well, we know in this case with the Brown house, the
18 house got released by the transport driver to the building
19 site without a certified check being handed over to the
20 driver, right?

21 A That is because we were under the assumption that it
22 was floor with 21st Mortgage. I told you she had made a
23 mistake and identified it as a different house that was
24 previously shipped but we weren't looking for a COD check
25 at that point. We were waiting for the ten to fourteen

1 day payment but I didn't catch it until I seen an AR maybe
2 three or four week after the house shipped.

3 Q And I think you said that was a terrible oversight by
4 Ms. Allen?

5 A Yes, sir.

6 Q Other than the quote that we talked about on the
7 Brown house, have you seen any other separate document
8 that would cover the Brown house transaction between
9 R-Anell and HomeMax?

10 A I wouldn't be looking for anything in addition to a
11 signed quote, that is what we always receive. And that is
12 what we received on every house that he has ever bought
13 from us.

14 Q You talked about a conversation that took place with
15 Mr. Fautley in person about the decision for R-Anell to
16 terminate business, right?

17 A Yes.

18 Q And did you also say, is it your testimony that there
19 was in that same conversation discussion about the Brown
20 house?

21 A I am not one-hundred percent sure but I am sure that
22 we would have talked about the house that was sitting in
23 my yard and that we were intending to honor the house that
24 has already been built. I can't put my -- I can't tell
25 you with a definitive yes but I am very sure.

1 Q Isn't it true that you have also previously stated
2 that you never directly communicated with Mr. Fautley in
3 any way about the Brown house?

4 A Other than that in-person meeting the day that we
5 were terminating the relationship. I would never pick up
6 the phone and talk to him, I wouldn't call Terry Patoka or
7 anybody, that's not, you know, unless there's something
8 very wrong where I have to get involved as a sales
9 manager, those are all the regional sales managers
10 responsibilities.

11 Q Do you recall being asked a question whether at any
12 point and time you ever communicated with Mr. Fautley
13 about the Brown house?

14 A If the answer was that I didn't, I may have
15 over-cited that one meeting that I have had with him when
16 I talked to him.

17 Q Okay. So it might have been an oversight in terms of
18 any testimony you previously gave about actually talking
19 to Mr. Fautley on the Brown house, you said that you
20 didn't?

21 A Yes because I am very sure that we had that
22 conversation at that meeting when we discontinued the
23 relationship.

24 Q Did you ever have any other communications with Mr.
25 Patoka or Collins or anybody else at HomeMax about the

1 Brown house?

2 A Not unless they were present in that meeting that day
3 of the cancellation. And there was I believe Jay Collins
4 or, it was either Jay Collins or Terry Patoka that were in
5 that meeting as well. But I don't recall which one.

6 Q Mr. Gurner, thank you.

7 THE COURT: Any redirect?

8 MR. MANGUM: I have got one issue.

9 REDIRECT EXAMINATION

10 By Mr. Mangum:

11 Q Mr. Gurner, I just wanted to ask you quickly, why was
12 the relationship terminated. I just want to be clear on
13 why the relationship between R-Anell and HomeMax was
14 terminated?

15 A I think as I mentioned before, we were just not a
16 good fit business partner wise. There were a lot of,
17 there were several occasions where houses were not
18 delivering on schedule and pushed back and falling out of
19 months ends. I don't think he had the, the experience to
20 handle the more complicated modular product that we offer
21 compared to the traditional products that he has been
22 selling for years, they seem to be more simplistic.

23 Q And you say the houses were being pushed back. Why
24 were the houses pushed back in scheduling?

25 A You know, and we have had a pretty healthy back log

1 for quite some time, you know, anywhere from five months
2 or more. But when a house comes off line after four
3 months or five months you want that to ship within three
4 or four days. But they would not be ready for it, no
5 matter what kind of preparation we made -- put in front of
6 it, as happened on the Brown house where it bumped back
7 three months.

8 Q And when you say, they, you mean HomeMax?

9 A HomeMax, yes sir.

10 Q I have got no further questions.

11 THE COURT: Anything further from this witness?

12 MR. HEWETT: No, Your Honor.

13 THE COURT: Thank you, sir, you may step down. Leave
14 all of those papers up there. Thank you. Call your next
15 witness.

16 MR. MANGUM: We call Melissa Allen.

17 MELISSA ALLEN, being
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 By Mr. Mangum:

21 Q Will you state your name for the record?

22 A Melissa Allen.

23 Q Ms. Allen, where do you live?

24 A Sherrill Ford, North Carolina.

25 Q Are you aware of why you are in this courtroom today?

1 A Yes, sir.

2 Q And why is that?

3 A Just to give my testimony of what happened with the
4 HomeMax issue.

5 Q And who is your employer?

6 A R-Anell Housing.

7 Q And are they involved in this lawsuit?

8 A Yes.

9 Q What is your job at R-Anell?

10 A I am transportation coordinator and I also do sales
11 associate or sales assistant.

12 Q Do you do any invoicing?

13 A Yes.

14 Q Okay. How long have you been doing these jobs at
15 R-Anell?

16 A I have been there, July 15th of this year I have been
17 there for six years.

18 Q Generally speaking, not specifically anything in this
19 case but just generally, when do you become involved in
20 the ordering process for a modular home?

21 A Once the home is ordered, Al Gurner, my supervisor,
22 he gives me the paper work and I kind of just do the
23 clerical parts of that and add that into the production
24 schedule. And then I also enter into our order system,
25 CBS.

1 Q Okay. And so are you ever involved in contacting the
2 builder dealers, do you have any direct contact with them?

3 A Only when I ship a home.

4 Q And what kind of things do you discuss at that point
5 with the builder?

6 A Normally I start about 30 days before the house is
7 scheduled to be ready to ship. And then I start with them
8 just saying, you know, hello, your house will be scheduled
9 to ship in two weeks, just giving you a heads up. And
10 then I will follow-up with them usually after that two
11 weeks and then again until we get a confirmed date of when
12 they would like to ship the home.

13 Q And generally speaking, are you involved with
14 securing payment as well?

15 A I am involved with just verifying, when the house is
16 ordered there is, the payment terms are determined then.
17 Then whatever that payment source is, if it is floor
18 planned then I just -- it is basically going on that
19 particular floor plan's website, enter in the, maybe five
20 little, you know, the amount, the serial number. And with
21 that, I mean it is nothing that I contact with the
22 retailer.

23 Q And you say the payment terms are determined then,
24 who determines those payment terms?

25 A The retailer.

1 Q When you say, the retailer, you mean a builder or
2 dealer like HomeMax?

3 A Yes.

4 Q Okay. The houses that are floored planned, what
5 exactly do you do on that part?

6 A I just find out who and which, at the time of the
7 order the retailer has already told us which floor plan
8 person they would like to go through. In my six years I
9 have only, we only use three, three floor plan sources.
10 So when I get the order from Al it just says, the floor
11 plan source is going to be North Point, then I go to North
12 Point website, key in the order, and then go from there.
13 And those, I usually don't get an approval on that until
14 the house actually goes on-line or begins construction.

15 Q I want to address, now that we got through that
16 general stuff, thank you, I want to address the Brown
17 house now. You understand what I am talking about when I
18 say the Brown house?

19 A Yes.

20 Q Okay. And the jury understands because we have been
21 talking about it all day. What role do you have, if any,
22 in determining whether that house was COD or floor plan?

23 A On that particular house, if -- it was originally
24 ordered as a COD. I do know, when I went to, when we
25 scheduled all the shipping details to get the house ready

1 for me to get a transport company to deliver to the home,
2 I had talked to Mr. Fautley about the COD, it being a COD.
3 And when it is a COD, about seven to ten days, around in
4 there, I go ahead and invoice the house and send it to
5 them. And then I wait for a reply back, I give them
6 instructions of, please have a check ready for the driver
7 and things like that. And on this particular instance,
8 when I had sent that information to him I received a call
9 and I am not sure if he called me or if I called him, but
10 I received a call, you know, stating that this house was
11 not going to be COD, it was going to be floor planned
12 which was a normal way that he paid for those. I don't
13 recall him ever having a COD.

14 Q And so you said you are responsible for setting up
15 the floor plan on R-Anell's end. Is that right?

16 A Yes, I entered that information.

17 Q And when you tried for the floor plan on the Brown
18 house what happened?

19 A The first floor plan source that he, and
20 unfortunately I don't remember which of the three we tried
21 first. The first floor plan came back as denied or not
22 approved. And then we spoke again and he told me to go
23 with the other sources. And so I went to, I believe North
24 Point and then 21st Mortgage. North Point, they pretty
25 much come back with three options. It is either denied,

1 pending or approved. And if it is approved they give you
2 an approval notice. At that point, the second one was
3 also denied. And so I tried 21st Mortgage last and it
4 came back as pending.

5 Q And, you know, throughout the whole incident, did
6 HomeMax ever indicate to you that it didn't intend to pay
7 for the Brown home?

8 A No. I mean it was basically just floor plan it.

9 Q Okay. And that was the last word you had on it?

10 A Yes.

11 Q When did it come to your attention individually that
12 HomeMax had not paid on the Brown?

13 A It was probably, I would say maybe two weeks, three
14 weeks, around there, after the home had been shipped.

15 Q And what did you do, if anything at that point to
16 figure out the status of the payment?

17 A Well, I went directly to 21st Mortgage website to see
18 if that was, still listed as pending and it was. At the
19 time of the delivery of the home he had taken a house that
20 was floor planned, we changed the floor plan on it also a
21 few months before that. And the serial numbers were very
22 similar and I looked, I saw that one and I thought that
23 approval had come back. But once it was pending I just
24 checked with 21st Mortgage and they did verify and said,
25 yes, this is still pending.

1 Q And since it was pending, to your knowledge, has
2 R-Anell ever been paid on the Brown house?

3 A No.

4 Q Do you have any information from that time it was
5 pending as to why HomeMax hasn't paid R-Anell on the Brown
6 home?

7 A No. The only thing, I also called 21st Mortgage and
8 the only thing the representative there said, they were
9 awaiting some paperwork from the retailer.

10 Q And that was the last word you heard on that?

11 A Yes.

12 Q Let me ask you quickly. Did you sign the invoice on
13 the Brown home?

14 A Yes.

15 MR. MANGUM: Your Honor, this is Plaintiff's exhibit
16 8.

17 Q I will hand you this document and have you take a
18 look. You say you handled invoicing, do you see the date
19 on this invoice, on the top?

20 A 5/22/21.

21 Q Yes, that is right. And I don't, I think you are
22 familiar with this document but let me direct you to where
23 it says, balance due. Do you see that, it is in about the
24 middle of the page?

25 A Yes.

1 Q Would you read that balance?

2 A Zero.

3 Q No, no, right here, you see where it says retail from
4 invoice date, in the middle of the page?

5 A Yes.

6 Q Now go to the box that says balance due under that?

7 A Okay.

8 Q The first line?

9 A \$142,292.80.

10 Q And is that the amount you invoiced on the Brown
11 house?

12 A I don't recall without seeing their invoice.

13 Q Let me show you that then. It says Plaintiff's
14 exhibit 4 that is already in evidence. If you would, just
15 take a look at that real quick.

16 A Yes, those match.

17 Q So that refreshes your memory, you did sign the
18 invoice for the Brown house and that amount is correct?

19 A Yes.

20 Q And what was the invoice date on that?

21 A 3/24/18.

22 Q And would you read this interest, do you see that
23 interest column?

24 A The current interest due?

25 Q Well, just the percentage.

1 A Seven.

2 Q Okay. Is that standard?

3 A I am not sure.

4 Q Nonetheless, do you see this total interest due?

5 A Yes.

6 Q How much is that?

7 A \$774.71.

8 Q How about under that, the total interest due?

9 A \$33,233.33.

10 Q And to your knowledge, does that match that seven
11 percent?

12 A I wouldn't know, I am sure it does but I don't know
13 without calculating that. I think this may be a form that
14 accounting uses.

15 Q Okay. Do you have anything to do with that portion?

16 A No.

17 Q Okay. Let me ask you then, the Christofoli. Are you
18 familiar with what I am talking about that when I say
19 that?

20 A Yes.

21 Q You previously told the jury that you handle
22 coordination of shipment from R-Anell. Did you handle the
23 coordination of shipment in the Christofoli case?

24 A Yes.

25 Q Do you have any explanation for why HomeMax delayed

1 the shipments such that the Christofoli sat on location
2 on, from May 4th to May 17th?

3 A No.

4 Q Let me ask you just generally, are you aware of any
5 issues with the plastic on the Christofoli house that
6 occurred on the R-Anell facility?

7 A No.

8 Q I have got no further questions.

9 THE COURT: Mr. Hewett.

10 MR. HEWETT: May it please the Court.

11 THE COURT: Yes.

12 CROSS-EXAMINATION

13 By Mr. Hewett:

14 Q Hello, Ms. Allen.

15 A Hello.

16 Q Let us pick up where he left off. This document that
17 you were shown, it has some information about interest on
18 it. Do you see that?

19 A Yes, I see the total interest due.

20 Q Did you put this document together or do anything
21 with respect to the interest that we see here on the form?

22 A No, I have never seen this document until today.

23 Q And do you know whether HomeMax ever agreed at any
24 point and time to be responsible for any interest on this
25 house?

1 A No, I don't know that.

2 Q There is nothing on the invoice or quote where
3 R-Anell reserved the right to charge interest at any point
4 in time to HomeMax, did it?

5 A I don't know.

6 Q Okay. You were the transportation coordinator, I
7 think a sales assistant as well for R-Anell?

8 A Yes.

9 Q One of your responsibilities was to ensure that a
10 house was floor planned or paid for when it went out,
11 right?

12 A Yes.

13 Q And you know in this case the Brown house, it was
14 designated on the invoice as COD, right?

15 A It was.

16 Q And isn't it true that once a home is ordered you are
17 suppose to get payment terms on paper that tells you how
18 the house is going to be paid?

19 A We do get a payment term sheet, that's not always
20 written in stone. I mean, not very often but sometimes a
21 retailer does change their payment terms.

22 Q You are suppose to get the paper terms on paper,
23 right?

24 A I do get a payment term sheet when the house, when
25 the house packet is given to me.

1 Q And you never seen anything in writing from Mr.
2 Fautley on paper where he was saying this was going to be
3 a COD transaction, have you, at least on the Brown house?

4 A I don't recall seeing anything in writing from him
5 but, again, I don't really look at those documents. It is
6 already entered in, everything, so I don't know if it is
7 his handwriting, I am sure exactly where that came from.
8 It come from the initial order.

9 Q You don't recall seeing anything in writing from Mr.
10 Fautley saying he wanted this to be COD for the Brown
11 house, do you?

12 A I don't recall that.

13 Q Is it your testimony that you spoke to Mr. Fautley
14 and he at some point told you that this, the Brown house
15 was going to be COD transaction?

16 A I do not recall him ever telling me it was a COD.
17 Our only conversation was to change it from a COD to floor
18 planning.

19 Q So is it your testimony then that at some point Mr.
20 Fautley told you to change the transaction on payment
21 terms from a COD to floor plan?

22 A Yes.

23 Q Ms. Allen, I believe you used to work as a customer
24 service assistant for the Bethesda City up in North
25 Carolina, right?

1 A Yes.

2 Q And why were you terminated from that position?

3 MR. MANGUM: Your Honor, we are going to object to
4 this question. We would like to be heard without the
5 jury.

6 THE COURT: Yes. Ladies and gentlemen, please step
7 back to your jury room, don't discuss the case amongst
8 yourselves. I will bring you back shortly.

9 (Whereupon, the jury was excused from open court for
10 a break.)

11 THE COURT: Ms. Allen, the question was, why were you
12 terminated from that position. What is the answer to that
13 question.

14 A I actually was not terminated. I was pregnant and I
15 had put in my notice and was working my notice when I was,
16 probably about eight months pregnant.

17 THE COURT: Okay. Let me hear the objection.

18 MR. MANGUM: Well, and it is more than that. I think
19 I know where this is going and in her deposition she was
20 charged with embezzlement. Now, Rule 809, time limit on
21 this is ten years and as I recall from the deposition it
22 was 2010, if at all, when she was convicted. So it would
23 be out of time as to today. Furthermore, I think it
24 certainly, the probative value is certainly outweighed by
25 the prejudice of this. Again, that is Rule 609.

1 THE COURT: Yes, sir.

2 MR. HEWETT: It is Rule 609, Your Honor. The
3 conviction date on the felony charge for embezzlement in
4 North Carolina was August of 2011. Ms. Allen was working
5 for the City of Bethesda at that point in time, she was
6 charged with embezzlement of funds. She plead guilty to
7 that charge and paid restitution, I believe, for the
8 amount of \$10,000.00 dollars. So we not only have a
9 felony charge, we have a charge that concerns dishonesty,
10 false statements and credibility between Ms. Allen is
11 important in this case because we heard from Mr. Hathcock
12 who said it was between Mr. Fautley and Ms. Allen that
13 this was going to be a COD transaction. And Ms. Allen has
14 said that Mr. Fautley testified, or Mr. Fautley told her
15 he was changing it from COD to floor plan. Mr. Fautley
16 will testify that is not what happened. He did not set
17 this up as a COD and he did not make a statement to her
18 that he changed the floor plan. So we have credibility as
19 an issue, we have a felony within ten years and we have an
20 act of dishonesty.

21 THE COURT: Well, Mr. Mangum tells me it was more
22 than ten years, you now tell me it is less than ten years.
23 Does anybody have a certified copy of the conviction?

24 MR. HEWETT: I don't think I have that on me but the
25 conviction date is August 30th of 2011.

1 MR. MANGUM: All I can rely upon is the deposition
2 where she said, I think it was 2010. I think you have to
3 have a certified copy anyways.

4 THE COURT: In order for me to make the determination
5 that it is admissible I need a certified copy of the
6 conviction.

7 MR. HEWETT: Even if it were over ten years, Your
8 Honor, I understand it is still a balancing test and with
9 the act involved in this case it goes to credibility. I
10 think any prejudicial value would be outweighed by the
11 probative value.

12 THE COURT: Right. With a certified copy of the
13 conviction not only tells me the date of the conviction,
14 it tells me the specific crime and statute number under
15 which she was convicted, it gives me more information than
16 simply an allegation that apparently has not been admitted
17 to by this witness. I have not seen her deposition
18 transcript. But the only testimony that you have from
19 her, assuming that Mr. Mangum is correct, is, you know,
20 about her conviction, more than ten years ago and I don't
21 know anything about the statute, code section. I have no
22 idea.

23 MR. HEWETT: We didn't make that far in the
24 testimony. But I plan to ask her and we can proffer it
25 now, when that conviction took place. We didn't make it

1 that far in terms of the question. So if the Court allows
2 I would certainly would like to ask that.

3 THE COURT: Sure.

4 Q Ms. Allen, at some point you were charged with
5 embezzlement in connection with your prior employer,
6 correct?

7 A Yes.

8 Q And isn't it true that the conviction date on that
9 charge was August 30th of 2011?

10 A I do not recall that.

11 Q Okay. Is it possible that it very well was, right?

12 A I would have to see the paperwork. I mean, I don't,
13 I don't remember it. It was a very long and horrible
14 situation and my daughter was just born and my daughter
15 was born in May.

16 Q And I understand that, you can't rule out that it may
17 have been very well within ten years in which you actually
18 did plead guilty and were convicted of that charge, right?

19 A Repeat that.

20 Q Sure.

21 A I am sorry.

22 Q You can't rule out that it may be within ten years
23 for the conviction date on that particular charge, right?

24 A Right. I don't really understand that question for
25 some reason. It is not resonating with me there. I am

1 not sure.

2 MR. HEWETT: So, Your Honor, the witness has
3 provided, she can't rule out it is a charge that a
4 conviction resulted within the last ten years. And so I
5 have proffered that. Given the felony charge, given the
6 act of dishonesty, I certainly think it is relevant under
7 Rule 609.

8 THE COURT: It makes a difference to me whether it
9 was more than ten years or less than ten years ago. And
10 not being able to rule out is not the same as the Court
11 having a permanent evidence of the conviction date which
12 makes a difference in my analysis.

13 MR. HEWETT: I understand the Court's position and
14 obviously, and it seems like the Court is going to deny
15 the admissibility of that type of testimony of the
16 conviction. I understand the witness has, can't rule out
17 that it may have been within ten years. I understand the
18 Court's position. But obviously the Defendant would
19 assert that it is relevant testimony that should come into
20 the record in this case.

21 THE COURT: All right. I mean, I would have to, even
22 assuming that it was more than ten years. Let's say it
23 was more than ten years then I would have to make a
24 determination that the probative value of the conviction
25 is supported by specific facts and circumstances

1 substantially outweighs its prejudicial effect. You have
2 not given me anything to make that determination. Even
3 so, evidence of a conviction more than ten years old is
4 not admissible unless the proponent gives to the adverse
5 party sufficient advanced written notice of intent to use
6 such evidence to provide the adverse party with a fair
7 opportunity to contest the use of such evidence, which has
8 not occurred in this case. So I don't have evidence and
9 its been within ten years and you don't meet the standard
10 for more than ten years, therefore the objection is
11 sustained and you can't go into it.

12 MR. HEWETT: And, Your Honor, I understand. Thank
13 you for your ruling. We did file deposition designations
14 from Melissa Allen that have that portion of her testimony
15 including that she plead guilty to that charge. So we did
16 notify opposing Counsel of our intent to use that
17 testimony in this case.

18 THE COURT: That addresses one part of it but it
19 doesn't get to the other part that gives the Court
20 sufficient information to make that analysis.

21 MR. HEWETT: And, Your Honor, in response to that, I
22 won't belabor the point anymore. I did mention that there
23 is a credibility issue here about what she says took place
24 and what Mr. Fautley will say took place with their
25 communications on the financing of the Brown house. So I

1 do think it is relevant, I do think that probative
2 evidence considering her testimony and Mr. Hathcock's
3 outweighs any prejudicial effect of that conviction,
4 criminal charge, Your Honor.

5 THE COURT: I understand your position.

6 MR. HEWETT: Thank you, Your Honor.

7 THE COURT: All right. Let's bring the jury, please.

8 (Whereupon, the jury came into open court at
9 approximately 4:24 p.m.)

10 THE COURT: Okay, folks, you can have a seat. All
11 right. The objection to Mr. Hewett's last question was
12 sustained. The jury shall disregard that question, the
13 question is not evidence anyways. Mr. Hewett, proceed
14 with your questioning.

15 MR. HEWETT: I just want to make sure our position is
16 preserved given our --

17 THE COURT: -- on the record, yes sir.

18 MR. HEWETT: Your Honor, no further questions for
19 this witness. Thank you, Ms. Allen.

20 THE COURT: Any redirect?

21 MR. MANGUM: I actually do not have any redirect.

22 THE COURT: Wonderful, thank you, you may step down.

23 MR. MANGUM: I know we just brought the jury back. I
24 think our last witness, Mr. Hasenauer, he is going to be
25 quite lengthy.

1 THE COURT: And that is your last witness?

2 MR. MANGUM: That will be our last witness.

3 THE COURT: Okay, today is Tuesday, that suits me.
4 All right, ladies and gentlemen, we are going to call it
5 quits for the day. I am going to dismiss you, don't
6 discuss the case amongst yourself or with anyone else.
7 Don't do any research about the case. Be back in your
8 jury room tomorrow morning at 9:30. Have a good night.

9 (Whereupon, the jury was excused from open court for
10 the day.)

11 THE COURT: Anything before we break for the day?

12 MR. HEWETT: Nothing further from the Defense, Your
13 Honor.

14 MR. MANGUM: Thank you.

15 JUNE 9, 2021.

16 THE COURT: Folks, Mr. Mangum has handed me a
17 redacted version of Plaintiff's exhibit 18. One sentence
18 has been removed. Mr. Hewett, do you consent to this
19 redaction?

20 MR. HEWETT: I do, yes, Your Honor.

21 MR. MANGUM: So this will now be Plaintiff's exhibit
22 18 which I had previously admitted.

23 THE COURT: We can bring the jury in.

24 (Whereupon, the jury came into open court at
25 approximately 9:34 a.m.)

1 on the foundation.

2 Q How long did that process take approximately?

3 A It involved a couple of days to get the, the, all the
4 wet material out. And that has to deal with, there was a
5 point in the day where, initially the homeowner didn't
6 want the house put on the foundation. And David Fautley
7 was contacted and has to go to the site. And he had
8 communications with the homeowner at that point and at
9 some point in the day, I am thinking it was the day, from
10 what I recall it was about 1:00 o'clock, we got the call
11 that in fact the homeowner was allowing the modular units
12 to be put onto the foundation so they could proceed with
13 the set. So up until that point, from that midmorning
14 point we were notified of the water damage to that point
15 where they were told they could go ahead and put it on the
16 foundation, they were taking out anything that was wet
17 that they could access.

18 Q But that morning didn't end all of the issues with
19 the Christofoli home, is that correct?

20 A That's correct.

21 Q What happened after that.

22 A Once I was notified I went into our general manager,
23 Phil Hathcock, and notified him of the situation. And
24 that David Fautley had to be contacted and asked to go to
25 the site. That is the only information I received from

1 the site. And at that point there was phone conversations
2 with Phillip and David Fautley and myself in a conference
3 call. And it was, once he got the okay to put it on the
4 foundation the set crew moved forward with the set, he got
5 it put on.

6 Q Okay. And then what happened in the subsequent
7 months after that?

8 A We, during that initial call with David Fautley and
9 the conversations of that first day, it was, we talked
10 about whose responsibility it was. And I personally felt
11 it was David's responsibility for the water damage because
12 of the amount of time it sat in his, on his sales lot.
13 But what we agreed to was to work through it that day with
14 him and to get the house back to whole so the homeowner
15 can actually move into it. That was the most important
16 part that day.

17 Q Do you remember approximately how long you, as you
18 say work through with it with David, was it in terms of
19 days or weeks or months?

20 A It was months.

21 Q Okay. Let me ask you, over the course of those
22 months, were there other issues regarding moisture with
23 that home?

24 A Yes. Once the unit was set onto the foundation the
25 set crews themselves were removing as much wet material as

1 Q Okay. Let's start at the back which are the earliest
2 ones. You know, some of these are just trying to get
3 everybody's email address straight. But what I want to
4 start with is, the one that is sent from you to HomeMax
5 which appears to be Dave Fautley on Monday, July 17th,
6 2017. Do you see that?

7 A Yes, I do.

8 Q Okay. Would you read this summary that really begins
9 on the top of page four here.

10 A Yes.

11 THE COURT: Before he does that, have you offered
12 this into evidence?

13 MR. HEWETT: I don't have any objection.

14 MR. MANGUM: We move to offer it into evidence.

15 THE COURT: Plaintiff's 15 is admitted without
16 objection.

17 (Whereupon, Plaintiff's Exhibit 15 was admitted into
18 evidence.)

19 A The following is an update on factory service
20 contractors and the factory turnout work on the house,
21 Christofoli house. Serial number 40876. On Monday,
22 6/26/17, the factory was notified by the set crew, they
23 found there was water damage in the A module when they
24 unwrapped the shipping plastic. The set crew began to
25 tear out and removal of all wet and damaged materials

1 including a section of a wet roof sheathing that was found
2 once the units were set on the foundation. The set crew
3 continued with their work through Tuesday, 6/27/17.
4 Factory service contractors were sent to the site on
5 Tuesday, 6/27/17, to address the water damage and they
6 worked there through Friday, 6/30/17. During the
7 timeframe the service contractors continued with the
8 tear-out work necessary, had drying equipment in place and
9 treated the wet areas with an anti-microbial agent. Once
10 the service contractor was completed with the tear-out and
11 treatment I contacted the company, High Performance
12 Building Solutions, Incorporated to do an inspection of
13 the Christofoli house to advise us if any other
14 remediation work was found to be necessary or if we had
15 clearance to begin the work to replace the materials that
16 had been removed from the structure due to the water
17 damage. Francis Conlin, PE at High Performance Building
18 Solutions, Incorporated scheduled to do the inspection on
19 Thursday, 7/13/17. That inspection was completed as
20 scheduled and we are currently awaiting the results of
21 that inspection. Once we received the inspection results
22 we are prepared to move forward with recommendations with
23 the inspection with any additional remediation work
24 necessary or to proceed with the work to replace materials
25 removed from the house due to the water damage. The

1 A I wouldn't consider any of it warranty work.

2 Q And why wasn't it warranty work?

3 A Warranty work doesn't typically come into play until
4 after the house is set and a walk through is done with a
5 homeowner, by the dealer. And that is what we consider
6 warranty work.

7 Q So who requests that warranty work, is it the dealer
8 or the customer.

9 A We require that the dealer send us a list, service
10 request items.

11 Q Bob, I am going to show you another set of emails.

12 This is already in evidence as Plaintiff's exhibit 18.

13 Bob, I am going to have you read that email real quick?

14 A Okay.

15 Q So you say here, well, actually why don't you tell
16 the jury what you say. Read that second paragraph for us.

17 A Second paragraph?

18 Q Yes.

19 A From the date of set, when the unit was unwrapped it
20 was evident that the water damage sustained in the A
21 module occurred while the units were staged at your sales
22 lot. During the initial conversations after discovering
23 the water damage the day of the set you asked that we work
24 together to resolve this matter rather than pointing
25 fingers at who is at fault for the units sustaining water

1 damage which I believe we have done to this point. We
2 have directly paid out in excess of \$20,000.00 dollars to
3 date addressing the water damage issue. We are moving
4 forward with the reconstruction work from the water damage
5 and it will be those additional costs that will need to be
6 addressed at some point in the future.

7 Q And we have asked Phillip this question too. But do
8 you agree with your characterization here that the damage
9 was sustained in the A module?

10 A Yes, I do. And I say that because we changed our
11 production line around and the way that module units were
12 configured, there was a different fallout, whether it be A
13 or B. On a two box module house there will be two boxes.
14 We do three boxes configurations, four box configurations,
15 sometimes six box configurations. So we use lettering, A,
16 B, C, D and onward. And it is based on how the module
17 box, what we refer to as floors. The kitchen box in this
18 case we are referring to.

19 Q And I want to ask one more question of this email.
20 You just read that R-Anell had paid out in excess of
21 \$20,000.00 dollars. Could you tell me what the date is on
22 that email?

23 A Thursday, March 1st, 2018 at 5:08 p.m.

24 Q And do you still agree with that characterization
25 that as of that time R-Anell spent over \$20,000.00 on

1 MR. MANGUM: Phillip, you can come back down, we will
2 ask about that later.

3 THE COURT: You can step down, thank you, sir. Call
4 your next witness.

5 MR. MANGUM: Your Honor, the Plaintiff rest its case.
6 We will have rebuttal if necessary.

7 THE COURT: Ladies and gentlemen of the jury, there
8 are certain matters of law that I need to discuss with the
9 attorneys outside of your presence. So we are going to
10 take a break now. Please return to your jury room, don't
11 discuss the case amongst yourselves and we will have you
12 back shortly.

13 (Whereupon, the jury was excused from open court for
14 a break.)

15 THE COURT: Any motions?

16 MR. HEWETT: Your Honor, the Defendant has a motion
17 for a directed verdict. And it is specific to the issue
18 of the claim by R-Anell for any interest that is owed on
19 this case. They have rested their case, they have not
20 provided any testimony in the case-in-chief that they were
21 owed interest pursuant to a written agreement or verbal
22 agreement or any evidence at all there was any type of
23 agreement between the parties for interest to be paid by
24 HomeMax at any point in time. We have seen that the
25 invoice and the quote that they rely upon for the

1 agreement, actually had different amounts. And in order
2 for the interest to be charged, I think under the code
3 that the Plaintiff is relying on, there has got to be a
4 sum certain amount, an agreement as to the amount. And we
5 see different amounts just on their own paperwork. Their
6 quote, signed quote which is what they rely upon to show
7 the agreement between the parties, is different than the
8 invoice itself. It is not by much. But the reason that
9 is important is our law, based upon what they are relying
10 on for a charge of interest, there has got to be an
11 agreement and there has got to be a set certain amount for
12 the contract. There has already been a dispute as to
13 whether there is a contract at all. And the Defendant
14 contends there was no contract and by virtue of that there
15 was never any agreement to pay interest on top of that.
16 Because there has not been any testimony that they have a
17 right to interest, they are claiming interest, we think
18 that even drawing all reasonable inferences in the light
19 to the Plaintiff in this case the jury can't reasonably
20 find that HomeMax would in any way owe interest to
21 R-Anell.

22 MR. MANGUM: Of course, Your Honor, we respectfully
23 disagree. I think this is a clear case of liquidated
24 damages. I will point out that our UCC 2-202 which is
25 36-2-202 in South Carolina where you have got confirmatory

1 memoranda and then you have to read in the light of 2-207
2 as well. But the final written confirmation is what
3 controls. And as far as South Carolina case law goes.
4 You know, these are liquidated damages. I can give you
5 two citations. We have got Durlach v. Durlach which is
6 359 SC 64. Prejudgment interest is recoverable if pleaded
7 and if the sum is certain or capable of being reduced to
8 certainty. Well, I mean this is the invoices they sent in
9 March of 2018. That is as certain as it gets and they
10 never charged a different sum for that amount. I will
11 hand up these cases as well.

12 THE COURT: Please.

13 MR. MANGUM: I will just go ahead and hand you that
14 first one.

15 THE COURT: You can keep talking.

16 MR. MANGUM: Sure. And so like I have said, on
17 Durlach, as long as it is reducible to a sum certain,
18 which it is by virtue of the invoice, liquidated damages
19 and thus interest are recoverable. If you look on the
20 last page it says, when such a plea, which is for
21 prejudgment interest, is made, prejudgment interest may be
22 recovered on obligations to pay money from the time when,
23 either by agreement of the parties or by operation of law,
24 the payment is demandable, if the sum is certain or
25 capable of being reduced to certainty. I don't think

1 there is any contention that it is reducible to certainty,
2 even a reasonable contention when you have got an invoice
3 that comes in and it has got a specific dollar amount and
4 that dollar amount has not changed in three years. I will
5 also cite Butler Construction which is 369 SC 121. I have
6 got copies of that as well. In this it says, very
7 importantly, this is where, between the *18 and *19, it is
8 the next to the last and last pages that we are looking
9 at. The fact that the amount due is disputed by the
10 opposing party does not render the claim unliquidated.
11 The proper test is to look at the measure of recovery, not
12 necessarily the amount of damages. And that it is fixed
13 by conditions existing at the time the claim arose. The
14 invoice had already been submitted at the time the claim
15 arose. R-Anell has never claimed any other amount on that
16 invoice other than what was submitted on the final
17 invoice. The right, and I will further, this has been an
18 issue, the right of the party to prejudgment interest is
19 not affected by rights of discount or offset. So just
20 because you disagree or think you have an offset to it
21 doesn't mean that you vitiate the prejudgment interest.
22 And, you know, in South Carolina prejudgment interest is,
23 they are 8.75 percent, although parties are free to agree
24 otherwise. So, you know, for those reasons I think it
25 survives a directed verdict.

1 THE COURT: Mr. Hewett?

2 MR. HEWETT: Very briefly. On the Butler case, it is
3 distinguishable from the facts at hand. In the Butler
4 case, all the parties agreed that there was a contract in
5 place, it revolved timeliness and the mechanics lien.
6 They agreed there was a contract in place. Clearly here,
7 there is no agreement that there was a contract in place.
8 But even if the Court were to infer prejudgment interest
9 might be recoverable, there has been zero evidence offered
10 in case-in-chief on examination of any witness of an
11 assertion to a right for interest or a claim for a right
12 to interest against HomeMax, Your Honor. So even viewing
13 all of the inferences and the light most favorable to
14 R-Anell the jury can't reasonably find that R-Anell is
15 owed any prejudgment interest.

16 MR. MANGUM: My response to that is prejudgment
17 interest is forwarded by operation of law. You wouldn't
18 necessarily have testimony to it.

19 THE COURT: Well, right, and that is why, I thought I
20 was clear but maybe I am confused. Plaintiff's exhibit 8
21 calculates interest and if that is simply the prejudgment
22 statutory interest that Plaintiff believes it is entitled
23 to as a matter of law, is that a matter for the jury.

24 MR. MANGUM: It is actually, that is not the
25 statutory prejudgment interest. The statutory prejudgment

1 interest is 8.75 percent. Seven percent is their standard
2 that they charge. So technically by operation of law, I
3 mean what we are entitled to is actually more.

4 THE COURT: Right.

5 MR. MANGUM: I think the seven percent is an issue
6 for the jury.

7 THE COURT: Well, so the interest, the only interest
8 that we are talking about is by operation of law because
9 of the lack of payment, it is not a contract term or it
10 doesn't derive from anywhere else, correct?

11 MR. HEWETT: That's right.

12 MR. MANGUM: Yes, that's right.

13 THE COURT: Right. So that is a matter for the Court
14 and not a matter for the jury to decide anyways.

15 MR. HEWETT: That is my interpretation.

16 THE COURT: So it is not appropriate to grant a
17 directed verdict as to that but it is also not appropriate
18 for it to be presented to the jury.

19 MR. HEWETT: That's fine. As long as in closing or
20 otherwise there is no request for a specific amount for
21 prejudgment interest to the jury.

22 MR. MANGUM: Oh, yes. Agreeable, obviously.

23 MR. HEWETT: If it is a matter strictly for the Court
24 then understood on the directed verdict. Thank you, Your
25 Honor.

1 THE COURT: Right, okay. I wanted to make sure we
2 were on the same page. Anything else, Mr. Hewett?

3 MR. HEWETT: I am trying to think ahead. The only
4 claim we have here is for a breach of contract, that is
5 what was pled. There has been evidence submitted by the
6 Plaintiff that there was an agreement between the parties.
7 And so with that being said, I think that is a question
8 for the jury, Your Honor, whether there was an existence
9 of the contract between the two. So the Defendant will
10 not move for a directed verdict as to whether there was a
11 valid and enforceable contract between the parties.

12 THE COURT: Okay. So let's take a ten minute break
13 then before we get to the Defendant's case.

14 MR. HEWETT: Thank you, Judge.

15 (Whereupon, a short break was taken.)

16 THE COURT: Mr. Hewett.

17 MR. HEWETT: Your Honor, there is about ten exhibits
18 and they start at exhibit number 18 for the Defendant.
19 They are just invoices that HomeMax paid and they went
20 into the set up and trim out and hookup of this house.
21 They were all incurred to make sure the Christofoli was
22 getting ready to sell at some point in time. They are
23 certainly relevant as to the damages because they took
24 away from the amount that HomeMax ultimately made on the
25 house, they were expenses on the house. So they are

1 relevant in that regard. And also in the sense that
2 HomeMax was trying to mitigate its losses by getting this
3 house ready to close and sell at some point. There is
4 about ten of them, no issue on authenticity. And they are
5 certainly relevant to show the total amount of damages,
6 Your Honor. I think actually, I am hoping, Counsel
7 mentioned that they made \$280,000.00 dollars on the house.
8 They did resale it, they certainly did not profit that.
9 So these expenses just go into showing what they actually
10 lost on the house, all and all. So there is a few of
11 them, I plan to give them to Mr. Fautley, I have also
12 copies for the Court I will hand up. I can do that now.

13 THE COURT: Yes, please.

14 MR. HEWETT: They start at 18. I don't think there
15 was an objection to 20, 24, 25. Those are the Barnhills
16 invoices. I don't think there was any objection at all on
17 that.

18 MR. MANGUM: What are they?

19 MR. HEWETT: They were the porta-john.

20 MR. MANGUM: I think it is still the same argument.
21 I think the ones I don't have an objection to are the ADS
22 stuff. It won't matter because we are going to resolve it
23 here one way or the other.

24 THE COURT: To the extent that you do have an
25 objection, let me hear that objection.

1 MR. MANGUM: Yes, so my objection is this. This
2 stuff isn't chargeable against R-Anell and we have heard
3 this time and again. It is not R-Anell's responsibility
4 to do plumbing or electricity or foundation or grading or
5 any of that. And that is the bulk of what these invoices
6 are. And so our position is, it is just not relevant
7 because whether it was spent to make the home marketable
8 or not, that is not chargeable against R-Anell.

9 THE COURT: Okay. So that objection is overruled. I
10 mean that's part of the Defendant's counterclaim. It is
11 about their expenses, you know, for their loss profits or
12 however it is quantified. And this is certainly relevant
13 to that. I think your argument, your objection is
14 argument for the jury certainly. But I don't think that
15 makes these exhibits inadmissible.

16 MR. MANGUM: Very well, Your Honor. And like I said,
17 you know, it will go to all of them, we will stipulate to
18 the ruling as to all of these invoices.

19 THE COURT: Okay. So I am going to, in the absence
20 of the jury, go ahead and admit Defendant's 16, 17, 18,
21 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 over the
22 Plaintiff's objection.

23 (Whereupon, Defendant's Exhibits 16 through 29 were
24 admitted into evidence.)

25 MR. HEWETT: Thank you, Your Honor.

1 THE COURT: All right. Are y'all ready?

2 MR. HEWETT: Yes, Your Honor.

3 MR. MANGUM: I think so.

4 THE COURT: Bring the jury.

5 (Whereupon, the jury came into open court at
6 approximately 11:33 a.m.)

7 THE COURT: Welcome back. You were asked to bring
8 your belongings because we are playing musical chairs a
9 little bit due to COVID protocol still. So, when you
10 stepped out of the courtroom you heard the Plaintiff had
11 rested their case. They have presented their
12 case-in-chief as it is called. It is now time for the
13 Defendant to present its case-in-chief. I will tell you,
14 I don't know if it is in the beginning jury instructions
15 that I give you, but the Plaintiff will also have an
16 opportunity for a rebuttal after the Defendant's case if
17 they choose to do that, it doesn't always happen. But
18 just to prepare you for what might be coming. Also while
19 you were out of the courtroom we went ahead and handled
20 the admission of some exhibits. Defendant's exhibits 16
21 through 29 have been admitted into evidence. I just
22 explain that to you so you don't wonder what is going on
23 or wonder why they are not offering and proceeding forward
24 with them. And so if you would now give Mr. Hewett your
25 undivided attention. He is going to call his first

1 witness.

2 MR. HEWETT: Thank you, Your Honor, may it please the
3 Court. The Defendant calls David Fautley.

4 David Fautley, being
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Hewett:

8 Q Mr. Fautley, good morning.

9 A Good morning.

10 Q I have heard a lot about you so far, now is your
11 chance to answer some questions about the issues that the
12 jury has already heard about on the Christofoli house and
13 the Brown house. Now, you are the owner of HomeMax,
14 right?

15 A Yes.

16 Q And that is a small business based here in Lexington
17 just up the road on West Main Street?

18 A Correct.

19 Q And HomeMax sells modular and manufactured houses to
20 customers?

21 A Yes.

22 Q It also, at some point, sold tiny houses as well?

23 A Yes.

24 Q How many houses would you say that HomeMax bought or
25 dealt with in terms of, from R-Anell actually making the

1 house?

2 A Four or five.

3 Q All in all, since it went into the business, how many
4 houses has HomeMax sold to customers total for at least
5 modular houses?

6 A Hundreds.

7 Q Has HomeMax ever had a house, in those hundreds of
8 houses that it has sold on the modular side, has it ever
9 had a house get wet before because of issues with the
10 plastic?

11 A No.

12 Q Yesterday Mr. Gurner said something to the nature,
13 maybe Mr. Cosby too, that R-Anell has terminated business
14 with HomeMax because it wasn't a good fit, something to
15 the effect that it didn't sell or couldn't sell the type
16 of houses that R-Anell was used to making. Did you hear
17 that?

18 A Yes.

19 Q R-Anell works with, I am sorry, HomeMax has a chance
20 to work with some other manufactures as well, correct?

21 A Yes.

22 Q And is the quality of the homes that those
23 manufactures sells to HomeMax, you know, equal to or for
24 better than R-Anell markets?

25 A Comparable, yes.

1 Q Okay. And we heard a lot about and the jury probably
2 don't want me to say much more about it, these houses that
3 are built at the factory, are they suppose to be going to
4 the building site when they are done or are they suppose
5 to go to the HomeMax sales lot and sit there?

6 A They build at the building site.

7 Q And once the customer, say like the Christofoli's,
8 come into HomeMax and look at your line of houses and
9 select one that they like, has it been that HomeMax will
10 put in a purchase order to manufacture for the house?

11 A You first get a quote from the manufacture and then
12 based on that quote they come up with a purchase order.

13 Q Okay. And that quote that you get, assuming the
14 terms are satisfactory, at some point is there an
15 agreement, a purchase agreement that is put in place
16 between HomeMax and the customer, that has the total
17 amounts going to be charged for the house?

18 A Yes.

19 Q And on the setup side, does HomeMax also help at
20 times set up the house and bring in some local
21 subcontractors to get the house ready?

22 A We have done it both ways, factory and our own
23 contractors.

24 Q Is it fair to say, certain manufacturers may actually
25 use their own setup crew or arrange for the set up and

1 trim out?

2 A Yes.

3 Q Are there times where there are delays in a house,
4 actually being able to be delivered directly to the
5 building site for one reason or the other?

6 A Yes.

7 Q And tell the jury what type of issues sometimes come
8 up that may cause a house to be delayed from getting
9 shipped to the factory, to the building site?

10 A In the Christofoli case, they wanted to use my
11 contractor that had a basement, part of a house so they
12 could store it. And that is what delayed that one.

13 Q Okay. You ever run into any zoning or permitting
14 issues, depending on the county?

15 A Yes.

16 Q And the Brown house that was going to Ridgeville, I
17 think it is in Dorchester?

18 A Dorchester County, yes.

19 Q There was some talk about there being some delays
20 with the Brown house too. You remember anything about
21 what may have caused that Brown house to get delivered to
22 the building site?

23 A I am sorry?

24 Q There was some talk about some delays about the Brown
25 house being shipped out?

1 A Yes.

2 Q That was in Dorchester County. Was there some issues
3 that ran into with getting approval or permits or things
4 like that?

5 A Getting permits, yes. We were up there processing,
6 anything in the Charleston area takes some time.

7 Q And so sometimes, as a result, that it will go from
8 the factory to your sales lot to hold, sometimes?

9 A Typically not. That way we have to pay the
10 transportation twice, we have to pay it at our sales
11 center and we have to transport it to the customer's site.

12 Q And HomeMax doesn't wrap the units, do they?

13 A No.

14 Q And even if they are going to hold them for some
15 period of time, HomeMax doesn't come back and rewrap the
16 units at any point in time, do they?

17 A No.

18 Q And is it HomeMax's position that that was the
19 responsibility of the manufacturer in this case, R-Anell
20 to properly wrap the units to keep them from getting wet?

21 A Yes.

22 Q And in this case, did R-Anell, at any point in time,
23 knowing that the units are going to sit at the sales lot
24 for a little while, ask HomeMax to go check on them,
25 inspect them, place the plastic, do anything like that?

1 A No.

2 Q So we know in late of 2016 that Robert and Leslie
3 Christofoli came into HomeMax to look for a house, right?

4 A Correct.

5 Q And you ultimately agreed to sell them a house and
6 there is a purchase agreement put in place?

7 A Yes.

8 Q And that house, as the jury well knows, that was an
9 R-Anell line house, right?

10 A Correct.

11 Q And that house, instead of being delivered to the
12 HomeMax sales lot, was it suppose to go 1917 Nature Lane
13 in Gilbert?

14 A Yes.

15 Q That was the ultimate destination?

16 A Yes.

17 Q And at some point in time did R-Anell reach out to
18 HomeMax and let them know that the units were ready to be
19 shipped and take delivery?

20 A They requested that I take delivery even though I
21 told them I wasn't ready for the house yet.

22 Q Mr. Cosby testified yesterday, it could be sometime
23 between two weeks to a month where the builder, like
24 HomeMax, a retailer like HomeMax, gets notice or heads up
25 that the units are ready. Did you hear that?

1 A I didn't personally hear it, I don't know if my sales
2 people did or not. I did hear him say that, yes.

3 Q That is what I was asking. And in your experience
4 with R-Anell, would they usually give HomeMax a month's
5 heads up or notice that the units were ready?

6 A Not that I recall, that's not, they made it sound
7 like they do it every single time. And to my knowledge, I
8 wasn't aware of that.

9 Q You just mentioned a second ago, did you or somebody
10 at HomeMax let R-Anell know that the building site was not
11 yet ready for delivery, the Christofoli home?

12 A Yes.

13 Q And to spite that, did R-Anell ask HomeMax to take
14 shipment of the units anyway and hold them at the sales
15 lot?

16 A Yes, they did.

17 Q You agreed to that request?

18 A Yes.

19 Q Do you know why R-Anell was asking you to hold those
20 units at that point in time even though the site wasn't
21 ready for construction?

22 A I think so they can get paid, their accounting and
23 make a better month.

24 Q We have, the jury has seen the delivery inspection
25 form and we have heard about it a lot. Once they, in this

1 case, the units are delivered to the sales lot, shipped
2 there, there is a form that is signed. Does R-Anell ask,
3 did it ever ask HomeMax or any of its employee to go in
4 the house, inspect it up and down, in and out to make sure
5 there was no damage?

6 A No.

7 Q What is your understanding of the basis for why that
8 form gets signed, that delivery inspection form?

9 A Apparently from what I have read on the form, it
10 covers the factory's issues, if they have issues. They
11 try to transfer everything to the dealer.

12 Q Somebody has to sign that form so the transport
13 company can drop the units?

14 A Yes, so the driver can get paid.

15 Q And did or anybody, your staff ever go into the
16 Christofoli and look it up and down, all around to make
17 sure that it was not damaged or anything like that?

18 A No.

19 Q And why is that you didn't feel the need to do --

20 A -- it is a factory wrapped house. They are suppose
21 to be watertight. There is no need to go through them.

22 Q And those units sat, the Christofoli units sat at the
23 HomeMax sales lot for about 40 days. You have heard that,
24 right?

25 A Yes.

1 Q And did you actually, I know, you were there on site
2 at HomeMax about every day?

3 A Yes.

4 Q Did you have a chance to lay eyes on those units, at
5 least realize that they were there sitting at the sales
6 lot?

7 A Sure.

8 Q At any point in time did you ever see any damage to
9 the plastic where it got disrupted, torn?

10 A No.

11 Q Anything like that?

12 A No.

13 Q You got an invoice at some point in time on the
14 Christofoli house, right?

15 A Yes.

16 Q Let me show you, this is Defendant's exhibit 2. It
17 is an invoice for the Christofoli house.

18 MR. HEWETT: I believe it is without objection, Your
19 Honor.

20 THE COURT: Any objection to Defendant's 2?

21 MR. MANGUM: I don't know what it is.

22 THE COURT: Okay. Sorry.

23 MR. HEWETT: This is the Christofoli invoice.

24 MR. MANGUM: Okay. Then, no.

25 THE COURT: All right. Defendant's exhibit 2 is

1 admitted without objection.

2 (Whereupon, Defendant's Exhibit 2 was admitted into
3 evidence.)

4 Q That is the invoice that HomeMax got from R-Anell on
5 the Christofoli house?

6 A Yes.

7 Q And its true, right, that R-Anell got paid up front
8 on the Christofoli house?

9 A Yes. It was floor planned.

10 Q It was floor planned and does that mean they got paid
11 by a lender and then you got to pay the lender back?

12 A Yes, when the loan closes we pay the lender back.

13 Q Okay. And in this case, if you look at the invoice,
14 I think it was North Point Commercial Finance?

15 A Yes.

16 Q That's who was floor planning this house and pay
17 R-Anell up front, right?

18 A Yes.

19 Q And in this case it was \$125,296.00 dollars that
20 R-Anell got paid on the Christofoli house, right?

21 A Yes.

22 Q Now once the units ended up being shipped from the
23 HomeMax sales lot to the Christofoli site, at some point
24 did you get some information or learn that there was a
25 problem with one of the units?

1 A Yes.

2 Q How did you come to find out something had gone wrong
3 or one of the units had some issues?

4 A The setup crew called, actually the delivery guy was
5 there and he said you need to come down here, there is
6 some issues with the house. So I immediately went over to
7 the house.

8 Q You drove over to 917 Nature Lane and did you have a
9 chance to actually, personally observe what the problems
10 were there?

11 A Yes.

12 Q And was one of the units wet too or just one?

13 A The back half.

14 Q You said it was the back half that got wet?

15 A Yes?

16 Q And the kitchen and I think bathroom two?

17 A Yes, it did.

18 Q Do you typically, in the lingo that you work in, in
19 the mod industry call the back half the A unit, B unit?

20 A I usually call the front unit the A and the back unit
21 the B.

22 Q Tell me what you remember, once you got there on site
23 and were able to look at the condition of the unit that
24 was damaged, what do you remember being wrong?

25 A Well there was mold throughout the house, water

1 dripping and pouring from the ceiling, from the roof.

2 Q Was anybody else there on site with you?

3 A The customer was there.

4 Q Mr. Christofoli was?

5 A Uh-huh (yes.)

6 Q Is that, yes?

7 A Yes.

8 Q Okay. Mr. Fautley, I am handing you what is marked
9 as Defendant's exhibit 13. These are photographs taken of
10 the Christofoli unit.

11 MR. HEWETT: Robert, do you need a copy?

12 MR. MANGUM: Yes. I can just take a quick look.

13 MR. HEWETT: I believe these, we have reached an
14 agreement with Counsel on the admission of these
15 photographs.

16 MR. MANGUM: No objection, Your Honor.

17 THE COURT: Defendant's exhibit 13 is admitted
18 without objection.

19 (Whereupon, Defendant's Exhibit 13 was admitted into
20 evidence.)

21 Q Have you seen these photographs before?

22 A Yes.

23 Q And are these pictures taken of the Christofoli unit
24 once you got on site?

25 A Yes. This was after it was set up.

1 Q Do these give an accurate description or accurate
2 depiction of the condition of the unit once you got there?

3 A Yes, it does, they do.

4 Q Is it consistent with what you saw when you had a
5 chance to look at it?

6 A Yes.

7 Q Did you take any pictures yourself?

8 A If I did I don't recall. The customer took plenty so
9 I didn't need to.

10 Q I would imagine Mr. and Ms. Christofoli were not
11 happy with what they saw on the house?

12 A That's an understatement.

13 Q Do you know, HomeMax knows exactly when this unit got
14 wet?

15 A No.

16 Q Regardless of whether it got wet there at R-Anell or
17 while it was sitting at HomeMax's sales lot, is it
18 HomeMax's position that they should have been wrapped the
19 correct way to keep water from getting in and damaging the
20 units?

21 A Yes.

22 Q I suspect that Mr. Christofoli and Ms. Christofoli
23 would not accept the house in the condition that it was
24 in, is that right?

25 A Correct.

1 Q And they also, I imagine wouldn't go forward with the
2 closing of the house and finalizing the transaction so
3 HomeMax could get paid?

4 A Correct.

5 Q At some point did the Christofoli's go and hire a
6 lawyer of their own?

7 A Yes, they did.

8 Q Do you feel HomeMax has any responsibility for the
9 Christofoli unit getting wet?

10 A No, sir.

11 Q And you place that blame with R-Anell in this
12 situation?

13 A Yes, I do.

14 Q And even though you don't feel you had any
15 responsibility, did HomeMax start joining in some efforts
16 to try to get the house repaired and ready so the
17 Christofoli's would at some point accept it?

18 A Yes.

19 Q You were, were you at some point working initially
20 with R-Anell to try to make that happen?

21 A Yes.

22 Q We heard about R-Anell bringing in a company to
23 access, sample and treat for mold. Do you remember that?

24 A Yes, sir.

25 Q And was another company also brought in at some point

1 to do something similar?

2 A With the Christofoli's attorney's insistence, yes, he
3 insisted.

4 Q Okay. And so that wasn't initially HomeMax's idea,
5 or was that coming from the Christofoli's and their
6 lawyer, that they wanted their own company to come in and
7 check for mold?

8 A Yes.

9 Q And I might be confusing with someone else, did they
10 have a baby or small child or one on the way?

11 A They did. I can certainly understand their concern,
12 with an infant and a moldy house is not a good
13 combination.

14 Q And that first round of testing, that was done by a
15 company that R-Anell brought in and hired?

16 A Yes.

17 Q And so did you reach out to R-Anell at some point in
18 time about getting this other company in at the insistence
19 of the Christofoli's to sample and test for mold?

20 A I don't know that I reached out to them. I just went
21 ahead and hired the company.

22 Q Okay. Did you ultimately have to pay that company an
23 invoice?

24 A Yes.

25 Q I am handing you what has been marked as Defendant's

1 exhibit 16 which has been admitted into evidence. Are
2 those invoices from ABS Environmental?

3 A Yes.

4 Q And can you see, you got charged for not only one
5 round of inspection and testing, but it looks like they
6 came back later on and did some more testing and
7 inspection of the unit?

8 A Yes.

9 Q And did you pay those amounts?

10 A We did.

11 Q And one of the charges was for \$740.00 dollars and
12 the other is for how much?

13 A \$1,780.40.

14 Q And is that an expense that ultimately went into what
15 HomeMax spent on the Christofoli unit all together and had
16 to be accounted for when seeing whether you made money or
17 lost money on this house?

18 A Yes.

19 Q Did those expenses ultimately take away from what
20 HomeMax was able to capture in the form of revenue?

21 A Yes, sir.

22 Q Now, I know ABS, they came in and I think they did
23 like the inspection and testing. But another company
24 actually had to come in and do the remediation?

25 A Yes.

1 Q Okay. And in this case, is that BioTech
2 Environmental?

3 A Yes.

4 MR. HEWETT: I am handing the witness what has been
5 marked as Defendant's exhibit 17.

6 Q Mr. Fautley, are those the invoices or the final
7 invoice that HomeMax got from BioTech?

8 A I believe so, yes, it is.

9 Q And the total amount HomeMax ended up having to pay
10 BioTech was how much?

11 A \$8,976.01.

12 Q And, again, is that an expense that got attributed to
13 the Christofoli house and reduced the profit that HomeMax
14 was able to capture on this sale?

15 A Yes.

16 Q Now, in addition to this mold inspection testing and
17 sampling remediation, did HomeMax also have other expenses
18 connected with carrying the house, keeping it up, fully
19 trimming it out and trying to get it ready, either to
20 ultimately turn over to the Christofoli's or sell to
21 somebody else?

22 A Yes.

23 Q Let me hand you a series of exhibits, these are 18
24 through 29 and have been admitted into evidence. I will
25 take you quickly through those. The first one you are

1 looking at is from Bickley Masonry?

2 A Yes.

3 Q That is from Sease Bickley?

4 A Yes.

5 Q And was that to install the brick foundation, the
6 brick porch and the footing?

7 A Yes.

8 Q I know there are a few of them in there, I think the
9 total charge comes to about \$9,340.00 dollars. Does that
10 sound about right?

11 A It sounds right.

12 Q And, again, did that reduce the total revenue and
13 ultimate profit that HomeMax could capture on the sales of
14 the Christofoli house?

15 A Yes.

16 Q If you turn to, I think it is 17, should be the
17 Jackson invoice. Do you see that?

18 A Yes.

19 Q And was that payment to the company that transported
20 the units from, I think HomeMax sales lot, to the delivery
21 site?

22 A My 17 is BioTech.

23 Q I am sorry, it should be 18.

24 A 19.

25 Q 19, yes. We are on the same page now. Is that the

1 company that transported the units?

2 A Yes.

3 Q And did HomeMax pay them for their service?

4 A Yes.

5 Q How much was the total bill?

6 A \$10,270.00 dollars.

7 Q It sounds like I am on a repeat. But I have to do
8 this, is it an amount that was ultimately deducted from
9 the amount of revenue HomeMax got out of the Christofoli
10 house?

11 A Yes.

12 Q That affected its profit, did it not?

13 A Yes.

14 Q The next invoice should be from Southern Crane, do
15 you see that?

16 A It is.

17 Q As the names implies, is that the company, local
18 company, I don't know if they are local or not, but that
19 was the company that has cranes and puts units together?

20 A Yes.

21 Q How much was that total bill, Mr. Fautley?

22 A \$4,730.00 dollars.

23 Q Did HomeMax pay that bill?

24 A Yes.

25 Q Again, that went into the total expenses spent on the

1 Christofoli house, right?

2 A Yes.

3 Q Took away from any profit HomeMax could make on it?

4 A Yes.

5 Q The next one, if you turn over, the next exhibit, is
6 that from Patriot Heating and Air?

7 A It is.

8 Q How much was that for?

9 A \$4,800.00.

10 Q Did HomeMax pay it?

11 A Yes.

12 Q Was that to hook the HVAC and make sure all of that
13 was done?

14 A Yes.

15 Q Because it had to be done to code, right?

16 A Yes.

17 Q And HomeMax paid that bill and those expenses take
18 away from what it captured on the sell of the Christofoli
19 house?

20 A Yes.

21 Q The next one is a plumbing company called Smooth
22 Waters. Do you see that?

23 A Yes, I do.

24 Q How much was that charge?

25 A \$3,500.00.

1 Q Was that for the plumbing tie in and hookup?

2 A Yes.

3 Q It was paid by HomeMax, right?

4 A Yes.

5 Q And did that amount take away from what HomeMax would
6 capture a profit on this sale?

7 A Yes.

8 Q Do you see an exhibit for TK Construction?

9 A I do.

10 Q How much is it for, how much is the invoice?

11 A \$8,488.00 dollars.

12 Q And was that to put in a deck at the property?

13 A Yes.

14 Q And that was part of the bargain and the agreement
15 between HomeMax and the Christofoli's because they wanted
16 a deck or a floor --

17 A -- front porch and then a stoop at the other door.

18 Q And so that amount that was paid by HomeMax, did that
19 reduce the total amount of revenue and subsequent profit
20 that HomeMax made on this deal?

21 A Yes.

22 Q The next one hopefully in line is Barnhills Services
23 invoices. Do you see that?

24 A Yes.

25 Q There is a bunch of them. Is that for the porta-jon?

1 A Yes, it is.

2 Q Did you have to keep that out there on site for the
3 contractors and people doing work?

4 A Yes.

5 Q And did you pay all of those invoices?

6 A We did.

7 Q There is a few of them and I think they come to
8 \$908.40. Does that sound about right?

9 A That sounds right.

10 Q That got factored into the total revenue and ultimate
11 loss that HomeMax took on the Christofoli's?

12 A Yes.

13 Q We are getting close here. But the next one should
14 be from H&H Container Services. Do you see that?

15 A It is, yes.

16 Q Is that for a dumpster that stayed out there on site?

17 A Yes.

18 Q And that had to be done for several months while work
19 was being done and they are getting the units ready?

20 A Yes, sir.

21 Q The total amount those invoices should come to
22 \$1,230.00, is that the amount that HomeMax paid?

23 A Yes.

24 Q And, again, that went in, as far as the expenses, on
25 the Christofoli units?

1 A Yes.

2 Q You see the Mac Con invoice?

3 A I do.

4 Q Is that for the final grading on the property?

5 A Yes.

6 Q And how much was that invoice?

7 A \$600.00 dollars.

8 Q Again, that is an expense leading to the Christofoli
9 house and affected the revenue, profit?

10 A Yes.

11 Q K&L invoice. Do you have that in hand?

12 A I do.

13 Q Is that for the carpet install and the laminate
14 transition on the marriage line?

15 A Yes.

16 Q How much was that charge?

17 A \$500.00 dollars.

18 Q HomeMax paid it, did it not?

19 A Yes.

20 Q Took away from the amount of revenue and profit that
21 HomeMax made on this sale?

22 A Yes.

23 Q Do you see one for Cutter's Installation?

24 A I do.

25 Q And I think they were putting in a vapor barrier?

1 A Correct.

2 Q And that is an expense that HomeMax paid?

3 A Yes.

4 Q \$475.00 dollars, is that what you have?

5 A Yes.

6 Q And did that reduce the profit and lead to part of
7 the loss that HomeMax has in this situation?

8 A Yes.

9 Q Fit Home Repair invoice. Do you have that?

10 A Yes, I do.

11 Q Is that for \$50.00 dollars?

12 A Yes.

13 Q I think that is some cleaning, trash removal there at
14 the site?

15 A Yes.

16 Q Did HomeMax pay it?

17 A Yes.

18 Q And, again, that was an expense that went into the
19 whole Christofoli transaction, right?

20 A Yes.

21 Q Let me hand you, this is Defendant's exhibit 30.

22 MR. HEWETT: Your Honor, I believe there has been
23 agreement on the admission of these documents. These are
24 payments to North Point Finance.

25 THE COURT: Any objection, Mr. Mangum?

1 MR. MANGUM: I am looking at my list. I don't have
2 any objection to these.

3 THE COURT: Defendant's exhibit 30 is admitted
4 without objection.

5 (Whereupon, Defendant's Exhibit 30 was admitted into
6 evidence.)

7 Q Mr. Fautley, you have packet 30. We are not going to
8 go through each and every single one of those pages. But
9 as far as North Point Commercial's involvement, while all
10 of this was going on with the Christofoli house, and up to
11 the point where you were finally able to sell the house,
12 maybe borrow some money, were you having to make payments
13 on the house?

14 A Yes.

15 Q Did you have to make interest payments and some
16 payments towards the principle?

17 A Interest payments for up to a year and then after a
18 year you start paying principle and interest.

19 Q And those prepayments on the principle, are those
20 called curtailment payments?

21 A Yes, they are.

22 Q All right. And that packet that we see, does that
23 show the payments that are being made from HomeMax to
24 North Point Commercial Finance on the interest and the
25 curtailment payments for the Christofoli's?

1 A Yes.

2 Q You were having to carry that house while everything
3 was going on at the Christofoli's to the point you could
4 get it sold?

5 A Yes.

6 Q And I think, hopefully we don't all have to check our
7 math here but I think the total amount of all of those
8 payments that I see, \$36,988.37. Does that sound right?

9 A Yes.

10 Q Is that the amount HomeMax paid for curtailed
11 payments and interest to carry this point through North
12 Point, carry this house through North Point?

13 A Yes.

14 Q And did that take away from the revenue and profits
15 that HomeMax made on the ultimate sale?

16 A Yes.

17 Q We have heard that the Christofoli's ultimately filed
18 a lawsuit against HomeMax, right?

19 A They did.

20 Q And HomeMax had to retain legal Counsel, lawyer to
21 defend itself against that lawsuit from Mr. and Ms.
22 Christofoli, right?

23 A Yes.

24 Q I think that was Pat Frawley at Davis, Frawley, right
25 across the street, that worked for HomeMax on that case?

1 A Yes, it was.

2 Q Even though HomeMax didn't feel it was responsible
3 for the damages to the Christofoli unit that, at some
4 point did it reach a settlement agreement with the
5 Christofoli's?

6 A Yes.

7 Q And why was that done, why did it ultimately, felt
8 you didn't do anything wrong, why did HomeMax actually
9 make payments to the Christofoli's and paid in a form of
10 settlement?

11 A I had heard that they bought another house, a
12 different house and they got a site built house. And I
13 just wanted to get on with my life and let them get on
14 with their lives. So just agreed to buy it.

15 Q And my understanding that this is the house that had
16 been set up on a foundation on the Christofoli property?

17 A Yes.

18 Q It was going to be hard to take it off, right?

19 A Yes.

20 Q So y'all kind of at a standstill about what to do
21 with the house, they wouldn't close, would they?

22 A Correct.

23 Q And in order to move on and let them move on and let
24 HomeMax move on, did HomeMax end up buying the house back
25 from them?

1 A Yes, we did.

2 Q And did HomeMax actually have to buy the property
3 that it was on?

4 A We did.

5 Q Are you, you know, relying on the attorney that was
6 helping you, his recommendations as well on that matter?

7 A Sure, yes.

8 MR. HEWETT: Here is a, and what is marked as
9 Defendant's exhibit 31, Your Honor. This is the
10 Christofoli settlement agreement.

11 THE COURT: Any objection?

12 MR. MANGUM: I don't have an objection, no.

13 THE COURT: Defendant's 31 is admitted without
14 objection.

15 (Whereupon, Defendant's Exhibit 31 was admitted into
16 evidence.)

17 Q Now, ultimately the agreement to resolve the case
18 with the Christofoli's, that got memorialized in a written
19 document that the Christofoli's signed. Right?

20 A Yes.

21 Q Does that look like a copy of it that you see there?

22 A It is.

23 Q And if you look at, I think it is on page two at the
24 top, how much did HomeMax have to pay the Christofoli's
25 for damages that was claimed?

1 A \$94,000.00 dollars.

2 Q And, again, is that an expense, pretty big one at
3 that, that went into all the expenses that HomeMax, on the
4 Christofoli house and reduced that mount, if any sort of
5 profit if you gained on the sale?

6 A Yes.

7 Q There was, did your bookkeeper, I think her name is
8 Kim Bush?

9 A Yes.

10 Q And did she kind of help keep the accounting there at
11 the company?

12 A Yes, she is the controller.

13 Q Okay. You have got how many employees?

14 A Five.

15 Q Okay. And does she use, did she use some software
16 like Quick Books or something like that to keep tabs on
17 things?

18 A Yes.

19 Q Let me hand you Defendant's exhibit 36. This is the
20 final account Quick Report. Does this appear to be a copy
21 of the final account Quick report that was kept on the
22 Christofoli transaction?

23 A Yes.

24 Q Is that something that is in the usual ordinary
25 course of business when having these types of transactions

1 and expenses on a house?

2 A Yes.

3 Q Does that appear to be a true and accurate copy of
4 it?

5 A Yes.

6 MR. HEWETT: Your Honor, the Defendant would move the
7 Final Account Quick report into evidence.

8 THE COURT: What number is this.

9 MR. HEWETT: 36.

10 THE COURT: Okay. Any objection?

11 MR. MANGUM: No objection.

12 THE COURT: Defendant's 36 is admitted without
13 objection.

14 (Whereupon, Defendant's Exhibit 36 was admitted into
15 evidence.)

16 Q If you will turn to the final page, should be page
17 three of three for what you have?

18 A Okay.

19 Q Do you see there at the bottom right an amount that
20 shows the total expenses spent by HomeMax on the
21 Christofoli house?

22 A Yes, \$360,316.68.

23 Q So that captures all the money that got spent by
24 HomeMax on the Christofoli house, right?

25 A Yes.

1 Q Those are the expenses in full?

2 A Yes.

3 Q We talked about Mr. Fautley and his work at HomeMax
4 when the Christofoli sued. Did HomeMax have to pay him
5 for his services?

6 A Yes.

7 Q If you look at page three, do you see an amount that
8 shows what got paid to Mr. Fautley?

9 A \$5,070.07.

10 Q And, again, that is an expense that fed into that
11 \$360,000.00 dollars?

12 A Yes.

13 Q Okay. All right. We just mentioned, in order to
14 have ownership of the home, to let the two parties move
15 on, HomeMax had to actually buy the land that the house
16 was sitting on, right?

17 A Yes.

18 Q And in order to do that it had to pay, not only for
19 the house, the land, they had to pay back what was
20 borrowed on the house, right, through North Point
21 Commercial?

22 A Yes.

23 Q If you look at page, I think it is the bottom of page
24 two going into the top of page three. Do you see that, it
25 is small.

1 A You talking about the Nature Lane payoff?

2 Q Yes. Do you see those two amounts?

3 A Yes.

4 Q \$112,766.40 and the \$94,000.00 dollars?

5 A Yes.

6 Q And on the next page, you do the math, that comes to
7 \$206,000.00, \$206,766.40, right?

8 A Yes, it does.

9 Q Did HomeMax just have that type of money laying
10 around in its operating account?

11 A No.

12 Q And so to settle with the Christofoli's and let
13 everybody move forward did HomeMax have to borrow that
14 money?

15 A We did.

16 Q And was that done through TAG Lending?

17 A Yes, it was.

18 Q I will hand you what is marked as Defendant's exhibit
19 32. Do you recognize that document, Mr. Fautley?

20 A Yes.

21 Q And is that showing us some confirmation of the money
22 that got borrowed from TAG Lending in the connection with
23 the Christofoli house?

24 A Yes.

25 Q And how much do you see there on the amount that is

1 being borrowed.

2 THE COURT: Hold on. Have you offered it, is there
3 an objection?

4 MR. MANGUM: There is no objection to it.

5 THE COURT: Okay. Defendant's 32 is admitted without
6 objection.

7 MR. HEWETT: Thank you, Your Honor.

8 (Whereupon, Defendant's Exhibit 32 was admitted into
9 evidence.)

10 THE COURT: Now you can answer the question or do you
11 need him to repeat it.

12 Q I jumped the gun. How much do you see is being
13 borrowed on this document?

14 A \$112,766.40. In addition to that there is an
15 origination fee of \$1,127.66.

16 Q And did HomeMax ultimately pay that amount to TAG?

17 A Yes.

18 Q Pay the origination fee and the principle, if you
19 will?

20 A We did.

21 Q And did that reduce the amount that HomeMax could
22 actually make on the sale of this property?

23 A Yes.

24 Q This is Defendant's exhibit 33.

25 MR. HEWETT: Your Honor, I believe this document is

1 without objection. This is the TAG Lending letter for the
2 rest of the amount.

3 MR. MANGUM: Your Honor, no objection.

4 THE COURT: Defendant's exhibit 33 is admitted
5 without objection.

6 (Whereupon, Defendant's Exhibit 33 was admitted into
7 evidence.)

8 Q Do you recognize this as an approval letter for
9 borrowing money from TAG Lending?

10 A Yes, I do.

11 Q And how much is being borrowed?

12 A \$94,000.00.

13 Q Again, there is an origination fee as well?

14 A Another \$1,880.00 dollars, yes.

15 Q And that is money that HomeMax had to borrow to
16 really, to fund the settlement agreement with the
17 Christofoli's?

18 A Yes.

19 Q And did it have to pay back at some point in time?

20 A Yes.

21 Q With interest?

22 A Yes.

23 Q And did that take away from what it made on the sell
24 of the Christofoli property?

25 A Yes.

1 Q So as we were talking about the interest that HomeMax
2 had to pay, that was interest payable to TAG Lending on
3 those loans?

4 A Correct.

5 Q And if you look at, you may have to go back to that
6 final account, Quick Report on page two.

7 A This one?

8 Q That's right, page two of that one.

9 A Okay.

10 Q Do you see there in the kind of middle of the page
11 where there is some interest expenses that are documented
12 for payment to TAG Lending?

13 A Yes.

14 Q And do you see how much those total interest payments
15 come to?

16 A \$27,355.43.

17 Q That was on those two loans that we just talked about
18 and that is what HomeMax paid to TAG Lending?

19 A Yes.

20 Q And did that take away from what it made on the sell
21 of the Christofoli property?

22 A Yes.

23 Q And wasn't there also other expenses that went into
24 it like mowing the yard, utilities hookup and for carrying
25 that house after HomeMax sold it, actually settled with

1 the Christofoli's and took ownership of it?

2 A Yes. I had to do a little landscaping and maintain
3 the landscaping, et cetera; I power washed the house and
4 stuff like that.

5 Q That was in connection to try to keep it up so you
6 could sell it?

7 A Yes.

8 Q And HomeMax paid those amounts and that reduced the
9 amount ultimately capturing the profit of this particular
10 sale?

11 A Yes.

12 Q Now, this was put out there in opening so we all
13 should know it by now. HomeMax sold this property at some
14 point in time to somebody other than the Christofoli's,
15 right?

16 A Yes.

17 Q And I believe that was done right before COVID or
18 about February of 2020. Does sound right?

19 A Sounds right.

20 Q Okay. I think the homeowners are called Madeleines,
21 right.

22 A Yes.

23 Q And did HomeMax have to pay some closing costs on
24 that sale as well?

25 A We did.

1 Q This is Defendant's exhibit 35.

2 MR. HEWETT: Your Honor, I believe it is without
3 objection. The closing disclosure.

4 MR. MANGUM: No objection, Your Honor.

5 THE COURT: Defendant's, I am sorry, 34, is it 34?

6 MADAM COURT REPORTER: 35.

7 THE COURT: 35, sorry. Defendant's 35 is admitted
8 without objection.

9 (Whereupon, Defendant's Exhibit 35 was admitted into
10 evidence.)

11 Q Is that part of the -- I know closing documents are
12 certainly more than four pages. Was that part of the
13 transaction with the Madeleines, the form you see here?

14 A Yes.

15 Q And HomeMax had to pay those closing costs, do you
16 see that toward the bottom, the \$28,418.28 that HomeMax
17 paid on the closing costs on that transaction?

18 A Yes.

19 Q Okay. And, again, did that reduce the amount that
20 HomeMax made on the sell of this property and was
21 accounted for as expenses?

22 A Yes.

23 Q Did HomeMax keep a, what I call a profit and loss
24 statement on this property?

25 A Yes, we do on all the homes.

1 Q Let me hand you what is marked as Defendant's exhibit
2 37. Do you recognize that document?

3 A Yes, I do.

4 MR. HEWETT: I believe this is without objection,
5 Your Honor.

6 THE COURT: Any objection, Mr. Mangum?

7 MR. MANGUM: No objection.

8 THE COURT: Defendant's 37 is admitted without
9 objection.

10 (Whereupon, Defendant's Exhibit 37 was admitted into
11 evidence.)

12 Q And do you see this, look like the recitation of the
13 expenses and the sale price on that property?

14 A Yes, it does.

15 Q And you see the net income listed below, and that's
16 \$80,316.68, but that is in the negative, isn't it?

17 A It is a loss of \$80,000.00, yes.

18 Q So is that the loss that HomeMax took on this
19 property as a virtue of expenses that we just talked
20 about?

21 A Yes.

22 Q And is HomeMax asking the jury to award those damages
23 against, part of the damages claiming against R-Anell in
24 this case?

25 A Yes.

1 Q HomeMax, has it sold houses similar to this model,
2 the Christofoli model that is at issue in this case?

3 A Say that again, I am sorry.

4 Q Has HomeMax sold houses similar to this Christofoli
5 modular home?

6 A Yes.

7 Q And does it usually make a profit on the sale of the
8 house?

9 A Normally, yes.

10 Q It is the idea, isn't it?

11 A That's the idea, yeah.

12 Q And can you tell me conservatively what HomeMax
13 expected to make as a profit on the sale of this unit
14 before it was damaged and everything happened that we
15 talked about?

16 A Somewhere in the neighborhood of \$25 to \$30 thousand
17 dollars.

18 Q And is that on the conservative end?

19 A Yes.

20 Q So instead of making \$30 thousand dollars, HomeMax
21 lost over \$80 thousand dollars on this house?

22 A Correct.

23 Q And in addition to the \$80 thousand dollars, with the
24 loss that we see here is HomeMax also asking the jury to
25 return a verdict that includes \$30 thousand dollars for

1 that lost profit that wasn't realized?

2 A Yes.

3 Q And so with the total amount of damages that HomeMax
4 is seeking against R-Anell for breach of contract claim
5 and the negligence that we have asserted, does that add up
6 to over \$110 thousand dollars?

7 A It does.

8 Q And is it HomeMax's position that it had a contract
9 with R-Anell on the sell of the Christofoli house?

10 A Yes.

11 Q Does HomeMax believe that R-Anell breached that
12 contract given the condition of the unit that was
13 delivered?

14 A Yes.

15 Q All right. I spent a lot of time on the Christofoli
16 house, I tried to move as quick as I can. But we can't
17 ignore what happened on the Brown house. Did HomeMax, is
18 it HomeMax's position as to whether it had ever had a
19 contract in place with R-Anell on the Brown house?

20 A No, not on the Brown house, it did not.

21 Q Was there ever a signed contract that HomeMax is
22 aware of between it and R-Anell from the Brown house
23 transaction?

24 A No.

25 Q And by the time the Brown house had been delivered in

1 March of 2018, had R-Anell already cut ties with HomeMax
2 and terminated business?

3 A They did.

4 Q Did that mean HomeMax couldn't market and sell houses
5 for R-Anell?

6 A I had two models that I didn't have any use for and I
7 sat them up on foundations and completely finished them
8 off.

9 Q We discussed earlier --

10 MR. HEWETT: This is Defendant's exhibit 3. I
11 believe it is without objection. It is a copy of the
12 termination letter.

13 MR. MANGUM: No objection to that.

14 THE COURT: Defendant's exhibit 3 is admitted without
15 objection.

16 (Whereupon, Defendant's Exhibit 3 was admitted into
17 evidence.)

18 Q At some point in time HomeMax received a termination
19 or received a letter from R-Anell terminating business?

20 A After they came in and terminated our relationship,
21 yes.

22 Q And that had been a verbal conversation about that
23 issue before you actually got the letter?

24 A Yes.

25 Q It looks like it is Mr. Gurner --

1 A -- Al Gurner and Mr. Cosby both were there, yes.

2 Q Now, I believe there was a document in place, up
3 until 2017, that spoke to maybe some responsibilities
4 between the companies in the form of a dealer agreement?

5 A Yes.

6 MR. HEWETT: This is Defendant's exhibit 1, Your
7 Honor. Robert, this is a copy of the dealer agreement.

8 MR. MANGUM: No objection.

9 THE COURT: Defendant's 1 is admitted without
10 objection.

11 (Whereupon, Defendant's Exhibit 1 was admitted into
12 evidence.)

13 Q Is this a copy of the dealer agreement that I just
14 spoke of, Mr. Fautley?

15 A Yes.

16 Q And you see that it expired at the end of 2017,
17 right?

18 A Yes, it did.

19 Q In order for a house to be covered it would have to
20 be purchased, delivered and paid for within the year of
21 2017?

22 A Yes.

23 Q We heard from Melissa Allen in R-Anell's case,
24 transportation coordinator for R-Anell. And you heard her
25 testify and maybe some others that this was a COD

1 transaction. Did you hear that?

2 A I did hear that.

3 Q At any point in time did HomeMax ever call and tell
4 Melissa Allen or anybody that this is going to be a COD
5 transaction?

6 A No.

7 Q Would that have meant that HomeMax was going to have
8 to have, you know, a check for \$142 thousand dollars ready
9 and waiting on R-Anell when its transport driver dropped
10 off the houses?

11 A Cash on delivery is what it stands for. So, yes.

12 Q Is that how HomeMax usually does business or handles
13 these transactions?

14 A Never. We always floor plan the houses.

15 Q So is HomeMax in a position it didn't ask for or
16 require at any point in time R-Anell to put on the invoice
17 this is going to be a COD transaction?

18 A No, we did not.

19 Q Okay. How is that usually handled, at least on the
20 manufacture's end in terms of financing a house. Does
21 that usually go through a floor plan agreement. Is that
22 usually on the manufacturer's end?

23 A Yes.

24 Q They use the floor plan?

25 A Yes.

1 Q That means they are going to get paid and then
2 hopefully you will get paid later?

3 A Yes.

4 Q Now, you had an agreement with the Brown's to sell on
5 the house, right?

6 A We did.

7 Q And you, as the builder and the seller, that
8 scenario, did you have an obligation to carry through with
9 your responsibilities to the Brown's?

10 A Yes.

11 Q And so once the house got delivered to the site in
12 Ridgeville, did you participate in setting it up and
13 trimming it out, getting it ready for the Brown's?

14 A It was a factory setup and trim house.

15 Q Did you have some calls that involved those?

16 A Absolutely, yes.

17 Q And ultimately did you get paid from the Brown's on
18 that house?

19 A We did.

20 Q I think the total sales price was \$229 thousand
21 dollars, right?

22 A That sounds right.

23 Q And HomeMax had to put some money into that, that
24 wasn't all profit. I think you put in close to \$52
25 thousand dollars for cost and goods and everything that

1 went into the Brown house, does that sound about right?

2 A Sure, yes, air-conditioning, VAC's, et cetera.

3 Q Okay.

4 A Grading.

5 Q So it retained about, you know, about \$177 thousand
6 dollars from that sale, correct?

7 A Yes.

8 Q Did not pay it to R-Anell?

9 A Correct.

10 Q Did the builder owe R-Anell anything at that point in
11 time?

12 A No.

13 Q Had the dealer agreement expired at that point?

14 A It did.

15 Q And R-Anell terminated its business relationship with
16 HomeMax?

17 A They did.

18 Q And at the time that was going on was HomeMax still
19 taking losses or spending money on the Christofoli house?

20 A Absolutely.

21 Q So when you factor in everything that HomeMax has
22 gone through during three years of just about having to
23 defend itself in a lawsuit and all of those costs, is
24 HomeMax, R-Anell -- owed anything on that Brown house?

25 A No.

1 Q I think you mentioned this. On the Christofoli
2 house, once you got sued by them did HomeMax sue them
3 back, ever try to force them to take ownership of the
4 house or close on the deal?

5 A No.

6 Q In addition to the breach of contract we talked
7 about, is it HomeMax's position that R-Anell failed to use
8 reasonable care when it manufactured the Christofoli
9 house, wrapped it and dropped it off at your site?

10 A Yes.

11 Q Is it HomeMax's position that R-Anell was negligent
12 in that regard?

13 A Yes.

14 Q Is it seeking the damages that we have just talked
15 about in the amount over \$110 thousand dollars for its
16 losses on the Christofoli house?

17 A Yes.

18 Q Mr. Fautley, I don't have any other questions at this
19 time. Thank you and please answer any questions opposing
20 Counsel may have.

21 THE COURT: I think let's go ahead and take a lunch
22 break. Mr. Mangum is looking like he is going to take
23 more than five or ten minutes on his cross-examination.
24 So I am going to excuse you to lunch. Be back at 2:00 and
25 don't discuss the case amongst yourselves, don't do any,

1 A Yes.

2 Q On those what was different about the process with
3 those from the Brown house situation as far as ordering?

4 A What was different about them?

5 Q Yes, right.

6 A They got floor planned.

7 Q So in your opinion is it the fact that it didn't get
8 floor planned without a contract?

9 A My contract had gotten expired, they fired me,
10 remember.

11 Q Well, you know, you said your contract. But you did
12 have someone at HomeMax sign the quote, right, isn't that
13 right?

14 A I am sure.

15 Q Okay. So then, you know, that is not a contract to
16 you?

17 A No, sir.

18 Q Okay. Let me ask you then, did you have a contract
19 with the Brown family?

20 A Did I have a contract with the Brown family, sure.

21 Q What would have happened if R-Anell didn't deliver
22 that house to you?

23 A I can't answer that question.

24 Q Well, I imagine you can. Do you think that the Brown
25 family, I mean, wouldn't there had been an obligation to

1 deliver that house to the Brown family under that
2 contract?

3 A Yes, we agreed to do that.

4 Q Sure, so if you hadn't then you would have been in
5 breach of that contract, isn't that true?

6 A That's true.

7 Q Okay. So by delivering the Brown house R-Anell kept
8 you from breaching that contract with the Brown family,
9 isn't that right?

10 A Okay.

11 Q Okay. And let me ask you, did you accept the Brown
12 house or did HomeMax accept the Brown house?

13 A It was delivered right to the site.

14 Q Sure, so that was, you didn't never reject it, that's
15 right?

16 A That's correct.

17 Q You never revoked acceptance of it, is that right?

18 A I did not.

19 Q Did somebody sign off on the delivery, do you recall
20 that?

21 A I think so.

22 Q And I am going to show you that delivery inspection
23 form.

24 MR. MANGUM: Your Honor, this is already in evidence
25 as Plaintiff's exhibit 6.

1 THE COURT: Okay.

2 Q Have you ever seen that before?

3 A Yes, I have.

4 Q And there is any writing on that, handwriting?

5 A Handwriting says John went on the roof and inspected
6 and taped any holes on the roof and plastic.

7 Q Okay. And earlier on the Christofoli home, so that
8 was for the Brown home, that writing right there?

9 A Yes.

10 Q Earlier on the Christofoli you said that y'all, no
11 one had time to inspect the houses, that they just signed
12 off so the driver could leave. But doesn't that writing
13 indicate that someone had inspected the Brown house?

14 A It wasn't on our end, if they did.

15 Q Okay. Well, wouldn't that have had to been filled
16 out and signed by somebody on your end?

17 A Yes.

18 Q Okay. And just to be clear, this is Plaintiff's
19 exhibit 14 which is already in evidence. Does that appear
20 to be the delivery inspection form for the Christofoli
21 house?

22 A Yes, it does.

23 Q Now, is there any writing on that one?

24 A No.

25 Q So is it fair to say then that somebody had time to

1 inspect the Brown house but not the Christofoli house?

2 A I don't know who inspected the Brown house, I have no
3 idea.

4 Q Didn't somebody from HomeMax sign off on that sheet?

5 A Signed but I am sure it is not the handwriting, it is
6 not Jay's handwriting.

7 Q Somebody had to sign off on it from HomeMax?

8 A Somebody did but I don't know who signed off on it.

9 Q Okay. Do you recall the testimony that it took about
10 three months for you to accept delivery from the time that
11 the Brown house was manufactured to the time that it was
12 delivered to the job site?

13 A I did hear that, yes.

14 Q Okay. Do you know the reason for that delay?

15 A Dorchester County, getting the permit.

16 Q Now, you heard Mr. Cosby and Ms. Allen both talk
17 about speaking with HomeMax about poor delivery. Isn't it
18 true that somebody would have told you or someone else at
19 HomeMax before the house went online for construction?

20 A They may have told the salesperson, they didn't tell
21 me personally.

22 Q But they probably told somebody then, is that your
23 testimony?

24 A I don't know.

25 Q Okay. You don't know. So you are saying that you

1 A Yes.

2 Q Let me ask you, on the Brown house, was there ever a
3 point in time that you intended to pay for it?

4 A Absolutely.

5 Q And what point in time was that?

6 A When I ordered it.

7 Q And then at what point did you decide, you say you
8 ordered it, do you recall when you ordered it?

9 A I don't.

10 Q Was it after the Christofoli house sustained water
11 damage?

12 A I believe that is correct.

13 Q And so at what point between the time you ordered it
14 and the time that it was delivered did you decide not to
15 pay for it or was it after it was delivered that you
16 decided not to pay for it?

17 A It was prior to delivery, I believe, I can't be
18 certain of that.

19 Q So you don't really know when you decided you weren't
20 going to pay for the Brown house?

21 A When I had all the loss with the Christofoli.

22 Q Right. And that was the -- before then you just
23 decided at some point you had enough on the Christofoli
24 home and you just wanted to get paid for it?

25 A Correct.

1 Q Okay. I am showing you Plaintiff's exhibit 7 which
2 is already into evidence. What do you have there as
3 Plaintiff's exhibit 7?

4 A Email from Phillip Hathcock to me.

5 Q And what did you tell Phillip first, below that?

6 A My attorney is now handling the matter you left me a
7 message on today. Please communicate directly with Brad
8 Hewett at Mike Kelly Law Group and the phone number. He
9 is cc'd on the email.

10 Q And at what point then, what is the date on that
11 email?

12 A June 25th and I got a response June 28th.

13 Q So at what point then did you decide you were turning
14 this Brown house over to an attorney rather than dealing
15 with R-Anell directly?

16 A Because of the damage.

17 Q Yeah, but at what point did you make that decision?

18 A I don't know.

19 Q Okay. And has R-Anell sent you invoices periodically
20 since then for the \$142 thousand that you owe on the Brown
21 house?

22 A Every month.

23 Q Every month and you have never paid one of those, is
24 that right?

25 A Correct.

1 Q Well, that's what you say but. Let me point you to
2 Category H other. If you go down to number five there is
3 a pretty interesting entry here. It says a real estate
4 commission to HomeMax real estate, \$8,400.00 dollars. Do
5 you pay a commission to yourself on this house?

6 A No, a salesman that works with me.

7 Q But it was to another HomeMax entity, is that right?

8 A Yes.

9 Q So you think R-Anell should have to pay HomeMax
10 \$8,400.00 dollars for what HomeMax paid to itself?

11 A Yes.

12 Q Okay.

13 MR. MANGUM: Your Honor, again, I think this is
14 evidence already but rather than try to figure out the
15 number we will just admit it as Plaintiff's exhibit 24
16 unless there is an objection.

17 MR. HEWETT: No objection.

18 THE COURT: Plaintiff's 24 is admitted without
19 objection.

20 (Whereupon, Plaintiff's Exhibit 24 was admitted into
21 evidence.)

22 Q Again, this is something you just looked, I think, is
23 that correct, Mr. Fautley?

24 A Yes.

25 Q Okay. You know, it seems to me there is a lot of

1 cost identified in this. And I don't really want to go
2 back through all the invoices, we can if we have to. But
3 I think they are all fairly represented on here. Is that
4 right, the ones you went through with your attorney
5 earlier?

6 A Yes.

7 Q Again, I will make this point briefly. But you have
8 got electrical hookup, you have got lawn maintenance, you
9 have got grading, you have got plumbing. Are any of those
10 things that a manufacture would typically have to spend
11 money on a home setup?

12 A No.

13 Q Okay. So your argument is, or not argument, but your
14 testimony is that R-Anell should pay these things
15 nonetheless?

16 A Yes.

17 Q Let me ask you one thing. You have got interest on
18 here for every month, isn't that correct?

19 A I believe so, yes.

20 Q How long does it usually take you to set up a home,
21 even if nothing goes wrong with --

22 A -- R-Anell set it so they can answer that question
23 better than me.

24 Q You don't know how long it takes you to set up a home
25 as far as getting the grading and the electrical and

1 porches and all of that done?

2 A 30 to 60 days, depending on weather.

3 Q And during that time wouldn't you still have to be
4 paying the interest on that?

5 A Yes.

6 Q So it wouldn't matter whether the home was in perfect
7 condition or in bad condition like the Christofoli home,
8 you still have to pay some of the interest, isn't that
9 right?

10 A That's correct.

11 Q At least two months?

12 A That's correct.

13 Q Let me ask you. There is a lot of entries in this
14 first category and it totals \$52,684.27. Is that right,
15 on the same page.

16 A Yes.

17 Q And you will see a bunch of entries for, there is a
18 lawn service. Have you submitted anything, as far as you
19 know, have you addressed lawn service at all today?

20 A Have I addressed lawn service today?

21 Q Yes.

22 A I don't think I have.

23 Q Has there been an invoice submitted into evidence on
24 lawn service?

25 A Yes. I am sorry, we did address it today, yes.

1 Q There is an invoice on lawn service?

2 A Yes.

3 Q For how much?

4 A I don't know without looking at the bill.

5 Q I am going to hand you all of the invoices that were
6 put into evidence earlier. Would you flip through those
7 real quick and tell me which ones are for lawn service?

8 A Okay. I don't see it in here.

9 Q I will take those back. So needless to say then, you
10 haven't submitted an invoice that -- on lawn service. Is
11 that right?

12 A We paid lawn service so, that's why she accounted for
13 it.

14 Q But you have got nothing showing what you paid and
15 when it was paid other than this sheet, is that right?

16 A If it is not here I don't have it.

17 Q Okay. If you look, there is a few that just say,
18 check, SN4876, they are in the middle of this first page.
19 Do you see those?

20 A What column are you looking at.

21 Q So if you look at the first column, about midways
22 down there is several entries in a row that say check. Do
23 you see those?

24 A No, I don't know where you are looking. Okay, yes.

25 Q Now, some of these just say SN4876. Do you know what

1 these entries are for. I know there is one there that
2 says like, HVAC and then one that says plumbing. I know
3 we have been over those. But are these other checks for
4 --

5 A -- without seeing an invoice I couldn't tell you.

6 Q And it hasn't come into evidence today to your
7 knowledge, has it?

8 A I don't think so. I don't remember if it did or not.
9 That may be the lawn service right there you are referring
10 to.

11 Q Well, there are some different entires for lawn
12 service later on. But anyway, let's look to down here
13 towards the bottom and on to the top of the next page.
14 Aren't there several entries that say Nature Lane power
15 bill?

16 A Yes.

17 Q And do you recall seeing a power bill submitted into
18 evidence today?

19 A No.

20 Q Okay. And so therefore you have got no proof of it
21 other than this sheet, is that right?

22 A That's correct. It is out of Quick Books.

23 Q Now at the bottom of this page you have got the
24 payoff for the house and the payoff for the land and
25 settlement. We have seen the settlement agreement for the

1 Christofoli's. But and maybe it was in that big stack
2 that I was given by your attorney earlier. But I haven't
3 seen an actual payoff amount for 11276640 --

4 A -- that was from the floor plan company. We had to
5 pay interest for all that time and then we paid, that took
6 it down from \$125 to \$112. We paid \$12 thousand in
7 principle.

8 Q Oaky.

9 A And then we financed it with TAG.

10 Q If you will go to this third page. There is Nature
11 Lane legal fees category. Do you see that?

12 A Yes.

13 Q Have you submitted a bill into evidence today for
14 these legal fees?

15 A I don't recall if we submitted that bill or not.

16 Q Have you discussed a bill today?

17 A I have discussed a lot of things today.

18 Q Have you seen a bill for those legal services today
19 in this courtroom?

20 A Not that I am aware of.

21 Q Okay. Thank you. I am going to try to close this up
22 shortly. So let me understand your position, still is
23 that R-Anell is owed absolutely nothing on the Brown
24 house. Isn't that correct?

25 A That's what we are saying, yes.

1 Q And on Christofoli, you are saying R-Anell is
2 responsible for every expense that you ever had on that
3 house. Isn't that true?

4 A Yes.

5 Q And isn't it true, that just like on the Brown home
6 where you said you had, you know, I think you may have
7 said maybe about \$55 thousand dollars worth of setup work
8 to do on Brown. Isn't it true that you would have had
9 that, roughly that amount of work to do on Christofoli as
10 well?

11 A Yes.

12 Q Okay.

13 A Not if I didn't buy the house, but I bought the house
14 so I had to finish the house.

15 Q Well, you would have finished it anyway?

16 A Often times the customer will do some of their own
17 stuff.

18 Q Are you aware of what the arrangement was on the
19 Christofoli house as far as --

20 A -- we did everything.

21 Q But if everything had gone to plan do you know what
22 the arrangement was, you said that the customer might
23 finish some of the stuff. Are you aware that the
24 Christofoli contract, responsibilities for them versus
25 HomeMax?

1 A I am not sure what you are referring to.

2 Q So you just said on Brown, that you did about \$55
3 thousand worth of work?

4 A Okay.

5 Q I was asking about the Christofoli, if you would do
6 roughly that same amount and unless I am incorrect, you
7 said it would depend on what the contract said and what
8 the customer had agreed to do themselves?

9 A That's correct.

10 Q So you, as you sit here today, are you aware of, on
11 the Christofoli home, what the arrangement was with the
12 customer as far as what work they would handle versus what
13 work that HomeMax would handle?

14 A I know they handled their basement, where they had it
15 dug out underneath and poured the slab under there and we
16 paid for the rest of the foundation.

17 Q Okay. And, you know, isn't it true that a seller,
18 you know, the commissions paid in closing, wouldn't you
19 have those anyway, wouldn't you have commission to pay the
20 closing anyway when you close on a property?

21 A What commissions?

22 Q The real estate commission, just like any other real
23 estate transaction?

24 A You have real estate commissions, sure.

25 Q Okay. On further questions.

1 Q I cut a lot of yards and cut a lot of landscaping in
2 high school and college, I never sent invoices for my work
3 when I mow the yards. And possibly you didn't get
4 invoices, you just paid the yard guy?

5 A It is possible had invoices and Kim didn't think to
6 give us copies of those invoices. I know I paid a
7 landscaper that used to do HomeMax as well, I paid him to
8 go out there.

9 Q Thank you for your time.

10 A Thank you.

11 THE COURT: Anything further for this witness?

12 MR. MANGUM: I am going to ask one questions.

13 REDIRECT EXAMINATION

14 By Mr. Mangum:

15 Q Mr. Fautley, in the 40 days that the Christofoli
16 house sat on your lot did you ever once walk inside and
17 inspect it?

18 A No.

19 Q No further questions.

20 THE COURT: Thank you, you may step down. Leave all
21 of those papers up there if you will. Call your next
22 witness.

23 MR. HEWETT: Your Honor, we had a series of
24 deposition designations that we filed, I will be happy to
25 report that almost all of those have now been dispensed

1 throughout this trial to a deposition. In advance of
2 trial, witnesses are often placed under oath and asked a
3 number of questions. They are represented by their
4 attorneys, the opposing is there and everyone has the
5 opportunity to ask them questions. Really the same as
6 what happens in court, they just get to do it ahead of
7 time. And so you have heard some references to those
8 depositions. Those are, that audio recording is typed out
9 in a transcript just like it will be done for this trial
10 here today. And that transcript is put together and
11 printed out. And so today Mr. Hewett is going to read
12 portions of the deposition of Phillip Hathcock that was
13 taken, apparently he was deposed twice. But this one was
14 taken as the Representative of R-Anell Housing Group, LLC.
15 Normally we would have another person sit on the witness
16 stand and read it almost like a script for a play. But
17 apparently because it is so short Mr. Hewett is going to
18 read all of it. But you should take that testimony and
19 evaluate it just as if the witness were sitting live here
20 on the witness stand. It is no different from any other
21 testimony, it is part of the record for you to consider
22 and give it the weight and credibility you think it
23 deserves.

24 MR. HEWETT: Thank you, Your Honor. We will read
25 from page 80 beginning at line 9 which is a question I

1 asked to Mr. Hathcock about the Christofoli house.

2 And the question is this. This home was subject to
3 the National Manufactured Housing Construction and Safety
4 Standards Act, correct? Question.

5 And his answer on line 12 was, yes.

6 That is all that the Defendant seeks to introduce.
7 It is that short is why I didn't put a witness up.

8 THE COURT: Understood.

9 MR. HEWETT: With that being said the Defendant rest.

10 THE COURT: Wonderful. All right, ladies and
11 gentlemen, now would be a good time to take a break.
12 There are matters of law that I need to discuss with the
13 attorneys outside of your presence. Please go back to
14 your jury room and don't discuss the case amongst
15 yourselves.

16 (Whereupon, the jury was excused from open court for
17 a break.)

18 THE COURT: Any motions?

19 MR. MANGUM: Your Honor, we would move for a directed
20 verdict on our claim in our favor as well as against all
21 of the counterclaims. Obviously, this is going to take a
22 minute for us to get through. I think that we will start
23 with the easy ones first. Mr. Hewett, I will argue on it
24 if necessary but Mr. Hewett has indicated and indeed the
25 evidence has shown that unjust enrichment and quantum

1 meruit are improper causes of action for the sole act that
2 there is an admitted contract as to the Christofoli home.
3 And maybe we can have him speak on it now.

4 MR. HEWETT: No need to argue on it. The Defendant
5 will withdraw the claim for unjust enrichment, Your Honor,
6 I meant to do that earlier. So no need to argue it.

7 THE COURT: Okay.

8 MR. MANGUM: It cuts out a little time but not much
9 unfortunately. I will take the next easiest one next and
10 save the contract ones for last. As to their claim on
11 negligence, I don't think that they have indicated a
12 single piece of evidence that would lead to a negligence
13 claim in this case. Furthermore, as far as negligence
14 goes, this case is clearly unquestionably barred by the
15 economic loss rule. The economic loss rule is set out in,
16 well, it is an old principle but there, the case that I
17 think that they might rely upon and that, in fact, sets it
18 out is Kennedy versus Columbia Lumber. That is 299 SC 335
19 and I will pass up some copies.

20 THE COURT: Please. Yes, sir.

21 MR. MANGUM: So Kennedy establishes a very narrow
22 exception to the general rule on the economic loss rule.
23 And I will find my quotation here that lays out the rule
24 quite well. This is on, the site is *15. For some reason
25 the page number is cut off on this copy. But there is a

1 section B that says liability in tort. And the quote
2 says, "where purchasers expectations in a sale are
3 frustrated because the product he bought is not working
4 properly. His remedy is said to be in contract alone
5 where he has only suffered an economic loss." Now, this
6 Kennedy case is interesting because it created an
7 exception solely for residents in the commercial builder
8 context but for residents in a consumer transaction, the
9 Kennedy Court actually allowed the negligence claim. But
10 it is important on the last page, if you look at category
11 B. This is for new residential housing, a homebuyer
12 purchasing from a party, not the builder, may sue the
13 builder on this. So this exception is not applicable to
14 this case. That is clear, I think even from Kennedy but
15 it is certainly clear when you look at the case law that
16 is followed. And truthfully there was a lot of confusion
17 about Kennedy and it has actually been narrowed over time.
18 You will see in this next case I hand up, Sapp versus Ford
19 Motor Company, 386 SC 143. They had to overturn some
20 cases that improperly expanded that Kennedy, narrow
21 Kennedy exception. Now in this Sapp case they say,
22 contract law protects expectancy interest between the
23 parties while negligence protects society as a whole. And
24 you can see this on the second page, it is the third
25 paragraph. That is where that is. You can note from this

1 as well, it says, in the next paragraph down, Kennedy was
2 for a homebuyer recovering in tort from a developer or
3 builder. You know, it is not intended for a commercial
4 transaction such as that between R-Anell and HomeMax. It
5 is intended for the situation where a homebuyer buys from
6 a builder. And in fact, they explain the rationale behind
7 the Kennedy exception very well in this case. Right above
8 *149, it is three pages from the end. They say, a home is
9 typically an individual's single largest investment and is
10 a completely different type of manufactured good than any
11 other type of product that the consumer will buy, a
12 consumer will buy. Moreover, courts have recognized that
13 the transaction between a builder and buyer for a sale of
14 a home largely involves an inherently unequal bargaining
15 power between those parties. For these reasons we created
16 a narrow exception to the economic loss rule solely in the
17 residential home context. Judge, you can see, that's not,
18 again, they are just proving the point but this, it is not
19 intended in the commercial transaction context but rather
20 when a residential homebuyer buys a home from someone
21 else. And it says further, the Kennedy courts
22 specifically noted that the economic loss rule will still
23 apply where duties are created solely by contract. And in
24 that situation no cause of action in negligence will lie.
25 And they say, you know, since Kennedy, there have been

1 several Federal Court opinions on this matter. And in
2 closing they say, we conclude the Federal Courts were
3 correct in this regard saying that it cannot apply to
4 consumer, to commercial transactions. Indeed the Federal
5 Courts in South Carolina have looked at this issue several
6 times. I am obviously not going to go through every one
7 but I will pull a couple for y'all. And the first one I
8 am going to hand up is Myrtle Beach Pipeline versus
9 Emerson Electric. And that is 843 F. Supp 1027. And this
10 is burdensome long opinion but luckily we do not need to
11 go through it in great detail. I will just hand that up.
12 You will note this is in 1993 which is after the Kennedy
13 opinion. The point of this case is they say, at the
14 citation *88 which is going to take a minute to get there
15 because this thing is so dang long. South Carolina law
16 has long recognized the principle that no tort claim will
17 lie where the parties duties are defined by a contract.
18 If Myrtle Beach can bring its tort action the uniform
19 commercial code would be totally eviscerated and the
20 action of the General Assembly of South Carolina in
21 enacting it would be rendered nugatory. I mean, you know,
22 that's the exact situation here. You have got a contract
23 between two commercial parties, neither of them really
24 seriously disputes that the UCC applies. And so, you
25 know, to allow a negligence claim to go to the jury on

1 this case would totally eviscerate the Uniform Commercial
2 Code which is the exact concern that the Myrtle Beach
3 Court had. I will point out too, this is a little further
4 back on 76, *76. South Carolina has only applied the
5 doctrine in consumer transaction regarding the houses and
6 has not yet been presented with the question of whether
7 the Rule should be rejected in all context including the
8 commercial arena. Thus, South Carolina's highest Court
9 had not addressed it to this point. However the Fourth
10 Circuit had. And you will see this, the next page is this
11 2000 Watermark case. This is somewhat similar to our
12 facts here. In 2000 Watermark, they had an issue with
13 defective shingles. And they said, well, we should be
14 able to bring this in tort as well because we had some
15 issue with the felt and the tarpaper on the roof and that
16 didn't have anything to do with the shingles. Well, the
17 Court in that case said, the negligence claim cannot
18 proceed because its incidental to the contract
19 responsibilities of the parties, the damages to the extent
20 there were any. I have got one more Federal case for you
21 on this point. And it is Ross Dress for Less versus Lauth
22 Construction Group. That is 2012 U.S. District Lexis
23 90937. And the reason that I bring this case to your
24 attention is that the Courts specifically addressed the
25 Kennedy as well. And they say Kennedy is not applicable

1 in the commercial context and the parties must have a
2 special relationship to impose tort duties. And that is a
3 citation at, that runs from *41 to *42. It is three pages
4 from the back. And I will read the actual quote because
5 it is fairly short. The Court finds that Kennedy is not
6 applicable in the commercial context as is a discussion
7 of an exception to the economic loss rule. Not an
8 exception to the requirements that parties in the
9 negligence action must have a special relationship to
10 impose a legal duty. Now, I have not heard evidence and
11 indeed it hasn't been offered because it doesn't exist.
12 There is no evidence of a special relationship between
13 R-Anell and HomeMax that exist outside of the contract
14 between the parties on the Christofoli home. And I will
15 point out, of course, these are Federal cases but the Sapp
16 Court said, we conclude the Federal Courts, we are correct
17 in this regard. And that's a Supreme Court decision from
18 2009. So, and in closing, at least on the negligence
19 piece, I haven't seen any evidence and indeed I think the
20 law demands that there not be a negligence verdict for the
21 Defendant and against the Plaintiff because, you know, in
22 this case there simply is no special relationship that
23 would lead to a negligence claim. There is no dispute
24 that there was a contract between the parties. And all of
25 the damages to the extent there are any at all on the

1 Christofoli home can be sorted out, you know, if the
2 contract claim is even appropriate. It should be brought
3 in that claim and not as a negligence claim.

4 THE COURT: Mr. Hewett.

5 MR. HEWETT: Thank you, Your Honor. I have heard
6 these arguments before and they were all presented to the
7 Court in a motion for summary judgment that has been ruled
8 on. We had these same arguments before the Court. Judge
9 Keesley denied their motion for summary judgment as to
10 whether he could bar the jury from providing any sort of
11 finding on the negligence claim. They all have been
12 brought before the Court, they have been ruled on, they
13 have been denied. The evidence hasn't really changed
14 except the fact that it has gotten better on our end
15 because this is the house, as you heard at the tail end of
16 our case-in-chief, that was subject to a Federal Law,
17 National Manufacturing Housing Safety Standards Act. And
18 our Courts have ruled that builders and professionals have
19 duties in this case and usually decline to extend economic
20 loss rule to professionals that have those duties, in this
21 case, to properly build, properly wrap a house. They have
22 admitted on the stand they had a responsibility to
23 properly manufacture this house and to properly build the
24 house. And that may be beyond any sort of contract that
25 existed between the companies. The Court has seen that

1 the written documents that may constitute a contract are
2 pretty scant between these two companies. And so there
3 were professional duties and there was a relationship,
4 this is a company selling houses to another company and
5 getting paid for it obviously. So there were duties as is
6 admitted, properly manufacture and properly wrap the
7 houses. In the Griffin case, Griffin versus, I will give
8 you the cite. It is 320 SC 49, it is Tommy L. Griffin,
9 Plumbing and Heating Company versus Jordan, Jones and
10 Goulding. That is a case involving a builder. We had a
11 company that is licensed to sell homes in this State and
12 is subject to the Federal law as well, has admitted and
13 has responsibilities to do that in a proper manner. So,
14 Your Honor, beyond any contractual terms that have come
15 out in the evidence, there are duties that this builder
16 has and they have admitted to those. And so since this
17 issue has come up before the Court and it is ruled that a
18 fact finder must find as to whether they are negligent, we
19 think that is an issue for the jury to decide, whether
20 there is any negligence beyond any sort of contractual
21 finding it may find against R-Anell. I don't have time
22 to, I do have time if the Court wants me to, to read all
23 these cases that just got passed up and try to unwind them
24 and distinguish them. But I know the law in this State
25 under Griffin, is that a builder and somebody like a

1 manufacturer has professional duties and usually do not
2 extend the economic loss doctrine to parties like that.
3 So, Your Honor, that's the Defendant's position. We think
4 that there has been more than enough evidence for a fact
5 finder to reasonably conclude that there was negligence in
6 the part of R-Anell. And when you view all of those
7 inferences in the light most favorable to the Defendant,
8 we would ask the Court to deny the directed verdict motion
9 as to the negligence claim on the Christofoli house.

10 THE COURT: Did you prepare this order, Plaintiff's
11 motion for summary judgment for Judge Keesley's signature?

12 MR. HEWETT: The order denies summary judgment?

13 THE COURT: Yes.

14 MR. HEWETT: I did not prepare that order. That came
15 directly from Judge Keesley.

16 MR. MANGUM: The Judge wrote it himself.

17 THE COURT: Did he?

18 MR. MANGUM: Yes. He actually did.

19 MR. HEWETT: I apologized to Judge Keesley in advance
20 because that is the longest, I had a 38 page memo I sent
21 to him and I apologized. But he heard us out for a long
22 time and he ruled and that is his order.

23 THE COURT: Okay. I don't recognize his writing like
24 I thought I did.

25 MR. MANGUM: Your Honor, when you are ready I do want

1 to make a point on this order.

2 THE COURT: Go ahead.

3 MR. MANGUM: This order does not make a specific
4 finding whatsoever on the negligence issue. And I will
5 say that Mr. Hewett has, I will point to a case where the
6 economic loss rule has not been applied in a commercial
7 transaction between two commercial parties.

8 THE COURT: What part of this order, Mr. Hewett, do
9 you believe addresses the negligence claim, the economic
10 loss rule.

11 MR. HEWETT: Ultimately the Court denied their motion
12 for summary judgment on the basis of economic loss
13 doctrine. So obviously, taken as a whole, if the order
14 denies their motion for summary judgment and leaves it to
15 the fact finder, if you look at the order to make a
16 determination as to whether there was negligence on the
17 part of R-Anell.

18 THE COURT: Well, its not that simple. I mean,
19 because truly if that were the case then every denial of
20 summary judgment would amount to a denial of a directed
21 verdict. That is not how this works.

22 MR. HEWETT: In full context, Your Honor, we
23 submitted a, and filed a lengthy memorandum detailing the
24 law and the facts. Those are also argued to the Court.
25 And so I think, I am not inside of Judge Keesley's head

1 but he heard that and you know like I do, he reads what is
2 in front of him.

3 THE COURT: Oh, absolutely.

4 MR. HEWETT: And so he understood all of that when he
5 decided that this was an issue for the fact finder on the
6 negligence claim based on the evidence that was before him
7 at that time, it was likely going to come into trial and
8 has come into trial at this point in time.

9 THE COURT: So there is nothing in the order that you
10 can point to. I just want to make sure I am not missing
11 it because I don't see it.

12 MR. MANGUM: I didn't see it either.

13 MR. HEWETT: So, you can read the order just as well
14 as I can, Your Honor. I am looking at page five in that
15 first full paragraph about it being, the facts aren't as
16 simple as the Plaintiff would purport. And the Court
17 believes that to be true, that the facts and law are not
18 so simple. But then goes on to say it is an issue for the
19 fact finder. And had I drafted the order, Your Honor, it
20 probably would have mirrored my 38 page memo. Judge
21 Keesley didn't ask me to, he just ordered. And so I
22 didn't ask him to clarify his order, I took as this is an
23 issue for the jury and the fact finder and the evidence
24 hasn't changed from what Judge Keesley considered to what
25 the jury heard in this case.

1 THE COURT: Well that I don't know because I haven't
2 read what was put before Judge Keesley. I have to decide
3 based on what has been put before the Court within this
4 courtroom and this trial. You have a legal argument for
5 me to consider as to the economic loss rule?

6 MR. HEWETT: I presented that as well.

7 THE COURT: You have.

8 MR. HEWETT: I made that argument.

9 THE COURT: And that is why I have this case in front
10 of me actually. Anything else from anyone else on this
11 issue?

12 MR. HEWETT: No, Your Honor, just to accept that
13 there are Federal laws that are incorporated into State's
14 statutes that speak to the modular home, manufactured
15 responsibilities. I think I mentioned that in the outset
16 of my argument. So that is, again, why we think that
17 mirrors our Courts refusal to extend economic loss
18 doctrine to parties who have professional duties. And
19 that is spoken for in the Griffin case. And that was the
20 case between one company against the Government. So a
21 merchant was involved in that case and it declined to
22 extend the economic loss doctrine in the Griffin case. I
23 won't repeat myself, Your Honor, I have stated my
24 position. And thank you for the Court's time.

25 THE COURT: Right. The difference, I find that

1 Griffin is distinguishable from this case. So Griffin
2 addressed whether design professionals incur malpractice
3 tort liability or could be liable for tort liability. And
4 that was an engineer. And there is discussion of the
5 duties to not negligently design or, I believe, plan
6 whatever the issue was here. That is distinguishable from
7 this case. This is an item, goods that were contracted
8 for and there is no dispute that there was a contract.
9 And really all licensed professionals have some duty under
10 State law, Federal law, and that is whether you are a
11 trucking company or an attorney or whatever. And I don't
12 know that those general duties expand or impact the
13 economic loss rule in a context like this where there was
14 a contract for goods. And the duty to Defendant from the
15 Plaintiff arises under that contract. I just --

16 MR. HEWETT: I understand what the Court is saying.
17 Along with that contract for goods there are duties
18 associated with those goods as well. And in this case
19 there has been evidence, they have got a responsibility to
20 properly wrap those houses. Yes, there is a contract for
21 goods along with that in connection with it. It comes
22 with responsibility by them to perform under standards,
23 Federal standards and also their professional
24 responsibilities in certain services connected to those
25 goods. That is why a negligence claim is brought in

1 addition to breach of contract. Because they could have
2 said, one of the contracts, we sell you a house, you can
3 pay for the house. That is what we do. Well, it goes
4 beyond that in this case and they have admitted that
5 because they have responsibilities that aren't spelled out
6 in any contract that may exist between the two companies.
7 And that speaks to installing the wrap properly and that
8 is a major issue in this case. So I understand what the
9 Court is saying about Griffin. I think the application
10 remains.

11 THE COURT: I want you to be certain that you are
12 actually finished arguing this time. Because when I am
13 ruling I don't want to be interrupted.

14 MR. HEWETT: I understand, I am sorry for
15 interrupting.

16 THE COURT: Are you actually finished this time?

17 MR. HEWETT: I am good.

18 THE COURT: Good. Right. I think it is
19 distinguishable. I think the economic loss rule applies
20 and I am granting the Plaintiff's motion for a directed
21 verdict as to the negligence cause of action as the duties
22 arise solely out of the contract between the parties and
23 certainly one part of that contract may be wrapping the
24 thing. Because obviously the thing has to be delivered
25 whether to HomeMax or directly to the building site or

1 where ever it is. But everybody agrees that there was a
2 contract between the parties and that is part of the
3 contract. As it is with goods, I mean he purchases goods
4 that must be delivered. I don't just agree for Amazon to
5 give me a cup, I mean in that contract and this is a very,
6 very bad analogy. But they have got to deliver it to me
7 in the condition that I purchased it. That is part of a
8 contract with them. It is not spelled out and, you know,
9 we don't write out all of the terms but that is part of
10 the contract. In any event, I am granting Plaintiff's
11 motion for a directed verdict as to the negligence cause
12 of action.

13 MR. HEWETT: Okay. Thank you, Your Honor.

14 THE COURT: Next.

15 MR. MANGUM: Next up. I think we are going to do, I
16 know this may be a little bit haphazard but I am going to
17 lay some foundation for my argument on the Christofoli
18 counterclaim. So I am going to do the Brown claim first.

19 THE COURT: You have an uphill battle here.

20 MR. MANGUM: Okay. Well, I will give it a shot. I
21 will start with Judge Keesley's order since Mr. Hewett
22 cited it. You know he says, he said even then that their
23 claim, that their defense on the Brown home was tenuous.
24 And I don't think any evidence has come to light since
25 then that would have, that would lead to them for

1 waylaying on that claim. And I will start here with,
2 2-204. I don't think that there is any way that they can
3 truly deny that there was a contract in this case. 2-204,
4 you can have a formation of a contract by any manners
5 sufficient to show agreement. Any manner sufficient to
6 show agreement. What we have heard in this case, that
7 there is a signed quote from HomeMax that gets sent back
8 to R-Anell that they invoice them, that, you know, in the
9 case of Brown, they took the home on their lot, they
10 didn't reject it. Mr. Fautley said it, no rejection, no
11 revocation of acceptance. They claim possession and they
12 sold it to their end consumer. If that doesn't evidence
13 the contract I don't quite know what would. 2-204, like I
14 said, a contract for the sale of goods may be in any
15 manner sufficient to show agreement including conduct by
16 the parties which recognizes the existence of such a
17 contract. And I will point out that in, confirmatory
18 memorandum, we have had this discussion already, so I
19 won't belabor the point, we talked about it earlier. With
20 confirmatory memorandum, 2-202 and 2-207, it doesn't take
21 a full drafted up contract document, we all know that. A
22 confirmatory memorandum can be the final expression of an
23 agreement between parties. So for that reason I think
24 there is a valid contract and we haven't heard really any
25 evidence to the contrary of that. So then once you get

1 past this threshold of what, that there is a contract, you
2 have got acceptance. You know, 2-606, acceptance occurs
3 after a reasonable opportunity, inspect of goods, the
4 buyer signifies in writing to the seller that they are
5 conforming or that he will take them in spite of
6 nonconformity or fails to make an effective rejection or
7 does any act inconsistent with the sellers ownership. We
8 have got plenty of evidence here that there are tons of
9 acts, that they were inconsistent with the sellers
10 ownership. In fact, I can't think of any evidence that
11 more than selling the house to somebody else. That is
12 indeed what happened. So what happens when the buyer
13 accepts the house. 2-607, when the tender is accepted,
14 this is section one, well sorry, let me start on section
15 one. 6-071, when the goods are accepted the buyer must
16 pay at the contract rate for any goods accepted. So, you
17 know, we have established acceptance. The buyer's first
18 duty, first and foremost, the buyer must pay the contract
19 goods for any good accepted. If a breach is discovered,
20 section three says, the buyer must within a reasonable
21 time after he discovers or should have discovered any
22 breach notify the seller of the breach or be barred from
23 any remedy. Now, accusation in this case, I mean there is
24 no accusation in this case of a breach of the Brown home.
25 So the burden is on the buyer to establish, once the goods

1 are accepted, that there was something that would have
2 permitted them to revoke acceptance. And indeed I have
3 got a case. This is the Coupled Product case. If I can
4 get out where it is on my chart. The signed acceptance
5 form in this case is good enough to indicate acceptance
6 along with efforts to resale a product. I will bring you
7 mine in a minute once I read my quote out of this case.

8 THE COURT: Actually I do have West law up if you
9 want to give me a citation.

10 MR. MANGUM: Yes, I will just give you the cite then.
11 It is 2014 U.S. Lexis 9288. If you go to page 11 of this,
12 it is almost to the end. It explains what has happened
13 here. in this case, it is obviously is not the exact same
14 factual instance. But they signed a machine acceptance
15 form and it indicated some issues. And they said, well,
16 that was sufficient for a rejection. And the Court
17 granted --

18 THE COURT: -- hold on. What is the case name?

19 MR. MANGUM: It is Coupled Products, LLC v. Modern
20 Mock Tool Company.

21 THE COURT: Give me a second. Westlaw does not like
22 the Lexis cite's.

23 MR. MANGUM: It is the Northern District of Ohio if
24 that helps.

25 THE COURT: Go ahead.

1 MR. MANGUM: In this case they said that a signed
2 acceptance form, even if it had complaints on it, was
3 enough to indicate acceptance and was not unambiguous
4 rejection. And furthermore, there is no genuine dispute
5 that Coupled's attempts to sell the cutoff system, which
6 is what was sold, were inconsistent with Modern's
7 ownership and thus an acceptance. The contract wire has
8 conformed that inconsistent with the seller's ownership,
9 specific goods by offering to resale these goods. Such an
10 act constitutes an acceptance of the goods. Here there is
11 just no question, I mean there is no question. They
12 resold it. That is exactly what this says.

13 THE COURT: I don't want to interrupt your train of
14 thought but are you going to have rebuttal witnesses or
15 not?

16 MR. MANGUM: We do, it will be Mr. Hathcock and it
17 will be quick.

18 THE COURT: But you haven't decided yet?

19 MR. MANGUM: I am still thinking on it. Honestly I
20 am inclined not to but I will talk with Mr. Murray to make
21 sure he doesn't have anything.

22 THE COURT: I am just asking, because I would like to
23 get all the testimony done today but if there will not be
24 any rebuttal then we can let the jury go and, you know,
25 talk about charges and everything else. They can be done

1 for the day. I am not pressuring you to make a decision.
2 That's why I want to know.

3 MR. MANGUM: Can I talk to Mr. Murray a second?

4 THE COURT: Sure.

5 MR. MANGUM: This isn't the answer that you want but
6 I think we are going to put him up. I think it will be
7 readily short but I do think we are going to put him back
8 up on rebuttal very quickly.

9 THE COURT: Okay, that's fine. Okay, continue.

10 MR. MANGUM: Okay. Let me see if I can get back on
11 my horse here. So, I mean, once you get past acceptance
12 and I think we have got clear acceptance here, you know,
13 now you have got to look at what is an appropriate
14 rejection or revocation. 2-602, rejection of goods must
15 be within a reasonable time after their delivery or
16 tender, it is ineffective unless the buyer seasonably
17 notifies the seller. Now, we have got a great South
18 Carolina case on this. It is Plantation Shutter versus
19 Ezell, 325 SC, excuse me, 328 SC 475. And in this
20 Plantation Shutter case, you know, it's not particularly
21 dissimilar from this. They tried to remediate an issue
22 with the shutters and ultimately they came to, they
23 struggled to come to an agreement on it and the buyer's
24 argument was that he didn't accept the goods because they
25 never fully agreed upon the, what the circumstances were.

1 And it says, in construing section 36-2-201, this is on
2 the third page, our Courts have determined that for an
3 rejection of goods to be effective a buyer must notify a
4 seller in writing. We have seen not one shred of writing
5 that would indicate that HomeMax rejected the Brown house,
6 not one. And, in fact, by reselling it to the end
7 consumer, they have to have been deemed to have accepted
8 it. You know, this, there is sufficient support for this
9 proposition. I will hand up Southeastern Steel real
10 quick, 273 SC 634. Lays out essentially the same
11 principle but it does say, again, oral notice is
12 ineffective to constitute rejection particularly where the
13 purchaser retains the goods. Obviously the purchaser has
14 retained the goods here. He has admitted it and even if
15 he hadn't it would be indisputable given the fact that he
16 resold those goods. So we have not got, well, I will
17 touch on revocation too just for the sake of thoroughness.
18 2-608, revocation of acceptance must occur within a
19 reasonable time after the buyer discovers or should have
20 discovered the grounds for it and before any substantial
21 change in condition of the goods, which is not caused by
22 their own defects. It is not effective until the buyer
23 notifies the seller of it. Again, we have seen no
24 evidence of revocation, none whatsoever. So you have got
25 a contract, we don't think you can seriously dispute that

1 there is a contract. We have got acceptance. We don't
2 think that there is any legitimate dispute that there is
3 acceptance. There is no evidence of revocation, there is
4 no evidence of rejection. And so therefore this triggers
5 the seller's remedies under 2-703 and then we will go to
6 2-709 which is the action for the price. You know, there
7 has been some dispute, previously whether an action for
8 the price was appropriate but, you know, I am here to say
9 today that it is unquestionably appropriate and in fact is
10 the remedy that is afforded to the seller under these
11 circumstances within the UCC. Section one under 2-709,
12 when the buyer fails to pay the price as it becomes due,
13 which has clearly happened here, the seller may recover
14 together with any incidental damages under 2-710. The
15 price of goods accepted or of conforming goods lost or
16 damaged within a commercially reasonable time after the
17 risk of loss as passed to the buyers and of goods
18 identified to the contract. If the seller is unable,
19 after reasonable effort to resell them, or the
20 circumstances reasonably indicate that such an effort will
21 be unavailable. Well, the seller can't, cannot resell the
22 goods after acceptance here because they are sitting in
23 HomeMax's control. And this is just unquestionable. I
24 will point to a case, SunOpta Grains v. JNK Tech, 2018
25 U.S. Lexis 196410. And I have copies of that as well. In

1 this SunOpta case, they indicate that the action for the
2 price is the appropriate remedy where a seller has agreed
3 to sell goods, the goods at delivered, accepted and the
4 buyer does not pay for those goods. This case
5 specifically authorizes an action for the price in that
6 situation. And in this case it is something more trivial,
7 it is soybeans, not a manufactured house. But you can see
8 on the second page, Cherith which is one of the people
9 involved, failed to pay in September 2016 as the parties
10 agreed after the soybeans had been delivered. And then
11 you go to page four under section two, action for the
12 price. SunOpta, who is the seller, seeks summary judgment
13 on this claim on action for the price, a seller's remedy
14 under the UCC. Because Defendants accepted the soybeans
15 once they arrived in China and failed to pay for them, an
16 action for the price is the appropriate remedy. The
17 Defendant concedes that SunOpta's interpretation of the
18 statute in its application for this case are correct. You
19 know, here we have got acceptance and I don't see how we
20 can, how that can possibly be disputed given that the
21 house was resold. There has been, you know, an
22 insinuation as well that failing to collect on the COD
23 payment may have waived a right to payment. Now, as a
24 matter of law, I don't think that there is any support for
25 that contention, I have not seen any yet. And I will hand

1 up a case that indeed says that, just because goods are
2 handed off to a carrier does not mean that the seller's or
3 the buyer's responsibility to pay for those goods is
4 waived. This case is a Missouri UCC case, 205 Mo.App.646.
5 And in this case the seller actually sued the transport
6 company for not giving the check. And in this case, on
7 the last page, you can see, such a payment by Tyler and
8 Company, who was the buyer; was not a voluntary payment of
9 a third party's obligation, who was the carrier, but was a
10 payment of their own debt. So their own primary
11 responsibility, having received these eggs, the goods,
12 from the Plaintiff, the seller; the law would clearly
13 compel payment for the same or return of the eggs. So
14 here, the law would compel, the law would compel either
15 payment for the goods or return of those goods. We have
16 seen neither of those here. And I have got one more on
17 this point. This is Audiovisual Artistry versus Tanzer,
18 403 S.W.3d 789, this is a Tennessee case. And I will make
19 the point that, although there is no allegation that the
20 seller here breached the Brown contract, there is one that
21 they breached, Christofoli. But in the Audiovisual
22 Artistry case, the Court says, even if the seller breaches
23 the contract it does not defeat an action for the price.
24 The remedy is instead, that the buyer might just prove
25 some sort of setoff on that specific contract. And so,

1 you know, I think that here, it is just plain as day that
2 you have got an action for the price. And that it is the
3 appropriate remedy and indeed is the remedy that the Court
4 should grant. I will try to read the quote here from it.
5 Contrary to the argument advanced by Mr. Tanzer in his
6 brief, the UCC does not contemplate that a general breach
7 on the part of the seller would fully preclude the
8 seller's action on the price. Rather, the buyer must
9 prove his or herself, if any, under the pertinent sections
10 of the UCC by proving rejection or revocation of
11 acceptance or breach of warranty. The buyer has offered
12 no evidence in this case that would entitle it to setoff
13 on the Brown contract. And the last piece of this claim
14 is the prejudgment interest part. We have already been
15 through that argument before. I don't know how much we
16 need to make again but I can give you the cites again if
17 you want to hear it.

18 THE COURT: I don't think it is necessary at this
19 point.

20 MR. MANGUM: Okay. So, I mean that's, just to wrap
21 that up, you know, you have got evidence in the record
22 that is unquestionable, there was a contract. You have
23 got a signed quote, you have got a returned invoice, you
24 have delivery, the buyer accepts the goods, the buyer
25 never revokes the acceptance of those goods and never

1 rejects the goods which on both cases, as we have seen,
2 has to be in writing delivered to the seller. Because you
3 have none of those things the seller is entitled to an
4 action for the price under the UCC and is entitled to
5 recover its principle on that sale. So we would move for
6 a directed verdict on our claim.

7 THE COURT: I know it is a super close call. But I
8 believe that this is an issue for the jury to determine,
9 yes, and that is all I am saying.

10 MR. MANGUM: I understand your ruling, Your Honor.

11 THE COURT: That's denied.

12 MR. HEWETT: Thank you, Your Honor.

13 MR. MANGUM: I will push forth on the Christofoli
14 counterclaim as well on breach of contract. I think we
15 are entitled to a directed verdict on that as well. Of
16 course, in this case we can skip the tort, the UCC because
17 we have got no question of a contract or delivery and
18 acceptance of the goods. I will reraise the Plantation
19 Shutter case and the Southeastern Steel. Again, for
20 revocation or rejection you must have a revocation or
21 rejection in writing of the goods. We have seen zero
22 evidence whatsoever that the Christofoli home was actually
23 rejected or revoked. And you might remember the case with
24 the signed acceptance form, the Coupled Products v. Modern
25 Mock Tool code, the Northern District of Ohio case. You

1 know, just saying we complained about this on the
2 acceptance form or just saying a general complaint is not
3 an unambiguous rejectionable revocation. So in that
4 sense, you know, I think that could bar their counterclaim
5 in and of itself. But nonetheless, since you seem
6 skeptical of that by your facial expression, I will
7 continue arguing.

8 THE COURT: Good idea.

9 MR. MANGUM: The other question really though, is the
10 shift of the risk of loss. I think this is where the law
11 really turns on this. And I will direct you to, since we
12 haven't covered that in the UCC in the previous one,
13 2-509. Where the risk of, where the contract requires or
14 authorizes the seller to ship the goods by carrier. If it
15 does not require him to deliver them to a particular
16 destination the risk of loss passes to the buyer when the
17 goods are duly delivered to the carrier even though the
18 shipment is under reservation. So, it doesn't matter,
19 ultimately the whole water damage thing, its irrelevant
20 because once the buyer delivers the goods to the carrier
21 the risk of loss passes to the buyer. And on, you know,
22 this is evident, 2-503, I've only got one copy but I can
23 hand it up. Comment five to 2-503 says, the default
24 contract is a shipment contract. And that is, you know,
25 as compared to a destination contract where the risk of

1 loss, if a product is required to be shipped to a
2 particular destination that product, the risk of loss does
3 not shift until it is delivered to the buyer. If a
4 destination is not specified says comment five, that's a
5 shipment contract. And the shipment contract is regarded
6 as the normal one and the destination contract is the type
7 -- so you can see that comment because it is kind of
8 convoluted. In this case, in fact we have a shipment
9 contract. You have heard evidence that it was delivered
10 to Bennett Transport and that at R-Anell's facility there
11 has been no evidence whatsoever offered that there was
12 damage at the time that it was delivered to Bennett
13 Transport. And further, I will point out, because the
14 invoice does list HomeMax's lot, although we have heard
15 evidence that they didn't really want it delivered there.
16 Wilson v. Brian of California, Inc; 132 Cal.App 4th, 549.
17 In this case addresses this comment five but we have
18 already talked about it in the South Carolina context. Of
19 course, a seller will have to provide the carrier with
20 shipping instructions. It follows that a contract is not
21 a destination contract simply because the seller places an
22 address label on the package or the important part, or
23 directs the carrier to ship to a particular destination
24 thus a ship-to term has no significance in determining
25 whether a contract is a shipment or destination contract

1 for risk of loss purposes. Okay. So even if the invoice
2 says ship-to HomeMax's lot, which I believe it does, that
3 is actually not a destination contract. It is a shipment
4 contract unless there is a clear and unambiguous term to
5 the contrary that shifts the risk of loss. So the risk of
6 loss really shifted at the time that R-Anell delivered the
7 unit to Bennett Transportation. And further, even if it
8 did not, even if it didn't we have got unambiguous
9 evidence that HomeMax signed the delivery inspection form
10 that said, you are taking the responsibility from here on
11 out. That evidence has, in fact, not been contradicted.
12 And I will point out too that it is in their counterclaim
13 and they have not proven that it wasn't the A side that
14 was damaged and in fact all of the evidence that has come
15 in has suggested that it was the B side other than maybe
16 the wall panel cut list which I don't really think says
17 anything at all about which unit was actually damaged.

18 THE COURT: Say that last part again.

19 MR. MANGUM: The A side is what was water damaged.
20 The wall cut list is what Mr. Hewett offered and I don't
21 think that, based on what we have seen, it is just the
22 electrical components. I don't think that is even remote
23 evidence of what side was actually damaged given the large
24 weight of the evidence over several months to indicate
25 that it was the A side. I will point out one more case.

1 Barton Brands Limited versus O'Brien and Gere. This is
2 200 U.S. District Lexis 64, 578. And in this case they
3 say the risk of loss should shift if the Plaintiff has
4 complete control and use and there is no provision
5 conditioning acceptance on some other condition. And I
6 will read the exact quote once I get it handed out to
7 everybody. Somehow again, I only managed to come away
8 with two copies of this one. But I will read the quote
9 and then hand it up to you. Page four of this case says,
10 Plaintiff had complete control and use of the entire vac
11 house system and Plaintiff is the purchaser here, and
12 certainly had undertaken the risk of the safekeeping. And
13 I am skipping ahead. Plaintiff's use here went beyond an
14 inspection period and constituting an acceptance of the
15 vac house in a full integration of the air pollution
16 system into its operation. Essentially they took it, they
17 took acceptance of it, integrated it entirely into what
18 they were doing. And so you can't argue then, once you
19 have accepted it and you have got it in your possession
20 that there was no shift of the risk of loss which is
21 essentially their argument, that because, they, on their
22 counterclaim admitted that they can't prove where the
23 water damage took place. So it is a question of risk of
24 loss. And as we have seen, the risk of loss default is
25 the risk of loss for the seller transfers when they hand

1 it off to the carrier, in this case, Bennett
2 Transportation. And in fact, we have got double
3 insulation on that essentially based on the inspection
4 form that they signed. And so if they can't point to the
5 fact that it was wet before it left R-Anell's facility, if
6 they cannot prove that, then the risk of loss is on the
7 buyer anyway and their entire counterclaim is defeated.
8 So for that reason we would ask for a directed verdict.

9 THE COURT: But no one can say whether it was damaged
10 before it left R-Anell, in transit, once it arrived at
11 HomeMax or while it was sitting on the HomeMax lot, there
12 is no direct evidence of that. Now, you have got some
13 circumstantial evidence, a little bit of roundabout where,
14 I think probably Mr. Hathcock testified, I can't be sure.
15 But that, well, it was signed off on this inspection and
16 that means it wasn't wet but he didn't see it, he didn't
17 inspect it. So there is no direct evidence, that is a big
18 question mark in this case. Was it wet at R-Anell, I
19 don't know, I doubt it but I don't know, who knows. I
20 don't have to know because I am not the fact finder but
21 that's a big question mark here, is it not?

22 MR. MANGUM: Well, I would say this. I don't think
23 there is enough evidence to prove that there was a risk of
24 loss. I don't think there is any evidence, sorry, not
25 there was -- it was damaged at R-Anell's facility which is

1 what the law would require, that it was damaged at
2 R-Anell's facility because the risk of loss shifts at the
3 time it is delivered to the carrier. There is actually no
4 evidence in the record that it was damaged at that point,
5 there is actually none, not that I can think of.

6 THE COURT: I don't know that that is your only
7 problem. That is just where I was starting because that
8 was the last thing you said. I am going to let this one
9 go to the jury too.

10 MR. MANGUM: Thank you, Your Honor.

11 THE COURT: Anything else?

12 MR. MANGUM: That is it from us actually.

13 THE COURT: Okay.

14 MR. HEWETT: Nothing further, Your Honor.

15 THE COURT: All right, let's take ten minutes before
16 we do this rebuttal and then we can talk about jury
17 charges after I have dismissed the jury panel for the
18 afternoon.

19 (Whereupon, a short break was taken.)

20 THE COURT: Go ahead and bring the jury.

21 (Whereupon, the jury came into open court at
22 approximately 4:20 p.m.)

23 THE COURT: All right, folks. Now, you have heard
24 the Plaintiff's case-in-chief, you have heard the
25 Defendant's case. As I told you, sometimes there is a

1 little rebuttal at the end so I am turning back to Mr.
2 Mangum for any rebuttal witnesses that he has. Call your
3 first witness.

4 MR. MANGUM: Your Honor, we will call Phillip
5 Hathcock to the stand, please.

6 MADAM CLERK: Do I need to swear him in again?

7 THE COURT: No, you are still under oath. Come on
8 up.

9 DIRECT EXAMINATION

10 By Mr. Mangum:

11 Q Phillip, let me ask you this. Earlier Mr. Fautley
12 said that he could have a home ready for somebody to move
13 in within 30 to 60 days. Is that your experience?

14 A No sir, again, maybe that's more on the simple side
15 of manufactured houses. I have tried to describe earlier
16 in my testimony. My builders, which we build mods, but it
17 is an average of four months basically what it takes.
18 Because if it takes him, I mean, on the Brown house it
19 took him four or five months just to get a permit. I
20 would like to think it takes him more than 30 to 60 days
21 to get the foundation in doing all the clearing, all the
22 leveling, all the HVAC, electrical, everything. So my
23 average dealers, I have got 35 builders and I have asked
24 that question many times. They have got porches and decks
25 and all of that stuff to put on so it is an average of

1 four months.

2 Q So during that four months would the builder incur
3 say interest charges for their floor plan?

4 A Yes, the floor plan is --

5 MR. HEWETT: Objection, Your Honor, I believe this
6 goes outside the scope.

7 THE COURT: It does. The objection is sustained.
8 Next question.

9 Q I am going to hand you some documents that the seller
10 put into evidence, actually I will have to look on with
11 you because I don't have a copy of them. The first one is
12 a Bickley Masonry invoice. Could you take a look at this.

13 A It looks like every house has to have a brick
14 foundation, mud seals put on it. So that is something
15 that goes in every house.

16 Q So whether or not the Christofoli home was water
17 damaged, that is a cost that HomeMax or its end consumer
18 would have to bear?

19 A Yes. It has absolutely nothing to do, there has got
20 to be a foundation there for the house, whether it has got
21 water damage or not. It is just part of the cost.

22 Q And this next one. It looks like it is from
23 somebody, it is an invoice for \$2270, would you take a
24 look at that?

25 A You know, this is a, it looks like I guess when

1 HomeMax wasn't ready to deliver when it come off line. It
2 was took to the sales location and then he had then, in
3 return freight it to the homeowner site which is not
4 R-Anell's responsibility either. I mean, that is just, he
5 decided to do that so that's his cost, had nothing to do
6 with water damage at all.

7 Q And how about this Southern Crane invoice?

8 A All mods come on a carrier and they have to be
9 unbolted and lifted up by a crane to put on the
10 foundation. So you have got to, that is just part of the
11 natural cost of every house you do. It has to have a
12 crane to pick it off the carrier and set it on a
13 foundation. So this has absolutely nothing to do with
14 water damage.

15 Q And how about this Patriot Heating and Air invoice?

16 A Well, \$4,800.00 dollars, we have nothing to do with
17 HVAC, it is not here, we don't do nothing with HVAC. This
18 is, they have to have a heating unit for every home.
19 Looks like this home has one installed for \$4,800.00
20 dollars and it has absolutely nothing to do with water
21 damage. I would assume every home has to have a heating
22 and air-conditioning put in it.

23 Q How about this Smooth Water Plumbing invoice, does
24 that have anything to do with water damage?

25 A No. This is, when we manufacturer a home we put

1 straight drops, you know, if you have got a kitchen sink
2 it has a straight drop and then somebody has got to take
3 it from there to the septic and finish it out and that
4 happens on site on every house. So it looks like we had
5 about, I don't know, \$3,500.00 dollars worth here that had
6 absolutely nothing to do with water damage again.

7 Q How about this invoice from JCK Construction. I am
8 not really sure what this is but maybe you can tell us
9 whether or not it has anything to do with water damage?

10 A This is a deck, this is actually a porch and a deck
11 that was added onto the house. Part of the contract, of
12 course I had nothing to do with. Almost \$8,500.00
13 dollars, \$8488 which absolutely has nothing to do with
14 water damage. This is part of, I guess, the contract that
15 HomeMax had with customers. So nothing to do with water
16 damage.

17 Q And how about this invoice that says K&L dependable
18 service. Can you tell us if that has anything to do with
19 water damage?

20 A No. This is part of, when you connect the two halves
21 together, it says install carpet tack and pad. That's
22 part of any modular you do, when you put it together you
23 have got to have that cost in doing that. Nothing to do
24 with water damage.

25 Q And one more, this one says Cutter Insulation invoice

1 as well. Could you tell me whether or not that has
2 anything to do with the water damage?

3 A This is actually, I think it come up in some
4 testimony, maybe when Bob was here, this says the vapor
5 barrier. So this is the actual vapor barrier wasn't
6 installed that we had to wait on to get put down which is
7 the builder's responsibility. It has absolutely nothing
8 to do with water damage. It is just part of the
9 requirement part of the code to get done.

10 Q The last thing I am going to hand you. This is the
11 closing disclosure, I think both parties actually have
12 this in evidence. Under the section H other, it looks
13 like there, really just this other cost in general. It
14 looks like there is quite a bit in closing cost here. Is
15 this something that the builder or dealer might naturally
16 incur on any home if they are closing on the real estate?

17 A It has nothing to do with manufactural water damage.
18 I can tell you that. So, yes, I would think this has to
19 do with the closing on every home itself.

20 Q I have no further questions for Mr. Hathcock.

21 THE COURT: Mr. Hewett.

22 CROSS-EXAMINATION

23 By Mr. Hewett:

24 Q Do you still have, I think it is exhibit 19, the
25 Jackson invoice with the crane, the \$2,270.00 dollars one.

1 problem with the way the Court charges it.

2 THE COURT: Perfect. Then I will use mine, it is a
3 little bit shorter.

4 MR. HEWETT: Three is deposition testimony to -- and
5 you may have a shorter one. Anyway we agree to it, if you
6 have got one you would like to use.

7 MR. MANGUM: No objection.

8 MR. HEWETT: Four is just some general language on
9 the applicability. And it is some definitions of the UCC.
10 They don't agree to it but there has been a lot of talk
11 about it for sure. And I think it is fair for them to
12 have that but, Judge, if you think it needs to be cut down
13 or you have already got a UCC charge somewhat akin to
14 this.

15 THE COURT: Tell me what you are trying to get at
16 with this one.

17 MR. HEWETT: Really that opening paragraph, its where
18 we are explaining, hey, we have got two commercial parties
19 and this is a transaction of goods between those
20 merchants. And given some definitions of goods and
21 merchants in there. Really that is what it is. There is
22 some customized language at that last paragraph about it
23 being over a modular home. You may have already planned
24 to talk in some way or fashion about the UCC generally.
25 That is why I put it in there, just so they know.

1 somebody at HomeMax on the Christofoli home and told them
2 when the home was expected to be ready. Nonetheless, when
3 the Christofoli home came off the lot at R-Anell on May
4 4th, 2017, HomeMax was not ready for delivery of that
5 home. In fact, because HomeMax could not take delivery
6 the house stayed at R-Anell's facility for two weeks. You
7 have heard testimony this week that R-Anell inspects its
8 houses and the temporary transport wrapping on them
9 satisfactory throughout the manufacturing process. And,
10 again, when the driver for the third party carrier, the
11 trucking company picks it up, as Mr. Hathcock told you,
12 none of these inspections saw any water damage whatsoever
13 to the Christofoli home. Once the home was delivered to
14 HomeMax, HomeMax had to accept delivery at its commercial
15 lot, rather than at the job site where the home was to be
16 affixed to the foundation because HomeMax was not ready to
17 go to the job site yet. Once R-Anell shipped the
18 Christofoli house to HomeMax's commercial lot, HomeMax had
19 an employee inspect and sign off on the delivery
20 inspection point. And that is what this says right here.
21 Please inspect this unit thoroughly for any exterior or
22 interior transit damages. R-Anell homes will not be held
23 responsible for any transportation damage. It has got a
24 dealer signature and a driver's signature. This is 4876A,
25 the A unit of the Christofoli home which is the one, as

1 you heard from Mr. Hasenauer as well as Mr. Hathcock,
2 that's the one that had the water damage. So when you
3 take this back in the jury room, 4876A is the sign off for
4 the Christofoli home. And as you have heard, this
5 inspection form certifies, even Mr. Fautley, certifies
6 that HomeMax is taking responsibility for the damage to
7 the home. Then once that form was signed it sat on, the
8 Christofoli home sat on HomeMax's lot for 40 days, almost
9 six weeks. You heard Mr. Fautley admit that neither he
10 nor any other person at HomeMax, to his knowledge, ever
11 inspected the home, whether it was the wrapping or just
12 looking around it, when all he had to do was open the door
13 to each module and simply walk inside. As you heard Mr.
14 Hathcock explain, it is quite easy to walk inside because
15 the wrapping only covers the roof and the exposed side
16 where the units go together so the door is accessible.
17 Any one at HomeMax on any single one of those days, those
18 40 days that it was on HomeMax's lot, could have simply
19 opened the door, walked in and looked to see if there was
20 any damage to the home and they didn't do it. And after
21 40 days on the HomeMax's lot, the Christofoli home was
22 finally delivered to the Christofoli property around the
23 end of June of 2017. As we went through with Mr. Fautley,
24 you will have the data too in the jury room with you, it
25 rained 13 of those 40 days that the Christofoli house was

1 on Mr. Fautley's lot. Obviously that's ample time for it
2 to have gotten wet there. And, heck, all you got to do
3 really is look outside this week and you can see what it
4 is like in late May and June, how it rains about every
5 day. And so unsurprisingly when they unwrapped it, as
6 y'all know and are very aware of by now, the home had
7 severe water damage. Now, you heard HomeMax this week try
8 to pin blame on R-Anell, which you also all know by now
9 that no evidence was presented in this courtroom today
10 that the water damage was caused by R-Anell. In fact, Mr.
11 Fautley had admitted that HomeMax has no idea of when or
12 how the water damage occurred. He has also admitted that
13 HomeMax has no idea how a house is even supposed to be
14 wrapped. And I want to remind you again, just to put a
15 point on it, he did not once and neither did anyone else
16 once inspect the home while it was on HomeMax's lot for 40
17 days. I remind you that the Judge told you at the
18 beginning of this trial that on the counterclaims that
19 HomeMax is asserting on the Christofoli home, HomeMax must
20 tip the scales even so slightly in their favor. And yet
21 all that they can say about the water damage is, I don't
22 know and no one can say for sure when that water damage
23 occurred. Members of the jury, you know that HomeMax
24 signed the delivery inspection form certifying that it had
25 inspected the Christofoli home, that there were no issues

1 with the Christofoli home and that HomeMax was accepting
2 responsibility from there on out for their home. And you
3 know that HomeMax never made any demand for money
4 whatsoever from R-Anell on the Christofoli home until this
5 lawsuit began because, in fact, it was R-Anell and not
6 HomeMax who in good faith spent the bulk of the cost in
7 remediating water damage on that home. You have also
8 heard that while the water damage on the Christofoli home
9 was being remediated by HomeMax and R-Anell, that HomeMax
10 actually ordered another home from R-Anell in late 2017.
11 Again, just like with the Christofoli home, HomeMax and
12 the customer, this time the Brown family put together a
13 request for a custom home with R-Anell. HomeMax requested
14 a quote from R-Anell, R-Anell provided that quote.
15 HomeMax signed and returned that quote and R-Anell put
16 that home into the production schedule just like it had
17 always done with HomeMax. The evidence has also indicated
18 that his second home, the Brown home was ready for
19 delivery in December of 2017. Nonetheless, HomeMax yet
20 again was unready for delivery. And, in fact, delayed
21 three months in taking delivery on that home. You heard
22 Mr. Fautley admit that at the time he ordered the Brown
23 home, he intended to pay for it. You heard him then admit
24 that when he got the invoice in the Brown home in March of
25 2018 he probably still intended to pay for it. You heard

1 Mr. Fautley say he closed on the Brown home with the Brown
2 family but they got exactly what they wanted. The same
3 people who ordered the home back in late 2017 and he,
4 HomeMax, made a profit on it. And you heard Mr. Fautley
5 say that sometime between March and June of 2018 he
6 actually decided that, you know, we didn't have a contract
7 with R-Anell and we are just not going to pay for it. Mr.
8 Cosby, who I mentioned earlier and who testified on
9 Tuesday, told you that Mr. Fautley reassured him multiple
10 times over those months that R-Anell would get paid for
11 that Brown house from HomeMax. And further, and I think
12 this is important, Mr. Fautley had to admit that if
13 R-Anell had not delivered that Brown house to him he would
14 have been in breach of contract with the Brown's and yet
15 he still never paid R-Anell for the Brown house. If Mr.
16 Fautley is willing to tell you in the fact of all of that
17 evidence that here was an agreement between HomeMax and
18 R-Anell for the Brown home and he says, you know what,
19 there wasn't any agreement, there was no contract. What
20 kind of credibility should he have with me, I submit none.
21 But beyond the Brown home, as you have heard, Mr. Fautley
22 decided, you know what, not only am I going to keep this
23 Brown home and not pay for it and take the whole profit
24 but I am going to charge R-Anell for all of the work that
25 I had to do on the Christofoli home to get it in livable

1 condition whether it was because that home got wet or not.
2 Remember, we went through all of those invoices. And Mr.
3 Fautley admitted that it is his responsibility to
4 coordinate with the customer to handle things like the
5 foundation and the plumbing and the HVAC and electrical
6 and other construction needs. And yet now here he is in
7 this courtroom saying, R-Anell should pay me back for
8 those things on the Christofoli home. I want you to
9 remember Mr. Fautley's answer yesterday that he had not
10 paid for the Brown home because of the money he spent
11 remediating on the Christofoli home. Because the evidence
12 shows that as of the beginning of May, 2018 R-Anell had
13 spent \$44 thousand dollars on the remediation work. If
14 you will look at HomeMax's accounting which you will have,
15 by the beginning of May 2018 there is two entries that say
16 mold on them and they total \$9 thousand dollars. So Mr.
17 Fautley is saying, I spent \$9 thousand dollars on this
18 Christofoli home remediating mold and so therefore I don't
19 have to pay for a \$142 thousand dollar house. And not
20 only that, he is saying I want R-Anell to pay for the
21 lawsuit and, you know, I will point out the Christofoli's
22 didn't sue R-Anell when things went wrong, they sued
23 HomeMax. And now HomeMax is saying, we want R-Anell to
24 pay for that lawsuit, we want them to pay for the
25 settlement, we want them to pay for the lawyer bills and

1 we want them to pay for everything on closing for the
2 resale of that house. And he is saying, oh yeah, I also
3 want them to pay for every bit of interest I incurred on
4 all of my loans whatsoever related to the Christofoli home
5 and my lawn care and my power bill and, oh yeah, my
6 closing costs and the real estate commission that I paid
7 to myself. And you can see that on the closing
8 disclosure. There is a commission line, it says HomeMax
9 real estate. So he paid a commission to himself and now
10 wants R-Anell to pay him back for it. And y'all will have
11 the deeds on the Christofoli home in the jury room and you
12 will be able to compare, when he purchased that property
13 in 2019, the recited consideration is \$30 thousand
14 dollars. And when he resold that home in 2020 you will
15 see that the recited consideration is \$280 thousand
16 dollars. So like I said in opening, it is mind boggling
17 to me that they can claim that they have damages on the
18 Christofoli home. Members of the jury, Mr. Fautley and
19 HomeMax don't deserve a thing from you and you should
20 award them nothing on their counterclaims. That is
21 because every one agrees that there was a contract but
22 R-Anell did not breach that contract. And for you to
23 award damages to HomeMax you would have to find that
24 R-Anell had breached that contract. And they simply
25 offered no evidence that tips the scales in their favor on

1 that point. We are asking you as well, to make sure that
2 R-Anell is compensated rather than punished for its good
3 deeds. And we would ask that you would check that box on
4 your verdict form that you will see soon enough saying
5 that, yes, R-Anell had a contract with HomeMax and is
6 entitled to \$142,292.80 which is the exact invoice price
7 of the Brown home. Thank you.

8 MR. HEWETT: If it please the Court?

9 THE COURT: Yes, sir.

10 MR. HEWETT: It will take just a minute to put this
11 TV back on the stand, Your Honor.

12 THE COURT: Okay.

13 MR. HEWETT: Ladies and gentlemen, I am sorry about
14 that but have got to set up our own technology so thank
15 you for your patience. I think you know at this part of
16 the case the Defense has a chance to say a few words to
17 you for the last time. And before I get into the argument
18 I want to thank you for your time here this week, for how
19 attentive you have been, how conscientious you have been,
20 I know you have been put in a box and then put in smaller
21 boxes on top of that. So I appreciate all of you paying
22 attention throughout the trial because it is an important
23 case. I think you understand that to HomeMax and Mr.
24 Fautley. So thank you again for your service and for
25 being here and paying attention as you have. Now that

1 that is said, one thing that I have noticed in recent
2 times, months, even years is seemingly lack of
3 accountability in our society, in our culture these days.
4 It looks like everybody is looking to blame somebody else
5 of their own mistakes. And instead of taking personal
6 responsibility for their conduct, their mistakes, they are
7 looking to blame others, to point the finger. I will
8 borrow a line from an American author named Richard Bach.
9 And Mr. Bach says, we can't accept fault if it is never
10 our responsibility. And if it is never our responsibility
11 then we are always the victim. And I think we have got a
12 touch of that in this case with R-Anell for a house that
13 it built and is wrapped and for a transaction that it made
14 errors on and then brought suit against somebody else
15 instead of taking responsibility for its own actions. And
16 so what we have seen play out in the testimony, I will go
17 to the Christofoli house first, is that we know and it has
18 been admitted, they wrapped the house, it is their
19 responsibility. And in wrapping that house it came out
20 that there is no training at all given to this one person
21 whose responsibility it is to wrap the house, no
22 supervision either. And for that matter, neither Mr.
23 Hathcock or Mr. Cosby, Mr. Hasenauer, Mr. Gurner or Ms.
24 Allen, none of them ever wrapped any modular houses. And
25 they didn't give you any real information on how that is

1 suppose to be done. Somebody did it at R-Anell and they
2 know who that was and he wasn't brought to trial to talk
3 to any of you about wrapping this house and the way it is
4 suppose to be done. That could have been presented to you
5 and it wasn't, they just made a big deal about Mr. Fautley
6 not giving you any information about houses are wrapped,
7 he didn't wrap the house and that is clear. I don't need
8 to keep telling you that, you have heard it from day one.
9 That was, you know, that was their responsibility to do
10 and they could have easily brought this gentleman in,
11 whoever he was, gave you some information about how it
12 should have been done. They didn't do that. We have
13 heard how the ultimate goal is for the house to go from
14 the factory directly to the building site, not a go
15 between, not to be heard anywhere. And in this case with
16 Christofoli it was R-Anell that asked HomeMax to take
17 early shipment. It knew the building site wasn't ready,
18 the Christofoli's were still doing some work on the site.
19 But as a favor to R-Anell HomeMax allowed them to store
20 the units at the HomeMax sales lot and that was really
21 just for R-Anell's own financial purposes, their
22 budgeting, their accounting purposes. And HomeMax did
23 that as a favor for R-Anell, didn't have to but it did.
24 R-Anell doesn't know when the house got wet. You have
25 heard that through multiple witnesses. They keep wanting

1 to say, well, it got wet at the sales lot but they don't
2 really know. They said that under oath, several of their
3 witnesses said, it was at the factory and their yard for
4 13 days, they don't know when it got wet. That has been
5 made clear. Obviously a big deal has been made about the
6 delivery form and they have shown you one for unit A,
7 there is two units in this case. And you have heard
8 evidence that, according to the wall panel production
9 check list, that the kitchen and bathroom 2, which is
10 where the damage was is in the back unit. And that is
11 usually referred to as unit B and on their wall panel cut
12 list, those parts of the house are in unit B. But never
13 seen a delivery form for unit B at all. So to the extent
14 you give any significance to what got signed off on to the
15 transport driver so they can drop the units, keep in mind
16 back in evidence, you will have one for unit A, there has
17 never been one given to me for unit B at any point in
18 time. And Mr. Hathcock said he didn't know whether it was
19 A or B, I think Mr. Hasenhauer when he testified in his
20 deposition, he didn't really know either. And this
21 escaped me at the time, but as I was thinking through it
22 last night, when Mr. Hasenauer testified that he got a
23 call from Dave Cranfield at Mid-State Modular about the
24 damage, he also got some pictures from Mr. Cranfield about
25 the damage, either texted or emailed to him. And he

1 testified to that in his deposition and he said it on the
2 stand too, at no point in time has Mr. Hasenauer ever
3 turned those pictures over, whether he lost them, didn't
4 keep them, just didn't turn them over. I have never seen
5 any pictures that he got from the setup crew the same day
6 that the damage was discovered. You heard testimony that
7 R-Anell never bothered to come down and look at the house
8 that they built and that they wrapped and they got paid
9 over \$125 thousand dollars for on the front end. Mr.
10 Cosby was the salesman, he pitched it, he sold the house,
11 he didn't think that he should have to come down and talk
12 to the Christofoli's or look at the damage. Mr.
13 Hasenauer, he was the factory and setup manager there at
14 the factory. He said it wasn't necessary for him to come
15 down and look at the house, ever meet with the
16 Christofoli's. The general manager, Mr. Hathcock, the
17 same thing, never bothered to make the less than two hour
18 drive from Crouse, North Carolina to talk to Mr. Fautley
19 in person about this or meet with the homeowners. Mr.
20 Hathcock, they keep saying, well, we dropped it off and at
21 that point in time it becomes HomeMax's responsibility at
22 the sales lot. Mr. Hathcock has said, we still have
23 responsibility for this house, we were doing the factory
24 set and at some point in time we set it up, we trim it out
25 and then we turn it back over to the retailed. So R-Anell

1 has admitted, it still had responsibility for the house
2 even while it was sitting at HomeMax's sales lot. And Mr.
3 Hathcock was also talking about this being a temporary
4 plastic. At no point in time did they ever let HomeMax
5 know, hey, this is a temporary plastic, you need to check
6 it, maybe rewrap it, inspect it while it is at your lot
7 because they knew it wasn't HomeMax's responsibility,
8 never asked them to do it, it is factory wrapped and they
9 knew that. There was a warranty on the house. As you
10 heard, R-Anell wants to say that warranty doesn't kick in
11 until the houses are joined together and closed out and
12 the customer basically takes possession of the house.
13 Nevertheless, there was a warranty and it applied and we
14 know it applied because all the expenses that were paid
15 out by R-Anell that it says it should get credit for are
16 listed under warranty. You will have some of their
17 invoices back in evidence and you will see up and down, it
18 is all listed as payment under warranty. And you also
19 heard how they have a markup on their expenses of 62
20 percent, they are going to charge them back to somebody.
21 In this case they didn't apply the markup on all these
22 costs, since they were under warranty were just priced out
23 under their normal warranty price. And you heard Mr.
24 Hasenauer testify and I asked them, do you know how this
25 house got wet and can you place fault either with R-Anell

1 or HomeMax, he said he couldn't. He testified under oath,
2 you told me since he didn't know how it got wet and he
3 didn't know when it got wet, he couldn't place any fault
4 on HomeMax. And Mr. Hathcock in his experience said he is
5 aware of at least one to two dozen houses that have gotten
6 wet over the past ten years because of plastic issues.
7 And Mr. Fautley, after selling hundreds of modular houses,
8 almost all of which were manufactured and wrapped by
9 somebody else, hasn't had another house get wet because of
10 the plastic other than this Christofoli unit. And it only
11 had four or five houses that it dealt with with R-Anell
12 and this is the only one out of all of them that has ever
13 gotten wet because of plastic. Going to the Brown house,
14 you have seen that there was a dealer agreement set out
15 the responsibilities between these companies, their
16 obligations to each other. That agreement expired at the
17 end of 2017 and in order for a house to be covered under
18 the agreement had to be purchased, delivered and paid for
19 by 2017. And we know with the Brown house, that did not
20 take place because the house wasn't delivered until March
21 of 2018 and by that time, now only had the dealer
22 agreement lapsed, R-Anell had terminated business
23 completely with HomeMax and parted ways. They had a
24 meeting, they had a followup letter, said we are going to
25 discontinue our relationship and at that point in time

1 HomeMax couldn't sell or market any houses for R-Anell.
2 So because of those reasons and you have heard us say, we
3 don't think there is a binding contract in place between
4 R-Anell and HomeMax on the Brown house. That will be the
5 first question you actually have to answer on the verdict
6 form, is whether you find in favor of R-Anell on its
7 breach of contract claim with the Brown house. And to do
8 that you have actually got to have a finding that there
9 was a valid and enforceable contract between these two
10 companies. Our position is that, no, there wasn't. The
11 dealer agreement had expired, business had been terminated
12 and because of everything going on with the Christofoli
13 house as well, there was no longer any meeting of the
14 minds between these two companies, if there ever had been
15 and, yes, Mr. Fautley testified, when he ordered that
16 house in 2017 he had intended to pay for it at the time.
17 But whatever agreement might have been in place was
18 terminated by R-Anell. And so you will have to keep that
19 in mind and we think since it is their burden they have to
20 carry the burden to show that there was a contract in
21 place on the Brown house and that it was breached by
22 HomeMax, that's their burden, not ours. And we don't
23 think they have met it nor can they. And so we would ask
24 you to answer no to question one, once you have the
25 verdict form back in the room. Staying on the Brown

1 house, you have heard a lot about COD, which is collected
2 funds on delivery or cash on delivery. That was the
3 payment terms set by R-Anell, it is on the invoice. You
4 heard Mr. Fautley, they don't do business as COD, they
5 don't have houses show up on site and certified check in
6 hand, that is not how they do business. Mr. Cosby who was
7 the salesman, who sold the house agreed with them, said we
8 don't do COD transactions with HomeMax. And so they kept
9 making a big deal about HomeMax setting the payment terms,
10 changing them from COD to floor plan. HomeMax didn't set
11 the payment terms, that wasn't their responsibility, this
12 was their house. They were the one who were ultimately
13 building it, shipping it out. They set the payment terms.
14 And because of that it was their responsibility, you heard
15 from Mr. Gurner, Ms. Allen, to secure financing ahead of
16 time. That was one of their responsibilities, to make
17 sure they either had payment in hand, had it floor
18 planned, to do any one of those things before they shipped
19 the house out. And they didn't do it in this case and
20 they admitted that was a mistake. They have admitted it
21 was a terrible oversight on the Brown house. The dealer
22 agreement had expired, there was no financing in place,
23 business had been terminated, HomeMax was still taking
24 losses on Christofoli, they shipped the house out anyway.
25 And it is important as to this being a COD transaction

1 because in a few moments Judge Newman is going to charge
2 you with the law that you will apply as the fact finders.
3 Part of that law is the South Carolina Uniform Commercial
4 Code. And that gives sellers certain remedies in a
5 situation just like this. And what we see here is that in
6 a COD transaction, when they are suppose to get funds in
7 hand when they drop off the units, they have certain
8 things they can do if they show up with the house and the
9 check is not there. Some of those things are they could
10 withhold delivery, you know, they could keep that unit on
11 the truck, send it back to Crouse, North Carolina until
12 they have financing secured or they have check in hand.
13 They could have done that, they didn't do it. They could
14 have canceled the sell all together, easily could have
15 done that. And then that would have been between the
16 Brown's and Mr. HomeMax to deal with it and if they resold
17 the house, which they could have done, if they had any
18 damages they could have sued on that. They didn't do that
19 either. What they did do is they let the house go in
20 violation of their own payment terms. That is important
21 because in any case like this, the parties bringing claims
22 against each other, the law says you have a duty to
23 mitigate your own damages. You can stop your damages from
24 avoiding or from being incurred, you can avoid them,
25 minimize them. If that can be reasonably be done, that is

1 your job to do it. And in this case they had every
2 opportunity to minimize their damages, to mitigate any
3 damages they had. Under the law they have these options.
4 One of them, yes, is to bring an action for the price.
5 That is the lawsuit. So that is what it chose to do.
6 Instead in mitigating in damages, bringing the house back,
7 canceling the sale, stopping it, they just chose to sue,
8 that is what they did. And on top of that, by delivering
9 the house, you know, they increased the money they had in
10 it, they had to trim it out, set it up, pay sales tax on
11 it. That was another \$20 thousand dollars they could have
12 avoided on top of everything else. So keep in mind, this
13 is a sophisticated entity. It is part of the Commodore
14 Corporation, they sell hundreds of houses, they know what
15 should be done. They know in a case like this that they
16 have got COD, they don't let the house go. You bring it
17 back, you minimize your damages, they didn't do that. And
18 so because of that, even if you were to find that, yes,
19 there was an agreement, there was a contract between Brown
20 and R-Anell, or between HomeMax and R-Anell and the Brown
21 house, even though we don't think the evidence supports
22 that, even if you find that we don't think they are owed
23 any damages because they failed to mitigate. They had
24 every opportunity to do it and still didn't take advantage
25 of their own remedies. Once you get past that part of the

1 verdict form, question number two will be on the
2 Christofoli house. Whether you find in favor of HomeMax
3 on its breach of contract claim, again, big difference on
4 these claims. We deny that there was a contract in place
5 on the Brown house. R-Anell has admitted it had a
6 contract on the Christofoli house. That is already
7 established so you don't have to worry about that. What
8 you will concern yourself is whether there was a breach
9 with the contract. We think the evidence overwhelming
10 supports there was a breach of that contract which
11 required them to deliver units in a good and acceptable
12 fashion. The house wasn't covered in mold, didn't have
13 sheetrock insulation and roof sheathing damage. They had
14 to deliver under the law of goods that conformed to the
15 terms of the contract. In this case a new house, you have
16 seen pictures of it, you will have it back in evidence.
17 You see the condition of the house as it got delivered.
18 That is a breach of the contract, they did not conform.
19 And so because of that, since the contract has been
20 admitted and since it is their responsibility, as they
21 have testified, that wrap has to be watertight. They knew
22 it was going to sit out at HomeMax sales lot for a while
23 before it could be delivered, ultimately to the building
24 site, they had to wrap it such a way that it wasn't going
25 to get wet but it did. That was their responsibility, so

1 they breached that as part of their contractual
2 obligation. One thing, I may have skipped over it in some
3 fashion, Mr. Hathcock testified he thinks this is an issue
4 of water coming in sideways from the side of the house.
5 We seen in the invoices, we have heard in the testimony,
6 the roof sheathing up under the shingles was wet, I mean
7 just getting wet from the top down. And a lot of that
8 roof sheathing, some of the shingles are not covered by
9 plastic, that damage is coming from the top down. That is
10 important because, not only did not wrap the house,
11 HomeMax didn't build the house. So there is parts of the
12 house getting wet, roof sheathing included that, you know,
13 perhaps show it was not manufactured, in addition not be
14 wrapped the way that it should have been. You just heard
15 under the law, goods have to conform in order for them to
16 satisfy their obligation in the contract and that simply
17 did not happen. And we are not saying it didn't rain in
18 Lexington, South Carolina in May and June of 2017, we
19 never said that. I know where we live and I know what the
20 weather is usually like. You saw the weather data, that
21 is fine, I mean that was taken from Columbia Metro Airport
22 about ten miles away. And so whether that is how much it
23 rained, just a couple of miles from here or not, I don't
24 know. They also didn't bring you any weather data from
25 Crouse, North Carolina where the house sat outside for 13

1 days. They wanted to blame me for that and that's fine
2 too. But they very easily could have shown you both and
3 shown you any differences between the two. So and just so
4 you know and before I forget, they were talking about
5 quality assurance. They bring a third party in, do a big
6 check list, make sure its up to code. No where on any of
7 their qualify assurance forms and they are pretty lengthy,
8 is there any line item for checking the plastic, just
9 didn't happen. They either didn't put it on there or just
10 didn't assign somebody, at some point you may have a
11 kitchen sink the way it needs to be and the toilets where
12 they need to be, none of that really matters if you don't
13 protect the house. And that was no where in their quality
14 assurance forms and didn't bring anybody in to say that
15 was done. Obviously this shows they delivered goods that
16 didn't conform to the contract, there are certain pictures
17 of the house that you will have back in evidence to show
18 the way it was when it was unwrapped with mold throughout
19 the units and all that had to be torn out. You will have
20 that and take that into consideration. And they keep
21 saying it is the responsibility of the retail, it is on
22 your sales lot, it is your responsibility. Well, when Mr.
23 Fautley reached out to Mr. Hathcock about this other mold
24 inspection company coming in and doing some work, that
25 wasn't his idea, that was the customer's lawyer and they

1 wanted that done because they didn't, maybe didn't
2 necessarily trust what was coming back from R-Anell's mold
3 expert. So they want their own done, they either had a
4 baby on the way or had already been born, they wanted
5 their own group, that was from their attorney. So Mr.
6 Fautley is trying to accommodate that request and when he
7 reaches out to tell them about it, here is the response he
8 gets back. And this is where things really start to go
9 sideways between the two companies. They say, moving
10 forward, you are going to accept one-hundred percent
11 responsibility on that house. You can read it just like I
12 can. The fair inference there is that at that point in
13 time R-Anell is still responsible for the Christofoli
14 house. Going forward they were putting it into the hands
15 of HomeMax. Here is the delivery inspection form, the one
16 form you will have back in evidence that shows on unit A.
17 I won't repeat myself as I mentioned at the beginning,
18 there is no form for unit B and all the evidence seems to
19 point that, and this is the production panel check list I
20 mentioned that will be back in evidence. The kitchen and
21 the bathroom unit are in the B unit. That is the backside
22 of the house, it is referred to as the B unit. There is
23 no form on the B unit, nothing saying we absolved HomeMax
24 or R-Anell for any problems with the plastic or anything
25 otherwise. Believe me, if they had it I would have been

1 given it a long time ago, when all of this started. There
2 was made mention in the closing and throughout some of the
3 testimony about how we are trying to pin all of the
4 expenses on R-Anell. And I think they are missing the
5 point. If we were asking for every single return of the
6 expense on the house we would be asking for \$360 thousand
7 dollars. That's how much got spent on the house. Some of
8 that, yes, HomeMax was going to have anyway as part of the
9 setup and part of a routine expense for a retailer and it
10 was incurred. What we are saying is that, yes, that house
11 was sold for \$280 thousand dollars. If it hadn't been
12 sold, if HomeMax had not agreed to buy the land and buy
13 the house we would be asking for a lot more money because
14 he would still be carrying the house, it would be interest
15 on it, there would be principle payments, the damages
16 would keep growing. But to mitigate his harms and
17 HomeMax's damages, he did what was best for HomeMax and
18 the Christofoli's, they needed to move on, he needed to
19 move on. They were not going to close on the house, they
20 made that clear, they got a lawyer, they sued HomeMax. We
21 don't know why they didn't sue R-Anell, they didn't have
22 to, they sued the company that sold them the house. And
23 the only way it was ever going to get worked out is if
24 HomeMax bought the house. HomeMax had a lawyer, the other
25 party had a lawyer, they were relying on advice of Counsel

1 and that was how that got done. They bought the house
2 from the Christofoli's, had to buy the land too. And all
3 of that goes into the cost for this house. And so, yes,
4 they sold it and they sold it at a loss. Here are the
5 expenses, you will have the Quick Book summary back in
6 evidence if you want to pick through it you are welcome
7 to. We may not have every invoice in there for lawn care,
8 I have put myself through college and started cutting, you
9 know, yards and had my own landscaping business when I was
10 in the ninth grade up until when I finished law school. I
11 didn't invoice anybody. I just got paid for my work. If
12 you want to discount some of the landscaping stuff because
13 we don't have supporting invoices, it is fine. But that
14 is up to you, they got paid and we have got credible
15 evidence that they did get paid. But those are the net
16 losses, \$80 thousand dollars. That is what they took the
17 loss on this particular unit, on a unit in the house where
18 they expected to conservatively make \$30 thousand dollars.
19 That was a conservative estimate, it is what they should
20 have profited on this house, that is why they do business.
21 And that puts their total losses at \$110 thousand dollars
22 on this deal. Because of the breach of contract, because
23 they delivered a wet house, did not wrap it properly,
24 didn't manufacture it properly, that is where it left
25 HomeMax. And so on that second part of the verdict form,

1 I think the evidence is overwhelming, there was a breach
2 of contract and there was damages for HomeMax, over \$110
3 thousand dollars. It didn't know whether or not to bring
4 a lawsuit, didn't want any of you to have to make a
5 decision and be placed in this box here now. But that is
6 where we are at. It took responsibility for its action,
7 HomeMax did on how it handled the Christofoli's. And Mr.
8 Hathcock said it is going to be your responsibility,
9 one-hundred percent moving forward, it is what it did.
10 And it didn't file a lawsuit over it, brought a
11 counterclaim because it got sued over the mistakes made by
12 R-Anell. This is kind, just a damages summary goes
13 through some of those invoices and expenses it includes,
14 the loss of profit item I just mentioned. And gets you to
15 that number that we are requesting you include as part of
16 your damages for this case. So I greatly appreciate your
17 time, I know you have had to hear testimony over and again
18 about contracts and UCC and wet houses. But nevertheless
19 we are very appreciative of how attentive you have been.
20 I know you have been taken away from your work, from your
21 houses, from your family and from your normal routine and
22 from your cell phones and sorry for all of that. But at
23 the end of the day we trust all of you with making this
24 decision to do what is right under the law. I have done
25 what I can for Mr. Fautley over the last three years as

1 HomeMax has been drug through litigation. That is now
2 turned over to all of you to make a decision you think is
3 fair and just under the law. I think I have covered my
4 notes so, again, thank you for your time.

5 THE COURT: Okay, yes sir.

6 MR. MANGUM: Y'all, you have already heard from me so
7 I don't want to take up too much of your time but I do
8 want to respond to some specific points. Mr. Hewett does
9 raise an interesting point, actually. He says it is about
10 a lack of accountability. You know, I tend to agree with
11 him, it is about a lack of accountability. It is about a
12 lack of accountability when you order a house and you get
13 the house and you resell the house, talking about the
14 Brown house, and then HomeMax, you don't pay for it. You
15 say, you know what, I don't have to pay for it because I
16 am not happy with R-Anell anymore. You know, I
17 retroactively decided that we didn't have an agreement,
18 you know, when all along we thought we did have one. And,
19 in fact, if we didn't have one I would be out a lot of
20 money with the Brown family. So I do agree that it is a
21 lack of accountability. And I agree that there is a lack
22 of accountability on HomeMax's part with the Christofoli
23 home too. They have tried to show you a lot of evidence
24 that is very cherry picked but the truth is, as I told you
25 before, as of May 2018 R-Anell has spent \$44 thousand

1 dollars for mediating that home and HomeMax had spent
2 maybe \$9. So that email about you are going to take
3 one-hundred percent responsibility going forward wasn't
4 true. They were trying to work it out for the Christofoli
5 customer and then at the end of the day they might settle
6 up, depending on how it went. You heard him say that Mr.
7 Hathcock testified that there was no training or
8 supervision as far as the wrapping goes. It is not
9 exactly what he said. What he said is, the guy who has
10 been doing the wrapping has been at R-Anell for more than
11 20 years. Mr. Hathcock has been there for six years. So
12 he said, I can't tell you that he was trained because he
13 has been doing it longer than I have been here. That is
14 all that was said on that point, not there is no training.
15 And we have this statement that has been repeated several
16 times that, you know, it was an early shipment on the
17 Christofoli home and that, you know, HomeMax was doing a
18 favor to R-Anell by taking it, it is just not supported by
19 the evidence. As you heard Mr. Cosby say, they called Mr.
20 Fautley or someone else at HomeMax to let them know when
21 the home was coming off line. They made sure, and I say,
22 they, R-Anell make sure that the dealers are ready for
23 delivery. They don't want to keep the home at their lot.
24 But you know what happened in this case, Mr. Fautley told
25 them, we are ready for it and then when the time came he

1 wasn't. It is as simple as that. So it wasn't a favor.
2 R-Anell did them, HomeMax a favor by holding it for two
3 weeks at R-Anell's facility. We have also heard several
4 times, R-Anell doesn't know when the house got wet. I
5 will just remind you again, that that is relevant to the
6 Christofoli counterclaim where it is HomeMax's burden to
7 prove when the house got wet, how it got wet and whose
8 fault it was that it got wet. And the truth is, as I said
9 earlier, they told you, they don't know when the house got
10 wet. What R-Anell can tell you, as Mr. Hathcock said, is
11 that the house wasn't wet when it left R-Anell's facility.
12 So that doesn't leave a whole lot of options for when it
13 got wet. We heard a little bit about the sign off forms.
14 And that we didn't know whether or not it was A or B that
15 got wet. But we did know, there is two different emails
16 that will be in evidence and that you can see that along
17 the way, they are not retroactive, they are during the
18 service process. Employees of R-Anell identified the A
19 unit as the one that got wet. And, of course, as we have
20 heard, that is important. On the other hand, they really
21 can't offer you what unit got wet other than, well, you
22 know, usually the back unit is the B unit and so therefore
23 that must be the one that got wet. And, oh yeah, that is
24 the one that there is not an inspection form for it. It
25 is a lot of conjecture to get to that conclusion. We have

1 also heard several times during testimony and then again,
2 in closing, that R-Anell didn't come down and look at the
3 house. But as we have seen, R-Anell hands over the
4 responsibility for the Christofoli house when it is
5 delivered to HomeMax. They didn't need to come down and
6 look at it, they had pictures they needed to see what was
7 wrong with it, they had the word from HomeMax and the
8 Christofoli's on top of that. So what was the purpose of
9 R-Anell coming down, they knew the house was damaged, they
10 trusted their subcontractors. You will see all of the
11 invoices. They were paying subcontractors all along the
12 way to remediate the damage. There was no reason and it
13 would have served no benefit for R-Anell to come down and
14 look at the house. And you have heard, you know, I think
15 that Mr. Hewett mischaracterized Mr. Hathcock's testimony
16 a bit when he said, he said that R-Anell has
17 responsibility for the house until they set and trim.
18 That's not true. What he said is, there are still
19 obligations other than delivery, but not that, you know,
20 there is no implication that R-Anell has full
21 responsibility for the house. In fact, it defies reason
22 to believe that R-Anell would have responsibility for the
23 house while it sat on HomeMax's lot for 40 days. We have
24 also heard that at no point in time did they tell HomeMax
25 that the wrapping was temporary. This goes back to Mr.

1 Hewett's lack of accountability point. R-Anell is a
2 professional company that deals with other professionals.
3 They shouldn't have to hold their hand and walk them
4 through everything. The wrapping is temporary. We have
5 that. They shouldn't have to make a point. We have also
6 heard that there is a warranty but, you know, we heard
7 from Mr. Hasenauer as well that the work was not warranty
8 work, he is the service manager for R-Anell. The work was
9 not warranty work. The reason it was coded as warranty
10 work was specifically so they wouldn't end up charging
11 HomeMax for money. Mr. Hewett actually made this point.
12 It wasn't warranty work but as we have heard, there was no
13 way for them to code remediation work into the system
14 because thankfully this is the exception to the rule and
15 not the rule. So you don't have water remediation on a
16 regular bases and there is no reason for Corporate to
17 create a code for it. We have also heard that Mr. Fautley
18 has had hundreds of manufactured homes sold and never had
19 another house get water damage. But they say R-Anell has
20 had homes get wet a lot. Well, when I talked to Mr.
21 Fautley on cross he admitted that, yes, there are actually
22 a lot of homes that get wet but this is the only one that
23 had water damage. So I think truly the parties are saying
24 the same thing. Plenty of houses can get wet but not to
25 the extent that the Christofoli house did. We heard a lot

1 about the dealer agreement expiring, excuse me, expiring
2 in 2017 and that therefore when that happened in 2018 when
3 Mr. Gurner said, after the Brown house that is it, we are
4 not sending you anymore. That therefore there was no
5 meeting of the minds and therefore no contract. Well, it
6 just defies the evidence that we have heard here today and
7 this week really. Because as we heard from Mr. Fautley,
8 he thought he would still pay for the Brown house in March
9 of 2018. That is after the dealer agreement expired.
10 That is after R-Anell terminated the business relationship
11 going forward with HomeMax. And frankly speaking, if he
12 didn't want the Brown house, they met face to face, he
13 could have easily said, I don't want the one that you have
14 got sitting on your lot that I have taken two months and
15 still not ready for delivery, you keep it. That never,
16 you heard several people testify to this conversation.
17 That never ever, ever came out of Mr. Fautley's mouth.
18 Mr. Hewett also said that it was R-Anell's decision as to
19 whether it was a COD house or a floor plan. That is just
20 not true. As you heard several people from R-Anell say,
21 they can't tell the customer how to pay. And indeed
22 R-Anell does have responsibilities in securing the floor
23 plan approval but it is not R-Anell's credit limit, it is
24 HomeMax's credit limit that makes the difference on
25 whether a house gets approved for floor planning or not.

1 And indeed we don't really know what happened here and why
2 it sat pending but that is a possibility that was raised
3 with Ms. Allen. We have heard also that sellers have
4 certain remedies and they can withhold delivery or cancel
5 the sell. And incredibly Mr. Hewett has suggested to you
6 that rather than dropping the house, that HomeMax, excuse
7 me, that R-Anell by putting the house back up on the truck
8 and driving back to North Carolina that they could have
9 actually saved money by incurring the extra expense of
10 sending it back to North Carolina and storing it. It
11 doesn't make logical sense because it is just not true.
12 And Mr. Hewett said something interesting, he said R-Anell
13 has a duty to deliver units that conform to the contract.
14 And guess what, it did. We got the signed inspection form
15 that shows that the Christofoli unit did conform to the
16 contract. Now, you know, that is the delivery, is
17 dropping it off in that lot and getting the form signed
18 and moving on from it. He says, he said too and I think
19 this is, I just want to touch on this briefly because it
20 is a grave mischaracterization of Mr. Hathcock's
21 testimony. He said that Mr. Hathcock testified that the
22 house got wet from the side. It is not true. If you
23 remember what he said. He said, it doesn't rain sideways,
24 it rains top down and so when a house gets wet it is top
25 down, not from the side. And on the rain point, he has

1 chastised us for not proving this case by bringing the
2 water data from North Carolina. But I will just resubmit
3 that if he wanted the water data from North Carolina he
4 had every bit access to the Federal data base that I had.
5 And he says, he accuses us well of missing the point on
6 the accounting regarding the expenses that went into the
7 house for resale, the Christofoli house. We are not
8 missing the point because he is saying, well, we sold it
9 for \$280 thousand dollars but it took this much to get it
10 up to ship shape. Well, most of what it took to get up to
11 ship shape was stuff that they were going to have to spend
12 money anyway. That is an important point. That was stuff
13 like foundation and HVAC and electrical and building a
14 porch even. That stuff, it has nothing to do with
15 R-Anell, it shouldn't be counted against R-Anell. If they
16 had to do it to make the house marketable, that is on them
17 and importantly it is something that they would have done
18 anyway even if the house hadn't had a drop of water inside
19 of it. And you have heard that they want loss profits and
20 that they conservatively expected to make \$30 thousand
21 dollars. But indeed all you have heard on that, they have
22 not given you any estimation of how they calculated that
23 number or where it came from. They could have brought you
24 every house that they had ever sold in here and showed you
25 how much they make on an average house and they didn't do

1 it. They didn't offer any evidence of their loss profits
2 except Mr. Fautley sitting up here, the same guy who
3 denies he had a contract when he accepted the Brown house,
4 sold it to the end customer and didn't pay for it. He
5 says, well, conservatively I think I would have made about
6 \$30 thousand dollars on this. Zero evidence other than
7 that one statement. And I will close with, Mr. Hewett's
8 statement that HomeMax didn't want to bring a lawsuit.
9 Well, they didn't have to, nobody forced them to file
10 counterclaims. They wanted to bring a lawsuit because
11 they were sour over how the relationship ended and they
12 wanted to see what they could get out of on the
13 Christofoli home. And that is part of why we are here
14 today. So this thought that they didn't want to bring a
15 lawsuit, it is not very availing and frankly it is just
16 not true. Thank you, good luck and I appreciate your time
17 this week. Thanks very much.

18 THE COURT: All right, folks, it is now time for me
19 to charge you on the law that applies to this case. I
20 remind you that during this trial you and I have certain
21 duties to perform. As the trial Judge it is my
22 responsibility to preside over the trial of this case and
23 I also have the duty to rule on the admissibility of the
24 evidence offered during this trial. You are to consider
25 only the evidence before you, including the testimony

1 which has been presented from this witness stand, any
2 exhibits which have been made a part of the record in this
3 case and any stipulations of Counsel. I have the
4 additional duty to charge you the law applicable to this
5 case. It is your duty as jurors to accept and apply the
6 law as I now state it to you. If you think you have any
7 idea as to what the law is or what the law ought to be and
8 it does not agree with what I tell you the law is, you
9 must forget that idea because you are sworn to accept the
10 law and apply the law exactly as I state it to you.

11 In every case tried in this court before the jury,
12 the jury becomes the sole and exclusive judge of the
13 facts. A trial Judge cannot comment on or make any
14 statement about the facts in a case. Since you are the
15 sole judges of the facts do not think by anything that I
16 have said during this trial that I have any opinion about
17 the facts in this case. The law does not allow me to have
18 an opinion about the facts.

19 The burden of proof in this case is by a
20 preponderance of the evidence. A preponderance of the
21 evidence simply means the greater weight of the evidence.
22 It is evidence which as a whole shows that the facts
23 sought to be proved is more likely true than not true.
24 Again, this can be illustrated by imagining a traditional
25 set of scales. When the case begins the scales are even.

1 After all of the evidence has been presented, if the
2 scales remain even or if they tip even slightly in favor
3 of the Defendant then the Plaintiff has failed to meet the
4 burden of proof. If, on the other hand, the scales tip
5 even slightly in favor of the Plaintiff, the Plaintiff
6 will have met the burden of proof and you should return a
7 verdict for the Plaintiff. The preponderance of the
8 evidence is not determined by the number of witnesses, it
9 must instead be determined by the greater weight of all of
10 the evidence.

11 There are two types of evidence generally presented
12 during a trial, direct evidence and circumstantial
13 evidence. Direct evidence is the testimony of a person
14 who claims to have actual knowledge of a fact such as an
15 eyewitness. It is evidence which immediately establishes
16 the main fact to be proved. Circumstantial evidence is
17 proof of a chain of facts and circumstances indicating the
18 existence of a fact. It is evidence which immediately
19 establishes collateral facts from which the main fact may
20 be inferred. Circumstantial evidence is based on
21 inference and not on personal knowledge or observation.
22 It is proof that does not actually establish the main fact
23 in question but that asserts or describes something else
24 from which you may either reasonably infer the truth of
25 the fact or at least reasonably infer an increase in the

1 probabilty that the fact is true. For circumstantial
2 evidence to be sufficient to warrant a finding of fact the
3 circumstances must lead to that fact with reasonable
4 certainty. The facts and circumstances should be
5 considered in light of ordinary experience and common
6 sense. The law makes absolutely no distinction between
7 the weight or value to be given to either direct or
8 circumstantial evidence nor is a greater degree of
9 certainty required of circumstantial evidence than of
10 direct evidence. However, the existence of a fact cannot
11 be based on speculation, surmise or conjecture.

12 Necessarily you must determine the credibility of
13 witnesses who have testified in this case. Credibility
14 simply means believability. It becomes your duty as
15 jurors to evaluate the evidence and determine which
16 evidence convinces you it is true. In determining the
17 believability of witnesses who have testified in this
18 case, you may believe one witness over several witnesses
19 or several witnesses over one witness. You may believe a
20 part of the testimony of a witness and reject the
21 remaining part of the testimony of that same witness. You
22 may believe the testimony of a witness in its entirety or
23 reject the testimony of a witness in its entirety. You
24 may consider whether the witness has an interest in the
25 result of the trial, whether the witness is prejudiced

1 toward either the Plaintiff or the Defendant, the
2 opportunity for the witness to have seen the matters and
3 things about which the witness may testify and the way the
4 witness acts on the witness stand.

5 During the course of this trial you have had
6 testimony presented to you by deposition. A deposition is
7 a document containing sworn testimony given by a witness
8 outside of court in the presence of lawyers for each party
9 who may ask questions of the witness. The testimony, this
10 testimony is entitled to the same consideration and is to
11 be judged as to credibility and weighed by you in the same
12 way as if the witness were present and gave the testimony
13 from the witness stand. It is for you, the jury, to
14 determine the effect, value, weight and truth of the
15 testimony given in a deposition.

16 In our courts no distinction is made between
17 corporations and individuals. A corporation is a person
18 in the eyes of the law. A corporation is entitled to the
19 same fair and impartial consideration and to justice by
20 the same legal standards as an individual.

21 In this case both the Plaintiff and the Defendant
22 claim that the other party breached a contract that
23 existed between them. Because these claims involve the
24 sale of goods the law of South Carolina's Uniform
25 Commercial Code or UCC must be applied. Under the UCC and

1 in all breach of contract cases the party bringing the
2 claim must prove three things by the preponderance or
3 greater weight of the evidence. The existence of a
4 binding contract, a breach of that contract and damages
5 resulting from the breach of the contract. A contract is
6 an agreement entered into by two or more parties in which
7 each party agrees to perform or not to perform certain
8 acts. It may be shown by words, written or oral, or by
9 conduct. However, a contract is more than the mere
10 exchange of promises. For the agreement to be considered
11 a contract the parties must have intended to enter into a
12 contract and must have reached a mutual understanding of
13 the terms of that contract. This is sometimes called a
14 meeting of the minds. The parties must intend to be
15 mutually bound by the agreement. Under the UCC a contract
16 may be established by a signed document, of course a
17 dealing or usage of trade. In addition, a contract for
18 the sale of goods is enforceable if the party against
19 which enforcement is sought has admitted it in his
20 pleadings, I am sorry, has admitted in its pleadings
21 testimony or otherwise in court that a contract for sale
22 was made. To make a contract there must be an offer and
23 an acceptance. An offer is a proposal which is definite
24 and certain in its terms. The offer must be communicated
25 to the other party. The mere intention to do an act is

1 not an offer. In addition, preliminary negotiations are
2 not offers. If you find that an offer was made you must
3 next decide whether the offer was accepted. The
4 acceptance must be communicated to the person or entity
5 who made the offer. Under the UCC the acceptance of an
6 offer may be indicated not only by a contract signed by
7 the parties but also by any expression of acceptance or
8 written confirmation such as an invoice or memorandum. If
9 you find that the offer was rejected or not accepted then
10 there was no contract and therefore no breach of contract.
11 In addition, each party to the contract must give some
12 valuable consideration to the other. This means that
13 there must be something that benefits each party.
14 Consideration may be some right interest or benefit given
15 to a party. It may be money, an act, a service or a
16 promise to do something or not to do something in the
17 future. Mutual promises may constitute consideration.
18 For example, if I buy a loaf of bread from the grocery
19 store, the consideration the grocery store gives to me is
20 the bread. The consideration I give to the grocery store
21 is the money I pay for the bread. In making your decision
22 as to whether a valid contract exist you should only be
23 concerned with whether there was any consideration, not
24 the value of the consideration. You should not weigh the
25 value of the consideration given by one party against the

1 value of the other parties consideration. You are to
2 decide only whether there was consideration to support the
3 agreement, not whether the agreement was a good one.

4 Next, the party claiming breach of contract must show by a
5 preponderance or a greater weight of the evidence that the
6 other party unjustifiably breached the contract. The
7 word, breach, means the failure without legal excuse to
8 perform any promise that forms the whole or a part of the
9 contract. This includes the refusal of a party to
10 recognize the existence of the contract or the doing of
11 something inconsistent with the existence of a contract.

12 A party breaches a contract when that party does not
13 perform as agreed under the contract by failing to carry
14 out a term promised or a condition of the contract.

15 Termination of a contract for sale occurs when either puts
16 it into the contract, otherwise and for its breach. On
17 termination all obligations which are still executory on
18 both sides are discharged, but any right based on prior
19 breach or performance survives. In other words, if the
20 parties to a contract have obligations under the contract
21 that were yet to be completed at the time of termination,
22 the termination of the contract also terminates those
23 obligations.

24 Finally as to both claims for breach of contract the
25 claimant must prove by a preponderance or greater weight

1 of the evidence that it suffered damages which were
2 proximately caused by the opposing parties breach of
3 contract. This does not mean that damages must be proven
4 to a mathematical certainty or by evidence of the exact
5 amount of damages suffered. However, the amount of
6 damages cannot be left to guesswork or speculation.
7 Instead the evidence presented must be sufficient to allow
8 you to determine the amount of damages with reasonable
9 certainty and accuracy. Damages for breach of contract
10 are those that may fairly and reasonably be considered to
11 arise naturally from the breach of contract itself or
12 those that may reasonably have been in the minds of the
13 parties at the time the contract was made. A party may
14 not recover damages for breach of contract unless it shows
15 that it has performed its part of the contract or at least
16 was ready, willing and able to perform at the appropriate
17 time.

18 The UCC provides remedies for a seller when a buyer
19 fails to make payment due on or before delivery. In such
20 cases the seller may withhold delivery of the goods, stop
21 delivery, resale and recover damages, recover damages for
22 non-acceptance, cancel the contract or in a proper case
23 recover the price. When the buyer fails to pay the price
24 as it becomes due the seller may recover together with any
25 incidental damages the price of goods accepted or of

1 conforming goods lost or damaged within a commercially
2 reasonable time after the risk of their losses pass to the
3 buyer and of goods identified to the contract if the
4 seller is unable, after reasonable effort, to resale them
5 at a reasonable price or the circumstances reasonably
6 indicating that such effort will be unavailing.

7 A seller has an obligation to deliver goods in
8 accordance with the contract. If the goods fail in any
9 respect to conform to the contract the buyer may reject
10 the goods. Should the buyer choose to reject the goods,
11 rejection must be made within a reasonable time after
12 their delivery or tender. The buyer has the burden of
13 proving this rejection of the goods. On the other hand, a
14 buyer may accept the goods, acceptance may occur by
15 failing to make an effective explicit rejection of the
16 goods in writing or by taking any act inconsistent with
17 the seller's ownership of the goods such as taking
18 possession of the goods or reselling the goods. Finally a
19 buyer may accept nonconforming goods. Goods are
20 nonconforming that they are not in accordance with the
21 contract requirements and their value to the buyer is
22 substantially impaired. Acceptance of nonconforming goods
23 can be revoked if acceptance was made for the reasonable
24 assumption that the nonconformity would be seasonably
25 cured. Acceptance does not impair a buyer's remedies for

1 nonconforming goods. Where a buyer has accepted goods and
2 given notification he may recover as damages for any
3 nonconformity of tender, the loss resulting in the
4 ordinary course of events from the seller's breach as
5 determined in any manner which is reasonable.

6 A buyer may also recover incidental and consequential
7 damages. Incidental damages include expenses reasonably
8 incurred in inspection, receipt, transportation and care
9 and custody of goods rightfully rejected. Any
10 commercially reasonable charges, expenses for commissions
11 in connection with effecting cover and any other
12 reasonable expense incident to the breach. Consequential
13 damages include any loss resulting from general or
14 particular requirements and needs of which the seller at
15 the time of contracting had reason to know and would,
16 could not reasonably be prevented by cover or otherwise.

17 Profits are the net of income over expenditures
18 during a given period. Profits refers to the gross
19 proceeds of a business transaction less the cost of the
20 transaction. Loss profits are recoverable in an action
21 for breach of contract and are recoverable by an aggrieved
22 buyer as consequential damages under the UCC. First the
23 profits must have been prevented or lost as a natural
24 consequence of the breach of contract. Second, loss
25 profits must reasonably be supposed to have been within

1 the contemplation of the parties at the time the contract
2 was made as a probable result of the breach of contract.
3 A party has the duty to mitigate or minimize the damages
4 caused by another parties breach of contract. The test is
5 whether the party has done what an ordinarily prudent
6 person would have done under like circumstances. If the
7 party has used reasonable care to reduce its losses the
8 party may recover the full amount of its damages. If the
9 party has not done so then you would reduce the damages
10 accordingly. Where no evidence is given that damages
11 could have reasonably been reduced the injured party is
12 not required to have done more. The burden of proving
13 that damages could have been minimized rest on the party
14 claiming that the damages should have been reduced or
15 avoided.

16 In a contract for sale under the UCC the general
17 obligations of the parties include the obligation of the
18 seller to transfer and deliver in accordance with the
19 contract and the obligations of a buyer to accept and pay
20 in accordance with the contract. In order to determine
21 what is in accordance with the contract, usage of trade,
22 course of dealing and performance and general background
23 of circumstances must be given due consideration in
24 conjunction with the ordinary meaning of the words used to
25 define the scope of the conditions and the duties of the

1 parties.

2 You have been presented with evidence and testimony
3 in this case which included the term, COD, or collect on
4 delivery. Under the UCC, unless the parties otherwise
5 agree, when goods are delivered to a buyer COD the buyer
6 is not entitled to inspect the goods before paying the
7 price of the contract for sale.

8 If there is no breach of contract by the seller you
9 must then determine who is required to bear the risk of
10 loss under the law. Under the UCC if a contract
11 authorizes a seller to ship the goods by carrier, that is
12 under a party company, then the risk of loss shifts to the
13 buyer when the seller delivers the goods to the carrier.
14 However, if the contract also specifies a particular
15 destination for delivery then the risk of loss shifts when
16 the goods are tendered by the seller or its carrier to the
17 buyer at that specific location. The parties may also
18 make a contrary agreement as to when the risk of loss
19 shifts. However, where a tender or delivery of goods
20 fails to conform to the contract in a manner giving the
21 buyer a right of rejection the risk of loss remains on the
22 seller until cured or acceptance.

23 Now, I will give you a copy of these instructions in
24 written form. During your deliberations you may refer to
25 the instructions to guide your decision making. You must

1 consider the instructions as a whole and not follow some
2 and ignore others. All twelve of you must agree on the
3 verdict, your verdict cannot be based on sympathy,
4 passion, prejudice, emotion or any other consideration not
5 in evidence. The Foreperson will provide, preside, the
6 Foreperson will preside over the deliberations in the jury
7 room and be the jury spokesperson here in court. When the
8 jury agrees on the verdict the Foreperson will sign their
9 name as Foreperson on the line underneath the jury
10 verdict, then knock on the jury room door and inform the
11 Bailiff that you have reached a verdict. At that time we
12 will receive you back into the courtroom to receive your
13 verdict. I have not chosen a Foreperson, I am going to
14 allow you to choose a Foreperson. So when you return to
15 the jury room the first order of business is to select a
16 Foreperson, you will, the Foreperson, as I said, is the
17 jury spokesperson so you will write down the Foreperson's
18 jury number on a piece of paper, knock on the door and
19 hand it to the Bailiff so we will know who the Foreperson
20 is. At this point I am going to excuse you to the jury
21 room and this is the last time I will tell you not to
22 discuss the case. You should not begin your deliberations
23 until you have received the written copy of these jury
24 instructions and all of the evidence. That should only
25 take a few minutes. We just need to make sure all of the

1 evidence is there and the Bailiff will bring it to you
2 along with the jury instructions. And I put the verdict
3 form right in the front pocket of this notebook, it is
4 pretty self-explanatory. You will continue to deliberate
5 until you reach a verdict. Okay. I need the twelve
6 jurors to return to the jury room, as I said when you
7 receive the binder and the evidence that is your signal to
8 begin deliberating and you will continue to deliberate
9 until you have reached a verdict. The two alternates can
10 stay in the courtroom. Please return to your jury room.

11 (Whereupon, the jury was excused from the courtroom
12 at 11:05 a.m.)

13 THE COURT: Thank you two for your service and for
14 hanging in there with us this week. You are two alternate
15 jurors, sort of our backups in case one of the other
16 jurors got sick. You never know, people get sick, have
17 car accidents, family emergencies, other things like that.
18 But because they have all made it to the end then we don't
19 need your service anymore on this case. So you don't get
20 to deliberate but you are now free to talk about the case
21 to anyone you want to talk to about it. You can talk to
22 these attorneys if they want to ask you questions, maybe
23 they do, maybe they don't. If you don't want to talk to
24 them walk away. That is fine. But you can talk to
25 friends, family, whoever. Also your jury service for this

1 week is complete. Your jury service for this year is
2 complete, you are no longer eligible to serve on a jury in
3 circuit court for the remainder of 2021. If you are
4 summoned in jury duty in 2022 or 2023, again, just in
5 circuit court, you will have to show up but you will let
6 that Judge know and you can exercise an exemption and they
7 should release you from your jury service because you are
8 really not required to serve more often than once every
9 three years. The check is in the mail. If you need a
10 work excuse you can get it from the Clerk's office. I
11 think that takes care of everything.

12 Since we are still on the record, any objections to
13 the jury instructions from the Plaintiff?

14 MR. MANGUM: No, Your Honor.

15 THE COURT: From the Defendant?

16 MR. HEWETT: No objections.

17 THE COURT: We can go off the record and y'all check
18 the evidence with Joy and y'all are free to go. Thank
19 you.

20 (Whereupon, the Court Reporter and Attorneys went
21 over exhibits.)

22 (Whereupon, the jury started deliberations at
23 approximately 11:15 a.m.)

24 THE COURT: We have a jury note which reads, can we
25 add interest to the cost of the Brown house for the lack

1 of payment over the course of three years. And at the top
2 of it there is an arrow above the word, interest, that
3 points to a little note that says seven percent. What
4 says the Plaintiff about what the Court's response should
5 be.

6 MR. MANGUM: Well, I certainly would like to believe
7 that we can ask for seven percent interest. I know that
8 the exhibit did not go in. I think there was some
9 evidence, at least, to the effect that was the intent but
10 I don't, I would like to be able to charge it but
11 truthfully I think that we kind of decided that we would
12 talk about legal interest at the end to make that
13 determination with you.

14 MR. HEWETT: That's correct, I think that was the
15 issue for the Court to decide, Your Honor.

16 THE COURT: Okay. My response will simply be, no. I
17 just wanted to put it on the record. I figured that is
18 what y'all would say. We will be at ease while we wait
19 for the jury. Let's go ahead and mark this as Court's --

20 MADAM COURT REPORTER: -- that will be number 4.

21 THE COURT: Yes. I think putting a sticker on it
22 deters them from throwing it away.

23 (Whereupon, Court's Exhibit 4 was marked for
24 identification only.)
25

1 (Whereupon, Court's Exhibit 3 was marked for
2 identification only. (Foreperson).)

3 THE COURT: The jury reports that they have a
4 verdict. Bring the jury.

5 (Whereupon, the jury came into open court with the
6 verdict at approximately 1:58 p.m.)

7 THE COURT: All right. Mr. Foreman, has the jury
8 reached a verdict?

9 FOREMAN: Yes, Your Honor.

10 THE COURT: Is it unanimous?

11 FOREMAN: Yes, Your Honor.

12 THE COURT: Okay. If you will hand that verdict form
13 to the bailiff. And you can have a seat, I am not going
14 to make you read it. Okay, Madam Clerk, if you will
15 publish the verdict, please.

16 MADAM CLERK: 2018-CP-32-03103, R-Anell Housing
17 Group, LLC versus HomeMax, LLC. We, the jury, unanimously
18 find as follows: As to question one, as to R-Anell
19 Housing Group's claim against HomeMax for breach of
20 contract. We find in favor of R-Anell Housing Group in
21 the amount of \$142,292.80.

22 Number two, as to HomeMax's claim against R-Anell
23 Housing Group for breach of contract. We find in favor of
24 R-Anell Housing Group.

25 Signed and dated by the Foreperson of the jury.

1 THE COURT: All right. Anything further before the
2 jury gets dismissed. From the Plaintiff?

3 MR. MANGUM: Nothing further, Your Honor.

4 THE COURT: From the Defense?

5 MR. HEWETT: Nothing from the Defense, Your Honor.

6 THE COURT: All right. Ladies and gentlemen, thank
7 you, thank you, thank you for your service. And I will
8 excuse you back to the jury room, don't leave just yet, I
9 am going to step back there and talk to you for just a
10 moment but your service is complete. I will be with you
11 in two minutes. Go on back to the jury room.

12 (Whereupon, the jury was excused from the courtroom.)

13 THE COURT: All right, folks, I would like to handle
14 any post-trial motions now. I am going to talk to the
15 jury, but to the extent that you have motions I would like
16 to hear them this afternoon so we can wrap up this case. I
17 will be back in just a few minutes.

18 (Whereupon, the Court goes to the jury room to talk
19 to the jurors at approximately 2:02 p.m.)

20 THE COURT: Y'all can have a seat. Let me hear first
21 from Mr. Hewett. Any motions?

22 MR. HEWETT: No motions, Your Honor.

23 THE COURT: Okay.

24 MR. MANGUM: We would ask for the Court to apply the
25 legal rate of interest. I think we have already gone

1 through this on the directed verdict argument. With the
2 extent we need to do any further I am happy to. I will
3 just say, you know, this is South Carolina code 34-31-20,
4 section (a) says that all accounts shall draw interest
5 according to the law. So therefore I think it is to be
6 applied and I have roughly worked up the numbers while we
7 were waiting on the jury, if you would like to see my
8 math.

9 THE COURT: I would.

10 MR. MANGUM: Okay.

11 THE COURT: Tell me, just give me the number that you
12 have got.

13 MR. MANGUM: Sure. So it is \$38,204.64. So three
14 years plus 25 days.

15 THE COURT: What was the date that it began to
16 accrue, May --

17 MR. MANGUM: -- well, actually I am realizing that my
18 math is wrong because I was thinking May too but it is
19 actually March 24th, 2018.

20 THE COURT: March 24th.

21 MR. MANGUM: I should be able to add those months
22 pretty quickly.

23 THE COURT: That is fine. I just wanted to know
24 close to where you were and to give me some guidance just
25 to make sure that I am not completely off.

1 MR. MANGUM: Well, it should be \$38,ish.

2 THE COURT: Right.

3 MR. MANGUM: I think it may touch \$39, adding two
4 months.

5 THE COURT: It won't make much difference and I will
6 do the math.

7 MR. HEWETT: And, Your Honor, since I have already
8 set forth my position on the application of interest in
9 this case, the Defendant objects to the application of any
10 interest, we don't believe this is an account stated. The
11 signed, quote, which is part of what R-Anell says
12 constitutes the contract was different from the invoice
13 price. There was no agreement in contract or in writing
14 for the recovery of interest. I don't think that there is
15 any statute within the UCC that expressly allows for the
16 recovery of interest in this situation. So I would object
17 to the application of any interest on the amount of the
18 verdict.

19 THE COURT: Understood. I do think it is liquidated
20 damages certainly and, you know, that was my earlier
21 ruling. It is really buttressed by the jury's verdict.
22 You know, that's, they didn't pick that number out of the
23 sky, it is based on the evidence, the amount that was
24 suggested of the liquidated damages. So really the jury
25 agreed, not that that makes a, necessarily a turning point

1 of my analysis but it does buttress my previous rulings on
2 the matter. So I will award the prejudgment statutory
3 interest over the Defendant's objection.

4 MR. MANGUM: Thank you, Your Honor.

5 THE COURT: Thank you, folks. Anything else?

6 MR. HEWETT: Nothing further, thank you, Your Honor.

7 THE COURT: Thank you all. We are adjourned. That
8 is it, that is our week.

9 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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*** QUOTE ***		R-ANELL HOUSING GROUP, LLC		Quote No: 5333706	
Dealer: 1723 HOMEMAX		Ship To:		Zone: 120B Brand: RJ - ROCKBRIDGE 32 WIDE	
1323 W MAIN ST PO Box 159 (29071) LEXINGTON, SC 29072		Model: RJ551 32X76 PY: 15		Serial:	
Retail: BROWN		Dealer Rep: JAY		Requested Delivery	
Date: 5/18/17		PO #:		Week of: Revised: 9/1/17 Rev. No: 8	
*****SPECIAL INST*****					
1 WIND ZONE EXPOSURE B 130 MILE ADJUST SIDING FOR A DOUBLE SILL PLATE		500.00		BATH 1 LX241	
1 MODULAR LABEL, SC 221 NORTH ROAD RIDGEVILLE, SC 29472		0.00		BATH 2 LX194	
1 INSULATION R19-R31 AVG		0.00		BEDROOM 1 MACRAME - PEAT	
1 FOUNDATION - CONVENTIONAL CRAWLSPACE -BUILT TO 2017 SPECIFICATIONS		0.00		MBR CLOSET MACRAME - PEAT	
*****PLUMBING*****					
1 FAUCET HUNTINGTON BRASS T/O NICKEL		0.00		BEDROOM 2 MACRAME - PEAT	
1 FAUCET EXTERIOR STD		0.00		BEDROOM 3 MACRAME - PEAT	
1 EXTRA EXTERIOR WATER FAUCET SEE PRINT		40.00		BEDROOM 4 MACRAME - PEAT	
1 VALVE SECONDARY SHUT-OFFS THROUGHOUT EXCEPT TUBS & SHOWERS		0.00		FAM ROOM MACRAME - PEAT	
1 ***FAUCET HUNTINGTON KIT GOOSENECK W/PULL-DOWN NICKEL		0.00		LIVING ROOM MACRAME - PEAT	
1 *** SHWR CERAMIC 4'X6' WALK-IN REP SOAKER TUB AND SHOWER INCLUDES RAINFALL SHOWER HEAD AND ADJUSTABLE HAND HELD SHOWER HEAD VERTICAL TILE INSTALLATION		0.00		FOYER WHITE WASH WALNUT - LAMINATE	
1 *** TUB GARDEN W/ CURVED FRONT AND FULL SURROUND REP 60" TUB/SHOWER CURVED FRONT WITH SURROUND		0.00		1 20.4 KW FURNACE 0.00	
2 LAV SQUARE WHITE PORCELAIN -BATH 1		140.00		1 INSTALL THERMOSTAT WIRE 0.00	
1 SEAT FOR CERAMIC SHOWER -BATH 1		195.00		1 RETURN AIR CEILING 0.00	
*****FLOORS*****					
KITCHEN WHITE WASH WALNUT - LAMINATE				1 JOIST 2X10 FLOOR 16" O.C. W/ DOUBLE PERIMETER RAILS 0.00	
DINING WHITE WASH WALNUT - LAMINATE				1 23/32" OSB FLOOR DECKING 0.00	
UTILITY LX246				1 ADD R-19 FLOOR INSULATION W/ NETTING 0.00	
				1 HEATING SYSTEM COMPLETE - OMIT MAIN TRUNK 0.00	
				- INCLUDES FLEX LINE FOR 2 MODULE HOME, CEILING AIR RETURNS, BOOT AND REGISTERS INSTALLED	
				1 HEAT, PERIMETER 0.00	
				76 OMIT FIBERGLASS HEAT DUCTS -528.20	
				1 PAD CARPET 5.0 REBOND 0.00	
				1 *** - LAMINATE FLOORING 0.00	
				KITCHEN, DR, FOYER	
				*****ELECTRICAL*****	
				1 RECEPTACLE EXTERIOR - (2) W/ GFI 0.00	
				1 USB RECEPT. STD. KIT 0.00	
				1 MEDIA ROUGH IN BOX -FAMILY ROOM 50.00	
				WITH SEPARATE RECEIPT	
				3 DELUXE BRUSHED NICKEL 52" CEILING FAN 380.00	
				-GREAT ROOM	
				-FAMILY ROOM	
				-MASTER BEDROOM	
				1 ARC FAULT BREAKER 0.00	
Quote. Prices subject to verification.				Base: 86,525.00	
R-ANELL HOUSING GROUP, LLC				Total Options: 17,906.80	
Salesman: Jeremy Cosby				Allowances: 0.00	
Confirmation of Order. Check all specifications thoroughly, and if correct, sign and return copy of the confirmation and fax to R-Anell Homes.				Other: 33,038.00	
				Freight: 5,191.00	
				Sales Tax: 0.00	
				Total Invoice Price: \$142,660.80	

9/1/2017

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*** QUOTE ***

R-ANELL HOUSING GROUP, LLC

Quote No: 5333706

Dealer: 1723 HOMEMAX		Ship To:	Zone: 120B	Brand: RJ - ROCKBRIDGE 32 WIDE	
1323 W MAIN ST PO Box 159 (29071) LEXINGTON, SC 29072				Model: RJ551	32X76 PY: 15
				Serial:	
Retail: BROWN		Dealer Rep: JAY		Requested Delivery	
Date: 5/18/17		PO #:		Week of:	
				Revised: 9/1/17 Rev. No: 8	
*****ELECTRICAL*****				KIT-EDGE MOCHA FANTASTICO	
1 XENON UNDER WALL CABINET		225.00		ISLAND MOCHA FANTASTICO	
LIGHTS WITH UNDER CABINET				ISLAND EDGE MOCHA FANTASTICO	
LIGHT RAIL TRIM (3)				BATH 1 ITALIAN WHITE DI PESCO	
1 SMOKE DETECTORS BY CODE		0.00		BA 1-BACKSPLASH BRUNE	
1 BATH FAN W/LIGHT		0.00		BA 1-EDGE ITALIAN WHITE DI PESCO	
ALL BATHS				CER SHWR TILE EMBLEM GRAY	
1 200 AMP SERVICE		0.00		CER SHWR ACCENT MOSAIC LUCENTE GRAZIA	
24 *** RECESSED LED LIGHTS		0.00		(GRAY)	
10- KITCHEN				BATH 2 ITALIAN WHITE DI PESCO	
6- DR				BA 2-BACKSPLASH ITALIAN WHITE DI PESCO	
3- BEV CENTER				BA 2-EDGE ITALIAN WHITE DI PESCO	
2- MBR CLOSET				BEV CNTR COUNTEF MOCHA FANTASTICO	
2- BA1 SHOWER				BEV CNTR EDGE MOCHA FANTASTICO	
1- FAMILY ROOM ENT CENTER				1 CAB DOORS JAVA MAPLE FLAT	
1 *** (2) 3-WAY SWITCHES		0.00		PANEL MISSION - KIT	
GR				1 CROWN #748 WALL CABINET	
*****FIREPLACE*****				3-7/8"	
*****WALLS*****				3 CAB DOORS JAVA MAPLE FLAT	
1 WALLS EXTERIOR 2X6 16" O.C.		0.00		PANEL MISSION OTHER	
1 INTERIOR WALLS 2X4 24" OC		0.00		-BA1	
1 MARRIAGE WALLS 2X4 24" OC		0.00		-BA2	
1 BUILD WITH AN OPEN		1,120.00		-BEVERAGE CENTER	
STAIRWELL				1 LAMINATE BACKSPLASH -	
INCLUDES CARPET AND PAD FOR STAIRS AND				OTHER	
MATERIALS FOR STAIR ENCLOSURE SHIPPED				-BA2	
LOOSE-INCLUDES SOLID CORE DOOR W/				2 VANITY 36"	
SWEEP				-BA1	
1 BUILD WITH A PLUMBING		100.00		-BA2	
CHASE GOING UPSTAIRS				1 DRAWERS DOVETAIL	
1 PAINT SHELL WHITE		0.00		WITH UNDERMOUNT GUIDES	
1 WALLS EXT SHEATHING 7/16"		0.00		1 DRAWER GUIDES SOFT CLOSE	
OSB				- KITCHEN	
1 MARRIAGE WALLS 7/16" OSB		0.00		1 *** CABINET OVERHEAD KIT 12"	
WITH GAP				STAGGER 30"/42"	
1 *** 9' SIDEWALL WITH 68"		0.00		1 *** DRAWER OVER DOOR	
WINDOWS				WITH TIP OUT TRAYS AT KIT SINK	
*****CABINETRY*****				1 *** FULL CERAMIC TILE	
KITCHEN CABINETS JAVA (FLAT)				BACKSPLASH IN KITCHEN	
KITCHEN ISLAND JAVA (FLAT)				INCLUDING TO TOP OF	
BATH 1 CABINETS JAVA (FLAT)				RANGEHOOD STACK	
BATH 2 CABINETS JAVA (FLAT)					
OTHER CABINETS JAVA (FLAT)					
KITCHEN MOCHA FANTASTICO					

Quote. Prices subject to verification.

R-ANELL HOUSING GROUP, LLC

Salesman: Jeremy Cosby

Confirmation of Order. Check all specifications thoroughly, and if correct, sign and return copy of the confirmation and fax to R-Anell Homes.

Base:	86,525.00
Total Options:	17,906.80
Allowances:	0.00
Other:	33,038.00
Freight:	5,191.00
Sales Tax:	0.00
Total Invoice Price:	\$142,660.80

9/1/2017

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*** QUOTE ***

R-ANELL HOUSING GROUP, LLC

Quote No: 5333706

Dealer: 1723 HOMEMAX		Ship To:	Zone: 120B	Brand: RJ - ROCKBRIDGE 32 WIDE
1323 W MAIN ST PO Box 159 (29071) LEXINGTON, SC 29072		Model: RJ551		32X76 PY: 15
Serial:				
Retail: BROWN	Dealer Rep: JAY	Requested Delivery		
Date: 5/18/17	PO #:	Week of:		
		Revised: 9/1/17 Rev. No: 8		
*****CABINetry*****		FRONT WINDOWS		
FULL LINEAR MOSAIC IVORY -KITCHEN		1 DUTCH LAP SIDING 0.00		
ONE ROW OF LINEAR MOSAIC IVORY AT BEVERAGE CENTER		WITH WHITE CORNER POSTS		
1 *** - CRESCENT EDGE 0.00		1 VINYL SIDING SHAKE AND 295.00		
THROUGHOUT		BOARD ACCENT		
1 *** - BEVERAGE CENTER W/ SLIDING BARN DOORS AND CAN LIGHTS	0.00	DINING ROOM		
:JAVA		1 DORMER 9/12 22' - TWIN PEAK 1,120.00		
1 *** CERAMIC BACKSPLASH IN MASTER BATH	0.00	1 8' CAPE DORMER FOR 9/12 1,725.00		
4" BACKSPLASH		ROOF		
1 *** - CABINET PULLS (7128) ON ALL DOORS	0.00	SHIP LOOSE ON SEPERATE CARRIER		
WITH BRUSHED NICKEL KNOBS (3910) ON DRAWERS		DOUBLE WINDOW PER PRINT		
THROUGHOUT HOME		INCLUDES ARCHTOP WINDOW		
1 ***APPLIANCE GARAGE 0.00		1 HOUSEWRAP 0.00		
1 *** - UNDER CABINET MOULDING 0.00		1 SOFFIT VENTED 0.00		
		1 FACIA METAL 6" 0.00		
		1 9/12- 27'-4" TWIN PEAK WITH WINDOW AND 4' ROOF 2,195.00		
		OPENING.		
		1 RECESSED FLOOR 525.00		
		PER PRINT		
		1 SIDING VERTICAL W/ SHAKE - 22' TWIN PEAK DORMER 295.00		
		1 SIDING VERTICAL W/ SHAKE - 27'4" DORMER W/ BUMPOUT 695.00		
		9/12		
		1 SHAKE SIDING ON 8' CAPE DORMER FRONT ONLY 225.00		
*****ROOF & CEILING*****		*****DOORS/WINDOWS*****		
1 9/12 ROOF 24" OC 5,300.00		1 DOOR EXT 1/2 LITE BRIGHTON 900.00		
W/STAIRWELL		W/ (1) SIDELITE		
INCLUDES INSTALLED WHOLE HOUSE VENTILATION FAN IN BATH 2		17 WINDOWS WITH GRIDS AND 680.00		
1 OVERHANG 10" FIXED 0.00		SILL REPLACING WINDOWS		
1 ROOF LOAD 20 LB 0.00		W/O GRIDS		
1 ROOF EXT SHEATHING 7/16" OSB 0.00		2 EXTRA WINDOW W/GRIDS 510.00		
1 R-31 AVG. ROOF INSULATION 0.00		1 EACH UPPER GABLE END		
1 ***CEILING SMOOTH 0.00		***DOOR 15-LITE KITCHEN 0.00		
W/ NO COVE T/O UNLESS OTHERWISE NOTED		1 *** TRANSOM 36X12 WINDOW 0.00		
1 *** TRAY CEILING WITH DROPPED BEAMS IN DR 0.00		BTH 2 WITH GRIDS		
BEAM COLOR: JAVA		1 WINDOW 68" T/O 0.00		
*****EXTERIOR*****		*****TRIM*****		
SIDING CYPRESS		1 DOOR & WINDOW CASING 0.00		
SHAKE SIDING BLACK WALNUT		3-1/4"		
VERTICAL SIDING CYPRESS		1 STANDARD MOULDING 0.00		
SHINGLES ARCH - ONYX BLACK		INCLUDES:		
8 3 1/2" LINEALS REP. SHUTTERS 360.00		3-1/4" BASE		
FOR DUTCH LAP SIDING				
Quote. Prices subject to verification.		Base: 86,525.00		
R-ANELL HOUSING GROUP, LLC		Total Options: 17,906.80		
Salesman: Jeremy Cosby		Allowances: 0.00		
Confirmation of Order. Check all specifications thoroughly, and if correct, sign and return copy of the confirmation and fax to R-Anell Homes.		Other: 33,038.00		
		Freight: 5,191.00		
		Sales Tax: 0.00		
		Total Invoice Price: \$142,660.80		

9/1/2017

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QUOTE

R-ANELL HOUSING GROUP, LLC

Quote No: 5333706

Dealer: 1723 HOMEMAX	Ship To:	Zone: 120B	Brand: RJ - ROCKBRIDGE 32 WIDE
1323 W MAIN ST PO Box 159 (29071) LEXINGTON, SC 29072			Model: RJ551 32X76 PY: 15 Serial:
Retail: BROWN	Dealer Rep: JAY	Requested Delivery	
Date: 5/18/17	PO #:	Week of:	Revised: 9/1/17 Rev. No: 8

*****TRIM*****	
1 BRUSHED NICKEL PACKAGE	0.00
1 2" BLINDS T/O	0.00
1 CROWN #748 WALL CABINET	0.00
3-7/8"	
1 *** DOOR INT 6-PANEL WHITE	0.00
T/O	
1 ***ELITE*** CEILING BEAMS - DR	0.00
DROPPED	
BEAM COLOR: JAVA	
1 ***ELITE*** (2) SLIDING BARN	0.00
DOORS @ BEV. CTR.	
:JAVA	
*****APPLIANCES*****	
1 Water Heater Electric 50 Gallon	165.00
Hi-Efficiency .95	
1 REFER WHIRLPOOL 25 CF SIDE	0.00
BY SIDE WICEMAKER SS	
1 COOKTOP WHIRLPOOL	0.00
SMOOTH TOP SS	
1 RANGE HOOD	0.00
GLASS/STAINLESS CHIMNEY	
1 DISHWASHER WHIRLPOOL 4	0.00
CYCLE SS	
1 MICROWAVE WHIRLPOOL	0.00
BUILT-IN W/TRIM KIT SS	
1 WALL OVEN CONVECTION	0.00
SINGLE WHIRLPOOL 5.0 CF SS	
1 BEV/MINE COOLER SS	0.00
*****MISCELLANEOUS*****	
BUILDER ACCEPTANCE	
DAN - MODULAR LABEL SC	182.00
DAN - SC SALES TAX	3,911.00
DAN - FACTORY TRIM	3,160.00
DAN - CARRIER DEPOSIT	2,250.00
DAN - FACTORY SET	12,605.00
DAN - FTO STAIRWELL	1,550.00
DAN - RETURN FREIGHT	1,084.00
DAN - MAINTENANCE FEE (CARRIER)	750.00
STATE DUES	250.00
DAN - MATERIAL SURCHARGE	7,296.00

Jack

Quote. Prices subject to verification.		Base:	86,525.00
R-ANELL HOUSING GROUP, LLC		Total Options:	17,906.80
Salesman: Jeremy Cosby		Allowances:	0.00
Confirmation of Order. Check all specifications thoroughly, and if correct, sign and return copy of the confirmation and fax to R-Anell Homes		Other:	33,038.00
		Freight:	5,191.00
		Sales Tax:	0.00
		Total Invoice Price:	\$142,660.80

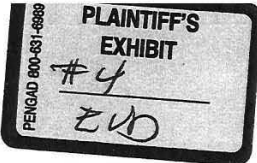
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R-Anell Homes®



PLEASE REMIT TO

INVOICE NO: 2967

R-ANELL HOUSING GROUP, LLC
P.O. BOX 1143
CHERRYVILLE NC 28021

PLANT/RETAILER NO. 4	INVOICE DATE 03/24/18	SERIAL NO. RQ41182ABM	MODEL RJ551-A38	BRAND RJ - ROCKBRIDGE 32	SIZE 32X76	MODEL YR 15	BEDROOMS 3	BATHS 2.00
MANUFACTURE DATE 12/14/17	EXTERIOR DECOR	INTERIOR DECOR	SHIP VIA Bennett's Transport	F.O.B.	SALESMAN NO. Jeremy Cos	ORIGINAL ORDER NO. 5333706		
PURCHASE ORDER NO.	APPROVAL NO.	N STOCK	CUSTOMER NAME BROWN	UNIT TERMS	FREIGHT TERMS			

RETAILER SOLD TO:
HOMEMAX

1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072

SHIP TO:
HOMEMAX

1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072

FINANCED THROUGH:
COD/CERTIFIED CHECK

HUD CERTIFICATE LABELS:

THIS HOME CONTAINS THE FOLLOWING INSULATION:

LOCATION	R-VALUE	APPROX. AVG. THICKNESS.
FLOORS	0	0.00"
WALLS	0	0.00"
CEILING	0	0.00"

NA

NOTICES 1. This Invoice is Due Upon Receipt unless the customer has special terms. This invoice price may be subject, if earned, to Manufacturer's Volume Rebate Program. 2. This home may have used time, fine and/or miles which have been inspected relative to appearance and applicable to safety standards. 3. Module homes are temporarily attached to carriers for transporting the modular units to the site. The modules are removed by Builder/Dealer from the carrier on site. The carrier is the property of the manufacturer of the modular units and must be returned by the Builder/Dealer to the manufacturer once the modular units are removed. 4. Manufacturer certifies that to the best of its knowledge and belief, this manufactured home is constructed in conformance with the Federal Manufactured Home Construction and Safety Standard or state building codes in effect on the date of manufacture.		5. WARRANTY: This unit is sold subject to the manufacturer's published warranty. 6. All authorized Builder/Dealers are independent contractors and are not considered to be an agent of the Commodore Corporation. All purchase contracts with retail customers including options are with the Builder/Dealer who is solely responsible for any alteration, exchanges, additions or attachments made to a sold home. Submission of the purchase order by the Builder/Dealer for this home has been relied upon by the manufacturer as evidence of its being licensed or registered as an independent contractor. <i>William Allen</i> AUTHORIZED MANUFACTURER REPRESENTATIVE

CODE	QTY	DESCRIPTION	PRICE	CODE	QTY	DESCRIPTION	PRICE
4437	1	WALLS EXTERIOR 2X6 16" O.C.	0.00	1163	9	3 1/2" LINEALS REP. SHUTTERS FOR FRONT WINDOWS INCLUDING UPPER GABLE END WINDOW ABOVE FAMILY ROOM	405.00
1427	1	INTERIOR WALLS 2X4 24" OC	0.00	345	1	DUTCH LAP SIDING ELM GROVE, WITH WHITE CORNER POSTS	0.00
4428	1	MARRIAGE WALLS 2X4 24" OC	0.00	6375	1	VINYL SIDING SHAKE AND BOARD ABOVE DINING ROOM	295.00
3592	1	BUILD WITH AN OPEN STAIRWELL INCLUDES CARPET AND PAD FOR STAIRS AND MATERIALS FOR STAIR ENCLOSURE SHIPPED LOOSE-INCLUDES SOLID CORE DOOR W/ SWEEP	1,120.00	4167	1	DORMER 9/12 22' - TWIN PEAK	1,120.00
3597	1	BUILD WITH A PLUMBING CHASE GC	100.00	2528	1	8' CAPE DORMER FOR 9/12 ROOF SHIP LOOSE ON SEPERATE CARRIER	1,725.00
7397	1	PAINT SHELL WHITE	0.00			DOUBLE WINDOW PER PRINT INCLUDES ARCHTOP WINDOW	
7449	1	WALLS EXT SHEATHING 7/16" OSB	0.00	535	1	HOUSEWRAP	0.00
7495	1	MARRIAGE WALLS 7/16" OSB WITH C	0.00	7451	1	SOFFIT VENTED	0.00
550	1	*** 8' SIDEWALL WITH 68" WINDOWS	0.00	7452	1	FACIA METAL 6"	0.00
443	1	9/12 ROOF 24" OC W/STAIRWELL INCLUDES INSTALLED WHOLE HOUSE VENTILATION FAN IN BATH 2	5,300.00			9/12- 27'-4" TWIN PEAK WITH WINDO	2,195.00
662	1	OVERHANG 10" FIXED	0.00	6185	1	RECESSED FLOOR PER PRINT	525.00
850	1	ROOF LOAD 20 LB	0.00	7958	1	SIDING VERTICAL W/ SHAKE - 22' TV	295.00
7447	1	ROOF EXT SHEATHING 7/16" OSB	0.00	7962	1	SIDING VERTICAL W/ SHAKE - 27'4" I	695.00
7731	1	R-31 AVG. ROOF INSULATION	0.00	2961	1	SHAKE SIDING ON 8' CAPE DORMER - FRONT FACE WALL ONLY OF 8'-0" DORMER	225.00
1751	1	***CEILING SMOOTH W/ NO COVE T/O UNLESS OTHERWISE NOTED	0.00	3361	1	FAUCET HUNTINGTON BRASS T/O N	0.00
2060	1	*** TRAY CEILING WITH DROPPED BI BEAM COLOR: JAVA	0.00	4052	1	FAUCET EXTERIOR STD	0.00
1137	1	DOOR EXT 1/2 LITE BRIGHTON W/ (1	900.00	4550	1	EXTRA EXTERIOR WATER FAUCET SEE PRINT	40.00
2735	17	WINDOWS WITH GRIDS AND SILL RE	680.00	6394	1	STAINLESS KITCHEN SINK 33X22X8	0.00
2734	2	EXTRA WINDOW W/GRIDS 1 EACH UPPER GABLE END .	510.00	7515	1	VALVE SECONDARY SHUT-OFFS THI	0.00
2730	1	***DOOR 15-LITE KITCHEN	0.00	1033	1	***FAUCET HUNTINGTON KIT GOOSE NICKEL	0.00
2381	1	*** TRANSOM 36X12 WINDOW BTH 2 WITH GRIDS	0.00	7039	1	*** SHWR CERAMIC 4'X6' WALK-IN RI	0.00
1862	1	WINDOW 68" T/O	0.00				

REMARKS:	BASE PRICE	86,525.00
	TOTAL OPTIONS	17,551.80
	ALLOWANCES	0.00
	OTHER	33,025.00
	FREIGHT	5,191.00
	SALES TAX AS APPLICABLE	0.00
	TOTAL INVOICE PRICE	\$142,292.80

ORIGINAL

Page 1 of 4



PLEASE REMIT TO

INVOICE NO: 2967

R-ANELL HOUSING GROUP, LLC
P.O. BOX 1143
CHERRYVILLE NC 28021

PLANT	RETAILER NO.	INVOICE DATE	SERIAL NO.	MODEL	BRAND	SIZE	MODEL YR	BEDROOMS	BATHS
4	1723	03/24/18	RQ41192ABM	RJ551-A38	RJ - ROCKBRIDGE 32	32X76	15	3	2.00
MANUFACTURE DATE	EXTERIOR DECOR	INTERIOR DECOR	SHIP VIA	F.O.B.	SALESMAN NO.				
12/14/17			Bennett's Transport		Jeremy Cos				
PURCHASE ORDER NO.	APPROVAL NO.	N STOCK	CUSTOMER NAME	UNIT TERMS	FREIGHT TERMS	ORIGINAL ORDER NO.			
			BROWN			5333706			

RETAILER SOLD TO:
HOMEMAX1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072SHIP TO:
HOMEMAX1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072FINANCED THROUGH:
COD/CERTIFIED CHECK

HUD CERTIFICATE LABELS:

THIS HOME CONTAINS THE FOLLOWING INSULATION:

LOCATION	R-VALUE	APPROX. AVG. THICKNESS
FLOORS	0	0.00"
WALLS	0	0.00"
CEILING	0	0.00"

NA

NOTICES

1. This Invoice is Due Upon Receipt unless the customer has special terms. This invoice price may be subject to change, if earned, to Manufacturer's Volume Rebate Program.
2. This home may have used trees, stumps and/or other items which have been inspected relative to appearance and applicable to safety standards.
3. Modular homes are temporarily attached to trailers for transporting the modular units to the site. The modules are removed by Builder/Dealer from the trailer on site. The trailers are the property of the manufacturer of the modular units and must be returned by the Builder/Dealer to the manufacturer once the modular units are removed.
4. Manufacturer certifies that to the best of its knowledge and belief, this manufactured home is constructed in conformance with the Federal Manufactured Home Construction and Safety Standard or state building codes in effect on the date of manufacture.

5. WARRANTY: This unit is sold subject to the manufacturer's published warranty.
6. All authorized building materials are independent contractors and are not considered to be an agent of the Contractor/Builder. All purchase contracts with retail customers including options are with the builder/dealer who is totally responsible for any alteration, exchanges, additions or attachments made to a sold home. Submission of the purchase order by the builder/dealer for this home has been relied upon by the manufacturer as evidence of this being licensed or registered as an independent contractor.

AUTHORIZED MANUFACTURER REPRESENTATIVE

CODE	QTY	DESCRIPTION	PRICE	CODE	QTY	DESCRIPTION	PRICE
		- BATH 1		A712	1	WALL OVEN SINGLE WHIRLPOOL 5.C	0.00
		- BEVERAGE CENTER IN DINING ROOM		A320	1	BEV/WINE COOLER SS	0.00
7026	1	LAMINATE BACKSPLASH - OTHER	0.00	900061	1	WIND ZONE EXPOSURE B 130 MILE ADJUST SIDING FOR A DOUBLE SILL PLATE	500.00
3842	2	VANITY 36"	0.00	1125	1	MODULAR LABEL, SC 221 NORTH ROAD RIDGEVILLE, SC 28472 DORCHESTER COUNTY	0.00
		-BA1		7578	1	INSULATION R19-R19-R31 AVG	0.00
2372	1	DRAWERS DOVETAIL	0.00	4714	1	FOUNDATION - CONVENTIONAL CRA -BUILT TO 2017 SPECIFICATIONS	0.00
6541	1	DRAWER GUIDES SOFT CLOSE - KIT	295.00	4944	1	20.4 KW FURNACE	0.00
6525	1	*** CABINET OVERHEAD KIT 12" STA	0.00	4081	1	INSTALL THERMOSTAT WIRE	0.00
1740	1	*** DRAWER OVER DOOR WITH TIP OUT TRAYS AT KIT SINK	0.00	7488	1	RETURN AIR CEILING	0.00
3024	1	*** FULL CERAMIC TILE BACKSPLASH - 4X8 BRICKLAYED TILE - KITCHEN	0.00	7483	1	JOIST 2X10 FLOOR 16" O.C. W/ DOU	0.00
7557	1	*** - CRESCENT EDGE THROUGHOUT	0.00	3392	1	23/32" OSB FLOOR DECKING	0.00
7551	1	*** - BEVERAGE CENTER W/ SLIDING - COLOR JAVA	0.00	3728	1	ADD R-19 FLOOR INSULATION W/ NETTING	0.00
1833	1	*** CERAMIC BACKSPLASH IN MASTER 4" BACKSPLASH	0.00	4801	1	HEATING SYSTEM COMPLETE - OMIT - INCLUDES FLEX LINE FOR 2 MODULE HOME, 2017 CEILING AIR RETURNS, PERIMETER BOOTS AND REGISTERS INSTALLED	0.00
7568	1	*** - CABINET PULLS (7128) ON ALL C WITH BRUSHED NICKEL KNOBS (3910) ON DRAWERS THROUGHOUT HOME	0.00	4810	1	HEAT, PERIMETER	0.00
6481	1	***APPLIANCE GARAGE	0.00	3713	76	OMIT FIBERGLASS HEAT DUCTS	-528.20
7810	1	*** - UNDER CABINET MOULDING	0.00	7396	1	PAD CARPET 5.0 REBOND	0.00
90010	1	Water Heater Electric 50 Gallon Hi-Effic	165.00	7576	1	*** - LAMINATE FLOORING KITCHEN, DR, FOYER	0.00
A220	1	REFER WHIRLPOOL 25 CF SIDE BY S	0.00				
A152	1	COOKTOP WHIRLPOOL SMOOTH TO	0.00				
3443	1	RANGE HOOD GLASS/STAINLESS CH	0.00				
A414	1	DISHWASHER WHIRLPOOL 4 CYCLE	0.00				
A515	1	MICROWAVE WHIRLPOOL BUILT-IN V	0.00				

REMARKS:

BASE PRICE	86,525.00
TOTAL OPTIONS	17,551.80
ALLOWANCES	0.00
OTHER	33,025.00
FREIGHT	5,191.00
SALES TAX AS APPLICABLE	0.00
TOTAL INVOICE PRICE	\$142,292.80

ORIGINAL

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PLEASE REMIT TO

INVOICE NO: 2967

R-ANELL HOUSING GROUP, LLC
P.O. BOX 1143
CHERRYVILLE NC 28021

PLANT	RETAILER NO.	INVOICE DATE	SERIAL NO.	MODEL	BRAND	SIZE	MODEL YR	BEDROOMS	BATHS
4	1723	03/24/18	RQ41192ABM	RJ551-A38	RJ - ROCKBRIDGE 32	32X76	15	3	2.00
MANUFACTURE DATE		EXTERIOR DECOR	INTERIOR DECOR	SHIP VIA	F.O.B	SALESMAN NO.			
12/14/17				Bennett's Transport		Jeremy Cos			
PURCHASE ORDER NO.		APPROVAL NO.	N STOCK	CUSTOMER NAME	UNIT TERMS	FREIGHT TERMS	ORIGINAL ORDER NO.		
				BROWN			5333708		

RETAILER SOLD TO:
HOMEMAX1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072SHIP TO:
HOMEMAX1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072FINANCED THROUGH:
COD/CERTIFIED CHECK

HUD CERTIFICATE LABELS:

THIS HOME CONTAINS THE FOLLOWING INSULATION:

LOCATION	R-VALUE	APPROX. AVG. THICKNESS.
FLOORS	0	0.00"
WALLS	0	0.00"
CEILING	0	0.00"

NA

NOTICES

1. This invoice is Due Upon Receipt unless the customer has special terms. This invoice price may be subject, if earned, to Manufacturer's Volume Rebate Program.
2. This home may have used tires, rims and/or axles which have been inspected relative to appearance and applicable to safety standards.
3. Module homes are temporarily attached to carriers for transporting the modular units to the site. The modules are removed by Builder/Dealer from the carrier on site. The carriers are the property of the manufacturer of the modular units and must be returned by the Builder/Dealer to the manufacturer once the modular units are removed.
4. Manufacturer certifies that to the best of its knowledge and belief, this manufactured home is constructed in conformance with the Federal Manufactured Home Construction and Safety Standard or state building codes in effect on the date of manufacture.

5. WARRANTY: This unit is sold subject to the manufacturer's published warranty.
6. All authorized subcontractors are independent contractors and are not considered to be an agent of the Commodore Corporation. All purchase contracts with retail customers including options are with the builder/dealer who is totally responsible for any alterations, exchanges, additions or attachments made to a sold home. Submission of the purchase order by the builder/dealer for this home has been relied upon by the manufacturer as evidence of his being licensed or registered as an independent contractor.

AUTHORIZED MANUFACTURER REPRESENTATIVE

CODE	QTY	DESCRIPTION	PRICE	CODE	QTY	DESCRIPTION	PRICE
1311		DAN - MODULAR LABEL SC	162.00				
2251		DAN - SC SALES TAX	3,898.00				
2270		DAN - FACTORY TRIM	3,160.00				
2270		DAN - CARRIER DEPOSIT	2,250.00				
2270		DAN - FACTORY SET	12,605.00				
2270		DAN - FTO STAIRWELL	1,550.00				
4602		DAN - RETURN FREIGHT	1,084.00				
5261		DAN - MAINTENANCE FEE (CARRIER)	750.00				
4528		STATE DUES	250.00				
3113		DAN - MATERIAL SURCHARGE	7,296.00				

REMARKS:

Worcester County

BASE PRICE	88,525.00
TOTAL OPTIONS	17,651.80
ALLOWANCES	0.00
OTHER	33,025.00
FREIGHT	5,191.00
SALES TAX AS APPLICABLE	0.00
TOTAL INVOICE PRICE	\$142,292.80

ORIGINAL

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5537413
418836

R-ANELL HOMES

R-ANELL HOMES GROUP, LLC
PO Box 1145 Charlotte, North Carolina 28221
Ph: 1-888-631-6888 Fax: 704-442-4717

DELIVERY INSPECTION FORM

DEALER Hennings

SERIAL # 911921A

DESTINATION Ridgeway NC

PLEASE NOTE: MARRIAGE LINE AND OVER THE ROOF PLASTIC MUST BE CHECKED AT TIME OF DELIVERY OR PICK-UP. R-ANELL HOMES ASSUMES NO RESPONSIBILITY OR LIABILITY FOR ANY DAMAGES DUE TO WATER LEAKS THROUGH SHIPPING PLASTIC THAT ARE NOT COMMUNICATED AT TIME OF DELIVERY OR PICK-UP.

Please thoroughly inspect this unit upon delivery for any exterior or interior transit damages and list them below. R-ANELL HOMES will not be held responsible for any transit damage that is not reported on this form.

John went on roof and inspected and
lined any holes on roof and plastic

Driver's Signature John Cole

Dealer's Signature [Signature]

Date Received 3/14/12

THIS IS NOT A REQUEST FOR FACTORY SERVICE

Please fax this completed form to (704) 442-4717 or e-mail to: mallen@r-anell.com



R-Anell Homes Group, LLC
P.O. Box 1143 Glenville, North Carolina 28021
PH: 704-445-4717 Fax: 704-445-4717

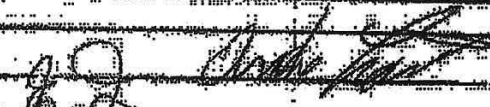
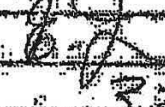
553741X
418994

DELIVERY INSPECTION FORM

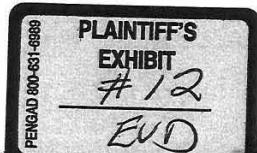
DEALER Home MAX SERIAL # 418994
DESTINATION R. J. Goss, Jr. S.C.

PLEASE NOTE: MARRIAGE LINE AND OVER-THE-ROOF PLASTIC MUST BE CHECKED AT TIME OF DELIVERY OR PICK-UP. R-ANELL HOMES ASSUMES NO RESPONSIBILITY OR LIABILITY FOR ANY DAMAGES DUE TO WATER LEAKS THROUGH SHIPPING PLASTIC THAT ARE NOT COMMUNICATED AT TIME OF DELIVERY OR PICK-UP.

Please thoroughly inspect this unit upon delivery for any exterior or interior transit damages and list them below. R-Anell Homes will not be held responsible for any transit damage that is not reported on this form.

Driver's Signature: Dealer's Signature: Date Received: 3-24-18**THIS IS NOT A REQUEST FOR FACTORY SERVICE**

Please fax this completed form to (704) 445-4717 or e-mail to: mallen@r-anell.com



INVOICE NO: 2600

R-ANELL HOUSING GROUP, LLC
P.O. BOX 1143
CHERRYVILLE NC 28021

PLANT	RETAILER NO.	INVOICE DATE	SERIAL NO.	MODEL	BRAND	SIZE	MODEL YR	BEDROOMS	BATHS
4	1723	05/17/17	RP40876ABM	RJ551A21	ROCKBRIDGE 32 WDI	32X76	15	3	2.00
MANUFACTURE DATE		EXTERIOR DECOR	INTERIOR DECOR	SHIP VIA	F.O.B	SALESMAN NO.			
05/04/17				Bennett's Transport		Jeremy Cos			
PURCHASE ORDER NO.		APPROVAL NO.	N STOCK	CUSTOMER NAME	UNIT TERMS	FREIGHT TERMS	ORIGINAL ORDER NO.		
0517213502				CHRISTOFOLI			5146296		

RETAILER SOLD TO:
HOMEMAX1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072SHIP TO:
HOMEMAX1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072FINANCED THROUGH:
NORTHPOINT COMMERCIAL FINANCE
11675 RAINWATER DRIVE
SUITE 450
ALPHARETTA GA 30009

HUD CERTIFICATE LABELS:

THIS HOME CONTAINS THE FOLLOWING INSULATION:

LOCATION	R-VALUE	APPROX. AVG. THICKNESS.
FLOORS	0	0.00"
WALLS	0	0.00"
CEILING	0	0.00"

NOTICES

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2. This home may have used tires, rims and/or axles which have been inspected relative to appearance and applicable to safety standards.
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4. Manufacturer certifies that to the best of its knowledge and belief, this manufactured home is constructed in conformance with the Federal Manufactured Home Construction and Safety Standard or state building codes in effect on the date of manufacture.

5. WARRANTY: This unit is sold subject to the manufacturer's published warranty.
6. All authorized builder/dealers are independent contractors and are not considered to be an agent of the Commodore Corporation. All purchase contracts with retail customers including options are with the builder/dealer who is totally responsible for any alteration, exchanges, additions or attachments made to a sold home. Submission of the purchase order by the builder/dealer for this home has been relied upon by the manufacturer as evidence of his being licensed or registered as an independent contractor.

AUTHORIZED MANUFACTURER REPRESENTATIVE

CODE	QTY	DESCRIPTION	PRICE	CODE	QTY	DESCRIPTION	PRICE
540	1	2X6 EXTERIOR WALLS 16" O.C.	0.00	2381	1	KIT	
1427	1	INTERIOR WALLS 2X4 24" OC	0.00			*** TRANSOM 36X12 WINDOW	0.00
4428	1	MARRIAGE WALLS 2X4 24" OC	0.00			BTH 2 WITH GRIDS	
3592	1	BUILD WITH AN OPEN STAIRWELL	1,120.00	1862	1	WINDOW 68" T/O	0.00
		INCLUDES CARPET AND PAD		319	1	15" RAISED PANEL SHUTTERS - FRC	0.00
		FOR STAIRS AND MATERIALS		345	1	DUTCH LAP SIDING	0.00
		FOR STAIR ENCLOSURE				WITH WHITE CORNER POSTS	
		SHIPPED LOOSE-INCLUDES		535	1	HOUSEWRAP	0.00
		SOLID CORE DOOR W/ SWEEP		7451	1	SOFFIT VENTED	0.00
3597	1	BUILD WITH A CHASE GOING	100.00	7452	1	FACIA METAL 6"	0.00
7397	1	PAINT SHELL WHITE	0.00	3361	1	FAUCET HUNTINGTON BRASS T/O	0.00
7449	1	WALLS EXT SHEATHING 7/16" OSB	0.00	7300	1	LAV, DBL., WHERE AVAILABLE	0.00
7495	1	MARRIAGE WALLS 7/16" OSB WITH C	0.00			BA1	
550	1	*** 9' SIDEWALL WITH 68" WINDOWS	0.00	7566	1	***ELITE*** UTILITY SINK & CABINET	0.00
443	1	9/12 ROOF 24" OC W/STAIRWELL	6,300.00	4052	1	FAUCET EXTERIOR STD	0.00
		INCLUDES INSTALLED CEILING		4550	2	EXTRA EXTERIOR WATER FAUCET	80.00
		VENTILATION FAN				SEE PRINT 3 TOTAL	
662	1	OVERHANG 10" FIXED	0.00	6394	1	STAINLESS KITCHEN SINK 33X22X8	0.00
850	1	ROOF LOAD 20 LB	0.00	7515	1	VALVE SECONDARY SHUT-OFFS THI	0.00
7447	1	ROOF EXT SHEATHING 7/16" OSB	0.00	1033	1	***FAUCET HUNTINGTON KIT GOOSE	0.00
1751	1	***CEILING SMOOTH	0.00			NICKEL	
		W/ NO COVE T/O UNLESS		7039	1	*** SHWR CERAMIC 4'X6' WALK-IN RI	0.00
		OTHERWISE NOTED				INCLUDES RAINFALL SHOWER	
2060	1	*** TRAY CEILING WITH DROPPED BI	0.00			HEAD AND ADJUSTABLE HAND	
		BEAM COLOR: JAVA				HELD SHOWER HEAD	
4921	1	FIBERGLASS OVAL DOOR W/2 SIDEL	1,570.00			VERTICAL TILE INSTALLATION	
2850	1	9-LITE REAR DOOR	0.00	7390	1	*** TUB GARDEN REP 60" TUB/SHOW	0.00
		UTL				CURVED FRONT WITH	
2735	14	WINDOWS WITH GRIDS AND SILL RE	560.00			SURROUND	
2734	2	EXTRA WINDOW W/GRIDS	510.00	4319	24	RECESSED CAN LITE	0.00
		1 EACH UPPER GABLE END					
2844	1	WINDOW TRANSOM SINGLE	85.00				
		MBR CLOSET					
		WITH GRIDS					
2730	1	***DOOR 15-LITE REP STANDARD	0.00				

REMARKS:

BASE PRICE	85,525.00
TOTAL OPTIONS	16,205.00
ALLOWANCES	(4,069.00)
OTHER	24,953.00
FREIGHT	2,682.00
SALES TAX AS APPLICABLE	0.00
TOTAL INVOICE PRICE	125,296.00

ORIGINAL

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INVOICE NO: 2600

PLEASE REMIT TO

R-ANELL HOUSING GROUP, LLC
P.O. BOX 1143
CHERRYVILLE NC 28021

PLANT/RETAILER NO 4 1723	INVOICE DATE 05/17/17	SERIAL NO. RP40876ABM	MODEL RJ551A21	BRAND ROCKBRIDGE 32 WID	SIZE 32X76	MODEL YR 15	BEDROOMS 3	BATHS 2.00
MANUFACTURE DATE 05/04/17	EXTERIOR DECOR	INTERIOR DECOR	SHIP VIA Bennett's Transport	F.O.B.	SALESMAN NO. Jeremy Cos			
PURCHASE ORDER NO. 0517213502	APPROVAL NO	N STOCK	CUSTOMER NAME CHRISTOFOLI	UNIT TERMS	FREIGHT TERMS	ORIGINAL ORDER NO. 5146296		

RETAILER SOLD TO:
HOMEMAX

1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072

SHIP TO:
HOMEMAX

1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072

FINANCED THROUGH:
NORTHPOINT COMMERCIAL FINANCE
11675 RAINWATER DRIVE
SUITE 450
ALPHARETTA GA 30009

HUD CERTIFICATE LABELS:

THIS HOME CONTAINS THE FOLLOWING INSULATION:

LOCATION	R-VALUE	APPROX. AVG. THICKNESS
FLOORS	0	0.00"
WALLS	0	0.00"
CEILING	0	0.00"

NOTICES

1. This invoice is Due Upon Receipt unless the customer has special terms. This invoice price may be subject, if earned, to Manufacturer's Volume Rebate Program.

2. This home may have used tires, rims and/or axles which have been inspected relative to appearance and applicable to safety standards.

3. Module homes are temporarily attached to carriers for transporting the modular units to the site. The modules are removed by Builder/Dealer from the carrier on site. The carriers are the property of the manufacturer of the modular units and must be returned by the Builder/Dealer to the manufacturer once the modular units are removed.

4. Manufacturer certifies that to the best of its knowledge and belief, this manufactured home is constructed in conformance with the Federal Manufactured Home Construction and Safety Standard or state building codes in effect on the date of manufacture.

5. WARRANTY: This unit is sold subject to the manufacturer's published warranty.

6. All authorized builder/dealers are independent contractors and are not considered to be an agent of the Commodore Corporation. All purchase contracts with retail customers including options are with the builder/dealer who is totally responsible for any alterations, exchanges, additions or attachments made to a sold home. Submission of the purchase order by the builder/dealer for this home has been relied upon by the manufacturer as evidence of his being licensed or registered as an independent contractor.

Melissa Allen
AUTHORIZED MANUFACTURER REPRESENTATIVE

CODE	QTY	DESCRIPTION	PRICE	CODE	QTY	DESCRIPTION	PRICE
		10 - KITCHEN		3091	1	2 PANEL INT. DOORS T/O	0.00
		6 - DR		3112	1	FRENCH DOORS R/1 DOOR	320.00
		3 - BEV CENTER				OFFICE	
		2 - MBR CLOSET		7443	1	TAPED TOP ANGLE	0.00
		2 - BA1 SHOWER		2006	1	DOOR & WINDOW CASING 3-1/4"	0.00
		1 - ENT CENTER		2211	1	STANDARD MOULDING INCLUDES:	0.00
4140	2	EXTRA EXTERIOR RECEPTACLE	100.00			3-1/4" BASE	
		SEE PRINT 4 TOTAL		9039	1	BRUSHED NICKEL PACKAGE	0.00
7463	1	RECEPTACLE EXTERIOR - (2) W/ GFI	0.00	3670	1	MOULDING UNDER CABINET-KITCH	150.00
8727	1	USB RECEPT. STD.	0.00	1574	1	2" BLINDS T/O	0.00
		KIT		2160	1	CROWN #748 WALL CABINET 3-7/8"	0.00
4150	4	EXT FLOOD LIGHTS	300.00	2217	1	***ELITE*** CEILING BEAMS - DR	0.00
4164	3	MEDIA ROUGH IN BOX	30.00			DROPPED	
		ENT CENTER				BEAM COLOR: JAVA	
		DESK IN OFFICE		2858	1	***ELITE*** (2) SLIDING BARN DOOR:	0.00
		ABOVE FIREPLACE				JAVA	
4340	4	WIRE & SWITCH FOR PADDLE FAN C	180.00	7587	1	CABINET CHIFFON WHITE MISSION	1,100.00
		ALL BR'S		2160	1	CROWN #748 WALL CABINET 3-7/8"	0.00
		FAMILY ROOM		6436	5	CAB DOORS JAVA MAPLE FLAT PANE	0.00
4771	1	ARC FAULT BREAKER	0.00			BA1	
4130	1	EXTRA INTERIOR RECEPTACLE	30.00			BA2	
		MBR CLOSET				DESK IN OFFICE	
4130	1	EXTRA INTERIOR RECEPTACLE	0.00			ENT CENTER	
		FREEZER				BEV CENTER	
4457	1	SMOKE DETECTORS BY CODE	0.00	7588	1	CABINET CHIFFON WHITE - OTHER /	180.00
4738	1	BATH FAN W/LIGHT	0.00			UTL	
		ALL BATHS		6051	4	BACKSPLASH 4" CERAMIC	240.00
4010	1	200 AMP SERVICE	0.00			BTH 2	
1894	1	*** PADDLE FAN DELUXE	0.00			BEVERAGE CENTER	
		GR				ENT CENTER	
		BRUSHED NICKEL				UR	
4006	1	*** (2) 3-WAY SWITCHES	0.00	3842	2	VANITY 36"	0.00
		SEE PRINT				BA1, BA2	
		GR		2372	1	DRAWERS DOVETAIL	0.00
						WITH UNDERMOUNT GUIDES	

REMARKS:

BASE PRICE	85,525.00
TOTAL OPTIONS	16,205.00
ALLOWANCES	(4,069.00)
OTHER	24,953.00
FREIGHT	2,682.00
SALES TAX AS APPLICABLE	0.00
TOTAL INVOICE PRICE	125,296.00

ORIGINAL

Page 2 of 4



PLEASE REMIT TO

INVOICE NO: 2600

R-ANELL HOUSING GROUP, LLC
P.O. BOX 1143
CHERRYVILLE NC 28021

PLANT/RETAILER NO.	INVOICE DATE	SERIAL NO.	MODEL	BRAND	SIZE	MODEL YR	BEDROOMS	BATHS
4	1723	05/17/17	RP40876ABM	RJ551A21	ROCKBRIDGE 32 WDI	32X76	15	3
MANUFACTURE DATE	EXTERIOR DECOR	INTERIOR DECOR	SHIP VIA	F.O.B.	SALESMAN NO.			
05/04/17			Bennett's Transport		Jeremy Cos			
PURCHASE ORDER NO.	APPROVAL NO.	N STOCK	CUSTOMER NAME	UNIT TERMS	FREIGHT TERMS	ORIGINAL ORDER NO.		
0517213502			CHRISTOFOLI			5146296		

RETAILER SOLD TO:
HOMEMAX

1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072

SHIP TO:
HOMEMAX

1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072

FINANCED THROUGH:
NORTHPOINT COMMERCIAL FINANCE
11675 RAINWATER DRIVE
SUITE 450
ALPHARETTA GA 30009

THIS HOME CONTAINS THE FOLLOWING INSULATION:		
LOCATION	R-VALUE	APPROX. AVG. THICKNESS
FLOORS	0	0.00"
WALLS	0	0.00"
CEILING	0	0.00"

NOTES

1. This invoice is Due Upon Receipt unless the customer has special terms. This invoice price may be subject, if earned, to Manufacturer's Volume Rebate Program.
2. This home may have used tires, rims and/or axles which have been inspected relative to appearance and applicable to safety standards.
3. Module homes are temporarily attached to carriers for transporting the modular units to the site. The modules are removed by Builder/Dealer from the carrier on site. The carriers are the property of the manufacturer of the modular units and must be returned by the Builder/Dealer to the manufacturer once the modular units are removed.
4. Manufacturer certifies that to the best of its knowledge and belief, this manufactured home is constructed in conformance with the Federal Manufactured Home Construction and Safety Standard or state building codes in effect on the date of manufacture.

5. WARRANTY: This unit is sold subject to the manufacturer's published warranty.

6. All authorized builder/dealers are independent contractors and are not considered to be an agent of the Commodore Corporation. All purchase contracts with retail customers including options are with the builder/dealer who is totally responsible for any alteration, exchanges, additions or attachments made to a sold home. Submission of the purchase order by the builder/dealer for this home has been relied upon by the manufacturer as evidence of its being licensed or registered as an independent contractor.

Michelle Allen
AUTHORIZED MANUFACTURER REPRESENTATIVE

CODE	QTY	DESCRIPTION	PRICE	CODE	QTY	DESCRIPTION	PRICE
4281	1	PULL-OUT SHELVES IN BASE CABINETS INSTALL 2 IN BOTTOM OF PANTRY IN KITCHEN	95.00	917		NATURE LANE GILBERT, SC 29054 LEXINGTON COUNTY	
6525	1	*** CABINET OVERHEAD KIT 12" STA	0.00	7578	1	INSULATION R19-R19-R31 AVG	0.00
1740	1	*** DRAWER OVER DOOR WITH TIP OUT TRAYS AT KIT SINK	0.00	3723	1	OMIT FURNACE(S) AND WIRING - FINISHED DRYWALL IN THE CLOSET IF THE CLOSET IS STILL ON THE PLAN	-150.00
3024	1	*** FULL CERAMIC TILE BACKSPLAS 4" CERAMIC (BRICK LAID)	0.00	3725	2	ADD AIR RETURN GRILL(S) IN THE WALL THROUGH FLOOR	270.00
7557	1	*** - CRESCENT EDGE THROUGHOU	0.00	7483	1	JOIST 2X10 FLOOR 16" O.C. W/ DOUI	0.00
1833	1	*** CERAMIC BACKSPLASH IN MAST 4" CERAMIC	0.00	3392	1	23/32" OSB FLOOR DECKING	0.00
7568	1	*** - CABINET PULLS (7128) ON DOO WITH BRUSHED NICKEL KNOBS (3910) ON ALL DRAWERS THROUGHOUT HOME	0.00	3728	1	ADD R-19 FLOOR INSULATION W/ NETTING	0.00
6481	1	***APPLIANCE GARAGE	0.00	4810	1	HEAT, PERIMETER	0.00
7810	1	*** - UNDER CABINET MOULDING	0.00	7545	1	HEATING SYSTEM COMPLETE INCLUDES HEAT DUCT, FLEX DUCT, CROSSOVERS, AIR RETURNS, BOOT AND REGISTERS INSTALLED	0.00
	1	DESK IN OFFICE AREA	300.00	7396	1	PAD CARPET 5.0 REBOND STAIR CARPET IS FRENCH BEIGE	0.00
7715	1	GE PKG PLATINUM - STAINLESS INCLUDES 23 CF SXS REFER WITH ICE AND WATER, SMOOTH TOP ELE COOKTOP, 5 CF WALL OVEN, AND DISHWASHER	0.00	7576	1	*** - LAMINATE FLOORING KITCHEN, DR, FOYER	0.00
7703	1	MICROWAVE GE GOLD/PLATINUM P/ -BUILT IN	0.00		1	HALL AT BED 1 AND BTH 2 CARPET FRENCH BEIGE	0.00
1865	1	***RANGE HOOD CHEFS SIGNATURE	0.00	3913	1	HALF CANYON MESQUITE FP	1,475.00
4899	1	4.5 C.F. BEVERAGE COOLER FOR BE	0.00	4999	1	VENTLESS GAS FIREPLACE	945.00
2158	1	TRIM KIT FOR MICRO/CONVECTION- OVEN	0.00				
	1	LOW BOY WATER HEATER SHIPPED	165.00				
924	1	WIND ZONE EXPOSURE B-110 MPH	150.00				
1125	1	MODULAR LABEL, SC	0.00				

REMARKS:

BASE PRICE	85,525.00
TOTAL OPTIONS	16,205.00
ALLOWANCES	(4,069.00)
OTHER	24,953.00
FREIGHT	2,682.00
SALES TAX AS APPLICABLE	0.00
TOTAL INVOICE PRICE	125,296.00

ORIGINAL

Page 3 of 4

Plaintiff's Exhibit 12 Page 3



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P.O. BOX 1143
CHERRYVILLE NC 28021

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MANUFACTURE DATE 05/04/17	EXTERIOR DECOR	INTERIOR DECOR	SHIP VIA Bennett's Transport	F.O.B.	SALESMAN NO. Jeremy Cos			
PURCHASE ORDER NO. 0517213502	APPROVAL NO.	N STOCK	CUSTOMER NAME CHRISTOFOLI	UNIT TERMS	FREIGHT TERMS	ORIGINAL ORDER NO. 5146296		

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Melissa Allen
AUTHORIZED MANUFACTURER REPRESENTATIVE

CODE	QTY	DESCRIPTION	PRICE	CODE	QTY	DESCRIPTION	PRICE
		LP GAS					
		W/ CARBON MONOXIDE					
		DETECTOR AND CEILING					
		VENTILATION FAN-2ND					
		VENTILATION FAN NOT					
		REQUIRED WITH ANY ATTIC					
		STORAGE OR CAPE.					
1311		DAN - MODULAR LABEL SC	162.00				
2251		DAN - SC SALES TAX	3,761.00				
2270		DAN - FACTORY TRIM	3,030.00				
2270		DAN - CARRIER DEPOSIT	1,500.00				
2270		DAN - FACTORY SET	9,250.00				
2270		DAN - FTO STAIRWELL	1,550.00				
3120		DAN - BUILDERS DISCOUNT	-4,069.00				
5261		DAN - MAINTENANCE FEE (CARRIER)	500.00				
4528		STATE DUES	250.00				
3113		DAN - MATERIAL SURCHARGE	5,700.00				
4000		RNL - PERFORMANCE BASED S/T ALL	-750.00				

REMARKS:

Lexington County

BASE PRICE	85,525.00
TOTAL OPTIONS	16,205.00
ALLOWANCES	(4,069.00)
OTHER	24,953.00
FREIGHT	2,682.00
SALES TAX AS APPLICABLE	0.00
TOTAL INVOICE PRICE	125,296.00

ORIGINAL

Page 4 of 4

Plaintiff's Exhibit 12 Page 4



5211812
418836

R-Anell Homes

R-Anell Housing Group, LLC
P.O. Box 1143 Cherryville, North Carolina 28021
Ph. 1-888-951-5511 Fax 704-445-4717

DELIVERY INSPECTION FORM

DEALER Home Depot SERIAL # 408761
DESTINATION Lexington, SC

PLEASE NOTE: MARKING LINE AND OVER-THE-ROOF PLASTIC MUST BE CHECKED AT TIME OF DELIVERY OR PICK-UP. R-ANELL HOMES ASSUMES NO RESPONSIBILITY OR LIABILITY FOR ANY DAMAGES DUE TO WATER LEAKS THROUGH SHIPPING PLASTIC THAT ARE NOT COMMUNICATED AT TIME OF DELIVERY OR PICK-UP.

Please thoroughly inspect this unit upon delivery for any exterior or interior transit damages and list them below. R-Anell Homes will not be held responsible for any transit damage that is not reported on this form.

Driver's Signature _____
Dealer's Signature _____
Date Received 5-17-17

THIS IS NOT A REQUEST FOR FACTORY SERVICE

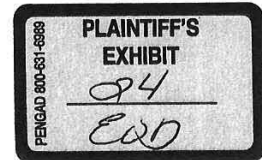
Please fax this completed form to (704) 445-4717 or e-mail to: mullen@r-anell.com

11:20 AM
08/08/19
Accrual Basis

HomeMax, LLC
Account QuickReport
As of August 8, 2019

Nature Lane Expenses

Type	Date	Num	Name	Memo	Split	Amount	Balance
1250 - Work In Process							
Check	11/11/2016	9409	Christofoli, Leslie & Robert	Appraisal	1000 - Operating Account	475.00	475.00
Bill	06/14/2017	713	Christofoli, Leslie & Robert	Foundation	2000 - Accounts Payable	5,850.00	6,325.00
Bill	06/14/2017	711	Christofoli, Leslie & Robert	Footers	2000 - Accounts Payable	2,600.00	8,925.00
Bill	06/27/2017	2636	Christofoli, Leslie & Robert	Deliver	2000 - Accounts Payable	2,270.00	11,195.00
Bill	06/30/2017	364261	Christofoli, Leslie & Robert	Crane Rental	2000 - Accounts Payable	4,730.00	15,925.00
Bill	07/21/2017	B-22062	Christofoli, Leslie & Robert	Port a Jon	2000 - Accounts Payable	75.70	16,000.70
Bill	08/18/2017	B-22579	Christofoli, Leslie & Robert	Port a Jon	2000 - Accounts Payable	75.70	16,076.40
Bill	08/28/2017	08042017-04	Christofoli, Leslie & Robert	Insulation	2000 - Accounts Payable	475.00	16,551.40
General Jo	08/31/2017	AJE 8-14	Christofoli, Leslie & Robert	Transportation of Christofoli Modular Home Bill Back	1250 - Work In Process	-2,270.00	14,281.40
Bill	09/15/2017	B-23095	Christofoli, Leslie & Robert	Port a Jon	2000 - Accounts Payable	75.70	14,357.10
Bill	09/22/2017	10737	Christofoli, Leslie & Robert	Inspection	2000 - Accounts Payable	740.00	15,097.10
Bill	10/02/2017	2189	Christofoli, Leslie & Robert	Cleaning/Trash Removal	2000 - Accounts Payable	90.00	15,187.10
Bill	11/01/2017	761	Christofoli, Leslie & Robert	22x8 Brick Porch	2000 - Accounts Payable	890.00	16,077.10
Bill	11/01/2017	2255	Christofoli, Leslie & Robert	Cleaning/Trash Removal	2000 - Accounts Payable	93.00	16,170.10
Bill	11/02/2017	95	Christofoli, Leslie & Robert	Foundation	2000 - Accounts Payable	600.00	16,770.10
Bill	11/10/2017	B-24102	Christofoli, Leslie & Robert	Port a Jon	2000 - Accounts Payable	75.70	16,845.80
Bill	12/08/2017	B-24610	Christofoli, Leslie & Robert	Port a Jon	2000 - Accounts Payable	75.70	16,921.50
Bill	12/21/2017	2355	Christofoli, Leslie & Robert	Cleaning/Trash Removal	2000 - Accounts Payable	90.00	17,011.50
Bill	01/05/2018	B-25099	Christofoli, Leslie & Robert	Port a Jon	2000 - Accounts Payable	75.70	17,087.20
Bill	01/22/2018	Christofoli	Christofoli, Leslie & Robert	Payment to Biotek-Mold	2000 - Accounts Payable	5,000.00	22,087.20
Bill	02/02/2018	B-25599	Christofoli, Leslie & Robert	Port a Jon	2000 - Accounts Payable	75.70	22,162.90
Bill	02/06/2018	2447	Christofoli, Leslie & Robert	Cleaning/Trash Removal	2000 - Accounts Payable	186.00	22,348.90
Bill	02/15/2018	307	Christofoli, Leslie & Robert	Cleaning/Trash Removal	2000 - Accounts Payable	50.00	22,398.90
Bill	03/07/2018	B-26141	Christofoli, Leslie & Robert	Port a Jon	2000 - Accounts Payable	75.70	22,474.60
Bill	03/08/2018		Christofoli, Leslie & Robert	Cleaning/Trash Removal	2000 - Accounts Payable	325.00	22,799.60
Bill	03/23/2018		Christofoli, Leslie & Robert	Payment to Biotek-Mold	2000 - Accounts Payable	3,976.01	26,775.61
Bill	04/05/2018	B26682	Christofoli, Leslie & Robert	Port a Jon	2000 - Accounts Payable	75.70	26,851.31
Check	04/23/2018	11012	Christofoli, Leslie & Robert	Christofoli SN 40876 HVAC	1001 - Operating Account 82	4,800.00	31,651.31
Check	05/16/2018	11066	Christofoli, Leslie & Robert	Christofoli SN40876	1001 - Operating Account 82	8,488.00	40,139.31
Check	05/24/2018	11090	Christofoli, Leslie & Robert	Christofoli SN 40876 Cleaning/Trash Removal	1001 - Operating Account 82	325.00	40,464.31
Check	05/31/2018	11109	Christofoli, Leslie & Robert	Christofoli SN 40876	1001 - Operating Account 82	350.00	40,814.31
Check	05/31/2018	11109	Christofoli, Leslie & Robert	Christofoli SN 40876	1001 - Operating Account 82	150.00	40,964.31
Check	05/31/2018	11115	Christofoli, Leslie & Robert	Christofoli SN 40876 Plumbing	1001 - Operating Account 82	3,500.00	44,464.31
Check	05/31/2018	11105	Christofoli, Leslie & Robert	Christofoli SN 40876 Port a Jon	1001 - Operating Account 82	75.70	44,540.01
Bill	01/10/2019	Multiple	Christofoli, Leslie & Robert	Electrical Christofoli house SN 40869-electric hookup	2000 - Accounts Payable	1,750.00	46,290.01
Bill	01/17/2019	11118	Christofoli, Leslie & Robert	Inspections	2000 - Accounts Payable	1,780.40	48,070.41
Bill	01/17/2019	360619 360620	Christofoli, Leslie & Robert	Electrical Christofoli SN 40869-electric hook up for we	2000 - Accounts Payable	550.00	48,620.41
Bill	02/07/2019		Christofoli, Leslie & Robert	Cleaning/Trash Removal at Nature Lane-cleaning and	2000 - Accounts Payable	750.00	49,370.41
Bill	02/14/2019	Multiple	Christofoli, Leslie & Robert	Electrical Nature Lane SN 40876	2000 - Accounts Payable	550.00	49,920.41
Bill	02/28/2019	Feb Statement	Christofoli, Leslie & Robert	Plumbing Nature Lane	2000 - Accounts Payable	146.06	50,066.47
Bill	05/09/2019	509 510	Christofoli, Leslie & Robert	Nature Lane lawn service	2000 - Accounts Payable	55.00	50,121.47
Check	05/10/2019	11891	Christofoli, Leslie & Robert	Power bill for Nature Lane	1001 - Operating Account 82	211.00	50,332.47
Bill	05/23/2019		Christofoli, Leslie & Robert	Power bill for Nature Lane 4-12 to 5-12-19	2000 - Accounts Payable	53.00	50,385.47
Bill	05/23/2019	545 546	Christofoli, Leslie & Robert	Nature Lane lawn service	2000 - Accounts Payable	55.00	50,440.47
Bill	06/27/2019		Christofoli, Leslie & Robert	Nature Lane lawn service	2000 - Accounts Payable	50.00	50,490.47
Bill	07/02/2019		Christofoli, Leslie & Robert	Nature Lane power bill	2000 - Accounts Payable	97.00	50,587.47
Bill	08/01/2019	Multiple	Christofoli, Leslie & Robert	Lawn Maintenance at Nature Lane - 7-8 and 7-23 - all	2000 - Accounts Payable	185.00	50,772.47
Bill	08/01/2019		Christofoli, Leslie & Robert	Nature Lane power bill	2000 - Accounts Payable	142.00	50,914.47
Bill	8/15/2019	768 776	Christofoli, Leslie & Robert	Lawn maintenance at Nature Lane	2000 - Accounts Payable	50.00	50,964.47
Bill	8/29/2019	812 813	Christofoli, Leslie & Robert	Lawn maintenance at Nature Lane	2000 - Accounts Payable	50.00	51,014.47
Bill	8/29/2019		Christofoli, Leslie & Robert	Nature Lane power bill	2000 - Accounts Payable	161.00	51,175.47
Bill	9/12/2019		Christofoli, Leslie & Robert	Lawn maintenance at Nature Lane	2000 - Accounts Payable	50.00	51,225.47



HomeMax, LLC
Account QuickReport
As of August 8, 2019

Type	Date	Num	Name	Memo	Split	Amount	Balance
Bill	9/26/2019		Christofoli, Leslie & Robert	Lawn maintenance at Nature Lane	2000 - Accounts Payable	55.00	51,280.47
Bill	10/3/2019		Christofoli, Leslie & Robert	Nature Lane power bill	2000 - Accounts Payable	120.00	51,400.47
Bill	10/31/2019		Christofoli, Leslie & Robert	Nature Lane power bill	2000 - Accounts Payable	92.00	51,492.47
Bill	11/4/2019	Multiple	Christofoli, Leslie & Robert	Nature Lane lawn care 10-1-19	2000 - Accounts Payable	50.00	51,542.47
Bill	11/4/2019	Multiple	Christofoli, Leslie & Robert	Nature Lane lawn care 10-21-19	2000 - Accounts Payable	50.00	51,592.47
Bill	11/26/2019		Christofoli, Leslie & Robert	Power bill for Nature Lane	2000 - Accounts Payable	56.00	51,648.47
Bill	12/30/2019		Christofoli, Leslie & Robert	Nature Lane power bill	2000 - Accounts Payable	63.00	51,711.47
Bill	1/23/2020	Multiple	Christofoli, Leslie & Robert	Nature Lane lawn care 12-3-19	2000 - Accounts Payable	55.00	51,766.47
Bill	1/30/2020		Christofoli, Leslie & Robert	Nature Lane	2000 - Accounts Payable	66.00	51,832.47
Bill	2/6/2020	470 472	Christofoli, Leslie & Robert	Nature Lane punch list prior to sale	2000 - Accounts Payable	350.00	52,182.47
Bill	3/5/2020		Christofoli, Leslie & Robert	Nature Lane final bill	2000 - Accounts Payable	52.00	52,234.47
Bill	08/16/2017	2102	Christofoli, Leslie & Robert	Invoice #2102 Trash removal	2000 - Accounts Payable	446.00	52,680.47
Total 1250 - Work in Process						52,680.47	52,680.47
TOTAL						52,680.47	52,680.47

Nature Lane Interest expenses from Tag Lending

Date	Memo	Split	Amount	Balance
01/11/2019	December Statement - Nature Lane interest	2000 - Accounts Payable	111.22	
01/11/2019	December Statement - Land interest	2000 - Accounts Payable	92.71	
02/14/2019	Interest - Nature Lane	2000 - Accounts Payable	1,127.66	
02/14/2019	Interest - Land	2000 - Accounts Payable	940.00	
03/14/2019	Interest - Nature Lane	2000 - Accounts Payable	1,127.66	
03/14/2019	Interest - Land	2000 - Accounts Payable	940.00	
04/11/2019	Interest - Nature Lane	2000 - Accounts Payable	1,127.66	
04/11/2019	Interest - Land	2000 - Accounts Payable	940.00	
05/09/2019	Interest - Nature Lane	2000 - Accounts Payable	1,127.66	
05/09/2019	Interest - Land	2000 - Accounts Payable	940.00	
06/11/2019	Interest on Nature Lane	2000 - Accounts Payable	2,067.66	
07/11/2019	Interest on Nature Lane	2000 - Accounts Payable	2,067.66	
08/15/2019	Interest on Nature Lane	2001 - Accounts Payable	2,067.66	
09/12/2019	Interest on Nature Lane	2002 - Accounts Payable	2,067.66	
10/10/2019	Interest on Nature Lane	2003 - Accounts Payable	2,067.66	
11/14/2019	Interest on Nature Lane	2004 - Accounts Payable	2,067.66	
12/12/2019	Interest on Nature Lane	2005 - Accounts Payable	2,067.66	
01/15/2020	Interest on Nature Lane	2006 - Accounts Payable	2,067.66	
02/13/2020	Interest on Nature Lane	2007 - Accounts Payable	2,339.58	
Total 5515 - Inventory Interest			27,355.43	
TOTAL			27,355.43	27,355.43

Nature Lane Bank and Merchant Fees

Date	Memo	Split	Amount	Balance
01/11/2019	December Statement - Nature Lane loan fees	2000 - Accounts Payable	1,127.66	
01/11/2019	December Statement - Land loan fees	2000 - Accounts Payable	3,760.00	
Total 6001 - Bank Merch Fees			4,887.66	
TOTAL			4,887.66	4,887.66

Nature Lane Payoff for House and Land

Memo	Amount	Balance
Payoff for house	112,766.40	
Payoff for land and settlement	94,000.00	

11:20 AM
08/08/19
Accrual Basis

HomeMax, LLC
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As of August 8, 2019

Type	Date	Num	Name	Memo	Split	Amount	Balance
Total Payoff						206,766.40	206,766.40
Nature Lane Legal Fees							
	Date	Num	Name	Memo	Split	Amount	Balance
6065 Legal Services	09/20/2018	53601	Christofoli, Leslie & Robert	Legal services for Homemax vs Christofolio	2000 · Accounts Payable	2,286.30	
	02/07/2019	54482	Christofoli, Leslie & Robert	Legal services for Homemax vs Christofolio	2000 · Accounts Payable	2,615.27	
	01/24/2020	56650	Christofoli, Leslie & Robert	Legal services for Homemax vs Christofolio	2001 · Accounts Payable	168.50	
Total Legal Services						5,070.07	
TOTAL						5,070.07	5,070.07
Nature Lane Floor Plan Interest and Curtailments							
Interest paid on SN	Date	Num	Name	Memo		Amount	Balance
40876							
	2017		North Point Comm Fin	Floor Plan Interest 07-13-17 to 12-31-17		6,574.74	
	2018		North Point Comm Fin	Floor Plan Interest 01-12-18 to 01-15-19		17,884.03	
Total						24,458.77	24,458.77
Curtailments paid on SN							
40876							
	2018		North Point Comm Fin	Curtailments paid for 2018		12,529.60	
Total						12,529.60	12,529.60
Closing Costs paid on Sale of Nature Lane				Closing costs		26,568.28	26,568.28
TOTAL							360,316.68

329

Appendix 334

Christofoli House Sold to Mattingly
Profit and Loss Statement
4/29/2021

Income	
Sale of Home	280,000.00
Total Income	<u>280,000.00</u>
Expenses	
Improvements	52,680.47
Interest from Tag	27,355.43
Loan Fees	4,887.66
COGS - House	125,296.00
COGS - Land and Settlement	94,000.00
Legal Fees	5,070.07
Interest from Northpoint	24,458.77
Closing Costs	26,568.28
Total Expenses	<u>360,316.68</u>
Net Income	<u><u>-80,316.68</u></u>

CROUSE

Commodore - wking Logout | Change Password | Current Version: 2.5.2

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Unit

Quote List

Unit Id	04-40876	Home Size	32 X 76	Confirm Date	01/06/2017	Base	85525.00
Order #	5146296	VIN #	RP40876ABM	Revision Date	07/18/2018	Options	16205.00
Series	RJ - ROCKBRIDGE 32 WIDE	Mfg Date	05/04/2017	Revision Number	8	Allowances	-4,069.00
Model	551 A21	Retail Date	05/17/2017	Changed Date	05/17/2017	Other	24,953.00
Suffix		Ship Date	05/17/2017	Changed User	Wanda King	Freight	2682.00
Dealer	HOMEMAX	Customer Last Name	CHRISTOFOLI			Sales Tax	0.00
Dealer Series Name	ROCKBRIDGE 32 WIDE - RJ	Warranty Expiration Date				Total	125296.00
Date	12/16/2016	Total Service Cost	\$44,371.44				
Quote Created Date	10/13/2016	Total FTO	\$12,050.00				

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Water Damaged Repairs \$14,361.85

[General Info](#) | [Customer Info](#) | [Shipping](#) | [Insulation](#) | [Floor Plan](#) | [HUD Labels](#) | [Remarks](#)
[Appliances](#) | [Notes](#) | [Options By Category](#) | [Decor](#) | [Accounts](#) | [Packages](#) | [Service Requests](#) | [Vendor Claims](#) | [Dealer Authorizations](#)
[Print History](#)

Request #	Type	Status	Request Date	Total Costs	Completed Date
5477925	Service Request (Work Order)	Closed	5/03/2018	\$1,207.26	5/21/2018
5477870	Service Request (Work Order)	Closed	5/02/2018	\$8,069.28	4/27/2018
5477764	Parts Request	Closed	5/01/2018	\$9.59	5/17/2018
5477765	Parts Request	Closed	5/01/2018	\$75.44	5/01/2018
5476786	Service Request (Work Order)	Closed	4/16/2018	\$480.42	3/25/2018
5476720	Service Request (Work Order)	Closed	4/13/2018	\$4,001.52	5/04/2018
5476364	Parts Request	Closed	4/09/2018	\$821.80	4/12/2018
5475978	Service Request (Work Order)	Closed	4/03/2018	\$1,888.64	4/08/2018
5475803	Parts Request	Closed	4/02/2018	\$745.45	4/04/2018
5475543	Service Request (Work Order)	Closed	3/28/2018	\$2,096.95	3/31/2018
5475342	Parts Request	Closed	3/23/2018	\$3,078.18	3/29/2018
5475010	Service Request (Work Order)	Closed	3/16/2018	\$1,369.51	3/24/2018
5466819	Service Request (Work Order)	Closed	11/01/2017	\$3,914.99	9/25/2017

Kevin \$861.75
Carpet - ~~Water Dam~~

Thomas RTR
~~Water Dam~~

Shutters (SS)
Cab Drs ~~Water Dam~~

Julian - RTR Sheet Rock
~~Water Dam~~

Kevin - RTR
~~Water Dam~~

parts due to ~~Water Dam~~

Thomas RTR ~~Water Dam~~
Cabs, Drywall.

parts for Thomas ~~Water Dam~~

Thomas RTR C-Top - Cabs
~~Water Dam~~

Parts - ~~Water Dam~~

Thomas RTR ~~Water Dam~~

Neil Rose RTR 71r Deck - ~~Water Dam~~

Q 5463647	Service Request (Work Order)	Closed	9/15/2017	\$1,787.16	9/05/2017	Francis Conlin Water Dam Inspect
Q 5462014	Service Request (Work Order)	Closed	8/21/2017	\$2,858.18	8/16/2017	Damia " Water Dam
Q 5461555	Service Request (Work Order)	Closed	8/14/2017	\$2,132.00	8/11/2017	Damia - Tent off claw space mold treatment Water Dam
Q 5461142	Service Request (Work Order)	Closed	8/07/2017	\$2,948.64	8/01/2017	Francis Conlin Water Dam Inspect.
Q 5460572	Service Request (Work Order)	Closed	7/31/2017	\$845.00	7/30/2017	Equipment Rental - Floyd Water Dam
Q 5459460	Service Request (Work Order)	Closed	7/13/2017	\$1,747.10	7/07/2017	Set Crew - Replace wet roof decking & Down time. Waiting to set due to Water Damage
Q 5459367	Service Request (Work Order)	Closed	7/11/2017	\$1,785.60	7/03/2017	Demo - Damian Water Dam
Q 5459289	Service Request (Work Order)	Closed	7/10/2017	\$697.40	7/03/2017	Demo - Floyd Water Dam
Q 5459027	Service Request (Work Order)	Closed	7/03/2017	\$0.00	8/01/2017	This should have been Void'd Duplicate w/o start'd
Q 5459031	Service Request (Work Order)	Closed	7/03/2017	\$1,263.60	6/30/2017	Floyd Demo Water Dam
Q 5458865	Parts Request	Closed	6/30/2017	\$547.73	7/05/2017	parts for Water Dam
Q 5457095	Factory Trim Out	Closed	5/19/2017	\$8,550.00	7/07/2017	
Q 5457096	Factory Trim Out	Closed	5/19/2017	\$3,500.00	3/16/2018	

**R-ANELL HOUSING GROUP, LLC
DEALER VOLUME BONUS PLAN and DEALER AGREEMENT**

<u>*ANNUAL DOLLAR VOLUME</u>	<u>RATE</u>
3,200,001 and above	7.0%
2,400,001 to 3,200,000	6.0%
1,600,001 to 2,400,000	5.0%
1,200,001 to 1,600,000	4.0%
800,001 to 1,200,000	3.0%
200,000 to 800,000	2.0%

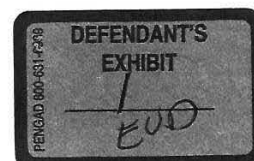
TERMS AND CONDITIONS

1. The "Plan Year" will be from January 1, 2017 through December 31, 2017.
2. Rebateable retail homes purchased, delivered, and paid for in full according to terms, during the period noted above, shall qualify for the above Volume Bonus and Dealer Agreement. The amount of the Plan Year Bonus shall be determined by multiplying the above applicable percentage rate times the aggregate amount of the invoice price of eligible R-Anell Housing Group LLC ("R-Anell") homes purchased and paid for by dealer from the locations specified on the Dealer Agreement, net of: parts, freight, tolls, permits, flagging, lumber surcharges, engineering fees, inspection fees, third party amounts, dealer installed amounts, other enroute charges, and any fixed dollar rebate applicable to any such home. Homes financed through a floor plan lender will qualify if full payment is received by R-Anell within fifteen (15) calendar days after the invoice date or within terms as agreed between the lender and R-Anell.
3. Rebateable stock homes purchased, delivered, and paid for in full according to terms, during the period noted above, shall qualify for the above Volume Bonus and Dealer Agreement however, the rebate will be paid upon the stock homes becoming retail sold. Rebate for stock homes will be based on plateau level achieved in the purchased year.
4. Payment will be made within thirty (30) days after the end of each Plan Year quarter, based on the actual earned rebate at the end of each quarter. Quarterly payments will retro back as volume increases during the Plan Year. Payments on stock units will be made in the quarter following confirmation by R-Anell of satisfaction of any outstanding liens on each stock unit.
5. R-Anell reserves the right to apply any or all earned Dealer Volume Bonus against obligations owed to R-Anell by the dealer. This right will also apply to dealer defaults under financial agreements under which R-Anell may have a repurchase obligation. Payment of any amounts due will be withheld until such default is fully corrected. Such right of offset will only be used if parts accounts, are not kept current.

DEALER AGREEMENT

The Agreement is made this 30th day of December 2016 by and between R-Anell Housing Group, LLC ("R-Anell"), a corporation organized and existing under the laws of the State of Delaware located at 235 Anthony Grove Rd, Crouse, North Carolina 28033, hereinafter referred to as "R-Anell," and Homemax, Dave Fautley, 1323 w Main St Lexington, NC 29072 hereinafter referred to as Homemax, and is effective for the period January 1, 2017 through December 31, 2017.

WHEREAS Homemax desires to purchase from R-Anell, and R-Anell desires to sell to Homemax, modular homes to be sold in the State of South Carolina pursuant to the terms and conditions as hereinafter set forth.



A. IT IS NOW THEREFORE AGREED AS FOLLOWS:

1. R-Anell will give Homemax, the right to put R-Anell product in the Lexington, SC area in joint agreement between R-Anell and Homemax, for the period beginning January 1, 2017 and ending December 31, 2017.
2. In return for this exclusive right, Homemax, agrees that it will diligently pursue the sale of R-Anell's products in said market area. It further agrees that it will advertise R-Anell's products and will represent R-Anell's products in a professional, businesslike manner.
3. Additionally, R-Anell and Homemax, agree that they will perform their respective service as outlined in the R-Anell Dealer Manufactured Home Service Agreement.

B. AS ADDITIONAL CONDITIONS TO THIS AGREEMENT, DEALER AGREES TO THE FOLLOWING:

1. Homemax, will agree to stock R-Anell products with the agreed stocking level of Two Model Home Displays.
2. Homemax, agrees, other than during brief unit rollover periods, to constantly maintain at least the minimum stocking level identified in above.
3. Homemax, agrees that all homes will be environmentally displayed to include complete trim inside and outside, ends finished and units decorated appropriately.
4. Homemax, agrees that R-Anell will not be responsible for subsequent tear down and set-up costs on units moved out and into display.

C. THE FOLLOWING ITEMS ARE APPLICABLE TO THIS AGREEMENT:

1. Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina.

2. Modification

This Agreement may be modified only by agreement in writing, signed by both parties.

3. Entire Agreement

This Agreement is the entire Agreement between the parties and supersedes all prior agreements between the parties, written or oral.

4. Term of Agreement

This Agreement shall be effective from January 1, 2017 through December 31, 2017. In the event either party wishes to cancel this Agreement, they must give the other party ninety (90) days advance written notice.

5. Notices

All notices pursuant to this Agreement shall be in writing and shall be sufficient if delivered, sent or mailed registered or certified mail postage, prepaid.

If to R-Anell:

Phillip Hathcock
General Manager
R-Anell Housing Group LLC
235 Anthony Grove Rd
Crouse, NC, 28033

If to Homemax:

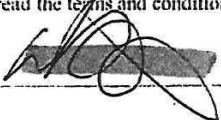
Dave Fautley
Owner
Homemax
1323 W Main St
Lexington, SC 29072

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date and year written above.

Homemax

R-Anell Housing Group LLC

I have read the terms and conditions listed above and I agree to be bound by same:

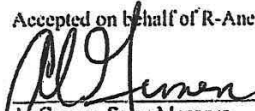




1-4-17

Date

Accepted on behalf of R-Anell:

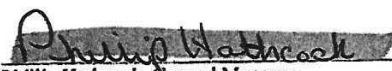


Jim Gurner, Sales Manager
R-Anell Housing Group LLC

1-4-17

Date

Approved By:



Phillip Hathcock, General Manager
R-Anell Housing Group LLC

1/4/17

Date



PLEASE REMIT TO

INVOICE NO: 2600

R-ANELL HOUSING GROUP, LLC
P.O. BOX 1143
CHERRYVILLE NC 28021

PLANT RETAILER NO	INVOICE DATE	SERIAL NO	MODEL	BRAND	SIZE	MODEL YR	BEDROOMS	BATHS
4 1723	05/17/17	RP40876ABM	RJ551A21	ROCKBRIDGE 32 W/DI	32X76	15	3	2.00
MANUFACTURE DATE	EXTERIOR DECOR	INTERIOR DECOR	SHIP VIA	F.O.B.	SALESMAN NO.			
05/04/17			Bennett's Transport		Jeremy Cos			
PURCHASE ORDER NO	APPROVAL NO.	N STOCK	CUSTOMER NAME	UNIT TERMS	FREIGHT TERMS	ORIGINAL ORDER NO.		
0517213502			CHRISTOFOLI			5146296		

RETAILER SOLD TO:
HOMEMAX

HUD CERTIFICATE LABELS:

1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072SHIP TO:
HOMEMAX1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072FINANCED THROUGH:
NORTHPOINT COMMERCIAL FINANCE
11675 RAINWATER DRIVE
SUITE 450
ALPHARETTA GA 30009

THIS HOME CONTAINS THE FOLLOWING INSULATION:

LOCATION	R-VALUE	APPROX. AVG. THICKNESS
FLOORS	0	0.00"
WALLS	0	0.00"
CEILING	0	0.00"

NOTICES

- This invoice is a true and correct receipt unless the customer has special terms. This invoice price may be subject to change if earned to Manufacturer's Volume Rebate Program.
- This notice may have been used by the manufacturer or sales agent which have been inspected relative to appearance and appropriate to safety standards.
- Module homes are temporarily attached to carriers for transporting the modular units to the site. The modules are removed by Builder/Dealer from the carrier on site. The carriers are the property of the manufacturer of the modular units and must be returned by the Builder/Dealer to the manufacturer once the modular units are removed.
- Manufacturer certifies that to the best of its knowledge and belief, the manufactured home is constructed in conformance with the Federal Manufactured Home Construction and Safety Standard or state building codes in effect on the date of manufacture.

- WARRANTY: This unit is sold subject to the manufacturer's published warranty.
- All authorized builder/dealers are independent contractors and are not considered to be an agent of the Commodore Corporation. All purchase contracts with retail customers including options are with the builder/dealer who is totally responsible for any alterations, exchanges, additions or attachments made to a sold home. Submission of this purchase order by the builder/dealer for this home has been relied upon by the manufacturer as evidence of his being licensed or registered as an independent contractor.

AUTHORIZED MANUFACTURER REPRESENTATIVE

CODE	QTY	DESCRIPTION	PRICE	CODE	QTY	DESCRIPTION	PRICE
540	1	2X6 EXTERIOR WALLS 16" O.C.	0.00	2381	1	KIT	
1427	1	INTERIOR WALLS 2X4 24" OC	0.00			*** TRANSOM 36X12 WINDOW	0.00
4428	1	MARRIAGE WALLS 2X4 24" OC	0.00			BTH 2 WITH GRIDS	
3592	1	BUILD WITH AN OPEN STAIRWELL	1,120.00	1862	1	WINDOW 68" T/O	0.00
		INCLUDES CARPET AND PAD		319	1	15" RAISED PANEL SHUTTERS - FRC	0.00
		FOR STAIRS AND MATERIALS		345	1	DUTCH LAP SIDING	0.00
		FOR STAIR ENCLOSURE				WITH WHITE CORNER POSTS	
		SHIPPED LOOSE-INCLUDES		535	1	HOUSEWRAP	0.00
		SOLID CORE DOOR W/ SWEEP		7451	1	SOFFIT VENTED	0.00
3597	1	BUILD WITH A CHASE GOING	100.00	7452	1	FACIA METAL 6"	0.00
7397	1	PAINT SHELL WHITE	0.00	3361	1	FAUCET HUNTINGTON BRASS T/O	0.00
7449	1	WALLS EXT SHEATHING 7/16" OSB	0.00	7300	1	LAV, DBL, WHERE AVAILABLE	0.00
7495	1	MARRIAGE WALLS 7/16" OSB WITH C	0.00			BA1	
550	1	*** 9" SIDEWALL WITH 68" WINDOWS	0.00	7566	1	***ELITE*** UTILITY SINK & CABINET	0.00
443	1	9/12 ROOF 24" OC W/STAIRWELL	8,300.00	4052	1	FAUCET EXTERIOR STD	0.00
		INCLUDES INSTALLED CEILING		4550	2	EXTRA EXTERIOR WATER FAUCET	80.00
		VENTILATION FAN				SEE PRINT 3 TOTAL	
662	1	OVERHANG 10" FIXED	0.00	6394	1	STAINLESS KITCHEN SINK 33X22X8	0.00
850	1	ROOF LOAD 20 LB	0.00	7515	1	VALVE SECONDARY SHUT-OFFS TH	0.00
7447	1	ROOF EXT SHEATHING 7/16" OSB	0.00	1033	1	***FAUCET HUNTINGTON KIT GOOSE	0.00
1751	1	***CEILING SMOOTH	0.00			NICKEL	
		W/NO COVE T/O UNLESS		7039	1	*** SHWR CERAMIC 4'X8' WALK-IN RI	0.00
		OTHERWISE NOTED				INCLUDES RAINFALL SHOWER	
2060	1	*** TRAY CEILING WITH DROPPED BI	0.00			HEAD AND ADJUSTABLE HAND	
		BEAM COLOR: JAVA				HELD SHOWER HEAD	
4921	1	FIBERGLASS OVAL DOOR W/2 SIDEL	1,570.00			VERTICAL TILE INSTALLATION	
2850	1	9-LITE REAR DOOR	0.00	7390	1	*** TUB GARDEN REP 60" TUB/SHOW	0.00
		UTL				CURVED FRONT WITH	
2735	14	WINDOWS WITH GRIDS AND SILL RE	560.00			SURROUND	
2734	2	EXTRA WINDOW W/GRIDS	510.00	4319	24	RECESSED CAN LITE	0.00
		1 EACH UPPER GABLE END					
2844	1	WINDOW TRANSOM SINGLE	85.00				
		MBR CLOSET					
		WITH GRIDS					
2730	1	***DOOR 15-LITE REP STANDARD	0.00				

REMARKS:

BASE PRICE	85,525.00
TOTAL OPTIONS	16,205.00
ALLOWANCES	(4,069.00)
OTHER	24,953.00
FREIGHT	2,682.00
SALES TAX AS APPLICABLE	0.00
TOTAL INVOICE PRICE	125,296.00

ORIGINAL

NatureLane_0081

Page 1 of 4



R-Anell Homes

PLEASE REMIT TO

INVOICE NO: 2600

R-ANELL HOUSING GROUP, LLC
P.O. BOX 1143

CHERRYVILLE NC 28021

PLANT RETAILER NO	INVOICE DATE	SERIAL NO	MODEL	BRAND	SIZE	MODEL YR	BEDROOMS	BATHS
4 1723	05/17/17	RP40876ABM	RJ551A21	ROCKBRIDGE 32' W/DI	32X76	15	3	2.00
MANUFACTURE DATE	EXTERIOR DECOR	INTERIOR DECOR	SHIP VIA	F.O.B.	SALESMAN NO			
05/04/17			Bennett's Transport		Jeremy Cos			
PURCHASE ORDER NO	APPROVAL NO	N STOCK	CUSTOMER NAME	UNIT TERMS	FREIGHT TERMS	ORIGINAL ORDER NO		
0517213502			CHRISTOFOLI			5146296		

RETAILER SOLD TO:
HOMEMAX

HUD CERTIFICATE LABELS:

1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072

SHIP TO:
HOMEMAX

1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072

FINANCED THROUGH:
NORTHPOINT COMMERCIAL FINANCE
11675 RAINWATER DRIVE
SUITE 450
ALPHARETTA GA 30009

THIS HOME CONTAINS THE FOLLOWING INSULATION:

LOCATION	R-VALUE	APPROX. AVG. THICKNESS
FLOORS	0	0.00"
WALLS	0	0.00"
CEILING	0	0.00"

NOTICES
1. This invoice is due upon receipt unless the customer has special terms. This invoice price may be subject to change to Manufacturer's Return Policy Program.
2. This home may have used tires, rims and/or axles which have been inspected relative to replacement and appropriate to safety standards.
3. Module homes are temporarily attached to carriers for transporting the modular units to the site. The modules are removed by Builder/Dealer from the carrier on site. The carriers are the property of the manufacturer of the modular units and must be returned by the Builder/Dealer to the manufacturer once the modular units are removed.
4. Manufacturer certifies that to the best of its knowledge and belief, this manufactured home is constructed in accordance with the Federal Manufactured Home Construction and Safety Standards or state building codes in effect on the date of manufacture.

WARRANTY The unit is sold subject to the manufacturer's published warranty.
5. All authorized dealer/dealers, are independent contractors and are not considered to be an agent of the Symonette Corporation. All outwarrant contracts with retail customers including repairs are with the dealer/dealer who is totally responsible for any alteration, exchanges, additions or attachments made to a sold home. Submission of the purchase order by the dealer/dealer for this home has been relied upon by the manufacturer as evidence of its being licensed or registered as an independent contractor.

Melissa Allen
AUTHORIZED MANUFACTURER REPRESENTATIVE

CODE	QTY	DESCRIPTION	PRICE	CODE	QTY	DESCRIPTION	PRICE
		10 - KITCHEN		3091	1	2 PANEL INT. DOORS T/O	0.00
		6 - DR		3112	1	FRENCH DOORS R/1 DOOR	320.00
		3 - BEV CENTER				OFFICE	
		2 - MBR CLOSET		7443	1	TAPED TOP ANGLE	0.00
		2 - BA1 SHOWER		2006	1	DOOR & WINDOW CASING 3-1/4"	0.00
		1 - ENT CENTER		2211	1	STANDARD MOULDING INCLUDES:	0.00
4140	2	EXTRA EXTERIOR RECEPTACLE	100.00			3-1/4" BASE	
		SEE PRINT 4 TOTAL		9039	1	BRUSHED NICKEL PACKAGE	0.00
7463	1	RECEPTACLE EXTERIOR - (2) W/ GFI	0.00	3670	1	MOULDING UNDER CABINET-KITCHE	150.00
8727	1	USB RECEPT. STD.	0.00	1574	1	2" BLINDS T/O	0.00
		KIT		2160	1	CROWN #748 WALL CABINET 3-7/8"	0.00
4150	4	EXT FLOOD LIGHTS	300.00	2217	1	***ELITE*** CEILING BEAMS - DR	0.00
4164	3	MEDIA ROUGH IN BOX	30.00			DROPPED	
		ENT CENTER				BEAM COLOR: JAVA	
		DESK IN OFFICE		2858	1	***ELITE*** (2) SLIDING BARN DOOR:	0.00
		ABOVE FIREPLACE				JAVA	
		ALL WITH RECEPTS		7587	1	CABINET CHIFFON WHITE MISSION	1,100.00
4340	4	WIRE & SWITCH FOR PADDLE FAN C.	180.00	2160	1	CROWN #748 WALL CABINET 3-7/8"	0.00
		ALL BR'S		6436	5	CAB DOORS JAVA MAPLE FLAT PANI	0.00
		FAMILY ROOM				BA1	
4771	1	ARC FAULT BREAKER	0.00			BA2	
4130	1	EXTRA INTERIOR RECEPTACLE	30.00			DESK IN OFFICE	
		MBR CLOSET				ENT CENTER	
4130	1	EXTRA INTERIOR RECEPTACLE	0.00			BEV CENTER	
		FREEZER		7588	1	CABINET CHIFFON WHITE - OTHER /	180.00
4457	1	SMOKE DETECTORS BY CODE	0.00			UTL	
4738	1	BATH FAN W/LIGHT	0.00	6051	4	BACKSPLASH 4" CERAMIC OTHE	240.00
		ALL BATHS				BTH 2	
4010	1	200 AMP SERVICE	0.00			BEVERAGE CENTER	
1894	1	*** PADDLE FAN DELUXE	0.00			ENT CENTER	
		GR				UR	
		BRUSHED NICKEL		3842	2	VANITY 36"	0.00
4006	1	*** (2) 3-WAY SWITCHES	0.00			BA1, BA2	
		SEE PRINT		2372	1	DRAWERS DOVETAIL	0.00
		GR				WITH UNDERMOUNT GUIDES	

REMARKS:

BASE PRICE	85,525.00
TOTAL OPTIONS	16,205.00
ALLOWANCES	(4,069.00)
OTHER	24,953.00
FREIGHT	2,682.00
SALES TAX AS APPLICABLE	0.00
TOTAL INVOICE PRICE	125,296.00

ORIGINAL

NatureLane 0082

Page 2 of 4



PLEASE REMIT TO

INVOICE NO. 2600

R-ANELL HOUSING GROUP, LLC

P.O. BOX 1143

CHERRYVILLE NC 28021

PLANT RETAILER NO.	INVOICE DATE	SERIAL NO.	MODEL	BRAND	SIZE	MODEL YR.	BEDROOMS	BATHS
4	1723	05/17/17	RP40876ABM	RJ551A21	ROCKBRIDGE 32 WID	32X76	15	3
MANUFACTURE DATE	EXTERIOR DECOR	INTERIOR DECOR	SHIP VIA	F.O.B.	SALESMAN NO.			
05/04/17			Bennett's Transport		Jeremy Cos			
PURCHASE ORDER NO.	APPROVAL NO.	N STOCK	CUSTOMER NAME	UNIT TERMS	FREIGHT TERMS	ORIGINAL ORDER NO.		
0517213502			CHRISTOFOLI			5146296		

RETAILER SOLD TO:
HOMEMAX1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072SHIP TO:
HOMEMAX1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072FINANCED THROUGH:
NORTHPOINT COMMERCIAL FINANCE
11675 RAINWATER DRIVE
SUITE 450
ALPHARETTA GA 30009

NOTICES

1. This invoice is a "Close Up" receipt unless the customer has signed terms. This invoice may be subject, if needed, to Manufacturer's Volume Rebate Program.
2. This home may have used tires, rims and/or tires which have been inspected relative to appearance and structure to safety standards.
3. Mobile homes are temporarily attached to carriers for transporting the modular units to the site. The modules are removed by Builder/Dealer from the carrier on site. The carriers are the property of the manufacturer of the modular units and must be returned by the Builder/Dealer to the manufacturer once the modular units are removed.
4. Manufacturer certifies that to the best of its knowledge and belief, this manufactured home is constructed in compliance with the Federal Manufactured Home Construction and Safety Standard or state building codes in effect on the date of manufacture.

5. WARRANTY: This unit is sold subject to the manufacturer's published warranty.
6. All authorized dealer/dealers, independent contractors and are not considered to be an agent of the Manufacturer Corporation. All purchase contracts with retail customers including options are with the dealer/dealer and a "total" responsible for any alteration, exchanges, additions or attachments made to a sold home. Submission of the purchase order by the dealer/dealer for this home has been released upon by the manufacturer as evidence of its being licensed or registered as an independent contractor.

AUTHORIZED MANUFACTURER REPRESENTATIVE

CODE	QTY	DESCRIPTION	PRICE	CODE	QTY	DESCRIPTION	PRICE
4281	1	PULL-OUT SHELVES IN BASE CABIN	95.00			917 NATURE LANE	
		INSTALL 2 IN BOTTOM OF				GILBERT, SC 29054	
		PANTRY IN KITCHEN				LEXINGTON COUNTY	
6525	1	*** CABINET OVERHEAD KIT 12" STA	0.00	7578	1	INSULATION R19-R19-R31 AVG	0.00
1740	1	*** DRAWER OVER DOOR	0.00	3723	1	OMIT FURNACE(S)	-150.00
		WITH TIP OUT TRAYS AT KIT				AND WIRING - FINISHED	
		SINK				DRYWALL IN THE CLOSET IF	
						THE CLOSET IS STILL ON THE	
3024	1	*** FULL CERAMIC TILE BACKSPLAS	0.00			PLAN	
		4" CERAMIC (BRICK LAID)		3725	2	ADD AIR RETURN GRILL(S)	270.00
7557	1	*** - CRESCENT EDGE THROUGHOU	0.00			IN THE WALL THROUGH FLOOR	
1833	1	*** CERAMIC BACKSPASH IN MAST	0.00	7483	1	JOIST 2X10 FLOOR 16" O.C. W/ DOU	0.00
		4" CERAMIC		3392	1	23/32" OSB FLOOR DECKING	0.00
7568	1	*** - CABINET PULLS (7/128) ON DOO	0.00	3728	1	ADD R-19 FLOOR INSULATION W/	0.00
		WITH BRUSHED NICKEL KNOBS				NETTING	
		(3910) ON ALL DRAWERS		4810	1	HEAT, PERIMETER	0.00
		THROUGHOUT HOME		7545	1	HEATING SYSTEM COMPLETE	0.00
6481	1	***APPLIANCE GARAGE	0.00			INCLUDES HEAT DUCT, FLEX	
7810	1	*** - UNDER CABINET MOULDING	0.00			DUCT, CROSSOVERS, AIR	
		DESK IN OFFICE AREA	300.00			RETURNS, BOOT AND	
7715	1	GE PKG PLATINUM - STAINLESS	0.00			REGISTERS INSTALLED	
		INCLUDES 23 CF SXS REFER		7396	1	PAD CARPET 5.0 REBOND	0.00
		WITH ICE AND WATER,				STAIR CARPET IS FRENCH	
		SMOOTH TOP ELE COOKTOP, 5				BEIGE	
		CF WALL OVEN, AND		7576	1	*** - LAMINATE FLOORING	0.00
		DISHWASHER				KITCHEN, DR, FOYER	
7703	1	MICROWAVE GE GOLD/PLATINUM P/	0.00			HALL AT BED 1 AND BTH 2	0.00
		-BUILT IN				CARPET FRENCH BEIGE	
1865	1	***RANGE HOOD CHEFS SIGNATURE	0.00	3913	1	HALF CANYON MESQUITE FP	1,475.00
4899	1	4.5 C.F. BEVERAGE COOLER FOR BE	0.00	4999	1	VENTLESS GAS FIREPLACE	945.00
2158	1	TRIM KIT FOR MICRO/CONVECTION-	0.00				
		OVEN					
		LOW BOY WATER HEATER SHIPPED	165.00				
924	1	WIND ZONE EXPOSURE B-110 MPH	150.00				
1125	1	MODULAR LABEL, SC	0.00				

REMARKS:

BASE PRICE	85,525.00
TOTAL OPTIONS	16,205.00
ALLOWANCES	(4,069.00)
OTHER	24,953.00
FREIGHT	2,682.00
SALES TAX AS APPLICABLE	0.00
TOTAL INVOICE PRICE	125,296.00

ORIGINAL

NatureLane_0083

Page 3 of 4



INVOICE NO: 2600

PLEASE REMIT TO

R-ANELL HOUSING GROUP, LLC
P.O. BOX 1143

CHERRYVILLE NC 28021

PLANT RETAILER NO.	INVOICE DATE	SERIAL NO.	MODEL	BRAND	SIZE	MODEL YR.	BEDROOMS	BATHS
4	1723	05/17/17	RP40876ABM	RJ551A21	ROCKBRIDGE 32 WDI	32X76	15	3
MANUFACTURE DATE	EXTERIOR DECOR	INTERIOR DECOR	SHIP VIA	F.O.B.	SALESMAN NO.			
05/04/17			Bennett's Transport		Jeremy Cos			
PURCHASE ORDER NO.	APPROVAL NO.	N STOCK	CUSTOMER NAME	UNIT TERMS	FREIGHT TERMS	ORIGINAL ORDER NO.		
0517213502			CHRISTOFOLI			5146296		

RETAILER SOLD TO:
HOMEMAX

HUD CERTIFICATE LABELS:

1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072SHIP TO:
HOMEMAX1323 W MAIN ST
PO Box 159 (29071)
LEXINGTON SC 29072FINANCED THROUGH:
NORTHPOINT COMMERCIAL FINANCE
11675 RAINWATER DRIVE
SUITE 450
ALPHARETTA GA 30009

THIS HOME CONTAINS THE FOLLOWING INSULATION:

LOCATION	R-VALUE	APPROX. AVG. THICKNESS
FLOORS	0	0.00"
WALLS	0	0.00"
CEILING	0	0.00"

NOTICES

- This invoice is due upon receipt unless the customer has special terms. This invoice date may be subject to Federal Motor Vehicle Recall Program.
- This home may have used tires, new and/or tires which have been inspected relative to appearance and applicable to safety standards.
- Module homes are temporarily attached to carriers for transporting the modular units to the site. The modules are removed by the carrier from the carrier on site. The carriers are the property of the manufacturer of the modular units and must be returned by the builder/dealer to the manufacturer once the modular units are removed.
- Manufacturer certifies that to the best of its knowledge and belief, this manufactured home is constructed in accordance with the Federal Manufactured Home Construction and Safety Standard or state building codes in effect on the date of manufacture.

- WARRANTY: This unit is sold subject to the manufacturer's published warranty.
- All authorized dealer/dealers are independent contractors and are not considered to be an agent of the manufacturer. The dealer/dealer is solely responsible for any alterations, exchanges, additions or attachments made to a sold home. Submission of the purchase order by the dealer/dealer for this home has been reviewed upon by the manufacturer as evidence of his being licensed or registered as an independent contractor.

AUTHORIZED MANUFACTURER REPRESENTATIVE

CODE	QTY	DESCRIPTION	PRICE	CODE	QTY	DESCRIPTION	PRICE
		LP GAS					
		W/ CARBON MONOXIDE					
		DETECTOR AND CEILING					
		VENTILATION FAN-2ND					
		VENTILATION FAN NOT					
		REQUIRED WITH ANY ATTIC					
		STORAGE OR CAPE					
1311		DAN - MODULAR LABEL SC	162.00				
2251		DAN - SC SALES TAX	3,761.00				
2270		DAN - FACTORY TRIM	3,030.00				
2270		DAN - CARRIER DEPOSIT	1,500.00				
2270		DAN - FACTORY SET	9,250.00				
2270		DAN - FTO STAIRWELL	1,550.00				
3120		DAN - BUILDERS DISCOUNT	-4,069.00				
5261		DAN - MAINTENANCE FEE (CARRIER)	500.00				
4528		STATE DUES	250.00				
3113		DAN - MATERIAL SURCHARGE	5,700.00				
4000		RNL - PERFORMANCE BASED S/T ALL	-750.00				

REMARKS:

Lexington County

BASE PRICE	85,525.00
TOTAL OPTIONS	16,205.00
ALLOWANCES	(4,069.00)
OTHER	24,953.00
FREIGHT	2,682.00
SALES TAX AS APPLICABLE	0.00
TOTAL INVOICE PRICE	125,296.00

ORIGINAL

NatureLane 0084

Page 4 of 4

R-Anell Homes*

R-Anell Housing Group, LLC
P.O. Box 1143 Cherryville, North Carolina 28021
Ph. 1-888-951-5511 Fax 704-447-0268

Date: 27 February 2018

HomeMax Homes

1323 West Main Street

Lexington, SC 29072

Mr. Dave Fautley

Mr. Fautley,

This letter is a follow up to the conversation that you, Jeremy Cosby and I had in your office on Friday, February 23rd at 10:00 in the morning.

The conversation consisted of R-Anell Homes' intent of discontinuing our relationship with HomeMax, and our desire not to sell or build any additional retail sold homes for HomeMax, from the date of our conversation.

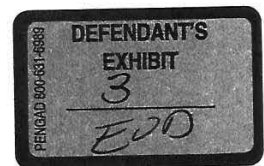
I wish you all the best with your future business endeavors.

Best Regards,



Al Gurner

Sales Manager



Homemax 000147

Zimbra

rosie.sellers@bennettig.com

Fwd: 40876

From : Carol Gentry <znc@bennettig.com>
Subject : Fwd: 40876
To : Rosie Sellers <rosie.sellers@bennettig.com>

Wed, Oct 02, 2019 04:14 PM

----- Forwarded Message -----

From: "Melissa Allen" <mallen@commodorehomes.com>
To: "Carol Gentry" <znc@bennettig.com>
Sent: Wednesday, May 17, 2017 10:40:26 AM
Subject: RE: 40876

Carol - I have 4 witnesses that the escort driver was the one talking and cussing our employees and Managers. I have witnesses that he was behind the plant in the final finish area. Bottom line - he should not be inside the gate. I have sent out notices (several times) to all the transportation companies stating that ALL escort drivers are to remain outside the gates. I was also told by the witnesses that Big John was given 2 rolls of tape to give to John, Jr.

Roger McSwain said that you could call him about the incident if you would like to. 704-445-9610 Ext. 106

I do appreciate all that you have done to help us with this house. I hate that they had trouble with the plastic yesterday. Unfortunately, that happens from time to time. We appreciate them fixing it and getting the house to the site.

I hate that your drivers don't like pulling from our plant.....

Roger has gone out to talk to John, Jr. now and see what he can do about the weight.

Thanks!

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

From: Carol Gentry [mailto:znc@bennettig.com]
Sent: Wednesday, May 17, 2017 10:19 AM
To: Melissa Allen <mallen@commodorehomes.com>
Cc: Carol Gentry <znc@bennettig.com>
Subject: Re: 40876

drivers are very upset today about one escort trying to get a roll of tape.....and getting talked to so badly.

You know we jumped thru hoops to ship this house..had 4 escorts and 2 drivers on stand by just so it could possibly go.

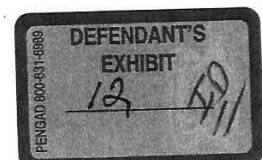
yesterday they had all kinds of problems with plastic..that is why they needed tape today....

also having trouble getting tires.

we just want to get the houses delivered safely to destination and overloading them with parts does not help.

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

A TRUE COPY
Lex. CO. C.C.C.R., G.S. & F.C.



From: "Melissa Allen" <mallen@commodorehomes.com>
To: "Carol Gentry" <znc@bennettig.com>
Sent: Wednesday, May 17, 2017 10:16:45 AM
Subject: RE: 40876

I just called Roger and Ship to see if anything can be done. I'll keep you updated. Thanks!

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

From: Carol Gentry [mailto:znc@bennettig.com]
Sent: Wednesday, May 17, 2017 10:13 AM
To: Melissa Allen <mallen@commodorehomes.com>
Subject: 40876

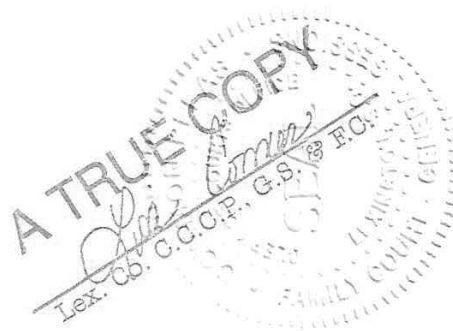
THE A side is loaded down with parts.
driver said this house weight too big and heavy to be delivering parts..

is there anyway to move some of them around before he leaves.

they not real happy....

--

Carol Gentry
Terminal Manager-ZNC
Steve Gentry
Terminal Asst-ZNC
Bennett Truck Transport, LLC
1144 N. Main St. Roxboro, NC
877-604-6452 (toll free)
336-599-9212 (fax)
znc@bennettig.com (email)



Bob Hasenauer

From: Dave Fautley <dave@homemaxsc.com>
Sent: Thursday, September 21, 2017 6:11 PM
To: Phillip Hathcock
Cc: Bob Hasenauer
Subject: Re: Modular home - 917 Nature Lane, Gilbert, SC

R-Anell_00219

Phillip, the attorney and the customer insisted. Please don't continue to chastise me.

Dave Fautley
HomeMax
803-808-1111

On Sep 21, 2017, at 5:44 PM, Phillip Hathcock <phathcock@commodorehomes.com> wrote:

I don't understand why you're accepting another 3rd party inspection. This makes absolutely no sense. Dave, with you making decisions like this, you will be taking 100% responsibility for this home in the future.

Sincerely,
Phillip Hathcock
General Manager
R-Anell Homes

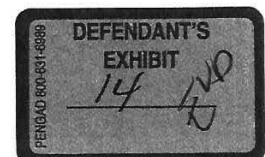
Sent from my iPhone

On Sep 21, 2017, at 5:32 PM, Dave Fautley <Dave@HomeMaxSC.com> wrote:

We can meet with attorney one day next week after inspection.

<image001.gif>

Dave Fautley
HomeMax
1323 West Main Street
Lexington SC 29072
803-808-1111
dave@homemaxsc.com
<http://www.homemaxsc.com>



STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

R-Anell Housing Group, LLC,
Plaintiff,

v.

Homemax, LLC,
Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Civil Action No. 2018-CP-32-03103

VERDICT

We, the jury, unanimously find as follows:

1. As to R-Anell Housing Group's claim against Homemax for breach of contract (i.e., "the Brown house"),

_____ In favor of Homemax; or

X In favor of R-Anell Housing Group in the amount of \$ 142,292.80

2. As to Homemax's claim against R-Anell Housing Group for breach of contract (i.e., "the Christofoli house"),

X In favor of R-Anell Housing Group; or

_____ In favor of Homemax in the amount of \$ _____

Robert C. McQuay
Foreperson, Juror # 168

June 10, 2021
Lexington, South Carolina.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	Civil Action No. 2018-CP-32-03103
	)	
R-ANELL HOUSING GROUP, LLC,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF’S MEMORANDUM
vs.	)	IN SUPPORT OF ITS MOTION
	)	FOR SUMMARY JUDGMENT
	)	
HOMEMAX LLC,	)	
	)	
Defendant.	)	

I. INTRODUCTION

Plaintiff R-Anell Housing Group, LLC (“Plaintiff”) files this memorandum in support of its Motion for Summary Judgment on its claims and on the counterclaims of Defendant Homemax LLC (“Defendant”) on the grounds that there are no material issues of fact as to each claim. Now that the parties have completed discovery, there is plainly no factual dispute as to whether Defendant failed to pay the contract price for the home at issue (the “Brown home”) in the Plaintiff’s breach of contract claim, nor is there sufficient factual evidence to support Defendant’s counterclaims for negligence, unjust enrichment/quantum meruit, and breach of contract as to the home at issue in Defendant’s counterclaim (the “Christofoli home”). Thus, Plaintiff is entitled to summary judgment in favor of its own claim, and against the counterclaims of the Defendant.

II. BACKGROUND

The operative facts in this case are relatively uncomplicated. For several years, Plaintiff and Defendant were engaged in a business relationship wherein the Plaintiff would manufacture and sell modular housing units to the Defendant, who would then sell the units to consumers.

This business relationship is evidenced by the 2017 Volume Dealer Agreement (“2017 Agreement”). *Exhibit A*. Plaintiff and Defendant maintained a mostly uncontroversial business relationship until 2017. In May 2017, Plaintiff completed the Christofoli home on May 4, 2017 and shipped it to Defendant on May 17, 2017. *30(b)(6) Deposition of Phillip Hathcock, 38:4-8 (Relevant Sections Throughout Included as Composite Exhibit I)*. A salesman for Defendant signed the delivery form certifying delivery without any interior or exterior damage. Christofoli Inspection Form, *Exhibit B* (Plaintiff’s Exhibit 1 to Fautley Deposition).

The Christofoli home sat on Defendant’s lot for approximately forty days before it was delivered to the end-purchasers. *30(b)(6) Deposition of Dave Fautley, 11:1-3 (Relevant Selections Throughout Included as Composite Exhibit J)*. The Christofoli home was never actually inspected in the approximately forty days it remained on Defendant’s property. *30(b)(6) Deposition of Dave Fautley, 12:6-8*. Defendants admit in their answer they delivered the unit to the end-purchasers in a “damaged and defective condition.” *Defendant’s Answer and Counterclaim, ¶ 31*. Despite clearly having no legal responsibility to do so, in a vain effort to avoid further complications with Defendant, Plaintiff expended, by mutual agreement, \$44,361.85 in attempts to remediate the water damage to the Christofoli home. *30(b)(6) Deposition of Phillip Hathcock, 42:21-25; 30(b)(6) Deposition of Dave Fautley, 24:10-15*.

Defendant repaid Plaintiff’s pragmatism by stiffing Plaintiff on the subsequent Brown home order. As the controversy with the Christofoli home was beginning to unfold, Plaintiff agreed to manufacture and deliver another modular home to Defendant, the Brown home, which is evidenced by an invoice and quote from September 2017. *Exhibit C; Exhibit D*. This home was supposed to be delivered in December 2017, but Defendant delayed the delivery. *30(b)(6) Deposition of Phillip Hathcock, 35:8-17*. Due to the issues with Defendant on the Christofoli

home and the failure of Defendant to accept the Brown home in a timely manner, Plaintiff terminated its business relationship with Defendant in February 2018. *30(b)(6) Deposition of Dave Fautley*, 27:10-13; *Exhibit E*.

The Brown home was eventually delivered to Defendant on March 24, 2018. *30(b)(6) Deposition of Phillip Hathcock*, 29:9-12. Defendant admits that the Brown home was completed and ready for delivery in December 2017, that it received delivery without issue in March 2018, and yet it still did not and has not paid the invoice of \$142,660.80. *30(b)(6) Deposition of Dave Fautley*, 8:6-8; 9:9-12; 9:18-19; *Exhibit F*. Defendant was paid \$183,232 for this home by the end-purchaser. *30(b)(6) Deposition of Dave Fautley*, 27:20-23.

III. STANDARD

“Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRCPP; *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct. App. 2005) (citation omitted). “The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” *Id.* (citation omitted). “Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Id.* (citation omitted). “[T]he nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” *Rife v. Hitachi Constr. Mach. Co.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005) (citations omitted).

IV. ARGUMENT

There are two distinct issues pertinent to the instant motion: whether summary judgment should be granted on the Plaintiff's claim of breach of contract, and whether Defendant's claims of negligence, unjust enrichment/quantum meruit, and breach of contract should be disposed of on summary judgment. Plaintiff is demonstrably entitled to summary judgment on both its claim and Defendant's counterclaims. The Court should grant summary judgment on Plaintiff's chief claim of breach of contract because the parties had an agreement for the delivery of the Brown home, Order #5333706, which no party denies. Defendant inarguably received delivery of, but never paid for, the Brown home, even though Defendant sold the Brown home for a profit to the end-consumer with no issue.

As will be shown irrefutably, Defendant can point to no evidence of negligence by the Plaintiff other than the Christofoli home was water damaged at some point, although Defendant did not discover the water damage until after the Christofoli home sat on Defendant's property for roughly forty days. Defendant cannot recover for unjust enrichment, as it has demonstrated no evidence that Plaintiff received an improper benefit from Defendant. Finally, Defendant's claim of breach of contract is clearly invalid due to the fact that Defendant cannot point to any material facts that would tend to support judgment in its favor, in addition to the pertinent portions of the UCC weighing in Plaintiff's favor.

A. Summary Judgment on Plaintiff's Breach of Contract Claim

Plaintiff's sole claim is that Defendant breached the contract between the parties by failing to pay for Order #5333706, the Brown home. Article 2 of the UCC, as adopted by South Carolina, applies to contracts for the sale of goods. *In re Breast Implant Prod. Liab.*, 331 S.C. 540, 552, 503 S.E.2d 445, 452 (1998). A contract is considered to be for the sale of goods if the

“predominant thrust” of the contract is for goods rather than services or real property. *United States ex rel. Conroy v. S. Contracting*, 862 F. Supp. 107, 109 (D.S.C. 1994). The definition of ‘goods’ is broad under the UCC; goods are “all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Title 36, Chapter 8) and things in action.” *Trident Constr. Co. v. Austin Co.*, 272 F. Supp. 2d 566, 571-72 (D.S.C. 2003) (citing S.C. Code Ann. § 36-2-105(1)). There is little doubt here that the contract is ultimately for the production and shipment of a good, a modular home. The contract for the Brown home is therefore governed by the UCC Article 2 under S.C. Code Ann. § 36-2-101 et. seq.

There is some dispute between the parties over whether the order and delivery of the Brown home is within the terms of the 2017 Agreement between Homemax and R-Anell. *Exhibit A* (Hometown 000161-165). Whether the 2017 Agreement applies to Order #5333706 is irrelevant as to whether there was a contract between the parties because there is sufficient evidence of a contract under the UCC. The UCC liberally permits acceptance “in any manner and by any medium reasonable in the circumstances.” S.C. Code Ann. § 36-2-101(a). A quote, an invoice, and a signed acceptance of delivery form all exist in the record and should be adequate to prove a contract. *Exhibit C; Exhibit D; Exhibit F*.

Even if the exchanged documents do not establish a contract standing alone, there is sufficient evidence of a contract between the parties under the UCC’s liberal standard. A contract may be established “by course of performance, course of dealing, or usage of trade.” S.C. Code Ann. § 36-2-202(a). Defendant accepted delivery at the location designated in the invoice, its principal place of business at 1323 W. Main Street in Lexington, SC. *Exhibit D*. The invoice clearly notes it is “due upon receipt” of the home. *Exhibit D*. Defendant outright

admits it ordered the Brown home, received the invoice confirming an order, allowed delivery of the Brown home to take place at its primary place of business, and then maintained the good at its principal place of business until shipping it to the end-purchaser. *30(b)(6) Deposition of Dave Fautley*, 9:9-12; 10:15; 25:13-17. An agent for Defendant also signed the shipment forms confirming shipment at its principal place of business. *Exhibit F*. Defendant clearly did not reject the Brown home, as it got paid for it by the end-purchaser to the tune of \$183,232. Defendant's course of performance can only indicate that it accepted the obligation to pay for the Brown home. In turn, there is simply no material issue of fact as to whether Plaintiff is entitled to judgment for breach of contract for the principal amount. Plaintiff is thus entitled at the very least to judgment in its favor in the amount of \$142,292.80 for the Brown home, Order #5333706.

Assuming the 2017 Agreement and interest rate contained therein do not apply to the Brown home, Plaintiff is entitled to the legal rate of interest under South Carolina law. In South Carolina, the legal rate of interest on accounts stated and monies due is 8.75%. S.C. Code Ann. § 34-31-20. Pre-judgment interest may be recovered so long as it has been pled in the complaint. *Durlach v. Durlach*, 359 S.C. 64, 75, 596 S.E.2d 908, 914 (2004). Such pre-judgment interest may be awarded from the time the obligation to pay money was due. *Id.* Plaintiff requested pre-judgment interest, albeit at the contractual rate in the 2017 Agreement of 7%. Complaint, ¶ 11; *See also* Exhibit A.

Defense counsel presumably intends to argue the 2017 Agreement does not apply to the Brown home. See Deposition of R-Anell, 31:22-32:11. Plaintiffs will concede the point and rest instead on the contract clearly formed by the exchange of quotes and invoices, the signed delivery form by Defendant's agent, the admission by Defendant that Defendant ordered the

Brown home and intended to pay for it, and the fact that Defendant subsequently sold the Brown home to the intended end-purchaser for a profit, evidencing a clear acceptance of the good. Since Defendant admits the material elements of a contract and admits its failure to perform its obligations under said contract, Plaintiff should recover the principal balance on the contract for the Brown home. If it is indisputable that Plaintiff should recover the principal balance on the Brown contract, then it follows that Plaintiff should also recover interest at the legal rate from the time payment was due on the contract under summary judgment in Plaintiff's favor.

B. Summary Judgment on Defendant's Three Counterclaims

i. Negligence

Defendant cannot show Plaintiff's conduct was wrongful, but even it could, Defendant still would not be entitled to judgment on a negligence claim. South Carolina recognizes the economic loss rule. The economic loss rule bars tort liability "[w]here a purchaser's expectations in a sale are frustrated because the product he bought is not working properly; the purchaser's 'remedy is said to be in contract alone, for he has suffered only 'economic' losses.'" *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 345, 384 S.E.2d 730, 736 (1989). The rule must always be applied "where duties are created solely by contract," and thus, "no cause of action in negligence will lie." *Id.* at 384, 737.

The economic loss rule should be applied particularly in commercial transactions between merchants. The District Courts of South Carolina and the 4th Circuit have had more occasions to consider this legal point than the appellate courts of South Carolina. Where defective shingles were installed by a defendant on a condominium project, the 4th Circuit reversed the District Court and held that a plaintiff could not recover in tort for an intangible economic loss. *2000 Watermark Asso. v. Celotex Corp.*, 784 F.2d 1183, 1184 (4th Cir. 1986)

(interpreting South Carolina law). Similarly, the court in *Myrtle Beach Pipeline Corp. v. Emerson Elec. Co.* granted summary judgment dispensing of a commercial plaintiff's negligence claim due to a failed air eliminator. *Myrtle Beach Pipeline Corp. v. Emerson Elec. Co.*, 843 F. Supp. 1027 (D.S.C. 1993) (*aff'd* *Myrtle Beach Pipeline Corp. v. Emerson Elec. Co.*, 1995 U.S. App. LEXIS 1257, at *2 (4th Cir. Jan. 17, 1995)). The court reasoned merchants cannot bring negligence actions against other merchants for damages that flow solely from contractual obligations between the parties because such actions would "eviscerate" the Uniform Commercial Code, in reliance on longstanding South Carolina case law that no tort claim can lie where the parties' rights are defined by a contract. *Id.* at 1054. The Supreme Court of South Carolina, in its most recent decision pertaining to the economic loss rule, endorsed the approach of these federal court decisions. By way of explanation, the Court stated "the economic loss rule prohibit[s] actions against a manufacturer where duties were created solely by contract and where the product only injured itself or where the damage was contemplated by the parties' contract." *Sapp v. Ford Motor Co.*, 386 S.C. 143, 149-150, 687 S.E.2d 47, 51 (2009).

The alleged breached duties in the instant case clearly only arise out of the contractual obligations between the Plaintiff and Defendant. Defendants have offered no evidence of extra-contractual duties both owed and breached by the Plaintiff. Defendant admits the only problem related to the Christofoli home was that, according to Defendant's allegations, the Christofoli home was wrapped improperly. 30(b)(6) *Deposition of Dave Fautley*, 13:24-14:5. Neither party disputes that Plaintiff had a contractual duty to deliver the Christofoli home to the Defendant's lot in a non-defective condition. It logically follows that any injury alleged by Defendant was therefore only to the property itself and the consequential damages flowing from such an injury rather than to any persons. The economic loss rule in turn bars recovery by Defendant on its negligence claim as a matter of law.

It should be observed that South Carolina has an exception to the economic loss rule for residential home builders, but the exception is not applicable in the instant case. As detailed above, contracts between merchants are subject to the economic loss rule. The residential home builder exception, created by the Supreme Court in *Kennedy v. Columbia Lumber & Mfg. Co.*, is based on an “implied warranty of service.” *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 347, 384 S.E.2d 730, 737 (1989). This warranty, however, applies only to a “home buyer purchasing from a party [which is] not the builder.” *Id.* at 347, 737. The purpose of the public policy exception to the economic loss rule is to protect the new home buyer and to allow the buyer to proceed against either a builder or seller, not to protect commercial entities. *Id.* at 342, 735; *Id.* at 344, 736.

To allow a merchant in a commercial dispute to take advantage of it would be a significant and unwarranted expansion of the ruling in the *Kennedy* case. There is no South Carolina case or statutory law that allows an entity other than the individual(s) who intend to reside in the home to take advantage of this narrow public policy exception. The Supreme Court has overturned prior expansions of the *Kennedy* exception. *Sapp*, 386 S.C. at 150, 687 S.E.2d at 50. Indeed, the Supreme Court has recently confirmed the holdings in the *Kennedy* case were “narrow substantive holdings.” *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 11 n.6, 791 S.E.2d 128, 133 (2016). Thus, the Defendant’s counterclaim for negligence is simply unsupported by South Carolina law due to the well-recognized economic loss rule.

ii. Unjust Enrichment/Quantum Meruit

As an initial matter, unjust enrichment and quantum meruit are improper remedies because the evidence demonstrates Order #5146296 for Christofoli home was covered by the

2017 Agreement. *Exhibit A*. The Christofoli home was both ordered and delivered in 2017, so it is covered by the terms of the agreement. *Exhibit A*. A party cannot succeed a claim for unjust enrichment if the relationship between the parties is governed by an express contract. *Flagstar Bank, FSB v. First Citizens Bank & Tr. Co.*, 2009 U.S. Dist. LEXIS 54289, at *19 (D.S.C. June 17, 2009). Under South Carolina law, quantum meruit is the same cause of action as unjust enrichment, as it is recognized “as an equitable doctrine to recover for unjust enrichment.” *Columbia Wholesale Co. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). The terms ‘restitution’ and ‘unjust enrichment’ are simply modern designations for older doctrines such as quasi-contract. *Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 734 S.E.2d 177, 180 (S.C. Ct. App. 2012).

While parties are permitted under South Carolina law to pursue alternative claims of breach of contract and unjust enrichment, the existence of an express contract between the parties is a defense to a claim of unjust enrichment. *Boldt Co. v. Thomason Elec. & Am. Contractors Indem. Co.*, 820 F. Supp. 2d 703, 707 (D.S.C. 2007) (citing *Franke Associates v. Russell*, 295 S.C. 327, 368 S.E.2d 462 (1988) & *Swanson v. Stratos*, 350 S.C. 116, 120, 564 S.E.2d 117, 122 (2002)). Neither party appears to dispute the 2017 Agreement governs the purchase and sale of the Christofoli home. Since the 2017 Agreement is an express contract governing this transaction, and since Homemax signed a letter incorporating the terms and amendments of the 2017 Agreement on December 30, 2016, Homemax cannot pursue a theory of unjust enrichment against Plaintiff. *See Exhibit A*.

Even if Defendant could theoretically pursue a claim of unjust enrichment under South Carolina law, it cannot demonstrate the requisite facts necessary to meet the elements of unjust enrichment. To prevail on a theory of unjust enrichment, a party must show: “(1) that he

conferred a non-gratuitous benefit on the [counter] defendant; (2) that the [counter] defendant realized some value from the benefit; and (3) that it would be inequitable for the [counter] defendant to retain the benefit without paying the [counter] plaintiff for its value.” *Sauner v. Pub. Serv. Auth.*, 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003) (internal citations omitted). The elements of quantum meruit are indistinguishable from the elements of unjust enrichment. *See Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 325, 734 S.E.2d 177, 180 (Ct. App. 2012); *See also Gillins v. Celadon Trucking Servs.*, 2016 U.S. Dist. LEXIS 112725, at *15 (D.S.C. Aug. 24, 2016) (stating “[T]he tests for quantum meruit and unjust enrichment are indistinguishable.”).

There is no evidence in the record that allows Defendant to meet the third element of this test. The parties clearly bestowed benefits upon each other, and both parties realized value from said benefits. The sole operative fact here is the same for Defendant’s negligence and breach of contract claims: whether the Christofoli home was provided by Plaintiff in a defective condition such that, for the purposes of the unjust enrichment inquiry, Plaintiff received unfair value for the Christofoli home. Defendant simply has not provided and cannot provide evidence to that effect.

On the contrary, Defendant’s agent signed an inspection form on the day of delivery certifying that there were no problems with the home and that Plaintiff would not be liable for any damages except those listed on the Inspection Form. *Exhibit B*. Defendant admits one of its employee/agents signed the form, although it makes claims contrary to the clear and unambiguous text. *30(b)(6) Deposition of Dave Fautley*, 11:6-12:5. Defendant further admits it accepted delivery and kept the Christofoli home on the Defendant’s lot for about forty days without inspecting it. *30(b)(6) Deposition of Dave Fautley*, 10:24-11:5; 11:25-12:25; 13:6-10.

After roughly forty days, Defendant admits the only problem with the house was water damage. *30(b)(6) Deposition of Dave Fautley*, 13:24-14:5; 14:23-15:4.

Furthermore, Defendant cannot succeed on a claim for unjust enrichment or quantum meruit because of its own unclean hands. “The doctrine of unclean hands precludes a [counter] plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.” *Mason v. Mason*, 412 S.C. 28, 54, 770 S.E.2d 405, 419 (Ct. App. 2015) (citations omitted). A party that is “tainted with inequity or bad faith” related to the matter in which it seeks relief will be barred from recovery in equity. *Id.* at 54-55, 419 (citations omitted). Defendant is barred from recovering in equity by the doctrines of unclean hands because as to the Brown home, Defendant admits it ordered the Brown home, received the invoice confirming an order, allowed delivery of the home, and then maintained the home at its principal place of business until shipping it to the end-purchaser. *30(b)(6) Deposition of Dave Fautley*, 9:9-12; 10:15; 25:13-17. Defendant’s clear and obvious breach of the Brown home contract is connected to the instant litigation because Defendant in fact admits its failure to pay for the Brown home was a direct result of incurring expenses to remediate the water damage to the Christofoli home. *30(b)(6) Deposition of Dave Fautley*, 25:18-21. Defendant’s admittedly willful breach of the Brown contract by failing to pay the agreed-upon price of the good should thus bar it from recovery in equity.

For all of the foregoing reasons, the Court must grant summary judgment as to Defendant’s claim of unjust enrichment/quantum meruit. Defendant simply has no evidence in the record demonstrating the water damage occurred prior to delivery. Thus, Plaintiff is and was entitled to full payment for the Christofoli home from Defendant. In conclusion, even if the Court allows Defendant’s claim to proceed beyond the threshold issue of whether an express

contract governed the transaction, the law and facts do not support Defendant's claim for unjust enrichment. Defendant's equitable claim is also quite evidently barred by unclean hands. As such, the Court should grant summary judgment for the Plaintiff disposing of Defendant's unjust enrichment/quantum meruit claim.

iii. Breach of Contract

Plaintiff is also entitled to summary judgment on Defendant's breach of contract claim. The order and delivery in question in this counterclaim, Order #5146296, is clearly covered by the 2017 Agreement. *Exhibit A*. The invoice for the Christofoli home indicates the home was finished and shipped in May 2017. Christofoli Invoice, *Exhibit G* (Homemax 234). The 2017 Agreement appears to be an installment contract of sorts because it is performed in several lots, which is authorized by the UCC in S.C. Code Ann. § 36-2-612. *Exhibit A*. The Defendant accepted this particular installment, the Christofoli home, on May 17, 2017. *Exhibit B*; Deposition of R-Anell, 69:2-5. Both parties agree Defendant paid in full for the manufacture and delivery of the Christofoli home. As a result, there can be no doubt a contract between the parties existed.

The Defendant has no evidence that tends to show Plaintiff breached the contract for the Christofoli home. Defendant unquestionably accepted delivery of the Christofoli home. *30(b)(6) Deposition of Dave Fautley*, 10:24-11:5. Defendant's employee signed the Delivery Inspection Form certifying no issues with the condition of the home. *Exhibit B*; *30(b)(6) Deposition of Dave Fautley*, 11:6-12:5. The form explicitly states that R-Anell Homes is not responsible for damage that is not reported on the form. *Exhibit B*. Defendant also admits the property sat on its lot for forty days before anyone noticed water damage to the Christofoli home. *30(b)(6) Deposition of Dave Fautley*, 13:6-10. Notably, it rained in the Lexington-Columbia area on more than twenty days from May 17, 2017 to June 30, 2017, providing ample for the property to be damaged in

Defendant's possession. *Exhibit H*. A reasonable jury simply could not find that Defendant had carried its burden of proof on its counterclaim. The undisputed material facts thus dictate that the Court should grant summary judgment in favor of Plaintiff.

The relevant law also demonstrates Plaintiff cannot be held liable for breach of contract. The general rule under the UCC is that the risk of loss is borne by the buyer once it receives the goods if the seller is a merchant. S.C. Code Ann. § 36-2-509(3). Additionally, where the contract authorizes or requires the seller to ship the goods by a carrier and requires them to be delivered to a particular destination, the risk of loss shifts to the buyer once the goods are delivered and are tendered so that the buyer may take delivery. S.C. Code Ann. § 36-2-509(3). The invoice has a stated delivery location of Homemax, 1323 W Main Street, Lexington, SC 29072. *Exhibit G*. Regardless of which portion of S.C. Code Ann. § 36-2-509(3) applies, the risk of loss clearly shifted to the Defendant in this case as soon as the Defendant took possession at its own principal place of business. Thus, the Plaintiff clearly cannot be held at-fault for the water damage to the Christofoli home that occurred while on the property of Defendant.

Even if the goods were damaged before they reached Defendant's property, Defendant still cannot prosecute its counterclaim for breach of contract. The risk of loss only remains with the seller upon delivery if the seller was in breach before delivery or delivers nonconforming goods. S.C. Code Ann. § 36-2-510(1). The risk of loss then shifts from the seller upon cure or acceptance. S.C. Code Ann. § 36-2-510(1). Defendant unquestionably accepted the goods under the South Carolina provisions of the UCC. Goods are accepted (a) if a buyer, after reasonable opportunity to inspect, signifies in writing that the goods are conforming or will be retained in spite of nonconformity; (b) if a buyer fails to make an effective rejection and has had a

reasonable opportunity to inspect the goods; (c) or does any act inconsistent with the seller's ownership. S.C. Code Ann. § 36-2-606(1)(a–c).

It cannot be questioned that Defendant accepted the goods under S.C. Code Ann. § 36-2-606(1)(b) or (c). As to (b), the buyer signed a Delivery Inspection Form certifying Defendant indeed had an opportunity to inspect. *Exhibit B*. Further, in order to invoke a rejection of delivered goods, the buyer must seasonably notify the seller within a reasonable time after delivery or tender. S.C. Code Ann. § 36-2-602(1). The law is clear that this timely rejection of delivered goods must be *in writing*. *Plantation Shutter Co. v. Ezell*, 328 S.C. 475, 480, 492 S.E.2d 404, 407 (Ct. App. 1997) (emphasis supplied). Even though the statute does not explicitly require notice in writing, “the better view is that oral notice is ineffective to constitute rejection under the UCC, particularly where there is conflicting evidence of its receipt and the purchaser retains possession of the goods.” *Southeastern Steel Co. v. Burton Block & Concrete Co.*, 273 S.C. 634, 637, 258 S.E.2d 888, 889 (1979). In the *Plantation Shutter* case, the Court of Appeals affirmed judgment for the seller and against the buyer where the buyer complained of shutter panels that did not satisfy him and the seller made concessions in an attempt to fix them. *Plantation Shutter*, 328 S.C. at 480, 492 S.E.2d at 407. The seller offered to fix the shutter, but the buyer would not allow the seller to install them and refused to pay for them. *Id.* The buyer never notified the seller in writing that he was rejecting the shutters, and so the court found in favor of the seller. *Id.*

This case is substantially similar to *Plantation Shutter*. The buyer, long after delivery, complained of water damage to the house. See *30(b)(6) Deposition of Dave Fautley*, 10:24-11:5. Without admitting liability, Plaintiff expended over \$44,000 to repair the water damage simply of its own accord and willingness to avoid conflict with a longstanding client. Deposition of R-

Anell, 87:16-20. And most importantly, to date, the Defendant has never notified Plaintiff that it was rejecting delivery or revoking acceptance of the Christofoli home, let alone in writing. See Deposition of Dave Fautley, 24:16-17. Thus, like in the *Plantation Shutter* case, Defendant must be deemed to have accepted the good (the Christofoli home) under S.C. Code Ann. § 36-2-606(1)(b).

Alternately, the Defendant also accepted the good under S.C. Code Ann. § 36-2-606(1)(c) by taking actions inconsistent with the Plaintiff's ownership. If Defendant has taken actions inconsistent with the Plaintiff's ownership, then it is deemed to have accepted the property. S.C. Code Ann. § 36-2-606(1)(c). The Supreme Court signaled support for this proposition in the *Southeastern Steel* case, cited above, where the Court took notice of the fact that the plaintiff returned the property and therefore did not reject it. *Southeastern Steel*, 273 S.C. at 637, 258 S.E.2d at 889. In the instant case, Defendant shipped the Christofoli home to the property on which it was to be installed and began installing the home. Not only did the Defendant ship the home to the installation property, but Defendant in fact has possession and ownership of the Christofoli home and the property to which it was delivered pursuant to a settlement agreement with the end-purchasers. 30(b)(6) Deposition of Dave Fautley, 16:1-3; 16:11-18. Defendant therefore must be deemed to have accepted the goods by action inconsistent with the seller's right of ownership under S.C. Code Ann. § 36-2-606(1)(c) as well.

Given the facts and law presented above, no reasonably jury could find in favor of Defendant on its breach of contract claim. None of the pertinent facts put forth thus far demonstrate Plaintiff was in breach of the contract for the Christofoli home, Order #5146296. Rather, the facts show to a substantial certainty that the Christofoli home was damaged while on the property of Homemax. Regardless, under the UCC, Defendant must be deemed to have

accepted the goods after proper time for inspection. The buyer never seasonably rejected the goods in writing thereafter. Defendant thus cannot prevail on its claim for breach of contract against Plaintiff.

V. CONCLUSION

Based on the foregoing, Plaintiff is entitled to summary judgment in favor of its claim of breach of contract and disposing of Defendant's claims of negligence, unjust enrichment, and breach of contract because there are no material disputes of law or fact. Plaintiff should have summary judgment in its favor because Defendant admits accepting the good, the Brown home, and yet never paying for it. Defendant cannot prevail on its claim of negligence due to the economic loss rule. Defendant's claim for unjust enrichment/quantum meruit must necessarily fail because both parties agree a contract governed the Christofoli home transaction, because Defendant cannot meet the elements of unjust enrichment, and because Defendant is barred by unclean hands from asserting its equitable claim. Finally, Defendant's breach of contract claim must also be disposed of because Defendant can point to no material facts in which a reasonable jury could find in its favor. As such, the Court should grant Plaintiff's motion for summary judgment, granting judgment in favor of Plaintiff's breach of contract claim and disposing of Defendant's claims of negligence, unjust enrichment, and breach of contract.

[signature page follows]

Augusta, Georgia
September 9, 2019

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
R-ANELL HOUSING GROUP, LLC,	)	Civil Action No.: 2018-CP-32-03103
	)	
Plaintiff,	)	
	)	DEFENDANT’S MEMORANDUM IN
vs.	)	OPPOSITION TO PLAINTIFF’S MOTION
	)	FOR SUMMARY JUDGMENT
HOMEMAX, LLC,	)	
	)	
Defendant.	)	

Defendant Homemax, LLC (hereinafter “Homemax”) hereby submits this Memorandum in Opposition to Plaintiff R-Anell Housing Group, LLC’s (hereinafter “R-Anell”) Motion for Summary Judgment and respectfully submits that the evidence of record establishes clear questions of fact, with respect to both Plaintiff’s claim and Homemax’s counterclaims, which are properly decided by a jury or fact-finder. Accordingly, R-Anell’s Motion for Summary Judgment is properly denied.

BACKGROUND

This action stems from a business relationship between R-Anell, a North Carolina company in the business of manufacturing and selling modular homes, and Homemax, a South Carolina company in the business of selling modular homes to end-consumers. The parties’ business relationship began in or around 2014 and continued until R-Anell terminated the relationship on February 27, 2018. Ex. A – Deposition of Jeremy Cosby at 9; Ex. B – R-Anell Letter of Termination. Though the precise terms of the parties business arrangements are scantily documented, the parties do not dispute that Homemax served as a local dealer for modular homes manufactured by R-Anell, as is evidenced by a 2017 Volume Dealer Agreement (“Dealer Agreement”) signed by the parties on January 4, 2017, some years after they entered into a business

relationship. Ex. C. – 2017 Volume Dealer Agreement. In May 2017, the business relationship began deteriorating due to complications stemming from sales of the “Christofoli House” in May 2017 and the “Brown House” in March 2018.

Course of Dealing between R-Anell and Homemax

Prior to May 2017 and the transactions surrounding the homes that form the instant dispute, Homemax sold approximately four or five R-Anell-manufactured homes to end-consumers in what R-Anell describes as a “mostly uncontroversial business relationship.” Pl. Mem. in Support of Summ. J at 2. Though no written agreements exist between the parties that set forth the process of ordering, manufacturing, delivering, and installing R-Anell homes purchased through Homemax, the conduct of the parties over the course of their dealings broadly establishes how the parties went about the purchasing process:

- Ordering: When a customer sought to purchase an R-Anell home through Homemax, Homemax would place the order with R-Anell. Cosby Dep. at 11. Once R-Anell had a signed production order and signed prints from Homemax, the order would be released for production and be scheduled in R-Anell’s system. Id. at 11-12.
- Manufacturing: Generally, R-Anell would begin production about four to six months after receiving an order. Id. at 13. According to R-Anell, it would contact Homemax a few weeks before beginning production to ensure that Homemax was ready for the house. Id. at 17. After R-Anell constructed the home, and prior to transporting the home, R-Anell was responsible for properly wrapping the home to make it watertight. Ex. D – R-Anell 30(b)(6) Deposition at 82.
- Transport: After constructing and wrapping the houses, R-Anell testified that it normally likes to deliver a house three to five days after it is completed, but in any event, the

company policy was to ship houses in the same month in which they were manufactured. R-Anell Dep. at 20; Cosby Dep. at 23. R-Anell's ultimate goal is to deliver the home directly to the home site where it will be installed. R-Anell Dep. at 18. Prior to May 2017, R-Anell had never delivered an order to Homemax's retail lot. R-Anell Dep. at 107; Cosby Dep. at 18-19.

- Payment: Prior to March 2018, every home purchased by Homemax was paid for through floor planning. Ex. E – Deposition of Albert Gurner, III at 13. A floor plan source is essentially a line of credit that manufacturers and retailers have in place with financial agencies. Id. After R-Anell received a purchase order from Homemax, they submitted it to a floor plan source for approval, and the home would not go into production until R-Anell received this approval. Id. at 13-14. Usually, R-Anell received payment on the house from the floor plan source 10-14 days after the house shipped. Id. at 13. R-Anell testified that it would never send a house without confirmation that a floor plan had been approved. Id. at 45-46.
- Installation: Once a house arrived at the home site, R-Anell arranged for a crew to set the house on the foundation and trim it, then turned the house over to Homemax. R-Anell Dep. at 17.

The Christofoli House

The matters at issue in this case begin with a home ordered from R-Anell by Homemax on behalf of Mr. and Mrs. Christofoli on or around December 17, 2016. Ex. F – Christofoli House Order. R-Anell completed its production of the Christofoli House on May 4, 2017, and although R-Anell salesman Jeremy Cosby testified that he called Homemax to confirm that it would be ready to receive the house prior to its production, he has no independent recollection of doing so

and no documentation of this call has appeared in discovery. R-Anell Dep. at 57; Cosby Dep. at 18. When production of the Christofoli House concluded, the home site was not ready to receive the house. Ex. G – Deposition of Dave Fautley at 29. Thus, after completing construction and wrapping the house—which consisted of two halves or units—with plastic sheeting, R-Anell moved the Christofoli House to its outside lot on May 5, 2017. R-Anell Dep. at 69, 113.

Rather than waiting to deliver the house to Homemax when the home site was completed, as R-Anell had done with all prior deliveries to Homemax, R-Anell requested that Homemax allow R-Anell to deliver the house to Homemax’s retail lot despite knowing that the Christofoli site was not ready. R-Anell Dep. at 22; Fautley Dep. at 11. R-Anell knew that the Christofoli site was not complete and would not be for some time, but asked Homemax to allow delivery to its retail lot to ensure the home was shipped in the same month it was manufactured for its own financial and budgeting reasons. R-Anell Dep. at 106-107; Cosby Dep. at 23-24. Homemax agreed to R-Anell’s request, and on May 17, 2017—after remaining outside on R-Anell’s lot for twelve days—R-Anell shipped the Christofoli House to Homemax’s retail lot, employing Bennett’s Transportation as the carrier. R-Anell Dep. at 39, 57; Fautley Dep. at 11.

R-Anell contends that, upon delivery of the Christofoli house, an agent of Homemax signed “an inspection form . . . certifying that there were no problems with the home and that Plaintiff would not be liable for any damages except those listed on the Inspection Form.” Pl. Mem. in Support of Summ. J at 11. R-Anell cites to a Delivery Inspection Form for a unit bearing the serial number 40876A¹, dated May 17, 2018, which Homemax owner Dave Fautley testified was signed by his salesman Jay Collins. Fautley Dep. at 11-12; Ex. H – Christofoli Delivery Inspection Form. However, Mr. Fautley indicated that the employee did not inspect the house nor did he certify that

¹ Homemax has not seen a similar form for Serial No. 40876B, the second of the two units comprising the Christofoli House.

there was no damage to the property; rather, he simply was instructed to sign the form so the driver could receive payment for the delivery. Fautley Dep. at 11-12. Notably, prior to this instance, Homemax had not had reason to accept delivery from R-Anell in an instance when the house was not delivered directly to the home site for install. See R-Anell Dep. at 107.

The Christofoli House was delivered to the home site for installation on June 26, 2017. R-Anell Dep. at 26. However, when the house was unwrapped, the set-up crew contracted by R-Anell discovered mold inside the house and moisture under the installed roof shingles and roof decking. Id. The set-up crew contacted R-Anell customer service manager/factory set and trim manager Bob Hasenauer about the problem, and Mr. Hasenauer immediately instructed the crew to start taking out the wet insulation, wet drywall, and any other wet materials to remove moisture from the house; he then called Mr. Fautley to advise Homemax of the issue. Ex. I – Deposition of Robert Hasenauer, Jr. at 34. That morning, R-Anell agreed that it would work though the problem with Homemax, and began selecting contractors for remediation. Id. at 42, 51. R-Anell selected contractors and incurred expenses related to the remediation without first seeking approval from Homemax. Id. at 62; R-Anell Dep. at 103.

After the house still had not been remediated to the satisfaction of the Christofolis, on September 21, 2017, R-Anell informed Homemax that Homemax would be responsible for any remediation expenses incurred after that date, and declined further assistance with the Christofoli House. R-Anell Dep. at 99; Ex. J – September 21, 2017 Email. Significantly, R-Anell had already received payment for the Christofoli house through Homemax's floor plan source, though Homemax had not received, nor did it ever receive, payment from the Christofolis. R-Anell Dep. at 49. Indeed, Homemax incurred at least \$204,301.96 in damages, including: costs of remediating the water damage to the house, paying interest to its floor plan source for the house, paying utilities

for the house, paying legal fees to defend litigation ultimately brought against it by the Christofolis, and \$94,000.00 paid by Homemax to the Christofolis to settle the lawsuit. Ex. K – Homemax’s Supplemental Interrogatory Answers.

The Brown House

While matters regarding the Christofoli House were still ongoing, Homemax ordered an R-Anell home on behalf of its customers, the Browns. Ex. L – September 1, 2017 Brown Quote (Revised). Per R-Anell, it completed construction of the Brown House in December 2017. R-Anell Dep. at 21. However, due to a delay in the permitting process, Homemax did not have a permit for the house and was unable to accept delivery at that time. Fautley Dep. at 8-9. Rather than request that Homemax accept delivery of the Brown House before the site was ready, as it did with the Christofoli House, R-Anell retained possession of the Brown House for several months. See R-Anell Dep. at 29. While the Brown House remained with R-Anell, on February 27, 2018, R-Anell sent Homemax a letter confirming an oral discussion in which R-Anell advised Homemax that R-Anell was terminating their business relationship, and expressing R-Anell’s “desire not to sell or build any additional retail sold homes for HomeMax, from the date of our conversation.” Ex. B. R-Anell testified that they terminated the business relationship because Homemax was not prepared to take delivery of the Brown House when it was finished. R-Anell Dep. at 25-26.

Despite having terminated its business relationship with Homemax, R-Anell shipped the Brown House to the Brown’s home site on March 24, 2018.² Ex. M – Deposition of Melissa Allen at 19; Gurner Dep. at 9, 34. According to her deposition testimony, R-Anell employee Melissa

² R-Anell’s supporting memorandum states that R-Anell shipped the house to Homemax’s retail lot, and that Homemax then shipped it to the Browns. However, all of the evidence confirms that R-Anell shipped the Brown House directly to the home site in Ridgeville, SC.

Allen sent Homemax an invoice for the Brown House prior to its delivery specifying payment terms as “COD,” certified funds on delivery. Allen Dep. at 18-19; Ex. N – Brown Invoice. The carrier employed by R-Anell to deliver the Brown House, Bennett Transport, released the home without collecting payment. Fautley Dep. at 30; Gurner Dep. at 40. The invoice further reflects that the price of the Brown House included factory set-up and trim, indicating that R-Anell arranged to have the Brown House set on the foundation and trimmed out after delivery. See Ex. N; Fautley Dep. at 28-29; Hasenauer Dep. at 21-22.

According to R-Anell, the company also submitted the Brown House order to Homemax’s floor plan source to secure payment through floor planning. R-Anell Dep. at 41; Allen Dep. at 17. Homemax assumed that, when the house was delivered, R-Anell had received financing through a floor plan. Fautley Dep. at 31-32. However, the order had not been approved by the floor planning source at the time R-Anell shipped the Brown House, and according to R-Anell, was not approved after shipment. R-Anell Dep. at 41; Gurner Dep. at 47. R-Anell never attempted to submit the Brown House invoice to Homemax’s floor plan source for payment after shipping the house. Gurner Dep. at 47. Instead, R-Anell demanded payment directly from Homemax after realizing “several months later” that payment had not been received on the house. Cosby Dep. at 28.

The instant action ensued. R-Anell alleges breach of contract against Homemax for failure to pay for the Brown House. Homemax asserts counterclaims against R-Anell for breach of contract, negligence, and unjust enrichment with respect to the Christofoli house, on the grounds that the Christofoli House became water-damaged as a result of R-Anell’s failure to properly wrap the home and safeguard it against the elements until it was ready for installation. R-Anell seeks summary judgment on all claims and counterclaims, arguing that the facts of this case are “relatively uncomplicated” and no material issues of fact exist with respect to any of these claims.

Pl. Mem. in Support of Summ. J at 1. Contrary to R-Anell's characterization, the evidence in this matter creates numerous genuine issues of material fact which must be resolved by the jury or fact-finder to properly resolve the claims in this case. Accordingly, summary judgment is properly denied.

LEGAL STANDARD

Summary judgment is appropriate only when it is absolutely clear that there is no genuine issue of material fact and the moving party is undeniably entitled to judgment as a matter of law. Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997); True v. Monteith, 327 S.C. 116, 289 S.E.2d 615 (1997). The court must look to the "pleadings and documents before the court" to determine whether a genuine issue of material fact exists. Gilmore v. Ivey, 290 S.C. 53, 57, 348 S.E.2d 180, 183 (S.C. Ct. App. 1986). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party." Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). Furthermore, "in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit **a mere scintilla of evidence** in order to withstand a motion for summary judgment." Id., at 803, 673 S.E.2d at 330 (emphasis added). Even where there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment must be denied. Id. Summary judgment should only be granted in those cases where plain, palpable and indisputable facts exist on which reasonable minds cannot differ. Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976).

ARGUMENT

R-Anell essentially raises two motions for summary judgment to be decided by the Court. First, it seeks summary judgment as to its claim that Homemax breached a purported contract between it and R-Anell for failure to pay the amount included in the invoice produced for the Brown House. R-Anell contends that Homemax cannot produce any evidence to refute its claim for breach, and asks this Court to award a judgment in its favor of the contract price and pre-judgment interest.

Secondly, R-Anell seeks dismissal of Homemax's counterclaims for negligence, breach of contract, and unjust enrichment, arguing that Homemax cannot point to any material facts that would support a finding in its favor with respect to these claims. However, as set forth below, the "relatively uncomplicated" version of facts presented by R-Anell in support of summary judgment is incomplete and, in some instances, directly contrary to evidence supplied by it in the course of discovery. When taking into account the totality of the evidence in this case, it is apparent that the parties' claims cannot be disposed of until the fact-finder first resolves numerous, genuine issues of material fact before the court.

I. Summary Judgment is Properly Denied on R-Anell's Breach of Contract Claim.

R-Anell cannot avail itself of any remedy under the South Carolina Commercial Code, which applies to these transactions, because it violated its own terms and conditions of the sale by failing to collect payment for the Brown House prior to delivering the home to the site. R-Anell classified this purchase as COD, thereby specifically limiting its available remedies under the UCC. Consequently, an action for price is not "proper" under Section 36-2-703, and R-Anell can only pursue relief via a cause of action for unjust enrichment—a claim which R-Anell has not pled.

Even assuming that R-Anell submits a claim for unjust enrichment, a fact finder at trial must decide the extent of any equitable relief warranted where R-Anell has unclean hands.

R-Anell states, as its sole claim, that Homemax “breached the contract between the parties by failing to pay for Order #5333706, the Brown Home,” a sale which it contends is governed by Article 2 of the UCC, as adopted by South Carolina. Pl. Mem. in Support of Summ. J at 4. R-Anell concedes that the sale does not fall within the scope of the 2017 Volume Dealer agreement, and instead argues that the September 1, 2017 quote, March 24, 2018 invoice, and signed delivery inspection forms are sufficient to prove a contract between R-Anell and Homemax. See Ex. L; Ex. N; Ex. O – Brown Delivery Inspection Forms. Finally, R-Anell argues that a contract is established, with respect to the Brown house, through the parties’ course of dealing, where Homemax accepted delivery of the house at its place of business, received an invoice describing payment as “due upon receipt,” and ultimately sold the house to the Browns. P. Mem. in Support of Summ. J at 5-6.

Significantly, R-Anell’s characterization of the documents and actions that purportedly create a contract between it and Homemax under the UCC is materially incomplete and inaccurate. When supplanting R-Anell’s misrepresentations with the actual evidence of record in this action, questions of fact arise that impact the issues of discharge, availability of remedies under the UCC, and damages.

- a. R-Anell terminated the business relationship with Homemax prior to delivering the Brown House, creating a question of fact exists as to whether R-Anell discharged and/or waived any obligation by Homemax.

R-Anell relies on documents dating back to September 2017 and the course of dealing between it and Homemax to establish the existence of a contract for the sale and purchase of the Brown House. However, R-Anell fails to take into account its decision to terminate its business relationship with Homemax effective February 27, 2018 and the COD payment requirement set

forth in the Brown House invoice. Further, R-Anell misstates the circumstances under which it delivered the Brown House. Ultimately, the series of events by which Homemax procured the Brown House is such that a question of fact exists as to whether R-Anell discharged or waived any obligation by Homemax to pay for the Brown House or otherwise simply conferred a gratuitous benefit upon Homemax to offset the financial burden it cast upon it when R-Anell terminated the parties business relationship.

Assuming, as R-Anell suggests, that the September 1, 2017 quote signed by Homemax and submitted to R-Anell evidences the existence of a contract between the parties, R-Anell terminated that contract in February 2018—approximately one month before it delivered the Brown House to the Brown home site. See Ex. B; Ex. L; Gurner Dep. at 23. Upon termination, R-Anell plainly expressed its “desire not to sell or build any additional retail sold homes for HomeMax, from the date of our conversation.” Pursuant to South Carolina’s Commercial Code, upon termination of a contract, “all obligations which are still executory on both sides are discharged.” S.C. Code Ann. § 36-2-106(3). Significantly, at the time R-Anell terminated its relationship with Homemax, no sale had been completed for the Brown Home; indeed, R-Anell had not yet delivered the item. Gurner Dep. at 26. Thus, upon termination of its business arrangement with Homemax, R-Anell discharged Homemax of its duty to purchase the Brown House, and R-Anell was likewise discharged of its duty to deliver the home.

Notwithstanding, on March 24, 2018, R-Anell “delivered [the Brown House] to the homeowners’ site on behalf of Homemax.”³ Gurner Dep. at 9. According to R-Anell’s Sales

³ R-Anell’s contention that it delivered the Brown House to Homemax’s retail lot, and that this is the normal course of dealing between the parties, is clearly false. Not only did R-Anell employee Al Gurner testify that R-Anell delivered the house directly to the Brown’s home site, R-Anell never delivered a house to Homemax’s retail lot prior to its delivery of the Christofoli House. Gurner Dep. at 9; R-Anell Dep. at 107; Cosby Dep. at 18-19.

Manager, Al Gurner, R-Anell orally represented to Homemax that, though it was terminating the parties' business relationship, it would still deliver and set the Brown House for Homemax as a gesture of good faith. Id. at 26. Mr. Gurner is silent as to whether R-Anell conditioned this gesture of "good faith" on receiving payment for the Brown House and, if so, whether this was made known to and agreed upon by Homemax, or whether it was offered as a concession in light of the financial detriment the termination imposed on Homemax.⁴ Although R-Anell, after terminating its relationship with Homemax, might have demanded assurance in writing of Homemax's future performance, it took no action to do so. See S.C. Code Ann. §36-2-609.

Arguably, R-Anell's conduct with respect to the delivery and "invoicing" of the Brown House supports that R-Anell did not deliver—or, at the very least, did not appear to deliver—the Brown House with the expectation of payment by Homemax. As an initial matter, although R-Anell indicates that Homemax's receipt of an invoice reading "due upon receipt" goes toward establishing the existence of a contract through course of dealing, this detail is in fact contrary to every other transaction between Homemax and R-Anell. Every home purchased by Homemax prior to March 24, 2018 had been financed through floor planning, and R-Anell sends invoices directly to the floor plan source when a house ships. Gurner Dep. at 13, 15. Moreover, as a general principal, R-Anell does not ship products unless they are secured by payment. R-Anell Dep. at 41. Where its own policy would be inconsistent with the "due upon receipt" language, R-Anell cannot reasonably argue that, in the course of dealing, this term would prompt payment after delivery.

⁴ As part of its business agreement with R-Anell, Homemax was required to pay the cost of setting up and trimming two R-Anell model home displays at its sales lot, and additionally was required to finish and decorate the homes. Likewise, Homemax would be responsible for the tear-down cost of the model homes upon termination. Ex. C; R-Anell Dep. at 32-33.

With respect to the Brown House, R-Anell sent an invoice as COD/certified check; under this arrangement, drivers transporting houses would not release the units without first being presented with a certified check. Ex. N; Gurner Dep. at 15-16. Under this term, payment would not be “due upon receipt” of the invoice, but upon receipt of delivery. However, R-Anell clearly did not condition delivery on presentation of payment; instead, it not only delivered the goods, but proceeded with setting up and trimming out the house as well. See Fautley Dep. at 28-29; Hasenauer Dep. at 21-22; Gurner Dep. at 26. And, though Melissa Allen with R-Anell testified to discussing a COD arrangement with Homemax, Homemax recalls no such conversation and assumed that any payment would be made through floor planning, per its course of dealing with R-Anell. Allen Dep. at 17; Fautley Dep. at 30-32.

Thus, in light of R-Anell’s termination of its business relationship with Homemax, and consequent discharge of Homemax’s obligation to pay; its deviation from the normal course of dealing with Homemax concerning payment and invoicing; and R-Anell’s release of the Brown House and subsequent installation despite having not received payment on delivery, it stands to reason that the invoice, which detailed the house’s specifications, might have been reasonably interpreted as a confirmation that the house delivered conformed to the Browns’ preferences rather than a prompt for payment. Even though Homemax originally intended payment to be made through floor planning, where R-Anell did not secure such financing prior to shipment, from Homemax’s perspective, the conduct would appear consistent with a discharge of obligation—especially since R-Anell did not follow up on payment until it discovered an outstanding balance on the Brown House “several months” later. Cosby Dep. at 28.

Accordingly, particularly where R-Anell terminated its business relationship with Homemax prior to shipping the Brown House, material questions exist as to whether R-Anell

discharged Homemax's obligation to pay or whether a new contract arose after the termination and, if a contract did arise, questions remain as to the terms – such as the price- of the new contract and whether R-Anell's actions were so inconsistent therewith to amount to a waiver of right to payment thereunder.

- b. R-Anell does not have a remedy under the UCC and failed to avail itself of mitigatory remedies under the UCC, creating a question of fact as to damages that is properly resolved under equitable principles.

Even if a contract existed between the parties and R-Anell's conduct did not rise to the level of waiver, its failure to demand payment under the COD provision of the invoice amounts to a failure to mitigate and defeats R-Anell's argument for summary judgment.

As an initial matter, a party to a contract in South Carolina has a duty to exercise reasonable care to mitigate damages. Harper v. W. Union Tel. Co., 133 S.C. 55, 130 S.E. 119, 121 (1925). Damages arising from breach of contract that may be avoided through reasonable efforts, care, and prudence cannot be said to be the proximate result of another's acts. Id. The duty to mitigate extends to contracts for sale of goods under the Uniform Commercial Code. See, e.g., Fateh v. Rich, 481 A.2d 464, 471 (D.C. 1984) ("In a situation where a buyer commits a breach of a contract of sale before completion of the seller's performance under the contract, the seller is obliged to mitigate the damages arising from the breach. The seller may be forced to retain control of the property, act in a reasonable manner to protect its value, and engage in a 'substitute transaction' designed to limit the loss resulting from the breach."); Schiavi Mobile Homes, Inc. v. Gironda, 463 A.2d 722, 725 (Me. 1983) (Plaintiff was obligated to take reasonable affirmative measures to keep losses to a minimum after buyer breached contract for purchase of mobile home); In re Rooster, Inc., 127 B.R. 560, 566 (Bankr. E.D. Pa. 1991) ("In a nonbankruptcy context . . . [i]f the goods could reasonably be resold, the concept of mitigation of damages may require the seller to do so and thereby reduce its damage claim further"). Though not explicit, the duty is implied by

the requirements of good faith and commercial reasonableness set forth in the UCC. Am. Nat. Bank & Tr. Co. of Chicago v. Weyerhaeuser Co., 692 F.2d 455, 468 (7th Cir. 1982).

The South Carolina Uniform Commercial Code expressly sets forth a seller's remedies, relevantly providing that, "[w]here a buyer . . . fails to make payment due on or before delivery . . . the aggrieved seller may (a) withhold delivery of such goods; (b) stop delivery by any bailee . . . (d) resell and recover damages . . . (e) . . . or in the proper case the price." S.C. Code Ann. § 36-2-703. "When the buyer fails to pay the price as it becomes due the seller may recover . . . the price (a) of goods accepted" S.C. Code Ann. § 36-2-709(1)(a). In the instant matter, R-Anell seeks to recover the price of the contract of the Brown House, presumably pursuant to Code Section 36-2-709(1)(a), by contending that an action for price is proper where Homemax accepted the Brown House. However, an action for price under the Commercial Code is limited to the instances set forth in this code section, and is intended to be a remedy limited only to cases in which resale of goods is impractical or where the buyer has accepted goods and refused payment. Id. at cmts. 2, 6. The limitation of an action for price as a remedy under the Commercial Code is further evidenced by language in Section 36-2-703, outlining seller's remedies in general, qualifying an action for price as available when "proper."

Though R-Anell argues that Homemax accepted the Brown House, an action for price is nonetheless improper under the circumstances of this case, where the evidence shows that R-Anell relinquished possession of the house to Homemax without enforcing COD payment. The South Carolina Commercial Code supplies that, for a COD delivery, a buyer is not entitled even to inspect goods before rendering payment of the contract price. S.C. Code Ann. § 36-2-513(3)(a). Furthermore, a buyer cannot accept goods without first having the opportunity to possess or inspect them. See S.C. Code Ann. § 36-2-606. Failure to make payment due on delivery—like in a COD

transaction—constitutes a breach triggering seller’s remedies under Section 36-2-703, meaning that in a COD transaction, a seller may take remedial actions such as withholding or stopping delivery and reselling the goods when a buyer fails to present payment at the time of delivery, all of which operate to mitigate a seller’s damages. S.C. Code Ann. § 36-2-703.

However, rather than refuse delivery until it received payment or maintain possession of the Brown House for resale, R-Anell not only allowed Homemax to take possession of the Brown House, but assisted in setting and trimming it. Nor was R-Anell’s decision not to enforce the COD made in good faith of prompt payment; R-Anell admits that non-payment for the Brown House is a product of its own making. R-Anell Dep. at 42. R-Anell Sales Manager Al Gurner testified that releasing a home without payment “should not ever happen,” especially after R-Anell terminated its relationship with Homemax, and he blamed the matter on “terrible oversight” by R-Anell employee Melissa Allen. Gurner Dep. at 27, 40. R-Anell, in no uncertain terms, admits that it did not act with reasonable effort, care, and prudence when it failed to secure payment prior to delivering the Brown House, and thus, it naturally did not exercise reasonable care to mitigate its damages by withholding or refusing delivery and attempting to resell the Brown House to a third-party buyer.

Yet, R-Anell now seeks enforcement of the contract price under the Commercial Code, relying on acceptance of the goods by Homemax in furtherance of this remedy, after it carelessly failed to enforce its own payment provision and actively participated in affixing the Brown House to a foundation for resale by Homemax—grounds which R-Anell relies upon to *prove* acceptance by Homemax. Yet, rather than taking reasonable steps to avoid those damages which it could after Homemax purportedly breached its contract with R-Anell, R-Anell took considerable action to further its damages. It is reasonable that, just as one could resell real estate, R-Anell could have

resold the Brown House, even if it did not receive the same price anticipated from Homemax, and simply recover the difference in contract price and resale price. See Bannon v. Knauss, 282 S.C. 589, 594, 320 S.E.2d 470, 473 (Ct. App. 1984). If not that, R-Anell presumably could have reused appliances and certain parts from the Brown House in subsequent construction.

Furthermore, the Brown Invoice indicates that portions of the alleged contract price consist of items which do not relate to the price of goods at all and should not be asserted as recoverable damages under the Commercial Code. See Ex. N. For example, the invoice price includes \$3,898.00 in state taxes; \$3,160.00 in services to trim the house; and \$12,605.00 to set the house. Id. at 3. Thus, the damages claimed by R-Anell consist of taxes payable to the State and services rendered after it failed to enforce its rights under the alleged contract, as well as interest on those amounts.

Where, as here, the evidence indicates that a party to a contract failed to reasonably mitigate its losses, summary judgment is not proper. Cisson Const., Inc. v. Reynolds & Assocs., Inc., 311 S.C. 499, 502–03, 429 S.E.2d 847, 849 (Ct. App. 1993). Instead, the reasonableness of mitigation is a question of fact. Id. Likewise, a failure to reasonably mitigate impacts the amount of damages recoverable, and the question of damages is, too, a question properly submitted to the factfinder. W. D. Bourne Supply Co. v. Se. Freight Lines, 259 S.C. 139, 142, 191 S.E.2d 4, 5 (1972). And, in the instant case, a question of law exists for the Court as to whether R-Anell appropriately seeks enforcement of the alleged contract price under the Commercial Code on the grounds that Homemax accepted the Brown House, when such acceptance would have been prevented had R-Anell exercised reasonable care in securing payment—per the terms of its invoice and internal policies—prior to surrendering the Brown House to Homemax. More likely, the an action for

price is not “proper” under Section 36-2-703, and R-Anell’s action for price is more appropriately categorized as an action for unjust enrichment—a claim which R-Anell has not pled.

- c. Alternatively, R-Anell’s demand for payment of contract price is unseasonable under S.C. Code Ann. § 36-2-325.

Assuming *arguendo* that a contract existed between R-Anell and Homemax for the sale of the Brown House, pursuant to S.C. Code Ann. 36-2-202, the Brown Invoice would serve as a final expression of such agreement, making the COD payment term the definitive payment term under the alleged contract and not subject to contradiction by evidence of a prior agreement or contemporaneous oral agreement. See S.C. Code Ann. 36-2-202. However, even if the Court should determine that, based on the parties’ course of dealing and R-Anell’s testimony that it believed payment had been secured through Homemax’s floor planning source when it shipped the Brown House, the contract’s term as to payment method was floor planning—a form of credit—as opposed to COD/certified check, R-Anell nonetheless failed to act in a manner that would entitle it to recovery under the Commercial Code.

Specifically, S.C. Code Ann. 36-2-325(1) supplies that “[f]ailure of the buyer seasonably to furnish an agreed letter of credit is a breach of contract for sale.” In the event that there is a defect with a letter of credit, the seller “may *on seasonable notification to the buyer* require payment directly from him.” S.C. Code Ann. § 36-2-325(2) (emphasis added). Though, in this context, R-Anell—not Homemax—was the party responsible for obtaining confirmation that payment would be honored by the lender, R-Anell testified that it did not obtain such approval. R-Anell Dep. at 41; Allen Dep. at 19-20. Indeed, though R-Anell testified that it should not ship a product without first securing payment, it knowingly shipped the Brown House while floor plan approval was “pending” rather than confirmed. Id. Where all other transactions between R-Anell and Homemax were funded through a floor plan source, the course of dealing between the parties

in conjunction with R-Anell's own policies dictates that shipment of an order is conditioned upon R-Anell receiving confirmation from Homemax's lender that it would pay the contract price. Indeed, Homemax believed, until notified otherwise, that R-Anell had been paid through its lender. Fautley Dep. at 31-32.

Where failure to seasonably furnish a letter of credit—or, in the instant case, floor plan approval—constitutes a breach of contract, then R-Anell knowingly delivered the Brown House after breach occurred. After all, the parties' course of dealing suggests that, to be seasonable, a floor plan approval is required *before* the shipment date. Nonetheless, R-Anell proceeded to ship the Brown House while the approval was still pending, and moved forward with delivering, setting up, and trimming the house, rather than exercising the remedies available to it under Code Section § 36-2-703 and, in doing so, mitigating its damages. Nor did R-Anell exercise its right to demand adequate assurance of payment pursuant to S.C. Code Ann. §36-2-609 at any time before delivering the Brown House. Thus, for the same reasons described in Section I(b), *supra*, questions of fact exist as to the reasonableness of R-Anell's mitigation efforts and the amount of damages—if any—recoverable in this action. Furthermore, a question remains as to whether R-Anell's action for price is properly raised under a breach of contract claim, where the UCC carefully limits the availability of this remedy and R-Anell waited months before seeking to collect direct payment from Homemax, or whether R-Anell's claims are more appropriately decided in a court of equity.

In sum, because questions of fact exist as to whether R-Anell discharged or waived Homemax's obligation to pay for the Brown House—if any—and with respect to the reasonableness of R-Anell's mitigation efforts and damages, Homemax respectfully asks this Court to deny R-Anell's Motion for Summary Judgment as to its breach of contract claim.

d. R-Anell is not entitled to pre-judgment interest.

“[P]rejudgment interest is allowed on a claim of liquidated damages; i.e., the sum is certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties. Prejudgment interest is not allowed on an unliquidated claim in the absence of an agreement or statute.” Butler Contracting, Inc. v. Court St., LLC, 369 S.C. 121, 133, 631 S.E.2d 252, 258–59 (2006). “On an obligation to pay money, if the sum is certain or capable of being reduced to certainty, prejudgment interest is allowed from a point when the parties agreed, or the law provides, payment was demandable.” T.W. Morton Builders, Inc. v. von Buedingen, 316 S.C. 388, 399, 450 S.E.2d 87, 93 (Ct. App. 1994).

As set forth above, Homemax disputes that R-Anell suffered damages in this case, and if it did suffer damages, those damages are not in the claimed amount of \$142,292.80. R-Anell argues that the alleged contract for the sale of the Brown House is governed by Article 2 of the UCC, as adopted by South Carolina, and thus seeks statutory remedies under the Commercial Code. Under the Code, R-Anell terminated in writing any contract between the parties prior delivering the Brown House (see Ex. B) and thus discharged Homemax of any obligation to perform. S.C. Code Ann. § 36-2-106(3). R-Anell failed to seek assurance of Homemax’s future performance on the Brown House after sending notice that R-Anell would no longer sell or build homes for Homemax. See S.C. Code Ann. § 36-2-609. Instead, R-Anell delivered and installed the house without first securing payment or assurance of payment, and after several months, sought to collect payment in the amount specified in an effectively terminated contract rather than an agreed-upon amount. Moreover, R-Anell had a duty to mitigate its damages and had the opportunity to do so by pursuing a number of alternate remedies under the Code.

As a result of R-Anell's actions, its damages—if any—are not in a sum certain amount and cannot be calculated with any certainty based on an agreed-upon method of calculation, and thus they are unliquidated damages upon which pre-judgment interest is not recoverable. The South Carolina Commercial Code recognizes that its remedy provisions may make a damages determination difficult, and separately provides that parties may include a reasonable liquidated damages provision in their agreement for the sale and purchase of goods. S.C. Code Ann. § 36-2-718(1). R-Anell does not contend, nor can it, that any such liquidated damages agreement existed between it and Homemax. Accordingly, in the event R-Anell's Motion for Summary Judgment is granted, its claim for prejudgment interest should nonetheless be denied.

II. Summary Judgment is properly denied with respect to Homemax's claims for negligence, breach of contract, and unjust enrichment.

In response to R-Anell's breach of contract action relating to the Brown House, Homemax raised counterclaims of negligence, breach of contract, and unjust enrichment for damages incurred by Homemax when the Christofoli House became water-damaged as a result of R-Anell's failure to wrap the house such that it maintained a watertight integrity prior to its installation. Just as R-Anell's argument for summary judgment on its breach of contract claim hinged on an incomplete recitation of the evidence of record, as does its argument for summary judgment on Homemax's counterclaims. Because genuine issues of material fact exist with respect to these claims, R-Anell's motion is properly denied.

a. Negligence

Homemax alleges that R-Anell is responsible for the water damage to the Christofoli House for negligently wrapping the house so that it was not adequately protected from the elements, thereby allowing water intrusion to occur and damage one of the two home units. Wrapping is “the plastic that's put on the units to temporarily protect it until it's set on the foundation,” and R-

Anell concedes that it had a responsibility to wrap the house prior to shipment in a manner that maintained a watertight integrity. R-Anell Dep. at 82; Hasenauer Dep. at 19. Notwithstanding, R-Anell argues that the economic loss rule bars Homemax from recovering under tort principles, claiming Homemax's damages did not arise from R-Anell's breach of any extra-contractual duty. Both state and federal law, as well as the evidence of record, suggests otherwise.

The economic loss rule exists to determine whether contract or tort theories are applicable in a given case. Kennedy v. Columbia Lumber & Mfg. Co., 299 S.C. 335, 345, 384 S.E.2d 730, 736 (1989). The rule generally limits a party's remedies to those derived from contract alone where damages are purely economic. Id. However, the economic loss rule focuses on activity as opposed to consequence—where damages stem from a breach of contractual duty only, then liability is only contractual; if a party's actions violate a legal duty, however, then liability is in both contract and in tort. Id. at 345-346, 384 S.E.2d at 737. In other words, “the question of whether the plaintiff may maintain an action in tort for purely economic loss turns on the determination of the source of the duty plaintiff claims the defendant owed.” Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc., 320 S.C. 49, 54, 463 S.E.2d 85, 88 (1995). “A breach of a duty arising independently of any contract duties between the parties . . . may support a tort action.” Id. at 55, 463 S.E.2d at 88. Such is the case particularly when, as here, damages stem from breach of a professional duty. Id. at 55, 463 S.E.2d at 89.

In its negligence claim, Homemax contends that its damages arose from R-Anell's breach of a number of extra-contractual duties, including a failure to construct the Christofoli house in a workmanlike manner, failure exercise the degree of care required by its profession, failing to adequately supervise or use due care in the construction, shipment, delivery, and/or protection of the house, and for acting in violation of accepted industry standards and practices. See Homemax's

Answer and Countercl. at ¶ 35. Such duties do not arise strictly by virtue of contract between Homemax and R-Anell, but through professional regulation and responsibility, as well as third-party contracts; for example:

- S.C. Code Ann § 40-29-260(A)(1) imposes a duty of workmanship on manufacturers of modular homes.
- The Model Manufactured Home Installation Standards⁵ dictate that “[t]he manufacturer must . . . protect all exposed materials not designed for exposure to the weather with plastic sheeting for transport.” 24 CFR § 3285.801, Figure A.
- Bennett Transport’s bill of lading, signed by R-Anell, provides that “It shall be the responsibility of Shipper to . . . prepare package, including sufficient wrapping with plastic or other suitable covering to protect against weather or road conditions or moisture . . .” Ex. P – Bills of Lading 40876A and 40876B.

Thus, the duties which Homemax alleges R-Anell breached are not ones created solely by contract, but which arise independently of the contract for the Christofoli House. Indeed, as discussed in Section II(b), *infra*, the scope and terms of R-Anell’s contractual duties with respect to wrapping are not reduced to writing, and are ascertained only through course of dealing and testimony. In its supporting memorandum, R-Anell simply describes this contractual duty as one requiring it “to deliver the Christofoli home to Defendant’s lot in a non-defective condition.” Pl. Mem. in Support of Summ. J at 8. Dependent upon ultimate findings as to R-Anell’s contractual duties to wrap and protect the Christofoli House, conceivably, the court or jury could find that R-Anell indeed failed to exercise due care that resulted in water damage to the Christofoli House, but that the failure did not breach any contractual terms. In this instance, recovery could only be had through tort action, and if the court deemed Homemax’s negligence claim to be barred by the

⁵ These standards were created pursuant to The Federal Manufactured Housing Construction and Safety Standards, which provide that each manufacturer shall provide with each manufactured home, design and instructions for the installation that provide equal or greater protection than the federally-supplied model standards. 44 U.S.C. § 5404(a). These standards are incorporated into South Carolina law pursuant to S.C. Code Ann. § 40-29-20(20), and R-Anell agrees that these standards apply. R-Anell Dep. at 80

economic loss doctrine, R-Anell would be absolved of liability despite having breached legal duties owed by modular home manufacturers.

So as to avoid unjust outcomes such as this, not surprisingly, South Carolina courts have declined to extend the economic loss doctrine to instances where tort actions for economic losses stem from a breach of professional duty. For instance, in the Griffin case, the plaintiff contractor was awarded a project to construct a water trunk for Charleston County, and the project was supervised by an engineer working for the defendant. Id. at 51, 463 S.E.2d at 86. After the engineer caused the plaintiff to suffer financial losses as a result of his negligence in designing and supervising the project, the South Carolina Supreme Court determined that the trial judge erred in finding that the economic loss rule prevented the plaintiff from maintaining a suit in tort for purely economic losses. Id. at 56, 463 S.E.2d at 88. Similarly, manufacturers of modular homes are subject to professional duties and responsibilities, including a duty of workmanship, by virtue of federal and state statutes and regulations. Where R-Anell was negligent in carrying out these responsibilities, it should not be immune from tort liability under the economic loss doctrine.

Contrary to R-Anell's argument that Homemax cannot present evidence that it was negligent in wrapping the Christofoli House, emails subpoenaed from the carrier R-Anell contracted to transport the house, Bennett Truck Transport, LLC, between it and R-Anell, establish that problems existed with the wrapping on the Christofoli House before it ever left R-Anell's lot. See Ex. Q – Emails between Bennett and R-Anell. Specifically, on May 17, 2017—the date R-Anell shipped the Christofoli House—in an email chain with the subject line “40876,”⁶ Carol Gentry of Bennett Transport wrote the following remarks to Melissa Allen at R-Anell:

- “The A side is loaded down with parts. driver said this house weight too big and heavy to be delivering parts..”

⁶ The serial number of the Christofoli House is 40876. See Ex. F; Ex. H

- “You know we jumped thru hoops to ship this house.”
- “drivers are very upset today about one escort trying to get a roll of tape.....and getting talked to so badly.”
- “yesterday they had all kinds of problems with plastic..that is why they needed tape today....”
- “we just want to get the houses delivered safely to destination and overloading them with parts does not help.”

Id. Melissa Allen, R-Anell’s employee, responded, in relevant part:

I do appreciate all that you have done to help us with this house. **I hate that they had trouble with the plastic yesterday.** Unfortunately, that happens from time to time. We appreciate them fixing it and getting the house to the site.

Id. (emphasis added). R-Anell conveniently failed to produce this email chain in discovery and Homemax received it from Bennett Transportation in a response to a subpoena after deposing Melissa Allen. R-Anell subsequently admitted the authenticity of the documents.

The exchange between R-Anell and Bennett certainly creates a question of fact as to whether R-Anell was negligent in wrapping the house to protect it from the elements. As a preliminary matter, R-Anell admits that it bears the responsibility of wrapping homes prior to transport, but it cannot offer testimony explaining the process of doing so. R-Anell Dep. at 67, 81. Further, R-Anell does not have a process in place for training employees to wrap houses. Ex. R – Deposition of Phillip Hathcock at 29-30. The most comprehensive description of how house-wrapping is accomplished comes from R-Anell’s General Manager, Phillip Hathcock, who explained that plastic was secured to the Christofoli units “by mechanical fasteners” and stated that R-Anell “use[s] screws and nails to fasten with straps and everything to fasten it down to the house.” Id. at 28. According to Mr. Hathcock, “if you didn’t [use mechanical fasteners], it wouldn’t stay on the house.” Id. at 29. R-Anell testified that it does not inspect the wrapping to

make sure that it is completed a particular way, and admits that “if it was improperly wrapped . . . it would have water intrusion.” R-Anell Dep. at 74.

Incidentally, the Christofoli House experienced such water intrusion. Emails between R-Anell and Bennett Transport strongly suggest that at least one of the Christofoli units was improperly wrapped, resulting in “all kinds of problems” with the plastic. These “problems” existed on May 16, 2017, predating the delivery of the Christofoli units to Homemax’s retail lot. R-Anell moved the Christofoli House outside on May 5, 2017; in the event that a defect in the plastic existed when the house was originally moved outside, the Christofoli House could have been improperly exposed to the elements for 12 days while being stored outside by at R-Anell’s facility. The May 17th email exchange creates the inference that problems with the wrapping may have remedied by Bennett as opposed to R-Anell, who carries the responsibility of properly wrapping each unit. And, alarmingly, the problems were addressed with tape, even though R-Anell’s General Manager testified that “mechanical fasteners,” screws, and nails were needed to properly secure plastic wrapping to the unit.

The evidence in this case certainly creates a genuine issue of material fact as to whether R-Anell negligently wrapped the Christofoli House. It further creates a question as to whether R-Anell had knowledge that the house was not securely wrapped prior to shipping it to Homemax and neglected to inform Homemax of that fact, despite knowing that the Christofoli House would remain at Homemax’s lot for some time before the home site was ready for installation. R-Anell Dep. at 106-107. Accordingly, summary judgment is improper on Homemax’s claim that the Christofoli Home became damaged as a result of R-Anell’s negligence.

b. Breach of Contract – Christofoli House

R-Anell likewise claims that Homemax has no evidence that it breached the contract for the purchase of the Christofoli House. It contends that Homemax cannot establish breach on the grounds that 1) Homemax presents no evidence of breach; 2) Homemax bore the risk of loss after delivery of the house on May 17, 2017; and 3) even if the house was damaged at the time of delivery—leaving the risk of loss on R-Anell—risk of loss nonetheless shifted to Homemax when it purportedly accepted the Christofoli House. In so arguing, R-Anell misapplies the Commercial Code to the nuanced facts of this case in order to assert grounds for summary judgment. Consequently, its argument is unpersuasive.

Homemax agrees with R-Anell that a contract existed between the parties for the purchase and sale of the Christofoli House, though the terms of the contract are largely governed by the course of dealing between the parties. Indeed, Homemax’s claim for breach of contract stems, in part, from terms implied by the parties’ course of dealing. Specifically, it alleges damages arising from R-Anell’s breach of its contractual duties to properly manufacture, deliver, ship, and/or take necessary measures to prevent damage and water intrusion to Unit No. 40876, the Christofoli House. R-Anell concedes that it was responsible for building the Christofoli House and preparing it for shipment. R-Anell Dep. at 17. It further agrees that it wraps the house prior to shipment, and is responsible for doing so in a fashion that ensures watertight integrity. *Id.* at 43-44, 80-81. In this transaction, R-Anell bore responsibility for arranging transportation of the Christofoli House. Allen Dep. at 26. And, of course, R-Anell had an obligation to deliver conforming goods. S.C. Code Ann. § 36-2-601.

Though a questions of fact exist as to precisely when the Christofoli House became water-damaged, whether it occurred when the units sat outside at R-Anell’s facilities, or after being

delivered to Homemax's retail lot, R-Anell ultimately delivered a defective good on May 17, 2017. Even if the water intrusion occurred on the Homemax lot, the evidence establishes that R-Anell knew the house would be stored on the lot for a significant period of time prior to installation, was responsible for properly wrapping the house in a watertight fashion, and yet delivered the home without employing adequate precautions or inspection. R-Anell Dep. at 74, 81, 106-107. Indeed, Bob Hasenauer of R-Anell explained that wrapping is "put on the units to temporarily protect it *until it's set on the foundation.*" Hasenauer Dep. at 19 (emphasis added). Yet, prior to shipping, R-Anell testified that it simply checks that the house is wrapped—not in any particular fashion—and assumes that the house would have water intrusion if it was not done so properly. *Id.* at 74. R-Anell makes no effort to check wrapping at the top of the units along the marriage line. *Id.* And with respect to the Christofoli House, R-Anell shipped units that experienced "all kinds of trouble" with the plastic and, apparently, relied on its carrier to fix the problem with tape. *See* Ex. Q. Thus, upon delivery, the unit was defective as a result of insufficient wrapping. In either instance, R-Anell delivered non-conforming goods.

Notwithstanding, R-Anell insists that, regardless of whether the goods conformed, Homemax accepted their delivery and bore the risk of loss. It first provides, under the assumption that the goods conformed, that the risk of loss shifted to Homemax under S.C. Code Ann. § 36-2-509(3) when it took possession of the goods on May 17, 2017. It further argues that, even if the goods arrived at the Homemax lot damaged, the risk of loss nonetheless would have shifted to Homemax upon cure or acceptance under S.C. Code Ann. § 36-2-510(1). According to R-Anell, Homemax accepted the Christofoli House in two ways: 1) by signing the Delivery Inspection Form on May 17, 2017 without subsequently sending written notice of rejection; and 2) by taking action inconsistent with R-Anell's ownership of the goods when it delivered the house to the home site

“and began installing the home.” Pl. Mem. in Support of Summ. J at 16. Both the parties’ course of dealing and conduct, and the Commercial Code, suggest otherwise.

Assuming, *arguendo*, that R-Anell was not in breach of contract when it shipped the Christofoli House to the Homemax lot on May 17, 2017, the course of dealing between the parties and witness testimony establish that risk of loss remained with R-Anell after delivery. Though risk of loss, in the absence of breach, would otherwise pass to Homemax upon receipt of goods under the Commercial Code, Section 36-2-509(4) provides that the Code’s provisions are subject to a contrary agreement by the parties. Though neither the Dealer Agreement nor the purchase order for the Christofoli House specify terms of delivery or risk of loss, throughout the parties’ course of dealing, prior to the Christofoli House, R-Anell had delivered every other home purchased through Homemax directly to the home site. R-Anell Dep. at 107; Cosby Dep. at 18-19. Though R-Anell testified that Homemax had been unprepared to have all or most of these houses delivered to their respective home sites when R-Anell completed construction; R-Anell had never shipped a house to Homemax’s retail lot pending completion of the site. Id. Instead, it deferred delivery until the site was prepared for installation. Id.

R-Anell’s delivery of the Christofoli House to Homemax’s retail lot, as opposed to the installation site, did not arise from the parties’ initial agreement or intent; rather, Jeremy Cosby, R-Anell’s sales representative over the Homemax account, asked Homemax to take delivery of the Christofoli House early for reasons related to R-Anell’s internal financial and budgeting policies. Fautley Dep. at 11; Cosby Dep. at 22-24, 37. Though Homemax signed a delivery inspection form upon receipt of the units at the lot, over the course of its dealing with R-Anell, this form would be received simultaneously with the commencement of set-up by R-Anell contractors, such that Homemax considered the form as no more than a document that the carrier needed signed in order

to receive payment. Fautley Dep. at 11-12. And, although Homemax ultimately arranged to have the units transported from its lot to the home site, evidence indicates that R-Anell agreed to cover the cost of shipment in consideration of Homemax's agreement to take early delivery of the Christofoli House. See Ex. S – October 20, 2017 Email from Dave Fautley. In any event, delivery of the Christofoli House to Homemax did not terminate R-Anell's contractual obligations; once the units arrived at the home site, R-Anell arranged for the house to be set up. Hasenauer Dep. at 21. Indeed, R-Anell, as a matter of course, once a house is delivered to the installation site, will “take the set up, and then [] set and trim [the house], and then it's turned back over to [the] retailer.” R-Anell Dep. at 17.

R-Anell's initial conduct upon the discovery of the water damage indicates that it assumed the risk of loss. At the time of installation, a set-up crew contracted by R-Anell removed the plastic wrapping from the damaged unit and contacted Bob Hasenauer upon seeing signs of water damage, at which time Hasenauer directed the crew to begin removing wet drywall and insulation from the unit. Hasenauer Dep. at 21, 34, 49. According to Mr. Hasenauer, when the crew began removing the wrapping, they saw water running out of the unit where the plastic had been, and the damage was focused around the marriage line of the house, where the two units are put together and where the plastic sheeting was in place. Id. at 26, 28. The set-up crew, as agents of R-Anell, did not advise Hasenauer of the condition of the wrapping at the time of removal, and he does not know what was done with the plastic.⁷ Id. at 32, 95. But R-Anell, without question, began repairs on the units because “R-Anell step[s] up—no matter whose fault it is.” Id. at 49. On that same day, R-Anell agreed to work with Homemax on remedying the problem—confirming its assumption of

⁷ Pursuant to S.C. Code Ann. § 36-2-515(a), had R-Anell disputed its responsibility for the loss, Homemax should have been afforded an opportunity to inspect the plastic and the unit which, at that time, was in R-Anell's control. Instead, R-Anell's agents presumably disposed of the plastic wrapping and immediately began removing damaged areas at R-Anell's request.

the risk of loss—and, with that exchange, Homemax sought permission from the Christofolis to proceed with putting the house on the foundation. Id. at 40.

Overall, the deviation from the course of dealing between Homemax and R-Anell may be more accurately described as Homemax agreeing to do a favor for R-Anell by storing the Christofoli House on its lot prior to installation as opposed to a delivery intended to pass risk of loss from R-Anell to Homemax. This is particularly true where R-Anell still owed duties under the contract to set up and trim the house. See, e.g., Berry v. Lucas, Or.App.2006, 150 P.3d 424, 210 Or.App. 334 (risk of loss was on seller when manufactured home sustained storm damage where contract required seller to set up the home and it was not yet completely assembled); Moses v. Newman, Tenn.App.1983, 658 S.W.2d 119 (contract required installation where buyer contracted for mobile home plus installation, and windstorm destroyed home before installation was complete, seller bore risk of loss); Southland Mobile Home Corp. v. Chyrchel, 255 Ark. 366, 371–72, 500 S.W.2d 778, 782 (1973) (where contract required seller to install trailer, term was construed as a contrary agreement which left risk of loss with seller after delivery and before installation).

Regardless of whether the Christofoli House was damaged at the time it arrived at the Homemax lot, R-Anell did not, and could not have, delivered conforming goods on May 17, 2017. The invoice shows that a significant portion of the contract price covered the cost of services to be performed by R-Anell, namely factory set (\$9,250.00) and factory trim (\$3,030.00). See Ex. T – Christofoli Invoice at 4. When an otherwise conforming good is delivered pursuant to a contract which requires additional action, such as installation, by the seller, the delivery does not conform to the contract—and risk of loss remains with the seller pursuant to Commercial Code Section 36-2-510—until the seller performs those additional obligations. See S.C. Code Ann. § 36-2-106(2)

(“Goods or conduct including any part of a performance are “conforming” or conform to the contract when they are in accordance with the obligations under the contract”); S.C. Code Ann. § 36-2-510, cmt. 1 (“seller by his individual action cannot shift the risk of loss to the buyer unless his action conforms with *all the conditions* resting on him under the contract)(emphasis added); see also, In re Thomas, 182 B.R. 347, 348–49 (Bankr. S.D. Fla. 1995)(when contract called for installation of pool heater, seller bore risk of loss when unit was stolen after delivery and before installation); Moses, 658 S.W.2d at 122 (where contract called for installation, delivery of trailer was nonconforming until installation occurred, and seller bore risk of loss when trailer was destroyed before installation); William F. Wilke, Inc. v. Cummins Diesel Engines, Inc., 252 Md. 611, 617-618, 250 A.2d 886, 889 (1969)(“In absence of a delivery of conforming goods, the risk of damage remained with . . . the seller, notwithstanding the delivery of the generator to the job site, the receipt of payment from [buyer], and some eight months’ delay in start-up”).

R-Anell’s argument that risk of loss, even of nonconforming goods, passed to Homemax by way of acceptance, is unavailing. At the time R-Anell delivered the Christofoli House to Homemax’s retail lot, Homemax did not accept the goods despite nonconformity—both R-Anell and Homemax understood that R-Anell would install and trim the house after delivery, and Homemax simply agreed that the house could remain on its lot until it did so. Notably, R-Anell completed its obligation to trim out the house as late as March 12, 2018. See Ex. U – March 9, 2018 Email from Bob Hasenauer. Homemax’s cooperation until R-Anell could tender conforming goods should not be misconstrued as acceptance.

Section 36-2-606 of the South Carolina Commercial Code provides that acceptance occurs a) after the buyer signifies in writing that the goods are conforming or that he will take them in spite of nonconformity, after a reasonable time to inspect; b) when the buyer fails to make an

effective rejection after having had a reasonable opportunity to inspect; and c) the buyer does any act inconsistent with the seller's ownership. R-Anell attempts to argue that Homemax accepted the Christofoli units by virtue of signing a delivery inspection form lacks merit. The delivery inspection form does not signify that Homemax received conforming goods or accepted the goods; it merely asks for the buyer and carrier to notate any transit damage. See Ex. H. And, although the inspection form indicates that R-Anell assumes no damages due to water leaks through shipping plastic that are not communicated at the time of delivery or pick-up, its form does not defeat the risk of loss borne by it pursuant to statute. Notably, though the Commercial Code provides that risk of loss provisions, in absence of breach, are subject to contrary agreement, there is no such caveat where goods are nonconforming, as is the case with the Christofoli House. See S.C. Code Ann. §§ 36-2-509(4), 36-2-510.

However, even if it could be argued that the delivery inspection form served as an acceptance, shifting risk of loss from R-Anell to Homemax, a question of fact exists as to whether Homemax ever signed an inspection form for the damaged unit. During the course of discovery, the only inspection form produced for the Christofoli House is one for the unit bearing the serial number 40876A. Ex. H. The house, however, was delivered in two units—40876A and 40876B. See Ex. P. Though R-Anell could not offer testimony as to whether Unit A or Unit B was damaged, the evidence of record indicates that Unit B is the portion of the house that experienced water intrusion. See R-Anell Dep. at 84; Hasenauer Dep. at 27. The damage “extended from the end wall of the living room, across the living room, the kitchen area, down the hallway, and partially in a bathroom, bath number 2...” Hasenauer Dep. at 33. In the course of discovery, R-Anell produced the production prints for the Christofoli House, which indicate that, the “B Unit” of the house would be that containing the kitchen, grand room, and bath 2. See Ex. V – Wall Panel Cut

List. Accordingly, a question of fact exists as to whether the delivery inspection form relied upon by R-Anell to argue acceptance even corresponds to the damaged unit. If not, R-Anell's argument is defeated, as South Carolina's Commercial Code provides that "[a]cceptance of a part of any commercial unit shall not be acceptance of the entire unit." S.C. Code Ann. § 36-2-606(2).

Nor is there merit to R-Anell's position that Homemax took action inconsistent with R-Anell's ownership, thereby resulting in acceptance of the goods. Specifically, R-Anell states that Homemax accepted the Christofoli House by shipping it to the home site and beginning installation of the home. Pl. Mem. in Support of Summ. J at 16. Though Homemax did ship the Christofoli House to the site for installation, it did so as a result of R-Anell's request that it take the house early and upon the understanding that R-Anell would pay for the transportation cost. Fautley Dep. at 11; Ex. S. Moreover, R-Anell, through its contracting agent, and not Homemax, began the process of installation once the house arrived. Hasenauer Dep. at 21. Upon learning of the water intrusion, Homemax and the Christofolis agreed to proceed with installation based on R-Anell's agreement to repair, or cure, the defect. Hasenauer Dep. at 50-51. Subsequently, R-Anell commenced repair work and hired contractors and incurred expenses without first consulting with Homemax. Id. at 62; R-Anell Dep. at 103. The parties' conduct, contrary to R-Anell's assertions, is consistent with R-Anell's ownership of the house during this time as opposed to Homemax.

If acceptance of the Christofoli House ever occurred, it would have been acceptance based on the reasonable assumption that nonconformities would be seasonably cured by R-Anell, and only after R-Anell performed its obligations to complete set-up and trim work, though acceptance under this condition does not impair Homemax's other remedies for nonconformity. See S.C. Code Ann. § 36-2-607(2). Section 36-2-714 of the Commercial Code sets forth a buyer's available remedies for breach in regard to accepted goods, which in this instance include recovery of "the

loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable" and "incidental and consequential damages." S.C. Code Ann. § 36-2-715 (1) and (3).

Accordingly, numerous, material questions of fact and law remain unresolved as to Homemax's breach of contract claim against R-Anell, including questions as to the issues of when and whether R-Anell delivered conforming goods, when and whether Homemax accepted those goods, when risk of loss transferred from R-Anell to Homemax, and the amount of damages recoverable by Homemax under the Commercial Code.

c. Unjust Enrichment

Finally, R-Anell asks this Court to grant summary judgment on Homemax's claim for unjust enrichment. Preliminarily, R-Anell contends that Homemax cannot pursue a claim for unjust enrichment because an express contract, the 2017 Volume Dealer Agreement, governs the transaction. Though it concedes Homemax's right to pursue alternative claims for relief, it contends that the existence of the Dealer Agreement is an insurmountable affirmative defense to Homemax's unjust enrichment claim. However, because the scope of the Dealer Agreement is in question, Homemax maintains that summary judgment is improper, and R-Anell's motion is rightfully denied.

Whether the Dealer Agreement fully governs the Christofoli transaction and the scope of Homemax's allegations against R-Anell is unclear and remains an issue for a jury to determine. The Dealer Agreement in place for the Christofoli House fails to comprehensively set forth the terms which govern the sale and the responsibilities of each party; rather, the agreement simply outlines conditions imposed upon Homemax as an R-Anell dealer and sets forth a "volume bonus plan" to incentivize sales of R-Anell's houses by Homemax. Ex. C. It does not set sufficiently

forth terms related to the rights and responsibilities of the two parties with respect to the Christofoli sale or individual home sales generally; it is questionable whether it governs the allegations brought by Homemax against R-Anell. Id. Notwithstanding, the South Carolina Supreme Court has indicated that damages may be properly awarded under a theory of quantum meruit/unjust enrichment even where a contract exists between the parties. Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 617 n.4, 703 S.E.2d 221, 225 n.4 (2010) (“While the circuit court did find there was a contract between the two parties in this action, it never awarded damages because of a breach of that contract. Rather, the circuit court chose the theory of quantum meruit as an alternate remedy.”).

Likewise, R-Anell’s argument that Homemax cannot establish that R-Anell retained a benefit from Homemax under inequitable circumstances must fail. As thoroughly explained, *supra*, with respect to its negligence and breach of contract claims, a material issue of fact exists as to whether R-Anell delivered defective goods, and R-Anell was paid in full for the Christofoli House based on representations by R-Anell agents that the company would work with Homemax to repair the damaged goods. Where R-Anell received upwards of \$125,000.00 for the defective house, and Homemax never received payment from the Christofolis for the house and incurred over \$200,000.00 in actual and consequential damages as a result of the defect, R-Anell’s retention of payment received for the Christofoli House is certainly inequitable.

Finally, R-Anell argues that Homemax cannot successfully bring a claim for unjust enrichment against it with respect to the Christofoli House under the doctrine of unclean hands. Specifically, R-Anell argues that Homemax breached the contract for the Brown House as a result of incurring expenses related to the Christofoli House, and thus is barred from recovering in equity. In other words, R-Anell’s unclean hands defense is simply a reiteration of its breach of contract

claim. Because Homemax has set forth numerous genuine issues of material fact that must be decided by the factfinder with respect to R-Anell's breach of contract claim, questions of fact likewise exist as to its argument that Homemax enters the court with unclean hands. Consequently, Homemax's action for unjust enrichment survives summary judgment.

CONCLUSION

R-Anell's arguments for summary judgment on both its own claim for breach of contract and Homemax's counterclaims for negligence, breach of contract, and unjust enrichment are unavailing.. With respect to its contract claim, the manufacturer argues flatly that a quote, an invoice, and an acceptance of delivery "should be adequate to prove a contract" between the parties for purchase of the Brown House, but fails to consider the implications of its own conduct, such as terminating the agreement prior to delivery, delivering without COD payment or other assurance of payment, and its unseasonable demand for payment from Homemax. R-Anell's actions significantly alter the matter-of-fact analysis of contract formation and breach argued in support of summary judgment and create questions of fact as to whether Homemax owed a contractual duty to pay R-Anell and, if so, as to the extent of R-Anell's damages.

Likewise, in seeking summary judgment on Homemax's claims pertaining to the Christofoli House, R-Anell's selective recitation of the facts disregards considerable evidence supporting Homemax's position that R-Anell negligently wrapped the unit and that R-Anell bore the risk of loss when the damage to the unit was discovered. R-Anell's conduct and communications create genuine issues of material fact as to whether R-Anell breached legal and contractual duties, thereby damaging Homemax, or whether it was otherwise unjustly enriched by accepting payment under inequitable circumstances. In light of the foregoing, R-Anell's Motion for Summary Judgment is properly denied with respect to the claims of both parties.

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June 18, 2020

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Jun 22 2021
SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

Case No.: 2018-CP-32-03103

R-Anell Housing Group, LLC.....Respondent,

v.

Homemax, LLC.....Appellant.

NOTICE OF APPEAL

Pursuant to Rule 203 of the South Carolina Appellate Court Rules, Defendant Homemax, LLC (“Appellant”) hereby appeals the orders and decisions rendered during the trial of this matter, held from June 7, 2021 to June 10, 2021. Judgment on the jury verdict was entered by the Court on June 10, 2021. Appellant appeals the following:

1. Order granting Respondent’s motion for directed verdict as to Appellant’s counterclaim for negligence.
2. Order granting Respondent’s motion for pre-judgment interest.
3. Decision by the Court excluding evidence in the form of emails between Melissa Allen and Carol Gentry.
4. Decision by the Court excluding character evidence, impeachment evidence and the criminal conviction of Melissa Allen, a witness that testified at trial on behalf of Respondent.
5. Decision by the Court entering judgment in favor of Respondent in the total amount of \$182,339.45.
6. Decision by the Court allowing Respondent to introduce evidence of expenses and damages neither pled by Respondent nor relevant to Respondent’s claims or defenses.

Respectfully Submitted,

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THE STATE OF SOUTH CAROLINA
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v.

Homemax, LLC.....Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on R-Anell Housing Group, LLC by depositing a copy of it in the United States Mail, postage prepaid, on June 22, 2021, addressed to its attorneys of record, Robert Mangum, Esquire and James S. Murray, Esquire, PO Box 1495, Augusta, GA 30903.

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May 24 2022

SC Court of Appeals

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

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

Common Pleas Case No.: 2018-CP-32-03103
Appellate Case No.: 2021-000658

R-Anell Housing Group, LLC, Respondent,

v.

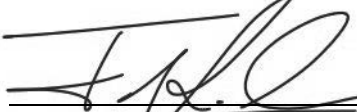
Homemax, LLC, Appellant.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210, SCACR, I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman
Circuit Court Judge

Common Pleas Case No.: 2018-CP-32-03103
Appellate Case No.: 2021-000658

R-Anell Housing Group, LLC, Respondent,

v.

Homemax, LLC, Appellant.

APPELLANT'S FINAL BRIEF

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May 24 2022
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ISSUES ON APPEAL

- I. Did the trial court err in awarding statutory prejudgment interest from March 24, 2018, when Respondent failed to plead prejudgment interest, where the amount sought was not a sum certain agreed to by the parties, and where there is no evidence that the amount claimed was payable on March 24, 2018, all of which are required by S.C. Code Ann. § 34-31-20?
- II. Did the trial court err in finding the economic loss rule barred Appellant’s negligence claim against Respondent because Respondent had no extra-contractual duties, where our Supreme Court has exempted residential construction from the economic loss rule, and where both South Carolina’s Code of Law and Code of Regulations impose duties on manufacturers of modular homes—such as Respondent—which arise independent of any contract?
- III. Did the trial court err in finding email evidence discussing problems with the waterproof plastic wrapping on one of the modular homes manufactured by Respondent was irrelevant when the issue here concerned Respondent’s alleged failure to properly waterproof a modular home before shipping, and where Respondent testified the wrapping on the subject home was installed with the same quality as the wrapping it installed on all other homes it manufactured?

STATEMENT OF THE CASE

The appellant, Homemax, LLC (“Homemax” or “Appellant”) is in the business of selling modular homes in South Carolina. (R. p. 363). The respondent, R-Anell Housing Group, LLC (“R-Anell” or “Respondent”) is a foreign entity in the business of manufacturing modular homes for sale in South Carolina. (R. p. 363). Homemax served as a dealer of modular homes manufactured by R-Anell pursuant to a “Dealer Agreement.” (R. pp. 333-35). This lawsuit concerns two separate transactions for two separate modular homes manufactured by R-Anell and sold to Homemax—the “Christofoli House” and the “Brown House.” (R. pp. 12-14) (R. pp. 15-22). R-Anell, the plaintiff below, brought a claim for breach of contract against Homemax regarding payment for the Brown House. (R. p. 13). Homemax asserted counterclaims for negligence and breach of contract stemming from the Christofoli House transaction. (R. pp. 18-21).¹ The trial court directed

¹ Homemax also asserted a claim for Unjust Enrichment/Quantum Meruit, but voluntarily dismissed this claim at trial. (R. p. 220).

a verdict against Homemax's negligence claim, and after the jury returned a verdict in favor of R-Anell, the trial court awarded R-Anell statutory prejudgment interest. This appeal followed.

FACTUAL BACKGROUND

The Purchasing Process

Although Homemax and R-Anell had a relationship going back to 2014, the parties entered into a written dealership agreement on January 1, 2017. (R. pp. 333-35). However, this agreement did not layout the specific details of how individual transactions were to be conducted. Rather, the evidence presented at trial regarding the parties' course of dealing demonstrated that if a Homemax customer was interested in an R-Anell home, the customer would select their desired model, options, and trims, then Homemax would request a quote from R-Anell. *See e.g.*, (R. pp. 313-16). If approved, Homemax would submit a purchase order to R-Anell for the specific floor plan model. (R. pp. 317-19). Homemax would pay for the homes through a line of credit that Homemax had with a third-party lender—this source of funding being known in the industry as “floor plan financing.” (R. pp. 38-39). After receiving a purchase order R-Anell would confirm the payment source before it would begin manufacturing the home. (R. p. 365). Manufacturing usually began four to six months after R-Anell received the purchase order. (R. p. 96).

The modular homes were manufactured in two halves which would be joined together once delivered to the final home site. Therefore, to avoid exposure of the interior components to the elements before the modules were joined together, the final stage of production required R-Anell to wrap the house in a water-tight plastic. (R. p. 63). R-Anell was responsible for delivering the home to its final destination and would hire contractors to unwrap and erect the two halves of the house on the foundation. (R. p. 56). The floorplan funding source would typically remit payment directly to R-Anell within 14 days after the house was shipped. (R. p. 106).

The Christofoli House

In December of 2016, Homemax ordered a modular home from R-Anell for Mr. and Mrs. Christofoli. (R. pp. 336-39). Production of the “Christofoli House” was completed before the site preparations were completed at the final home site. As a result, on May 5, 2017, R-Anell moved the Christofoli House to an outside storage lot where it remained for twelve days. (R. p. 366). It was significant to R-Anell, for budgetary and accounting reasons, that the Christofoli House ship as soon as possible. (R. p. 100). Therefore, even though the Christofoli home site was not ready, on May 17, 2017, R-Anell shipped the Christofoli House to Homemax’s retail location, where it remained (outside) until June 26, 2017, when it was finally delivered to the Christofoli’s home site. (R. p. 367). Once at the final home site, contractors hired by R-Anell unwrapped the house to discover one of the modules (Unit A) had suffered significant damage because of water intrusion. R-Anell instructed its contractors to remove all the water damaged components, and initially began efforts to repair the home. (R. p. 143). However, on September 21, 2017, R-Anell informed Homemax that it would not be undertaking any further repair efforts, and that it would be Homemax’s responsibility to complete the remediations. (R. p. 343). Homemax ultimately lost the deal with the Christofolis, incurring damages of \$203,301.96 caused by the damage to the home. (R. p. 367).²

The Brown House

On September 1, 2017, R-Anell submitted a quote for a house to Homemax’s customers Mr. and Mrs. Brown. The quoted price was \$142,660 but was “subject to verification.” (R. p. 313).

² This included costs of remediating the water damage to the house, paying interest to its floor plan source for the house, paying utilities for the house, paying legal fees to defend litigation ultimately brought against it by the Christofolis, and \$94,000.00 paid by Homemax to the Christofolis to settle the lawsuit.

However, due largely to the ongoing dispute over the problems with the Christofoli House, on February 27, 2018, R-Anell sent a letter notifying Homemax that it was terminating its relationship with Homemax and stating it would not “sell or build any additional retail sold homes for Homemax from the date of [February 23, 2018].” (R. p. 340). At the time R-Anell sent this letter, it had not yet delivered the Brown House. Despite some initial confusion about the status of the Brown House, subsequent to sending this letter, R-Anell clarified it did not intend to abandon the Brown House. (R. p. 109).

As the Brown House neared completion R-Anell’s transportation coordinator Melissa Allen took over the transaction to verify payment terms and coordinate delivery. (R. pp. 122-23). R-Anell’s internal documents, when provided to Ms. Allen, showed the Brown House transaction was to be “COD” (*i.e.*, “cash on delivery”). (R. pp. 130-32). However, Ms. Allen testified that she knew Homemax had never purchased a home COD, but always utilized a floor plan financier. (R. p. 125). Therefore, it came as no surprise, when in a phone call between Ms. Allen and David Fautley (owner of Homemax) several days before the Brown House was planned to ship, Mr. Fautley advised that he had not agreed to COD for the Brown House, but instead that it would be floor planned. (R. p. 125). After this call, Ms. Allen confirmed that the purchase was “pending” with one of Homemax’s floor plan financiers. (R. p. 126).

Ordinarily, R-Anell would not ship a home until Ms. Allen confirmed that the floor plan financing had been approved. (R. p. 111). In this case when Ms. Allen went to check the floor plan status, she confused the Brown House with a recent prior purchase from Homemax that had a similar serial number. (R. p. 112). Under the mistaken belief that the floor plan had been approved on the Brown House, R-Anell shipped the Brown House to Homemax. (R. p. 111). Because shipment would not typically occur prior to floor plan approval, since the Brown House was

shipped, all parties believed the floor plan was approved, and R-Anell did not expect or request payment on delivery. *See* (R. p. 79) (In explaining why no money was collected on delivery Phillip Hathcock, general manager of R-Anell, testified it was because a “floor plan [financier] was supposed to pay for it **not COD.**”) (emphasis added); *see also* (R. p. 117) (explaining why funds were not demanded on delivery, Albert Gurner testified that R-Anell was of the expectation that the house was to be paid by a floor plan financier and that as a result “**we weren’t looking for a COD check at that point.**”) (emphasis added); (R. pp. 125-26) (Melissa Allen testified that she spoke with Mr. Fautley—the owner of Homemax—and both she and Mr. Fautley were of the understanding the Brown House would be financed through a floor plan financier and not COD); *see also* (R. pp. 199-200). (David Fautley testified about the expectation that floor plan financing would pay).

Several months passed before it was discovered that the floor plan financier had not paid for the Brown House. (R. pp. 100-01). Only then did R-Anell seek payment from Homemax on the invoice for the Brown House—although this invoice amount was different than the amount shown on the quote it submitted to Homemax for the Brown House. *See* (R. pp. 313-19). However, by this time, Homemax had incurred substantial damage and costs stemming from the debacle with the Christofoli House—this exceeding the amount demanded by R-Anell for the Brown House—and therefore, Homemax declined to pay. This suit followed.

PROCEDURAL HISTORY & TRIAL COURT RULINGS

R-Anell commenced this action for breach of contract regarding the Brown House. (R. pp. 12-14). Meanwhile, Homemax asserted counterclaims for negligence and breach of contract related to the Christofoli House (R. pp. 15-22). Homemax asserted its damages stemming from the

Christofoli transaction fully offset any amounts it owed to R-Anell for the Brown House. (R. pp. 15-22).

The matter was tried before a jury in Lexington County between June 7 and 10 of 2021. *See* (R. pp. 23-312). During the trial, Homemax attempted to introduce email correspondence between R-Anell and its delivery company dated May 17, 2017—the same day the Christofoli home was delivered—in which the delivery company was complaining the house it carried for R-Anell the day before “had all kinds of problems with [the] plastic” wrapping and as a result the drivers needed additional tape to address these problems. (R. pp. 341-42). Notwithstanding that Homemax’s claim focused on R-Anell’s failure to properly wrap the house, the trial court excluded this evidence on the basis that it was not relevant. (R. pp. 80-82).

At the close of Homemax’s case in chief, the trial court directed a verdict against Homemax on its claim for negligence, reasoning this claim was barred by the economic loss rule. (R. pp. 219-51). To support this, the trial court held that R-Anell had no duties beyond those set forth by contract and therefore, Homemax could not go forward on a cause of action in tort but was limited only to an action sounding in contract. (R. pp. 231-34). Therefore, the jury was never able to consider Homemax’s tort claim.

The jury found in favor of R-Anell on its claim for breach of contract related to the Brown House, and against Homemax on its claim for breach of contract related to the Christofoli House. (R. p. 308). Over Homemax’s objection the trial court awarded R-Anell prejudgment interest from March 24, 2018. (R. pp. 309-10); (R. pp. 147-55). Homemax timely appealed. (R. pp. 401-03).

LAW AND ARGUMENT³

This appeal presents three instances of reversible error. First, this Court should reverse the trial court's award of prejudgment interest because it is inconsistent with established law and unsupported by the evidence. Additionally, or in the alternative, this Court should reverse and remand for a new trial because the trial court erred in finding Homemax could only proceed on a contract theory and directing a verdict against Homemax's tort claim. Finally, this Court should reverse and remand because the trial court abused its discretion in finding that email evidence regarding problems with the Christofoli House and R-Anell's plastic wrapping was not relevant to this matter.

I. The trial court erred in awarding statutory prejudgment interest from March 24, 2018, and therefore, this Court should reverse the trial court's award of statutory prejudgment interest.

The trial court's award of prejudgment interest is inconsistent with established law and unsupported by the evidence. Not only did R-Anell fail to plead statutory prejudgment interest, to allow the trial court's ruling to stand would alter the law to permit statutory prejudgment interest anytime the plaintiff creates an invoice for the amount claimed. The question does not, and should not, turn on whether the plaintiff reduces the amount claimed to an invoice. Instead, the law inquires whether the amount claimed is capable of being reduced to a sum certain based upon the terms of the parties' *agreement*. Moreover, prejudgment interest is only assessable from the time the amount was payable. Here, there is no evidence the amount was payable on March 24, 2018—the date on which the trial court commenced the accrual of interest.

³ Pursuant to Rule 208(b)(1)(D), SCACR the standard of review is addressed separately for each issue on appeal.

A. Standard of Review regarding the trial court’s erroneous award of statutory prejudgment interest.

This Court should reverse where the trial court’s award of prejudgment interest amounts to an abuse of discretion, which occurs when the award “conflicts with . . . established law [or] is not reasonably supported by the evidence.” *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 435-36, 673 S.E.2d 448, 458 (2009). Here the trial court abused its discretion in awarding prejudgment interest from March 24, 2018, because such an award is inconsistent with the law and not reasonably supported by the evidence.

B. Law and Argument regarding the trial court’s erroneous award of statutory prejudgment interest.

“In all cases of accounts stated and, in all cases, wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum.” S.C. Code Ann. § 34-31-20(A). “If pre-judgment interest is pled for in the complaint, it is allowed on obligations to pay money from the time the payment is demandable, either by agreement of the parties or by operation of law, if the sum is certain or capable of being reduced to certainty.” *Tilley v. Pacesetter Corp.*, 355 S.C. 361, 375, 585 S.E.2d 292, 299 (2003) (citation and internal quotations omitted). However, “our Supreme Court held pre-judgment interest should not be included in the judgment [when] it was not pled in the complaint or prayer.” *Dixie Bell, Inc. v. Redd*, 376 S.C. 361, 367, 656 S.E.2d 765, 768 (Ct. App. 2007) (citing *Town of Bennettsville v. Bledsoe*, 226 S.C. 214, 219, 84 S.E.2d 554, 556 (1954)); see also *McMillan v. S.C. Dep’t of Agric.*, 364 S.C. 60, 74, 611 S.E.2d 323, 330 (Ct. App. 2005) (“Pre-judgment interest must be specifically pled in order to be recovered.”) (reversed on other grounds by *McMillan v. S.C. Dep’t of Agric.*, 380 S.C. 212, 214, 670 S.E.2d 368, 369 (2008)).

Here, the trial court erred in awarding statutory prejudgment interest of 8.75% pursuant to S.C. Code Ann. § 34-31-20(A) from March 24, 2018, for three reasons: (1) because R-Anell failed to plead prejudgment interest; (2) because there is no evidence that the amount claimed is for a sum certain based upon calculations previously agreed to by the parties; and (3) because there is no evidence that the amount claimed was payable on March 24, 2018.⁴ Any one of these reasons, standing alone, warrants reversal.

1. R-Anell failed to plead statutory prejudgment interest.

As a threshold matter, R-Anell failed to plead a request for statutory prejudgment interest in its complaint. Rather, R-Anell's complaint alleges that contractual interest had accrued at the rate of 7% (not the statutory rate). (R. pp. 12-14). R-Anell's complaint is otherwise devoid of a claim for prejudgment interest pursuant to § 34-31-20(A). *Accord* (R. p. 151) (R-Anell conceding the 7% interest, as referenced in the complaint, "actually, **that is not the statutory prejudgment interest.**") (R. p. 151, lines 24-25) (emphasis added). At the close of R-Anell's case, Homemax moved for directed verdict on R-Anell's claim for interest. (R. pp. 147-54). To this the trial court found, and R-Anell conceded that the interest it prayed for in the complaint (*i.e.*, 7%) "is not a contract term [and] it doesn't derive from anywhere else." (R. p. 152). Consequently, the trial court determined it was "not appropriate" for R-Anell's claim for prejudgment interest to go before the jury but would be considered, if at all, by the court at the conclusion of the case. (R. pp. 152-53); *see also* (R. pp. 306-07) (wherein the court declined a question from the jury asking whether it could add interest).

⁴ There were 1,174 days between March 24, 2018, and June 10, 2021. Although not specifically set out in the Order, the trial court's calculation of interest "from March 24, 2018, to the date of judgment" is apparently calculated as daily interest on the verdict amount multiplied by these 1,174 days: *i.e.*, $((\$142,292.80 * 0.0875)/365) * 1,174 = \$40,046.65$.

While ordinarily the question of statutory prejudgment interest under Section 34-31-20(A) is a matter to be determined by the court, the trial court erred in awarding such interest in this case because R-Anell never pled it. *See Dixie Bell*, 376 S.C. at 367, 656 S.E.2d at 768 (“our Supreme Court held pre-judgment interest should not be included in the judgment because it was not pled in the complaint or prayer.”). The only interest R-Anell pled was contractual in nature for which it ultimately conceded was not supported by the evidence. (R. p. 151). (R-Anell conceding the 7% interest, as referenced in the complaint, “actually, **that is not the statutory prejudgment interest.**”); *accord* (R. pp. 12-14). Having failed to plead statutory interest under Section 34-31-20(A) the trial court committed reversible error in awarding such interest.

2. *The trial court erred in awarding statutory prejudgment interest because the amount claimed was not a sum certain as required by law.*

Second, and notwithstanding that R-Anell did not plead statutory prejudgment interest, there is no evidence that the amount claimed was for a sum certain based upon calculations previously agreed to by the parties. “[O]ur Supreme Court [has] explicated the sum certain requirement for prejudgment interest” by stating that “prejudgment interest is allowed on a claim of liquidated damages; *i.e.*, the sum is certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties.” *Dixie Bell*, 376 S.C. at 370, 656 S.E.2d at 769 (*citing Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 258-59 (2006)).

In this case, the trial court conflates the existence of an invoice with creating a *per se* entitlement to prejudgment interest. *See e.g.*, (R. pp. 311-12). The test is not whether there is an invoice for the amount claimed, but whether the amount due is capable of being made certain “by mathematical calculation previously agreed to by the parties.” *Id.* Had the legislature intended to make prejudgment interest dependent upon the plaintiff merely generating an invoice it could have

drafted Section 34-31-20 to say as much. But it did not. *Accord e.g., Hinton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 357 S.C. 327, 333-42, 592 S.E.2d 335, 339-43 (Ct. App. 2004) (recognizing that the intent of a statute is to be gleaned from the language employed by the legislature and applying the principle of *inclusio unius est exclusio alterius*—the inclusion of one is the exclusion of another).

While an invoice *could be* evidence that the claim is for a sum-certain, an invoice alone is not determinative. Instead, the question is whether the prior *agreement* of the parties establishes the amount to be for a sum certain or “liquidated” amount. *See Dixie Bell*, 376 S.C. at 370, 656 S.E.2d at 770 (recognizing that a liquidated sum is “an amount contractually stipulated to” while an unliquidated sum “cannot be determined by a fixed formula.”); *citing Lewis v. Congress of Racial Equality*, 275 S.C. 556, 274 S.E.2d 287 (1981) and *Beckman Concrete Contractors, Inc. v. United Fire and Cas. Co.*, 360 S.C. 127, 131-132, 600 S.E.2d 76, 78-79 (Ct. App. 2004) (italics added for comparison) (internal modifications omitted).

In this case the only evidence presented at trial of an agreement between the parties regarding the Brown House was a September 2017 “quote” purportedly accepted by Homemax in the amount \$142,660.80. (R. pp. 313-16). However, the terms of this quote specifically state: “Price [is] subject to verification.” (R. at *id.*). The process of “verification” is not defined in the quote and there is no evidence that this verification process—whatever it might be—is a formula by which the agreed upon price could be mathematically calculated to a certain sum. *Contra Dixie Bell*, 376 S.C. at 370, 656 S.E.2d at 769 (holding that a sum certain must be mathematically calculable based upon a formula agreed to by the parties).

The fact that there was no sum certain amount here is further demonstrated by the fact that the price reflected on the quote is different than the amount reflected in the invoice for the Brown

House. *Compare* (R. pp. 313-16) (the “quote” for the Brown House reflecting an amount of \$142,660.80) *with* (R. pp. 317-19) (the invoice for the Brown House reflecting an amount of \$142,292.80). If the amount at issue here were truly for a sum-certain, as required by statute, then the discrepancy between the amount of the quote and the amount of the invoice would be attributable to some mathematical formula agreed to by the parties. However, that is not the case. Instead, R-Anell’s witness conceded at trial it could not explain the difference. (R. p. 44); (R. p. 78). If R-Anell cannot explain why the price on the invoice is different than that reflected in the quote, then it cannot logically follow that there was an agreement between the parties by which the price could be reduced to a sum certain. *See Dixie Bell*, 376 S.C. at 370, 656 S.E.2d at 769 (holding it must be that the “sum is certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties.”).⁵

Therefore, because R-Anell failed to present evidence that the amount was for a sum certain, the trial court’s award of prejudgment interest was error and should be reversed. But there is more.

3. *The trial court erred in awarding statutory prejudgment interest because there is no evidence the amount claimed was payable as of March 24, 2018.*

Notwithstanding the reasons articulated *supra*, even assuming for the sake of argument that the amount R-Anell claimed was for a sum certain, the trial court nonetheless erred in awarding statutory prejudgment interest from March 24, 2018, because there is no evidence the amount was payable on March 24, 2018.

⁵ The terms of the invoice itself lend further support to the conclusion that the amount sought was not for a sum certain. For example, the invoice document specifically states: “This invoice price may be subject, if earned to Manufacturer’s Volume Rebate Programs.” (R. p. 317).

Statutory prejudgment interest may only be applied from the time the payment was due. *See Tilley*, 355 S.C. at 375, 585 S.E.2d at 299 (“If pre-judgment interest is pled” it is permitted only “**from the time the payment is demandable**, either by agreement of the parties or by operation of law.”) (emphasis added). A claim for prejudgment interest is properly denied where there is no evidence of any specified time for when the account is due or where there is no evidence the parties “agreed to a contract price” before the plaintiff performed. *See S. Welding Works, Inc. v. K & S Constr. Co.*, 286 S.C. 158, 164, 332 S.E.2d 102, 106 (Ct. App. 1985) (providing that statutory prejudgment interest requires “(1) that the account is actually stated; and (2) that the parties either expressly or impliedly agreed that it is a true statement and is due to be paid then or at some other specified time”); (citing *Wakefield v. Spoon*, 100 S.C. 100, 84 S.E. 418 (1915)).

The trial court’s grant of interest from March 24, 2018, was error because the evidence does not establish the amount (assuming *arguendo* it was a sum certain) was due on this date. *Contra* S.C. Code Ann. § 34-31-20(A) (requiring the amount claimed be both for sum certain, “and due”); *see also S. Welding Works*, 286 S.C. at 164, 332 S.E.2d at 106 (holding the amount must be “due to be paid then or at some other specified time.”). Presumably, R-Anell contends the amount was due on March 24, 2018, because the invoice for the Brown House bears this date with the designation COD (*i.e.*, “cash on delivery”). However, the evidence is undisputed that at the time R-Anell shipped the Brown House, neither it nor Homemax intended or agreed that COD was an agreed upon term of the transaction. In fact, the opposite is true.

There is no dispute where COD is a term of the sale, R-Anell demands payment be remitted directly to the delivery driver at or prior to the driver delivering the home to Homemax. (R. pp. 104-06)(Albert Gurner testified on behalf of R-Anell that when the terms of the sale are “COD” it would mean “the driver is supposed to get the funds before he unhooks the house”); (R. pp. 115-

16) (Mr. Gurner testified that COD means “the transport driver should pick up the check at the time that they are delivering the house to the site.”). However, that did not occur here because the undisputed evidence was that neither R-Anell nor Homemax agreed or believed the purchase to be on COD terms. To the contrary, all parties believed the payment would be through floor plan financing not COD. *See* (Trans. p. 79) (In explaining why no money was collected on delivery, Phillip Hathcock, general manager of R-Anell, testified it was because a “floor plan [financier] was supposed to pay for it **not COD.**”) (emphasis added); *see also* (R. p. 117) (explaining why funds were not demanded on delivery Albert Gurner testified that R-Anell was of the expectation that the house was to be paid by a floor plan financier and that as a result “**we weren’t looking for a COD check at that point.**”) (emphasis added); (R. pp. 125-26) (Melissa Allen testified that she spoke with Mr. Fautley—the owner of Homemax—and both she and Mr. Fautley were of the understanding the Brown House would be financed through a floor plan financier and not COD).⁶

The evidence as presented by R-Anell leaves only one logical inference—the designation of COD on the invoice was incorrect. (R. pp. 125-26). Prior to the shipment of the Brown House both R-Anell and Homemax were of the mutual understanding that payment would be through a floor plan financier. (R. at *id.*). Mr. Gurner testified the only reason the Brown House was delivered by R-Anell on March 24, 2018, was because R-Anell was under the mistaken belief that the floor plan financing had been approved. (R. pp. 117-18) (explaining this as a “terrible oversight by Ms. Allen.”). This is significant because the law requires that “the parties either expressly or impliedly agreed that [the amount] is due to be paid then or at some other specified time.” *S. Welding Works*, 286 S.C. at 164, 332 S.E.2d at 106. In this case the evidence makes plain that was no agreement

⁶ In testifying for R-Anell, both Jeremy Crosby (R. p. 102) and Melissa Allen (R. p. 125) conceded that Homemax had never purchased a home from R-Anell on COD terms before.

between the parties that the amount was payable on March 24, 2018. It is axiomatic that R-Anell's mistaken belief that the floor plan financing had been approved cannot take the place of the mutual agreement required by law.

Furthermore, the evidence presented by R-Anell is that "it didn't even realize the Brown House hadn't been paid for until months after it shipped." (R. pp. 100-01). Thus, there can be no inference that R-Anell demanded payment on March 24, 2018, if itself was unaware the floor plan financier had not issued payment until several months later. *See Smith-Hunter Constr. Co. v. Hopson*, 365 S.C. 125, 128, 616 S.E.2d 419, 421 (2005) (recognizing that interest is payable from the time payment is demandable) (citing *Babb v. Rothrock*, 310 S.C. 350, 426 S.E.2d 789 (1993)).

Finally, it bears mention that the terms of the invoice itself are inconsistent with the conclusion that payment was due on March 24, 2018. For example, the invoice states that payment should be remitted to R-Anell at its office in Cherryville, North Carolina. (R. pp. 317-19). Such delivery of payment by mail is inconsistent with the sale being COD which R-Anell testified would require payment be remitted immediately to the driver on delivery. Moreover, the face of the invoice states "This invoice is Due Upon Receipt **unless** the customer has special terms." (R. p. 317) (emphasis added). In this case, those special terms were R-Anell's and Homemax's understanding that the sale was to be financed through a floorplan financier. *Compare* (R. pp. 322-25) (the invoice for the Christofoli House—which was undisputedly floor plan financed—bears the same designation of "Due Upon Receipt unless [there are] special terms"). These facts serve to further demonstrate that there was no agreement between the parties that payment was due on March 24, 2018. *Contra Tilley*, 355 S.C. at 375, 585 S.E.2d at 299 ("If pre-judgment interest is pled" it is permitted only "**from the time the payment is demandable**, either by agreement of the parties or by operation of law.") (emphasis added).

In sum, there is no evidence to support the trial court's assumption that the parties agreed payment was due on March 24, 2018—this being an indispensable requirement to an award of statutory prejudgment interest. Therefore, the trial court's award of prejudgment interest from this date is reversible error.

II. The trial court erred in directing a verdict against Homemax's claim for negligence based on the economic loss rule. This Court should reverse and remand so that Homemax may submit its tort claim to the jury.

The trial court committed reversible error in directing a verdict against Homemax's negligence claim based on the economic loss rule. It was an error of law for the trial court to base its directed verdict on the incorrect conclusion that R-Anell had no duties other than those arising by contract. Not only has the Supreme Court exempted residential construction from the economic loss rule, but South Carolina's Code of Laws and Code of Regulations impose legal duties on R-Anell as a manufacturer of modular homes to the same extent as a contractor, engineer, architect, or other construction or design professional. Therefore, an action in tort may be pursued against R-Anell.

A. Standard of Review regarding the trial court's erroneous grant of directed verdict based on the economic loss rule.

“In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference, or its inference is in doubt.” *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006); *citing Jinks v. Richland County*, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003). “The appellate court will reverse the trial court's ruling on a JNOV motion only when there is no evidence to support the ruling or where the ruling is controlled by an error of law.” *Id.* at 434-

35, 629 S.E.2d at 648; citing *Hinkle v. Nat'l Cas. Ins. Co.*, 354 S.C. 92, 96, 579 S.E.2d 616, 618 (2003).

B. Law and Argument regarding the trial court's erroneous grant of directed verdict based on the economic loss rule.

Traditionally, the economic loss rule marks the distinction between actions which lie in tort and actions which lie in contract. See *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 54, 463 S.E.2d 85, 88 (1995) (recognizing that “the economic loss rule maintains the dividing line between tort and contract”) (internal quotations omitted). While some states use the economic loss rule to prohibit all recovery of purely economic damages in tort, that is not the case in South Carolina. *Id.* at 54, 463 S.E.2d at 88. Instead, South Carolina “has long recognized tort action [is permitted even] when the damages are purely economic.” *Id.* (“Purely ‘economic loss’ may be recoverable under a variety of tort theories.”).

Generally, “the economic loss rule simply states that there is no tort liability for a product defect if the damage suffered is only to the product itself.” *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 341, 384 S.E.2d 730, 734 (1989) (stating the traditional application would provide “tort liability only lies where the damage done is to other property or is personal injury”). *Id.* However, where the “product” is a residential home, the Supreme Court has held the economic loss rule will not exclude tort liability simply because the damage is limited to the home—*i.e.*, the “product itself”—despite such damage being traditionally a purely economic loss. *Kennedy*, at 347, 384 S.E.2d at 737-38. In the context of a residential home, the “framework [the Supreme Court] adopt[ed] focuses on activity, not consequence.” *Id.* at 345, 384 S.E.2d at 737.

In this way, the name economic “loss” rule is somewhat of a misnomer. Despite what the title of the rule may suggest, its application depends not on the resulting consequence or damage but on the source of the duty from which the damage arose. This is true even outside the context

of a residential construction where the Supreme Court has been clear that “[t]he question thus, is not whether the damages are physical or economic. Rather, **the question of whether the plaintiff may maintain an action in tort for purely economic loss turns on the determination of the source of the duty plaintiff claims the defendant owed.**” *See Griffin*, 320 S.C. at 54, 463 S.E.2d at 88. Where the duty arises exclusively by virtue of a contract, an action will not typically lie in tort. *Id.* However, where the duty would arise independent of the contract, this will support an action in tort. *Id.* at 55, 463 S.E.2d at 88. In the context of a residential home, the builder will be liable to the buyer of the home in tort, regardless of the existence or terms of a contract, where the builder has (among other things) deviated from industry standards. *See Kennedy*, at 347, 384 S.E.2d at 737. (indicating that although these duties may also arise under contract or warranty the law will also impose these duties).

In this case the trial court directed a verdict on Homemax’s claim for negligence because the trial court determined as a matter of law that the “duties arise solely out of the contract between the parties and certainly one part of that contract may be wrapping the [modular home components].” (R. p. 233). This was error.

In 1984 the Legislature enacted the South Carolina Modular Building Construction Act (the “Act”). *See* S.C. Code Ann. §§ 23-43-10 *et. seq.* The Act empowers the State Building Code Council to promulgate regulations which it has done at Article 6 of Title 8 of the South Carolina Code of Regulations. *See* S.C. Code Ann. § 23-43-40; S.C. Code Regs. Ann. §§ 8-600 *et. seq.* (Modular Building Construction); *see also* 24 CFR § 3280 (federal regulations applicable to manufactured home construction and safety standards); 24 CFR § 3281.12 (federal regulations providing certain exceptions for modular homes). By law, no business may sell (whether wholesale or retail) modular building units in South Carolina without being licensed by the Council. S.C.

Code Ann. § 23-43-150; *see also* S.C. Code Regs. Ann. § 8-620(1) (setting forth the licensing requirements for a manufacturer of modular buildings).

In addition to the licensure requirements, South Carolina’s regulations provide that all manufacturers of modular homes, like R-Anell, are subject to the tort liability as contemplated by Section 15-3-630 of the South Carolina Code. *See* S.C. Code Ann. § 15-3-630; S.C. Code of Regs. Ann. § 6-626(1) (“All manufactures . . . to the extent of their work, shall be subject to the provisions of Section 15-3-630.”) Section 15-3-630 contemplates tort actions against architects, engineers, and contractors upon completion of applicable portions of a construction project. Among the types of actions specifically contemplated by this statute are “action[s] to recover damages for economic or monetary loss” as well as actions against “manufacturers of components.” S.C. Code Ann. §§ 15-3-640(4) & (9). Further still, R-Anell itself conceded it was subject to these extra-contractual duties. *See* (R. p. 281, lines 2-8) (R-Anell’s witness Mr. Hathcock conceded, with regards to the Christofoli House, that “this home was subject to the National Manufactured Housing Construction and Safety Standards Act”).

In sum, R-Anell was subject to the duties which arise outside of, and independent from, any contract. That R-Anell may also have such duties by contract does not change the analysis. As a result, the trial court erred in finding Homemax’s tort claim for negligence was barred by the economic loss rule. Therefore, this Court should reverse and remand the matter for a new trial.

III. The trial court erred in excluding relevant email evidence that R-Anell had problems with the waterproof wrapping it put on houses.

The trial court excluded this email evidence on the basis that it was not relevant. (R. p. 82, lines 4-5) (ruling “it is not relevant to the ultimate issue in this case.”). That was error.

A. Standard of Review regarding the erroneous exclusion of evidence.

The admission of evidence is within the discretion of the trial court; however, the exclusion of relevant evidence is an abuse of discretion. *State v. White*, 425 S.C. 304, 311, 821 S.E.2d 523, 527 (Ct. App. 2018) (“Therefore, we find the trial court abused its discretion in excluding the [evidence] because it was relevant[.]”); *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) (“An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.”); *see also Burke v. Republic Parking Sys.*, 421 S.C. 553, 561, 808 S.E.2d 626, 630 (Ct. App. 2017)(recognizing that generally there is “a reasonable probability the jury’s verdict was influenced by the excluded evidence [when] the jury was not permitted to hear and consider all relevant evidence relating to” the issues before it).

B. Law and Analysis regarding the erroneous exclusion of evidence.

Generally, “all relevant evidence is admissible.” *Pagan*, 369 S.C. at 210, 631 S.E.2d at 266; *citing* Rule 402, SCRE and *State v. Saltz*, 346 S.C. 114, 551 S.E.2d 240 (2001). Relevancy is generally accepted to be a low bar. Relevant evidence is defined as “evidence having **any** tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE (emphasis added). “Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears, and it is not required that the inference sought should necessarily follow from the fact proved.” *State v. Sweat*, 362 S.C. 117, 126-27, 606 S.E.2d 508, 513 (Ct. App. 2004). Evidence need only be “logically relevant” and not a necessary element of the case. *Id.*

The email evidence in question is a thread of four emails between R-Anell and the delivery company that delivered the Christofoli House and that were exchanged on the very day the

Christofoli House was delivered. (R. pp. 341-42). The thread begins with a complaint that one of the Christofoli modules, particularly “THE A side is loaded down with parts [and] the driver said this house weight [sic] too big and heavy to be delivering parts” and asks if it is possible to move some parts to the other unit. (R. p. 342). The second half of the email thread recounts an effort on the part of the driver, who would be delivering the Christofoli House, to get additional rolls of tape to use for the purpose of repairing problems with the plastic wrapping during transit. (R. p. 341). The reason the driver needed these additional roles of tape was because he had used all his tape the day before. The email explains; “yesterday they had all kinds of problems with [the] plastic” wrapping on the house they delivered.” (R. p. 341). In response, R-Anell thanks the delivery company for fixing the problems with the plastic wrap the day before and recognizes that “Unfortunately [trouble with the plastic] happens from time to time” and confirming the driver was provided two rolls of tape for the Christofoli delivery. (R. p. 341).

The email thread is relevant for a variety of reasons. First, it outlines that Christofoli unit A—the unit that ultimately suffered damage—was manufactured in such a way that it was unsafe for delivery by being too heavy and/or overloaded with parts. (R. p. 342) (email subject line “40876”); *see also* (R. p. 86) (testimony reflecting unit 40876A was the Christofoli unit that suffered water damage). While the email evidences a request to move some parts from unit A to unit B, there is no response to this inquiry. (R. pp. 341-42). This email correspondence creates several relevant inferences. For example, the unexpected weight of unit A could be the result of it having taken on water damage while in R-Anell’s storage facility prior to delivery to Homemax. *Accord* Rule 401, SCRE (relevant evidence is “evidence having **any** tendency to make the existence of any fact that is of consequence . . . more probable or less probable”) (emphasis added).

Further, this evidence equally gives rise to the inference that damage to Christofoli unit A could have been the result of being transported while in an overloaded state. Finally, this email also gives rise to the inference that if parts were moved from unit A to unit B to correct the overloading problem, that damage to the plastic wrapping could have occurred when these parts were being offloaded from unit A. Any of these inferences demonstrate the relevancy of this email to the facts of this case. *Id. (supra)*.

Secondly, the portion of the email thread discussing problems with the wrapping on the house delivered the previous day is also relevant. Here, R-Anell has conceded that in order to protect the homes from water damage, it has a duty to properly wrap the homes before they are shipped. (R. p. 66) (suggesting this duty arose independent of contract). Moreover, when it comes to the wrapping, R-Anell testified that the Christofoli House was wrapped the same as all the other houses it manufactured and shipped. (R. p. 60) (Phillip Hathcock testified that the Christofoli House was “wrapped . . . just like [] all the other ones that we sent out there.”); (R. p. 69). (Phillip Hathcock conceded “again, I mean, we wrap them all the same way.”); (R. p. 63). (R-Anell conceded it had a duty and obligation to “properly wrap” the houses).

Because R-Anell has equated the propriety of the wrapping on the Christofoli House with the quality of its wrapping on all other houses, it cannot reasonably be said that the quality of the wrapping on the house delivered the day before is not logically or rationally connected to the quality of the wrap on the Christofoli house. *See generally, Toole v. Salter*, 249 S.C. 354, 361, 154 S.E.2d 434, 437 (1967) (“[i]n determining a dispute concerning the relevancy of . . . evidence, the question to be resolved is as to whether there is a logical or rational connection between the fact which is sought to be presented and a matter of fact which has been made an issue in the case.”).

To put it simply, by testifying that its wrapping on the Christofoli House was of the same quality as all other houses, R-Anell directly made the quality of the wrapping on other houses—including the one delivered the day before—relevant, and the email in question speaks directly to this point. The email offers direct evidence that “trouble with the plastic [wrapping]” is not uncommon, but rather something that “[u]nfortunately happens from time to time.” (R. pp. 341-42). Further, this email which is dated the same day that the Christofoli House was shipped provides circumstantial evidence that R-Anell was on notice that homes shipped during this time frame were experiencing problems with the plastic wrapping and it took no additional action to ensure the Christofoli House was not experiencing the same or similar problems. (R. at *id.*).

Moreover, R-Anell testified that the wrapping for the Christofoli House is affixed to the house with mechanical fasteners not tape. (R. p. 65). Yet, despite having knowledge of “trouble with the plastic [wrap]” from the day previous, this email correspondence demonstrates that R-Anell provided tape, rather than mechanical fasteners, to the transportation team to address these problems. (R. pp. 341-42). This, despite R-Anell knowing the Christofoli House would be sitting outside for a period of time because the home site was not ready. (R. pp. 69-70). This serves as, yet another, logical connection rendering the email relevant to the instant case.

Finally, this email creates the inference that rather than fulfilling its duty to ensure the house was properly wrapped, R-Anell simply passed the buck to the delivery company. This email, as well as the inferences it creates, makes it more likely that R-Anell failed to properly wrap the Christofoli House and makes it more likely than not that the damage to the Christofoli House occurred while it was sitting at R-Anell’s facility before it was ever shipped to Homemax. *See* Rule 401, SCRE (“Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable

than it would be without the evidence.”). However, the jury was never given the opportunity to consider this relevant evidence.

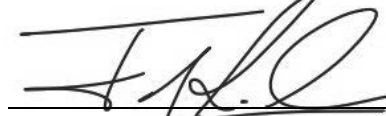
Therefore, the trial court abused its discretion in finding this evidence was not relevant, and this Court should reverse and remand for a new trial.

CONCLUSION

For the reasons stated above this Court should reverse the trial court’s award of prejudgment interest, and additionally, or in the alternative, reverse and remand the matter for a new trial.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2021-000658

R-Anell Housing Group, LLC, Respondent,

v.

Homemax, LLC, Appellant.

Certification of Counsel

The undersigned certifies that the enclosed complies with Rule 211, SCACR.

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court properly grant R-Anell's request for statutory pre-judgment interest pursuant to S.C. Code Ann. § 34-31-20 where the trial court found the evidence presented at trial showed a liquidated amount of \$142,292.80 was due on the contract as of March 24, 2018, and the only arguments made in opposition to the application of statutory pre-judgment interest by Homemax at trial were that this amount due was neither a liquidated amount nor an account stated?
- II. Did the trial court properly grant R-Anell's motion for directed verdict on Homemax's negligence counterclaim on the basis of the economic loss rule, where the mandate of the appellate courts in this State is that, except for narrow exceptions, the economic loss rule applies to bar negligence claims?
- III. Did the trial court properly exclude from evidence an email that is irrelevant to the ultimate issues in this case and is in fact pertinent only to an entirely different modular home that is unrelated to either of the homes at issue in the matter before the trial court?

STATEMENT OF THE CASE

Trial commenced on Respondent R-Anell ("R-Anell")'s claim for breach of contract and Appellant Homemax ("Homemax")'s counterclaims for breach of contract, unjust enrichment, and negligence on June 7, 2021. (Compl., Def. Answer and Counterclaim; *see generally* Trial Transcript) (R. pp. 12-14; R. pp. 15-22; *see generally* R. pp. 23-312). In relevant part to this appeal, at the conclusion of R-Anell's case-in-chief at trial, Homemax moved for directed verdict on R-Anell's request for an award of statutory pre-judgment interest pursuant to S.C. Code Ann. § 34-31-20(A). (Trial Transcript, pp. 268-273 (hereafter, "Tr.")) (R. p. 268, line 15-p. 273, line 25). The Circuit Court denied this motion. (*Id.*, p. 273) (R. p. 152, lines 13-18). At the

conclusion of Homemax's case-in-chief, in relevant part, R-Anell moved for a directed verdict against Homemax's counterclaim for negligence.¹ The trial court granted R-Anell's directed verdict motion as to Homemax's negligence claim. (*Id.*, p. 365-380) (R. p. 219, line 18-p.234, line 12). The jury returned a verdict in favor of R-Anell's breach of contract claim in the amount of \$142,292.80. (*See Verdict*) (*See* R. p. 308 and R. p. 344). R-Anell then moved the trial court to apply the statutory pre-judgment interest rate of 8.75% to the jury's verdict on the breach of contract claim. (Tr., pp. 478-481) (R. p. 309, line 24-p. 312, line 3). The trial court granted this motion. (*Id.*, p. 480-481; *see also* June 11 Order) (R. p. 311, line 19-p. 312, line 3; *see also* R. p. 3-5).

STATEMENT OF FACTS

Respondent R-Anell will state the operative facts briefly, then provide rebuttal to specific statements from Appellant Homemax. Typically, R-Anell and Homemax would enter into a contract in the following manner: Homemax would meet with an end-consumer. (Tr., pp. 57-58) (R. p. 28, line 7-p. 29, line 23). If the end-consumer desired to purchase a home, then Homemax would submit a request for the desired home to R-Anell. (*Id.*). Then R-Anell would issue a quote, which Homemax would sign and return if it agreed to the terms. (*Id.*). Homemax would then sell the home to the end-consumer, with whom it had a separate sales contract. (*See Id.*, pp. 280; 321-322) (R. p. 159, lines 7-18; R. p. 200, line 4-p. 201, line 9).

R-Anell would inform Homemax when the ordered homes were ready to go into production. (Tr., p. 62) (R. p. 31, lines 3-25). If Homemax was not ready to accept delivery on the projected completion date, then R-Anell expected Homemax to inform it so at that time. (*Id.*).

¹ Homemax orally agreed to dismiss its unjust enrichment claim at trial, and R-Anell's other directed verdict motions were denied. (Tr., pp. 365-66; 391; 396-397) (R. p. 219, line 19-p. 220, line 6; R. p. 245, lines 7-11; R. p. 250, line 9-p. 251, line 10).

Two to four weeks prior to completion of the manufacturing process, R-Anell would again follow up to confirm shipment and the method of payment. (*Id.*, p. 66) (R. p. 32, lines 1-13). After R-Anell completed production, it would turn over the modular homes to a third-party shipping company. (*Id.*, pp. 70-71) (R. p. 36, line 21-p. 37, line 11). R-Anell expected modular homes to ship within three-to-five days of production. (*Id.*, p. 68) (R. p. 34, lines 16-20).

Upon receipt of shipment, Homemax was required to sign a delivery inspection form. (*See* Pl. Ex. 14; Tr., pp. 327-328) (R. p. 326; R. p. 205, line 18-p. 206, line 8). Delivery could be made either at Homemax's commercial lot, or the final home site. (Tr., pp. 68-69) (R. p. 34, line 4-p. 35, line 15). R-Anell typically does not have contractual duties after delivery, but it did offer minimal trim services to Homemax due to Homemax's inexperience in the modular home industry. (*See Id.*, pp. 58-59) (R. p. 29, line 9-p. 30, line 21).

Here, Homemax ordered a home for the Christofoli family (hereafter, the "Christofoli Home") in late 2016. (Tr., p. 283) (R. p. 162, lines 2-7). R-Anell and Homemax agree that there was a binding contract between them on the Christofoli Home. (*Id.*, pp. 103; 106) (R. p. 60, lines 15-24; R. p. 63, lines 7-14). R-Anell completed the Christofoli Home on May 4, 2017, but Homemax delayed the delivery date. (*Id.*, p. 210-11) (R. p. 129, line 17-p. 130, line 3). It was shipped on May 17, 2017. (Pl. Ex. 12, R. p. 322-325). An employee of Homemax signed the delivery inspection form on the date of delivery certifying there were no damages to the Christofoli Home upon inspection. (Pl. Ex. 14) (R. p. 326). The Christofoli Home sat on Homemax's lot for 40 days. (Tr., p. 285) (R. p. 161, lines 22-25).

After 40 days, the Christofoli Home was shipped to the final destination. (*See* Tr., p. 362) (R. p. 217, lines 14-18). Upon unwrapping it, Homemax determined the home was water damaged in "Unit A." (*Id.*, p. 288; *See* Homemax Brief, p. 3) (R. p. 167, lines 8-17). R-Anell and

Homemax worked together for some months attempting to remediate the damages to the Christofoli Home. (Tr., pp. 227-228; 236-237; 291) (R. p. 141, line 2-p. 142, line 20; R. p. 145, line 15-p. 146, line 18; R. p. 170, lines 8-21).

During the time while Homemax and R-Anell were working together to remediate the water damage to the Christofoli Home, which R-Anell undertook gratuitously despite no responsibility to do so, Homemax contracted with the Brown family, and it ordered a home from R-Anell in May 2017 (hereafter, the “Brown Home”). (*See* Pl. Ex. 3; Tr., p. 159-160; Tr., p. 321-322) (R. pp. 313-316; R. p. 88, line 18-p. 89, line 5; R. p. 200, line 4-p. 201, line 9). Homemax delayed delivery of that house for approximately 3 months. (Tr., p. 328) (R. p. 306, lines 9-13). Homemax finally authorized delivery of the Brown Home on March 24, 2018. (*See* Pl. Ex. 4) (R. pp. 317-319).

After the Brown Home was delivered, Homemax refused to pay for it. (Tr., pp. 333-334) (R. p. 207, line 2-p. 208, line 25). An invoice issued for the delivery date, which R-Anell submitted to Homemax at or prior to delivery, shows the cost of the Brown Home was \$142,292.80. (*See* Pl. Ex. 4; *See* Tr., pp. 205-206) (*See* R. pp. 317-319; *See* R. p. 124, line 20-p. 125, line 13). Homemax’s president, David Fautley, testified that at the time of ordering the home, he intended to pay for it, but he later decided that he would not pay for it, claiming it was due to the money Homemax spent on remediation for the Christofoli Home. (Tr., pp. 333-334) (R. p. 207, line 2-p. 208, line 25). The subject lawsuit followed.

R-Anell disputes several statements in Homemax’s Statement of Facts, as set forth below. R-Anell disputes that the description of the purchasing and ordering conduct between R-Anell and Homemax was a “course of dealing,” which is a legal conclusion unsupported by Homemax’s citations. (*See* Homemax Brief, p. 2 (hereinafter, “Homemax Br.”)).

Homemax incorrectly suggested that it was assumed that every modular home for Appellant was financed through a floor plan. (Homemax Br., p. 2). Rather, the testimony was that R-Anell called for each sale to determine how the dealer intended to pay. (Tr., pp. 79-80; 204) (R. p. 45, line 7-p. 46, line 4; R. p. 123, lines 1-25). R-Anell also submitted due-upon-receipt invoices with all modular homes, regardless of payment method. (*Id.*, pp. 205-206; *see* Pl. Ex. 4, *see* Pl. Ex. 12) (R. p. 124, line 20-p. 125, line 13; R. pp. 317-319; R. pp. 322-325).

Few of the statements Homemax made in its brief regarding the wrapping and transport are supported by the record. R-Anell applied a temporary plastic intended only for transport. (Tr., p. 139) (R. p. 84, lines 6-21). To be clear, R-Anell was not responsible for delivering the modular homes to their “final destination,” and the testimony and evidence is that R-Anell handed off the modular units to a third-party carrier. (*See Id.*, p. 117) (R. p. 115, lines 5-9). The testimony also demonstrated that sometimes modular homes were delivered to the end-consumer’s lot, while other times the modular homes were delivered to the Homemax’s lot. (*Id.*, pp. 68-69) (R. p. 34, line 7-p. 35, line 15). In addition, while R-Anell hired contractors to do minimal trim services for some houses, which is not at issue here, the testimony was that this was not standard and only done for inexperienced dealers like Homemax. (*See Id.*, p. 58-59) (R. p. 29, line 9-p. 30, line 21).

It was not R-Anell’s fault that the modular units for the Christofoli Home were not able to ship in a timely manner, nor is it true that R-Anell forced shipment for “budgetary and accounting purposes.” (*See* Homemax Br., p. 3). Homemax’s deliveries were chronically late shipping due to Homemax’s own delays. (*See* Tr., pp. 168-169; 201-202) (R. p. 91, line 7-p. 92, line 19; R. p. 120, line 11-p. 121, line 9). It was not a favor to R-Anell for Homemax to accept delivery at its commercial lot; this was expected if the end-consumer’s lot was not ready once the

modular home was complete. (*See Id.*).

There is no reasonable calculation of damages that would result in Homemax having suffered \$203,301.96 in damages. (*See Homemax Br.*, p. 3). Even at trial, counsel for the Homemax admitted that Homemax could only recover \$110,000, and that included a \$30,000 claim for lost profits for which there was essentially no evidence presented. (Tr., pp. 316-317) (R. p. 195, line 4-p. 196, line 7).

Contrary to the statement in Homemax's brief, there was no possibility that R-Anell might have intended "to abandon the Brown Home" after R-Anell terminated the volume dealer relationship with Homemax. (*Homemax Br.*, p. 4). The testimony at trial established that R-Anell had already completed the Brown Home at the time it terminated the volume dealer agreement. (*See Tr.*, pp. 84; 190-191) (R. p. 48, lines 6-13; R. p. 109, line 10-p. 110, line 11). The only reason it did not ship earlier was because, yet again, Homemax delayed delivery. (*See Id.*, pp. 201-202) (R. p. 120, line 11-p. 121, line 9).

On the matter of whether the Brown Home was to be COD ("cash-on-delivery") or floor-plan financed, Homemax omits the testimony that someone from Homemax had to have asked for the home to be paid COD at some point prior to production, then later changed it to floor plan. (Tr., pp. 205-206, R. p. 124, line 15-p. 125, line 13). That testimony indicates Homemax was a cause of the confusion regarding payment. (*See Id.*). And while Homemax claims in its brief that "all parties believed the floor plan was approved," Homemax's president knew at the time it was not approved, and it was never going to be approved. (*Homemax Br.*, p. 5; Tr., pp. 325-326; 334) (R. p. 203, line 2-p. 204, line 21; R. p. 208, lines 13-18).

R-Anell disputes that it was "months" before it sought payment from Homemax on the Brown Home. (*See Homemax Br.*, p. 5). The evidence is that payment was due on delivery,

whether by COD or floor-plan. As the date on the invoice and the testimony both indicate, the invoice was generated and the price was transmitted to Appellant on or before the date of delivery. (Pl. Ex. 4; Tr., pp. 205-206) (R. p. 317-319; R. p. 124, line 20-p. 125, line 13). Mr. Fautley testified R-Anell got paid “up front” on floor-planned units, and COD payments were to be demanded at delivery. (Tr., pp. 287; *see also* Tr., pp. 196-197) (R. p. 166, lines 7-12; *see also* R. p. 115, line 19-p. 116, line 5). The testimony was that R-Anell understood something had gone wrong regarding payment and followed up with Homemax approximately three weeks after delivery. (*Id.*, pp. 85-86) (R. p. 49, line 15-p. 50, line 3).

Homemax misstates the testimony and evidence regarding payment for the Brown Home, and the amount spent by Homemax on the Christofoli Home in the months following the delivery of the Brown Home. (*See* Homemax Br., p. 5-6). As of March 24, 2018, though Homemax claims it spent an amount “exceeding the amount demanded” by R-Anell for the Brown Home in its brief, Homemax only spent approximately \$9,000 on remediation of the Christofoli Home water damage by that time. (*See* Pl. Ex. 24; *See* Tr., pp. 351-358) (*See* R. pp. 327-330; *See* R. p. 209, line 13-p. 216, line 24). The remaining expenses were costs that it would have incurred regardless of the water damage issue. (*See* Tr., pp. 399-402; *See* Pl. Ex. 24) (*See* R. p. 253, line 9-p. 256, line 19; *See* R. pp. 327-330). By comparison, R-Anell had spent a little more than \$44,000. (Tr., p. 152; *See* Pl. Ex. 26) (R. p. 86, lines 19-22; *See* R. pp. 331-332). Homemax did not suffer the bulk of its supposed “damages” until it settled the Christofoli lawsuit in 2019. (*See* Pl. Ex. 24) (R. pp. 327-330). Homemax later sold the Christofoli Home and lot for \$280,000. (*See* Pl. Ex. 24) (R. pp. 327-330).

ARGUMENTS

I. The trial court properly found that the jury award was a liquidated sum certain and

therefore properly applied statutory pre-judgment interest pursuant to S.C. Code Ann. § 34-31-20, and any argument as to the pleadings should not be considered by this Court because those arguments were neither raised nor ruled upon in the trial court.

A. Standard of Review

As to the statutory interest issue, “[t]he award of prejudgment interest will not be disturbed on appeal unless the trial court committed an abuse of discretion.” *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 435, 673 S.E.2d 448, 457-58 (2009) (citing *Jacobs v. Am. Mut. Fire Ins. Co.*, 287 S.C. 541, 544, 340 S.E.2d 142, 143 (1986)). “An abuse of discretion occurs when the circuit court’s rulings ‘either lack evidentiary support or are controlled by an error of law.’” *Holmes v. Haynsworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 635, 760 S.E.2d 399, 407 (2014) (citing *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012)).

B. Argument

Homemax set forth three grounds for its contention that the trial court improperly applied pre-judgment interest under S.C. Code Ann. § 34-31-20(A): (1) that the prejudgment interest was not pleaded; (2) that the amount requested at trial was not a sum certain as required by law; and (3) that there was no evidence the amount claimed was payable as of March 24, 2018. (*See generally* Homemax Br., p. 7-16). None of these arguments has merit. The trial court did not abuse its discretion in awarding statutory prejudgment interest to R-Anell.

“In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum.” S.C. Code Ann. § 34-31-20(A). Prejudgment interest may be awarded by the court “when a monetary obligation is a sum certain, or is capable of being reduced to certainty, accruing from the time payment may be demanded either by the agreement of the parties or the operation of law.” *Historic Charleston Holdings,*

381 S.C. at 435, 673 S.E.2d at 457 (citing *Butler Contr., Inc. v. Court St., LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 259 (2006)). “The fact that the sum due is disputed does not render the claim unliquidated for the purposes of an award of prejudgment interest.” *Babb v. Rothrock*, 310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993). “The proper test for determining whether prejudgment interest may be awarded is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose.” *QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 205, 600 S.E.2d 105, 109 (Ct. App. 2004) (citing *Babb*, 310 S.C. at 353, 426 S.E.2d at 791.).

1. R-Anell properly requested statutory interest, but to the extent it may not have done so, Homemax waived its pleading argument by failing to raise the issue at trial.

Contrary to Homemax’s contention that R-Anell has failed to adequately plead its request for pre-judgment interest, R-Anell did plead its request for interest in its Complaint. (*See* Homemax Br., pp. 9-10). R-Anell was not required to do so, however, as it pleaded a sum certain contract. Furthermore, even if R-Anell failed to meet the pleading burden, Homemax raises this argument for the first time on appeal, and this Court should refuse to consider it.

As an initial matter, the Supreme Court has held that “while pre-judgment interest must be pled in order to be recovered, *except in* cases involving an agreement to pay a sum certain...” *Calhoun v. Calhoun*, 339 S.C. 96, 102, 529 S.E.2d 14, 18 (2000) (emphasis added); *see also* *Dixie Bell, Inc. v. Redd*, 376 S.C. 361, 367, 656 S.E.2d 765, 768 (Ct. App. 2007) (explaining *Calhoun* as “finding pre-judgment interest must be pled absent an agreement to pay a sum certain.”). This case involves a sum certain, as R-Anell addresses in the section below, so R-Anell need not have pleaded prejudgment interest at all. For now, it suffices to say this was pleaded as a sum certain of \$142,292.80 in R-Anell’s Complaint, and this was the exact award

rendered by the jury prior to the application of interest. (*See* Compl., ¶ 9; *see also* Verdict,) (*See* R. p. 13; *see also* R. p. 308 and R. p. 344).

Further, even if R-Anell was required to plead prejudgment interest, it did so by requesting prejudgment interest on its actual damages in both its pleadings and its prayer for relief. (*See* Compl., ¶ 16 and Wherefore Clause) (R. pp. 13-14) (“Plaintiff is entitled to an award for actual damages, with interest thereon, for Defendant’s breach of contract.”)).² The South Carolina Rules of Civil Procedure require only notice pleading, and Homemax cannot reasonably say that it had no notice that R-Anell intended to pursue prejudgment interest on the Brown Home contract in this matter. *See Patton v. Miller*, 420 S.C. 471, 492, 804 S.E.2d 252, 263 (2017) (stating that “[t]oday, however, we operate under the far more flexible notice pleading provisions of the Rules of Civil Procedure); *see also Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 33, 530 S.E.2d 369, 371 (2000) (citing Rule 8(f), SCRCF for the proposition that “[p]leadings are to be liberally construed ‘to do substantial justice to all parties.’”). Homemax cited no case law holding that a plaintiff must invoke the statute in its pleadings to request prejudgment interest at trial.

Even if Homemax was correct on the law, and even if Homemax was correct that R-Anell had not sufficiently pleaded prejudgment interest, Homemax’s argument was not preserved for appeal. To preserve an issue for appeal, “the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments.” *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716,

² Homemax claims counsel for R-Anell “conceded” that the interest pleaded in the Complaint was not statutory prejudgment interest. (Homemax Br., p. 9). This a complete misrepresentation of the trial transcript. (*See* Tr., p. 272-273) (*See* R. p. 151, line 16-p. 152, line 14) (stating that R-Anell is entitled to 8.75% interest by operation of law, but whether there was a contract for 7% interest could be an issue for the jury.).

724 (2000). Counsel for Homemax had two opportunities to address the statutory prejudgment interest argument at trial: Once on Homemax's directed verdict that was denied, and the other at the conclusion of trial. (Tr., pp. 268-273; 478-481) (R. p. 147, line 15-p. 152, line 25; R. p. 309, line 24-p. 312, line 3). In both instances, Homemax argued only that the contract between Homemax and R-Anell was not a "sum certain" or an "account stated." (*Id.*). Homemax never argued the pleading issue, and so this argument is unpreserved and inappropriate for consideration on appeal.

For the foregoing reasons, Homemax has no argument that R-Anell failed to properly plead the statutory interest it requested, and the court granted pursuant to S.C. Code Ann. § 34-31-20(A).

2. The contract for the Brown Home was for a sum certain.

Homemax next maintains the Brown Home contract was not for a sum certain. (Homemax Br., p. 11-12). Homemax's argument appears to be that because R-Anell drafted the invoice it submitted for delivery of the Brown Home in March 2018, and because the price on the invoice was slightly lower than the original quoted price for the Brown Home in September 2017, the contract cannot be for a sum certain. (*Id.*). This argument fails to consider the leading decision in this State on liquidated sums and sums certain, and the law under the Uniform Commercial Code, as adopted by this State, that underlies the contract for the Brown Home.³

A claim is for a liquidated sum certain, if the damages claimed are "certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties. *Butler Contracting, Inc. v. Court St., LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 259

³ The court charged the jury, upon consent of the parties, that the UCC governs this contract. (*See, e.g.*, Tr., pp. 407; 464-465) (*See, e.g.*, R. p. 257, lines 8-14; R. p. 295, line 23-p. 296, line 3).

(2006) (internal citations omitted). In *Butler*, the Supreme Court further explained that “the fact that the amount due is disputed by the opposing party does not render the claim unliquidated for the purposes of an award of prejudgment interest,” and “[t]he proper test for determining whether prejudgment interest may be awarded is whether the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose.” *Id.* at 133, 259. “[I]t is the character of the claim and not the defense to it that determines whether prejudgment interest is allowable.” *Id.* at 134, 259.

The March 24, 2018 invoice controls the terms of agreement. Terms in a confirmatory memorandum are the final expression of the terms between the parties. S.C. Code Ann. § 36-2-202. Terms in a written confirmation between merchants are part of the contract unless: “(2)(a) the offer expressly limits acceptance to the terms of the offer; (b) they materially alter it; or (c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.” S.C. Code Ann. § 36-2-207(1)-(2). A term “materially alters” the contract if it results “in surprise or hardship if incorporated without express awareness by the other party.” S.C. Code Ann. § 36-2-207, Cmt. 4. “If no answer is received within a reasonable time after additional terms are proposed, it is both fair and commercially sound to assume that their inclusion has been assented to.” S.C. Code Ann. § 36-2-207, Cmt. 6.

Homemax claims the “trial court conflates the existence of an invoice with creating a *per se* entitlement to prejudgment interest.” (Homemax Br., p. 10). But the invoice here did not merely “exist.” The testimony at trial indicated that the March 24, 2018 invoice was sent to Homemax at or prior to delivery of the Brown Home units. (Tr., pp. 205-206) (R. p. 124, line 20-p. 125, line 13). Homemax’s pleadings admit that it received the invoice. (Def. Answer and Counterclaims, ¶ 9) (R. p. 16) (“Defendant admits only that Plaintiff has submitted an invoice to

Defendant for the Home.”)). The invoice set forth a price of \$142,292.80. (Pl. Ex. 4) (R. pp. 317-319). As Homemax notes, the September 2017 quote for the Brown Home states that the price is subject to verification. (Pl. Ex. 3) (R. p. 313-316). The March 24, 2018 invoice is the verification of the price quotation. (*See* Pl. Ex. 4) (*See* R. p. 317-319). Homemax’s complaint on appeal that there was no “mathematical formula” for calculation of the price misses the mark, as there was no need for a mathematical formula: R-Anell confirmed the price by sending the confirmatory invoice, which it is entitled to do under the UCC. S.C. Code Ann. § 36-2-202; S.C. Code Ann. § 36-2-207.

The only question, then, is whether the adjusted price term is violative of any of the three criteria listed above in Section 2-207 such that it cannot become part of the contract between the parties. If it does not violate any of the three, then it becomes the written expression of the agreement between the parties. There was no evidence submitted at trial that the contract for the Brown Home was specifically limited to the terms of the original offer. In fact, the price was explicitly subject to later verification. (*See* Pl. Ex. 3) (R. pp. 313-316) (“Quote: Price subject to verification.”)). There was no evidence at trial of notification of objection given by Homemax to R-Anell after receipt of the invoice, whether due to price or otherwise. David Fautley, president for Homemax, admitted at trial that he accepted delivery of Brown Home modular units, never objected to delivery, never later rejected delivery, and that R-Anell had consistently demanded the principal amount of \$142,292.80 since delivery. (Tr., pp. 325-326; 334,) (R. p. 203, line 18-p. 204, line 21; R. p. 208, lines 19-25). These unconvertible facts resolve at least concerns of Section 2-207(2)(a) and (2)(c).

The remaining question is whether a \$368 (approximately 0.2%) downward adjustment from the quotation price to the verified price in the March 24, 2018 invoice materially altered the

contract such that it resulted “in surprise or hardship” to Homemax. *See* S.C. Code Ann. 36-2-207, Cmt. 4. The appellate courts of South Carolina have not addressed a UCC case in which a downward price adjustment in a final confirmatory memorandum was at-issue, but one other court has held that a downward adjustment in price is not a material alteration resulting in surprise or hardship to the buyer. *Wildwood Indus. v. Genuine Mach. Design, Inc.*, 2007 U.S. Dist. LEXIS 77165, at *21 (N.D. Ind. Oct. 15, 2007) (stating “[t]he price of the machines reflected in the Purchase Order was approximately two percent less than the price reflected in the Machinery Quotation. These alterations did not affect the terms of the agreement to such a degree that the Purchase Order would be interpreted to reject the initial offer.”). It is hard to imagine that a buyer could successfully plead surprise or hardship under any circumstances when they receive a 0.2% discount on a product for which they contracted to purchase. The verified price in the invoice is therefore is not a material alteration to the contract.

Under the UCC, then, the March 24, 2018 invoice is a final expression of the agreement between the parties as to price. (*See* Pl. Ex. 4) (R. pp. 317-319). That Homemax fails to cite a single UCC provision in its brief despite both parties arguing extensively upon it at trial on this point is telling. The invoice price of \$142,292.80 is a sum certain as of March 24, 2018, as it fixes the “measure of recovery... at the time the claim arose.” *QHG of Lake City*, 360 S.C. at 205, 600 S.E.2d at 109 (Ct. App. 2004) (citations omitted). The trial court correctly pointed out that this is exactly the liquidated sum that the jury rendered its verdict upon. (Tr., pp. 480-481) (R. p. 311, line 19-p. 312, line 3).

Therefore, Homemax’s argument that the contract price was not a sum certain, and the application of statutory prejudgment interest was an error of law by the trial court, is unavailing.

3. The amount claimed on the Brown Home was due and payable as of March 24, 2018.

Homemax argues that there is no evidence the contract price of \$142,292.80 was demandable as of the date of delivery on March 24, 2018 despite the first term of the invoice stating it is “Due Upon Receipt” because they had unwritten and unexplained “special terms” under the contract. (Homemax Br., p. 12-16; *See also* Pl. Ex. 4) (*See also* R. pp. 317-319). This is incorrect.

“Prejudgment interest is allowed on obligations to pay money from the time when payment is demandable, either by agreement of the parties or by operation of law, if the sum is certain or capable of being reduced to certainty.” *Future Grp. v. Nationsbank*, 324 S.C. 89, 101, 478 S.E.2d 45, 51 (1996), overruled on other grounds, *Paradis v. Charleston Cty. Sch. Dist.*, Op. No. 28030, 2021 S.C. LEXIS 56, *12, 2021 WL 1992245 (citing *Babb v. Rothrock*, 310 S.C. 350, 426 S.E.2d 789 (1993)). The default under the UCC is that payment “payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery” unless otherwise agreed. S.C. Code Ann. § 36-2-310(a). As explained above, a written confirmatory memorandum is the final expression of the agreement between the parties, and between merchants, any additional terms in the final confirmatory memorandum are contract terms except under specified conditions. S.C. Code Ann. § 36-2-202; S.C. Code Ann. § 36-2-207. Parole evidence of “course of performance, course of dealing, or usage of trade” may only be admitted to supplement or explain, but not to contradict, the terms of a contract. S.C. Code Ann. § 36-2-202.

Homemax’s argument can be summarized as follows: The March 24, 2018 invoice says it is due upon receipt, but Homemax had special terms under the contract because it typically financed its transactions with R-Anell, which therefore means the contract price was not

demandable at the time of delivery. (*See generally* Homemax Br., pp. 12-16). Homemax asserts this is confirmed by the fact that because of confusion over whether the transaction was COD or floor plan financed, R-Anell did not immediately realize it had not been paid. (*Id.*, p. 15).

There are a number of problems with this argument. First, the UCC default rule is that when goods are shipped, payment is due at the time and place of delivery. S.C. Code Ann. § 36-2-310(a). Given that the goods here were both shipped and delivered on March 24, 2018, the default statutory due date of payment is March 24, 2018. (*See* Pl. Ex. 4; Pl. Ex. 6) (R. pp. 317-319; R. pp. 320-321). This is when payment is demandable “by operation of law.” *See Future Grp.*, 324 S.C. at 101, 478 S.E.2d at 51. In addition, the parties “by agreement” established payment was due on March 24, 2018 by the supplemental and uncontradicted terms of the March 24, 2018, invoice which is “Due Upon Receipt.” (*See* Pl. Ex. 4) (R. pp. 317-319); *see also Future Grp.*, 324 S.C. at 101, 478 S.E.2d at 51.

Homemax can only be correct if it can point to some evidence of “special terms” under the invoice. (*See* Pl. Ex. 4) (R. pp. 317-319). No evidence of written special terms was offered at trial. Homemax must argue that some evidence of “course of performance, course of dealing, or usage of trade” created “special terms” that rebut the presumption that payment was due on March 24, 2018.

For this, Homemax offers the aforementioned evidence that R-Anell did not realize the Brown Home had not been paid for immediately because Homemax usually financed its homes, and that the invoice states it is to be paid by mail. (Homemax Br., p. 15). On both points, Homemax apparently conflates demand—ed with demand—able. *See Future Grp.*, 324 S.C. at 101, 478 S.E.2d at 51. The standard is that payment must be demandable by a certain date to accrue prejudgment statutory interest, not that it must be demanded on that date. *See Id.*

Addressing the latter point first, nowhere on the invoice does it say it *must* be paid by mail. (See Pl. Ex. 4) (R. pp. 317-319). The invoice simply says to remit payment to R-Anell Housing Group, LLC, and lists an address for the company. This argument would not be availing for Homemax in any event, because while payment might not arrive at R-Anell if mailed on the date of delivery, it does not mean that the payment is not demandable as of that day.

As to the former point, the testimony at trial showed R-Anell expected floor plan financing to be approved by Homemax's financiers on or before the date of shipment, and that R-Anell would get paid "up front." (Tr., p. 287) (R. p. 166, lines 4-18). It is not clear why Homemax argues that the purported course of dealing between the parties that sales would be floor plan financed therefore means it was not demandable on the date of delivery. (See Homemax Br., p. 15). The record is devoid of evidence that payment was demandable on any date later than March 24, 2018, the date set by agreement and operation of law. (See Pl. Ex. 4) (R. pp. 317-319). The reason payment was not immediately demanded in this instance was the confusion created by Homemax. (Tr., pp. 205-20) (R. p. 124, R. p. 124, line 20-p. 125, line 13). This confusion is irrelevant because payment was demandable on March 24, 2018.

Since payment for the Brown Home was demandable as of March 24, 2018, the trial court correctly applied statutory prejudgment interest pursuant to S.C. Code Ann. § 34-31-20(A).

II. The trial court properly granted R-Anell's motion for directed verdict on Homemax's negligence counterclaim because the economic loss rule applies to bar negligence claims when the relationship between the parties is governed by a commercial contract.

A. Standard of Review

As to the directed verdict on Homemax's negligence counterclaim, an appellate court "must review the evidence and all reasonable inferences therefrom in the light most favorable to the party opposing the granted motion." *First State Sav. & Loan v. Phelps*, 299 S.C. 441, 446,

385 S.E.2d 821, 824 (1989). The appellate court must “determine whether a verdict for a party opposing the motion would be reasonably possible under the facts as liberally construed in his favor.” *Id.* at 446, 824 (citing *Bultman v. Barber*, 277 S.C. 5, 281 S.E. (2d) 791, 792 (1981). “The appellate court will reverse the trial court’s ruling on a directed verdict motion only when there is no evidence to support the ruling or where the ruling is controlled by an error of law.” *Zinn v. CFI Sales & Mktg.*, 415 S.C. 93, 108, 780 S.E.2d 611, 619 (Ct. App. 2015) (citing *Law v. S.C. Dept. of Corrections*, 368 S.C. 424, 434-35, 629 S.E.2d 642, 648 (2006)) (punctuation in original omitted for clarity). “An appellant seeking reversal must show error and prejudice.” *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 350, 479 S.E.2d 67, 78 (Ct. App. 1996). There is no prejudice on a directed verdict where another cause of action “subsumed” the issues relevant to the matter on which the verdict was directed. *See Henson v. City of Georgetown*, 358 S.C. 133, 140, 594 S.E.2d 499, 502 (Ct. App. 2004).

B. Argument

Homemax argues it was error for the trial court to grant a directed verdict in favor of R-Anell on Homemax’s negligence counterclaim. (Homemax Br., pp. 17-19). Homemax’s argument must fail, as the Court correctly applied the economic loss rule to bar Homemax’s negligence counterclaim. Even if the directed verdict was not proper, this was harmless error, as the only evidence offered in support of Homemax’s negligence claim is the same evidence the jury rejected in rendering a verdict in favor of R-Anell and against Homemax. (*See Verdict*) (*See* R. p. 308 and R. p. 344).

“South Carolina’s economic loss rule provides that where a buyer’s expectations in a sale are frustrated because the product does not work properly, the buyer’s remedies are limited to those prescribed by the law of contract.” *Palmetto Linen Serv. v. U.N.X., Inc.*, 205 F.3d 126, 128

(4th Cir. 2000) (citing *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 345, 384 S.E.2d 730, 736 (1989)). This is consistent with a majority of jurisdictions, which do not allow recover in tort on commercial contracts. See *Bishop Logging Co. v. John Deere Indus. Equip. Co.*, 317 S.C. 520, 529, 455 S.E.2d 183, 188 (Ct. App. 1995) (compiling citations from other jurisdictions). “[T]he Uniform Commercial Code, provides the exclusive rights and remedies under the economic loss doctrine to sophisticated parties in a commercial transaction when the product injures only itself and not other property belonging to the plaintiff.” *Id.* at 530, 189 (citing *Myrtle Beach Pipeline Corp. v. Emerson Elec. Co.*, 843 F.Supp. 1027 (D.S.C. 1993)). If commercial plaintiffs are permitted to bring negligence claims against parties with whom they contracted, then “the Uniform Commercial Code would be totally eviscerated, and the action of the General Assembly of South Carolina in enacting it would be rendered nugatory.” *Myrtle Beach Pipeline*, 843 F. Supp. at 1054.

The Supreme Court clarified in *Sapp* that the exception created by *Kennedy* “does not preclude a *homebuyer* from recovering in tort against the developer or builder,” reasoning that “[a] home is typically an individual’s single largest investment and is a completely different type of manufactured good than any other type of product that a consumer will buy...[m]oreover, courts have recognized that the transaction between a builder and a buyer for the sale of a home largely involves inherently unequal bargaining power between the parties.” *Sapp v. Ford Motor Co.*, 386 S.C. 143, 148, 687 S.E.2d 47, 49 (2009) (emphasis added). The matter has not been addressed at the appellate level in South Carolina, but federal courts interpreting South Carolina law have found that a general reference to violation of statutes or industry standard is insufficient to state a tort claim where a commercial contract exists between the parties. See, e.g., *Belfor USA Grp., Inc. v. Banks*, 2016 U.S. Dist. LEXIS 91483, at *19 (D.S.C. July 14, 2016) (holding

“vague references to ‘common building practices’ and broad statements of work not being up to ‘code’ are insufficient to state a tort claim); *Cox House Moving, Inc. v. Ford Motor Co.*, 2006 U.S. Dist. LEXIS 55490, at *22 (D.S.C. Aug. 8, 2006) (finding “No South Carolina court has found that the violation of an industry standard can give rise to a special duty”); *accord Tri-Lift NC, Inc. v. Drive Auto. Indus. of Am.*, 2021 U.S. Dist. LEXIS 6954, at *8-9 (D.S.C. Jan. 13, 2021). There is no appellate authority “under South Carolina law to allow an alleged violation of either statutory law or a regulatory standard to serve as an exception to the economic loss rule.” *Besley v. FCA US LLC*, 2016 U.S. Dist. LEXIS 2200, at *14 (D.S.C. Jan. 8, 2016).

The economic loss rule applies to bar Homemax’s negligence counterclaim. This is an instance of a commercial transaction that is governed by the Uniform Commercial Code. (*See, e.g.*, Tr., pp. 464-465) (*See, e.g.*, R. p. 295, line 23-p. 296, line 3). The expectations of the parties were set entirely by contract, and any alleged damages flow, if at all, directly from a failure to perform the contract on the Christofoli Home. (*See Id.*). The damages sought by Homemax on its negligence claim reveal this to be true: Homemax claimed only to have suffered damages in not being able to close on their contract with the Christofoli family and in efforts to repair and remediate the Christofoli Home. (Def. Answer and Counterclaims, ¶ 32) (R. p. 18). To permit Homemax to recover in tort for damages flowing from its contract with R-Anell would “eviscerate” the UCC as adopted by the Legislature and render its provisions “nugatory.” *See Myrtle Beach Pipeline*, 843 F. Supp. at 1054.

Homemax cites *Tommy L. Griffin* as follows: “the question of whether the plaintiff may maintain an action in tort for purely economic loss turns on the determination of the source of the duty plaintiff claims the defendant owed.” *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 54, 463 S.E.2d 85, 88 (1995). (Homemax Br., p. 18).

Homemax neglects to include that the Supreme Court also held that in order to show its damages flow from tort rather than contract, a plaintiff must demonstrate that the parties had a “special relationship” such that tort liability is justified. *See Tommy L. Griffin*, 320 S.C. at 55, 463 S.E.2d at 88 (stating “In most instances, a negligence action will not lie when the parties are in privity of contract. When, however, there is a special relationship between the alleged tortfeasor and the injured party not arising [i]n contract, the breach of that duty of care will support a tort action.”).

Homemax has not demonstrated in its brief that R-Anell had a special relationship with Homemax, nor has it offered a single specific extra-contractual duty to which R-Anell was obligated other than vaguely asserting R-Anell is subject to state and federal building codes and regulations. *See Homemax Br.*, p. 18-19. Homemax’s failure to identify this special relationship or duty is fatal to its argument. *See, e.g., Belfor*, 2016 U.S. Dist. LEXIS 91483, at *19 (holding “vague references to ‘common building practices’ and broad statements of work not being up to ‘code’ are insufficient to state a tort claim”).

Homemax also argues it is entitled to claim the residential home buyer exception under *Kennedy*. *See generally, Kennedy*, 299 S.C. at 345, 384 S.E.2d at 736. To permit Homemax to recover in tort pursuant to the *Kennedy* exception would be an enormous expansion of that exception, as neither of the rationales explained in *Sapp* apply to Homemax. *Sapp*, 386 S.C. at 148, 687 S.E.2d at 49. Homemax is admittedly a volume dealer of homes, and so this is not its “single largest investment,” and as a commercial entity, it does not face the “inherently unequal bargaining power” that an individual consumer might face. *Id.* The Supreme Court already once overturned unwarranted expansions of the *Kennedy* exception in *Sapp*, and a reversal of the directed verdict on this point would be just that. *See Id.* at 150, 51.

Even if Homemax were entirely correct on its argument, it cannot show that the directed

verdict against its negligence claim was prejudicial at trial. This is because Homemax's breach of contract counterclaim, which was predicated on entirely the same facts as the negligence counterclaim, went to the jury. (*See Verdict*) (*See R. p. 308 and R. p. 344*). In rendering a defense verdict in favor of R-Anell on Homemax's breach of contract counterclaim, the jury necessarily considered all of Homemax's evidence regarding the manufacturing and shipping process, and the jury necessarily rejected every construction of the facts put forth by Homemax. (*See Id.*). Because the breach of contract and negligence counterclaims rely on the same operative facts that were already presented at trial, Homemax can make no showing of prejudice. *See Henson v. City of Georgetown*, 358 S.C. 133, 140, 594 S.E.2d 499, 502 (Ct. App. 2004).

Therefore, the economic loss rule operates to bar Homemax's negligence counterclaim, and the trial court committed no error of law in granting R-Anell's motion for directed verdict. To the extent R-Anell was not entitled to directed verdict, Homemax has not and cannot show prejudice that would justify remand for a new trial, since its negligence claim is predicated entirely on the same operative facts as its breach of contract claim.

III. The trial court properly excluded the email chain referencing a prior modular home, as it was not relevant to the issues presented at trial, and it would have been overly prejudicial to R-Anell to admit the email.

A. Standard of Review

As to the evidentiary issue, the admissibility of evidence is within the discretion of the trial court. *Johnson v. Sam English Grading, Inc.*, 412 S.C. 433, 448, 772 S.E.2d 544, 551 (Ct. App. 2015) (citing *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 439, 540 S.E.2d 113, 121 (Ct. App. 2000)). "The court's ruling to admit or exclude evidence will only be reversed if it constitutes an abuse of discretion amounting to an error of law." *Id.* at 448, 388. "An abuse of discretion occurs when the ruling is based on an error of law or a factual

conclusion that is without evidentiary support.” *Id.* at 448, 388 (citing *Menne v. Keowee Key Prop. Owners’ Ass’n, Inc.*, 368 S.C. 557, 568, 629 S.E.2d 690, 696 (Ct. App. 2006)). The trial court’s “ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” *State v. Kromah*, 401 S.C. 340, 349, 737 S.E.2d 490, 494-95 (2013) (citing *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006)).

B. Argument

Homemax has essentially two grounds for asserting the excluded email chain was relevant: first, that the portion of the email referencing the Christofoli Home being too heavy for shipment was relevant to the issues at trial, and second, that the email discussing prior issues with other homes on another day was relevant to the issues at trial. (Homemax Br., pp. 20-24). The excluded email chain is not cited herein because the email chain that Homemax sought to offer as an exhibit apparently was not preserved in the trial court record, and R-Anell objects to its designation in the record, or consideration on appeal, based on the apparent lack of preservation of the exhibit. (*See* Tr., pp. 5-9) (R. pp. 23-27) (list of exhibits admitted at trial)). Even if Homemax is permitted to argue on this point, it cannot prevail. “Evidence which is not relevant is not admissible.” Rule 402, S.C.R.E. The trial court did not abuse its discretion in excluding the irrelevant email chain.

On the first point, Homemax raises three reasons a portion of the email chain was relevant, none of which were presented at trial and thus are likely waived. (Homemax Br., pp. 21-22; *See* Tr., pp. 115-118; 135-137) (*See* R. p. 72, line 10-p. 75, line 14; R. p. 80, line 21-p. 82, line 6). First, Homemax argues that an email regarding the Christofoli Home (Order Number 40876) was relevant because it said the home was overloaded with parts. Homemax draws three potential inferences: that Unit A was heavy because it already had water damage, that it could

have been damaged in transit, and that moving parts from Unit A to Unit B could have damaged the plastic on Unit A. (Homemax Br., pp. 21-22).

These are creative suggested inferences, but not reasonable ones. The jury's construction of the evidence must be reasonable, or its verdict may be overturned. *See Willis v. Floyd Brace Co.*, 279 S.C. 458, 460, 309 S.E.2d 295, 297 (Ct. App. 1983). The first suggestion, that the increased weight was due to water damage, would be an unreasonable conclusion since the plain language of the email stated that the weight was due to the parts in Unit A. (*See Homemax Br.*, pp. 21-22). The second suggestion, that the email could suggest damage in transit, does nothing of the sort, as it addresses the condition of the modular home *prior to* transit. (*See Homemax Br.*, p. 22). The third suggestion, that the email suggests that plastic wrap could have been damaged while moving parts from Unit A to Unit B, is directly contradicted by the evidence in the record. (*See Id.*). Phillip Hathcock of R-Anell testified that the wrap is only applied to the roof and the open-ended sides of the modular units and is specifically designed so that one can open the doors to the house and walk in and out, without damaging it. (*See Tr.*, pp. 138-139; 152) (R. p. 83, line 17-p. 84, line 21; R. p. 87, lines 9-18). Thus, none of the three are reasonable inferences, and there was no abuse of discretion.

On the second point, Homemax argues another part of same chain discussing a prior issue with another home on a previous day was relevant. (Homemax Br., p. 22-24). Though it has no bearing on the Christofoli Home, Homemax apparently argues that this email was relevant to establish a pattern of conduct or habit of improperly wrapping houses by R-Anell. (*Id.*). This email does not meet the standard to admit it as pattern of conduct or habit evidence.

As the Supreme Court has stated, Federal Rule of Evidence 406 is identical to South Carolina's Rule 406, SCRE. *State v. Brown*, 344 S.C. 70, 74, 543 S.E.2d 552, 554 (2001). The

Supreme Court acknowledged that the federal courts have had a difficult time determining the admissibility of habit evidence. *Id.* However, such evidence is only admissible “when the examples offered to establish such pattern of conduct or habit are numerous enough to base an inference of systematic conduct and to establish one’s regular response to a repeated specific situation.” *Charleston Marine Containers, Inc. v. Sherwin-Williams Co.*, 165 F. Supp. 3d 457, 467 (D.S.C. 2016) (citing *Wilson v. Volkswagen of Am., Inc.*, 561 F.2d 494, 511 (4th Cir. 1977)).

Habit evidence must be “specific, particularized conduct capable of almost identical repetition.” *Brown*, 344 S.C. at 74, 543 S.E.2d at 554 (internal citations omitted). At least more than two, and potentially more than five, instances of repeated conduct are necessary to demonstrate admissible habit or pattern evidence. *See Genesis Telecomms., LLC v. Moore*, 2010 U.S. Dist. LEXIS 142483, at *9 (D.S.C. Oct. 18, 2010) (citations omitted). Here, Homemax seeks to admit habit evidence regarding wrapping on prior homes, but it fails to meet these requirements of numerosity or specificity. (*See Homemax Br.*, 22-24). Homemax can only offer one example, where the plastic was corrected without issue, for the proposition that R-Anell has a propensity for improperly wrapping its houses. (*See Id.*). At the very least, the trial court committed no reversible error in excluding the email.

Even if Homemax could show the email chain was minimally relevant, as an additional sustaining ground, the email chain could have been excluded as unfairly prejudicial or for being likely to mislead the jury. Respondents may argue additional sustaining grounds that are not necessarily presented at trial. *I’On, L.L.C.*, 338 S.C. at 420-421, 526 S.E.2d at 723-724 (2000). “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

Rule 403, SCRE. “A trial court has particularly wide discretion in ruling on Rule 403 objections.” *State v. Lee*, 399 S.C. 521, 527, 732 S.E.2d 225, 228 (Ct. App. 2012).

The email chain is irrelevant, but even if it had minimal relevance, the minimal relevance would be substantially outweighed by the prejudice to R-Anell. The entire chain was entitled “40876” – the order number for the Christofoli Home. (*See* Homemax Br., p. 21; *See* Tr., p. 143) (*See* R. p. 86, lines 3-8). Thus, at a glance, it appears that the wrapping problems were related to order 40876. This is misleading because closer inspection reveals the wrapping issue was for another modular (of course, this Court cannot inspect it, because the email chain is not preserved in record). Given the “wide discretion” afforded trial courts, the trial court was within its discretion to exclude the email chain. *See Lee*, 399 S.C. at 527, 732 S.E.2d at 228.

Even if there was error in sustaining R-Anell’s objection, Homemax can show no “probable prejudice.” *See Kromah*, 401 S.C. at 349, 737 S.E.2d at 494-495. This is because the law and facts presented at trial established that Homemax assumed the risk of loss. Under the UCC, the risk of loss on a good shifts from seller to buyer: “(1) Where the contract requires or authorizes the seller to ship the goods by carrier (a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 36-2-505); but (b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.” S.C. Code Ann. § 36-2-509.

At the latest, then, the risk of loss shifted at the time the Christofoli Home was tendered to Homemax at its lot. *See Id.* Homemax admitted to acceptance of delivery at its commercial sales lot without issue when an employee signed a delivery inspection form certifying that Unit

A was undamaged. (*See* Pl. Ex. 14) (R. pp. 317-319). The only logical conclusion is that Homemax bore the risk of loss when the damage to the Christofoli Home occurred. Thus, even if the trial court abused its discretion by sustaining counsel for R-Anell's objection to the admissibility of these emails, such error did not result in "probable prejudice" to Homemax.

CONCLUSION

For the reasons stated herein, this Court should affirm the trial court on all three grounds raised by Homemax on appeal.

May 24, 2022

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2021-000658
Civil Action No. 2018-CP-32-03103

R-Anell Housing Group, LLC Respondent,

v.

Homemax, LLC Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the final brief of respondent complies with Rule
211(b) of the South Carolina Rules of Appellate Court Rules.

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RE-INTRODUCTION OF CASE AND ISSUES

Respondent (“R-Anell”) is a manufacturer of modular homes, and Appellant (“Homemax”) is a retailer. This dispute concerns two homes manufactured by R-Anell—the “Christofoli House” and the “Brown House.” R-Anell filed this suit against Homemax alleging a breach of contract for non-payment of the Brown House. Homemax answered and counterclaimed for both negligence and breach of contract related to the Christofoli House which was damaged by water intrusion. After the trial court granted directed verdict on Homemax’s negligence claim, the jury returned a verdict for R-Anell. This appeal concerns three alleged errors: (I) the trial court erred in awarding statutory prejudgment interest under S.C. Code Ann. § 34-31-20(A); (II) the trial court erred in granting directed verdict on Homemax’s claim for negligence based on the economic loss rule; and (III) the trial court erred by excluding email evidence as irrelevant.

RE-STATEMENT OF THE CASE

The general circumstances that precipitated this lawsuit are not disputed. R-Anell does not dispute that the Christofoli House suffered water damage, and Homemax does not dispute it withheld payment on the Brown House. The parties’ disagreement lies in whether R-Anell is responsible for the damages to the Christofoli House, and if so, does this offset any amount Homemax might have owed on the Brown House. Although the parties might agree on the “big picture,” throughout the four-day trial it was apparent they do not see eye-to-eye on the more nuanced facts or the inferences to be drawn therefrom. This competing view of the facts continues on appeal where R-Anell takes exception to Homemax’s characterization of certain facts.

For example, R-Anell disputes any inference Homemax makes that the plastic wrap was intended to do more than simply protect the home during the limited time it was in transit. Complaining this inference is not supported by the record, R-Anell claims the “temporary plastic

[is] intended only for transport.” (Resp. Br. p. 4). The problem for R-Anell is that the testimony of its own general manager, Phillip Hathcock, refutes R-Anell’s claim that the wrap was only intended to provide protection during transport. Mr. Hathcock specifically agreed that once construction is complete the homes are “put outside at the factory yard” and the wrap is needed because “they got to be watertight while they’re at R-Anell’s facility [before transport] . . . in addition to being [watertight] in the shipping process **and once delivered**”—*i.e.*, after transport. (R. p. 66) (all emphasis added). Further, Mr. Hathcock testified that because R-Anell may not know how long a home might sit outside before it is assembled, the wrap is intended to function regardless of “whether they’re going to sit for a day, a week or a month, **or two months.**” (R. p. 69) (emphasis added).¹

Homemax’s view of the facts is supported by the Record. That R-Anell might choose to ignore conflicting testimony or view conflicting evidence differently does not leave Homemax’s view unsupported.² The Appellate Court Rules do not require the parties to agree on the facts, their

¹ For reference, the Christofoli Home sat outside for 53 days—*i.e.*, less than two months—this was 13 days at R-Anell’s facility before delivery and 40 days at Homemax’s facility after delivery. (R. p. 69).

² There are other examples that show R-Anell’s complaints about Homemax’s recitation of the facts are unfounded. For instance, in response to Homemax’s statement of facts, R-Anell avers; “nor is it true that R-Anell forced shipment [of the Christofoli House] for ‘budgetary and accounting purposes.’” (Resp. Br. p. 5). However, R-Anell’s salesman for the Christofoli House (Jeremy Cosby) was asked: “Did you ever make any representation to Mr. Fautley [the owner of Homemax] to the extent that you wanted this [Christofoli] house to go ahead and be transported even though the Christofoli site was not ready to receive it?” Mr. Cosby answered: “I’m sure I did, yes. . . . Yes, we wanted the house to ship.” (R. p. 99). Mr. Cosby went on to testify that “**when the house shipped made a difference in terms of R-Anell’s budget.**” (R. p. 100). Thus, there is no basis for R-Anell’s claim that Homemax’s statement of the facts in this regard is false.

As another example, R-Anell disputes Homemax’s description that it was “months” before R-Anell realized it had not been paid on the Brown House. Claiming this period was only three weeks, R-Anell complains Homemax’s view of the facts is not supported by the record. (Resp. Br. p. 6). But again, R-Anell is wrong, ignoring that its own witness, Mr. Cosby, testified “Q: And I

import, or the inferences to be drawn therefrom. Regardless, R-Anell does little to explain how its alternative interpretation of the facts is of consequence to this appeal. To the contrary, that the evidence offered at trial supports varied interpretations serves to bolster Homemax's arguments that reversal is required—particularly regarding the erroneous application of prejudgment interest and improper grant of directed verdict.

LAW AND ARGUMENT IN REPLY

I. THE TRIAL COURT ERRED IN AWARDING STATUTORY PREJUDGMENT INTEREST.

As set out in Homemax's initial brief, the trial court erred in awarding prejudgment interest under S.C. Code Ann. § 34-31-20(A) for three reasons: (A) because R-Anell failed to plead prejudgment interest; (B) because the amount claimed is not a sum certain determinable by a formula previously agreed to by the parties; and (C) because the amount claimed was not due on March 24, 2018—the date from which the trial court began assessing prejudgment interest.

A. R-Anell failed to plead statutory prejudgment interest.

As a threshold matter, Homemax pointed out that R-Anell failed to plead statutory prejudgment interest. In response, R-Anell offers three summary assertions: (1) that the law does not require a party to plead prejudgment interest; (2) that R-Anell did plead prejudgment interest; and (3) this issue is not preserved. None of these arguments are compelling.

think you didn't even realize the Brown House hadn't been paid for **until months after** it had shipped, [is that] right? . . . A: "That's correct." (R. pp. 100-01). Just because R-Anell might disagree with, or choose to ignore, the competing testimony offered by its own witnesses does not mean Homemax (or this Court) is required to do the same.

1. R-Anell's claim that it was not required to plead prejudgment interest is contrary to well-established law and is based on an incomplete quotation that R-Anell offers from Calhoun v. Calhoun which serves as a manifest misrepresentation of the law.

To incorrectly claim the law does not require a litigant to plead prejudgment interest when the amount pled is purportedly for a sum certain, R-Anell offers **a partial** quotation from *Calhoun v. Calhoun*. (Resp. Br. p. 8). The complete quotation from *Calhoun*, reads: “While prejudgment interest must be pled in order to be recovered, except in cases involving an agreement to pay a sum certain, this Court has recognized that a claimant is entitled to interest from the date of the rendition of the verdict, or post-judgment interest, as a matter of course.” *Calhoun v. Calhoun*, 339 S.C. 96, 102, 529 S.E.2d 14, 18 (2000).

By deleting the second half of the quoted sentence, R-Anell also deletes the context. It completely ignores that, unlike this case which concerns prejudgment interest under subsection §34-31-20(A), the *Calhoun* decision actually addresses post-judgment interest under subsection §34-31-20(B). The question in *Calhoun*, was whether the plaintiff could collect post-judgment interest if she failed to allege it in her complaint. *Id.* Although the Court recognized the failure to plead prejudgment interest would preclude that particular form of relief, the *Calhoun* Court declined to impose the same pleading requirement on post-judgment interest. *See Calhoun*, 339 S.C. at 102, 529 S.E.2d at 18 (holding that unlike claims of prejudgment interest, because “[the] petitioner was entitled to post-judgment interest as a matter of law, the fact that . . . she failed to seek it in her [] pleadings is irrelevant.”)(emphasis added). The statement quoted by R-Anell, (albeit incomplete) was offered by the *Calhoun* Court within this limited context of distinguishing between prejudgment and post-judgment interest.

Thus, when the complete quotation offered by R-Anell is considered in context, it is abundantly clear that *Calhoun* supports the well-settled requirement that a party must plead pre-

judgment interest—precisely the opposite of what R-Anell cites it for. There can be no doubt that *Calhoun* does not change this well-settled requirement because the Supreme Court has specifically cited *Calhoun* for this exact premise. See *Tilley v. Pacesetter Corp.*, 355 S.C. 361, 375, 585 S.E.2d 292, 299 (2003) (citing *Calhoun* for the premise that “[t]his Court requires parties to plead for pre-judgment interest in order for it to be recovered.”); *Durlach v. Durlach*, 359 S.C. 64, 75, 596 S.E.2d 908, 914 (2004) (citing *Calhoun* for the premise that “[p]arties must plead for pre-judgment interest in order for it to be recovered.”).

R-Anell’s claim that *Calhoun* holds that a litigant is not required to plead statutory prejudgment interest under Section 34-31-20 (A) is a blatant misrepresentation of the law, and R-Anell has acknowledged it did not plead this statutory interest. Therefore, this Court should reverse the trial court’s award of prejudgment interest. See *Tilley*, at, 375, 585 S.E.2d at 299 (“If no request for prejudgment interest is made in the pleadings, it cannot be recovered on appeal”).

2. *At trial R-Anell acknowledged the 7% interest it plead in the complaint is not statutory prejudgment interest, therefore R-Anell cannot now claim it plead this relief.*

Section 34-31-20(A) establishes the statutory prejudgment interest rate at 8.75%. In its complaint R-Anell did not seek this statutory prejudgment interest amount but instead sought contractual interest at the rate of 7%. See (R. p. 13). At trial, Homemax moved for directed verdict on R-Anell’s pleaded claim for contractual prejudgment interest. (R. p. 147) (arguing “they have not provided any testimony in the case in chief that they were owed interest pursuant to a written agreement or verbal agreement or any evidence at all there was any type of agreement between the parties for interest[.]”). In discussion of the issue R-Anell acknowledged that “the statutory prejudgment interest [rate] is 8.75 percent [whereas the] Seven percent is [R-Anell’s] standard that they charge” on unpaid invoices. (R. pp. 151-52).

Having admitted that the 7% interest alleged in the complaint is **not** statutory interest under Section 34-31-20(A), it follows that R-Anell did not plead this statutory prejudgment interest. On appeal, R-Anell does not argue that it actually pled statutory prejudgment interest. Instead, it suggests this omission should be overlooked because the pleadings are to be liberally construed. (Resp. Br. p. 9). While it is generally true that Rule 8 provides pleadings are to be “construed as to do substantial justice to the parties,” this does not eliminate the law’s requirement that statutory pre-judgment interest be specifically pled. *See* Rule 8, SCRCF. Moreover, there is no need to “construe” the pleadings when R-Anell has acknowledged the contractual interest it sought in the complaint (*i.e.*, 7%) is not statutory prejudgment interest under Section 34-31-20(A). Thus, R-Anell’s claim that the pleadings should be construed to have pled something (*i.e.*, 8.75% statutory prejudgment interest) it has acknowledged is distinct from what it actually pled (*i.e.*, 7% non-statutory prejudgment interest) must fail.³

3. *R-Anell’s allusion to issue preservation is misplaced.*

Finally, R-Anell contends this point is not preserved. However, to find this unpreserved would be an overly technical interpretation of the rules of issue preservation because Homemax is not required to use some magic or specific language to raise this point. *See Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) (“[A] party is not required to use the exact name of a legal doctrine in order to preserve the issue.”). The notion that the only interest

³ R-Anell suggests its pleadings were sufficient by reference to the prayer for relief contained at the conclusion of its Complaint which seeks “the amounts stated above with updated interest.” (R. p. 14). However, this Court has offered persuasive unpublished authority to indicate that such a vague pleading should be considered insufficient. *See Sundown Operating Co. v. Intedge Indus.*, No. 2007-UP-091, 2007 S.C. App. Unpub. LEXIS 132, at *7 (Ct. App. Feb. 23, 2007) (“Sundown makes only a general request for ‘interest as provided by law.’ This request is too general and vague to meet the strict requirement that a demand for prejudgment interest must be specifically pled.”).

R-Anell pled was for 7% (and therefore not statutory prejudgment interest) was inherent from the context of the argument and the fact that it arose on directed verdict. As such, the argument was “specific to the issue of the claim by R-Anell for any interest that is owed on this case,” which as set forth in the complaint was limited to the 7% contractual interest, not statutory interest. *See* (R. p. 147) (“They have rested their case, they have not provided any testimony in the case-in-chief that they were owed interest pursuant to a written agreement or verbal agreement or any evidence at all there was any type of agreement between the parties for interest to be paid . . .”); *accord* (R. p. 153) (in limiting its motion for directed verdict to the issue of interest, stating “The only claim we have here is for a breach of contract, that is what was plead.”). Stated differently, the fact that Homemax moved for directed verdict on the issue of prejudgment interest necessarily means the “prejudgment interest” pled by R-Anell was not statutory prejudgment interest. *Accord* (R. p. 152, lines 7-11) (R-Anell acknowledging that statutory prejudgment interest is a matter for the court not the jury).

To the extent that R-Anell suggests statutory prejudgment interest was tried by consent, this implication must also fail. *See Norwest Props., LLC v. Strebler*, 424 S.C. 617, 626, 819 S.E.2d 154, 159 (Ct. App. 2018) (“when there is no consent to try an unpleaded issue, as manifested by a trial objection to evidence only relevant to the unpleaded issue, a court may not amend without a formal motion.”); (citing 3 James Wm. Moore et al., *Moore’s Federal Practice* §15.18[3] (3d ed. 2018); *see also McMillan v. S.C. Dep’t of Agric.*, 364 S.C. 60, 75, 611 S.E.2d 323, 331 (Ct. App. 2005) (finding, in a matter where pre-judgment interest was not pled, the defendant’s objection to pre-judgment interest prevented the conclusion that issue was tried by consent, even where the plaintiff made a motion to amend the pleadings to conform to the evidence) (reversed on other grounds by *McMillan v. S.C. Dep’t of Agric.*, 380 S.C. 212, 670 S.E.2d 368 (2008))). Thus, the

discussion of prejudgment interest was within the context, and on the premise, that 7% contractual interest is the only interest R-Anell sought in its complaint. Therefore, R-Anell's preservation argument is not compelling.

B. This case did not involve a "sum certain" as required by law.

Regardless of whether R-Anell properly pled prejudgment interest, it was nonetheless improperly awarded because this case was not for a "sum certain" as required by law. "[P]rejudgment interest is allowed on a claim of liquidated damages; *i.e.*, the sum is certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties." *Dixie Bell*, 376 S.C. at 370, 656 S.E.2d at 769 (*citing Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 258-59 (2006)). Prejudgment interest is not proper where the sum cannot be determined by a fixed formula." *Id.* at 370, 656 S.E.2d at 769 (*citing Lewis v. Congress of Racial Equality*, 275 S.C. 556, 274 S.E.2d 287 (1981)). Homemax argues this is not a sum certain as defined by the law because the amount is determined by an invoice (unilaterally created by R-Anell) rather than by a formula agreed to by the parties.

In responding to Homemax's arguments, R-Anell initially asserts that Homemax "fails to consider the leading decision in this State on liquidated sums and sums certain." (Resp. Br. p. 10). Strangely however, R-Anell fails to identify what this "leading decision" is. (*Id.*). Assuming this "leading decision" is *Butler Contracting, Inc. v. Court Street, LLC*, (because it is the only South Carolina opinion cited in this section of R-Anell's brief), this case actually supports Homemax's position.⁴

⁴ Although Homemax cited *Butler* in its initial brief, it accepts R-Anell's invitation to discuss it further because it supports Homemax's position that this case does not satisfy the "sum certain" requirement.

In *Butler*, after completing a construction project, the plaintiff (Subcontractor), sued the defendant (Contractor) seeking \$177,001.00, which was the unpaid balance on a \$713,364.00 contract. *Id.* Importantly, as the *Butler* Court explained; “Contractor did not dispute the [contract amount], or the amount still owed to Subcontractor. Contractor, however, filed a counterclaim seeking an offset for \$94,878 in damages allegedly caused by delays attributable to Subcontractor.” *Id.* at 134, 631 S.E.2d at 259. At a bench trial, the circuit court determined Contractor was entitled to \$25,000.00 as an offset (not the \$94,878.00 sought in the counterclaim) and a verdict of \$152,001.00 was entered in favor of Subcontractor (*i.e.* \$177,001.00 less \$25,000.00 = \$152,001.00). *Id.* The issue on appeal concerned the trial court’s decision to deny prejudgment interest because the counterclaim constituted a “good faith dispute [over] the amount due.” *Id.* In reversing the denial of prejudgment interest the Supreme Court explained the “assertion of a counterclaim seeking an offset [against a sum certain] does not prevent an award of prejudgment interest.” *Id.* at 134-35, 631 S.E.2d at 259. Importantly, the *Butler* Court determined the amount owed to the plaintiff Subcontractor was a sum certain because the contract amount was undisputed, and therefore was “capable of being reduced to a certainty based on contractual provisions regarding the amount of the original contract. . . and [deducting] payments made by Contractor.” *Id.* at 134, 631 S.E.2d at 259.

In sum, *Butler* holds that a counterclaim pled as an offset to a sum certain will not preclude prejudgment interest. However, *Butler* does nothing to abrogate the requirement that (setoff notwithstanding) the underlying amount must still be a sum certain capable of calculation based on an agreed upon mathematical formula. In *Butler*, that formula was the undisputed contract price, less the undisputed partial payments which equaled a sum certain of \$177,001.00. *See id. (supra)*.

Here, and unlike *Butler*, Homemax's argument is not based on the fact that it asserted a counterclaim. Instead, Homemax argues this matter is not for a sum certain because there was no agreed upon mathematical formula by which the alleged sum (\$142,292.80) could be calculated. To the contrary, this amount is derived solely, and exclusively from the March 24, invoice unilaterally created by R-Anell. Applying the *Butler* reasoning to this case it follows that the question is whether R-Anell and Homemax agreed upon a mathematical formula that would lead to the singular conclusion that the amount owed was \$142,292.80 (before the application of any setoff for a counterclaim). Here, there is no evidence that at the time the Brown House was delivered (*i.e.*, the time R-Anell claims the payment was due) that there was an agreed upon formula that could be used to calculate this amount. The initial quoted price from R-Anell was \$142,660.00, yet now it claims a different amount (*i.e.*, \$142,292.80) as the "sum certain."⁵

If this case were truly for a sum certain R-Anell could point to some provision of the contract which explains the difference between the quoted amount and the invoice amount. But it cannot. (R. p. 41) (R-Anell testifying it did not "know what might have caused that difference"). This is the fatal flaw in R-Anell's claim that this is a sum certain.

In the hopes of explaining this problem away, R-Anell claims the absence of an agreed upon formula does not matter because this requirement should be usurped by Section 36-2-207 of South Carolina's Uniform Commercial Code (the "UCC"). Specifically, R-Anell claims there is no need for this formula because the March 24 invoice operated as a "confirmatory memorandum" that unilaterally and irrefutably established a sum certain contract amount. *See* (Resp. Br. p. 12)

⁵ Homemax recognizes these two amounts are close, and that the amount R-Anell claims in the invoice is slightly less than the amount referenced in the quote. However, the point is that if the contract were for a sum certain there would be no difference, small as it may be. The law requires a sum certain, not a sum *almost* certain.

(asserting there was no need for a mathematical formula). However, this argument is a perversion of the UCC's confirmatory memoranda provision—which concerns contract *formation*, not damages. *See* S.C. Code Ann. §36-2-207(1) (“[A] written confirmation which is sent within a reasonable time operates as an **acceptance** even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.”) (emphasis added). If prejudgment interest were apples, Section 36-2-207 is broccoli.

Our Supreme Court has explained that because Section 36-2-207 arises to address the “battle of the forms” in which the parties exchange pre-printed boiler-plate forms that may not mirror one another on terms, this section “simply does not warrant application . . . in the case of a non-form agreement, [or when] there is no pattern of exchange of pre-printed forms.” *Columbia Hyundai, Inc. v. Carll Hyundai, Inc.*, 326 S.C. 78, 82, 484 S.E.2d 468, 470 (1997) (confirming Section 36-2-207 does not eviscerate the law of contracts which requires a meeting of the minds); *see Weisz Graphics Div. of Fred B. Johnson Co. v. Peck Indus.*, 304 S.C. 101, 106, 403 S.E.2d 146, 149 (Ct. App. 1991) (explaining this section in context of the battle of the forms and confirming it only applied where the terms of the acceptance might differ from the terms of the offer by virtue of using form documents).

Here, there was no pre-contract exchange of boiler-plate forms. As such, the March 24 invoice is simply not germane to contract formation. As R-Anell itself argued, if a contract was formed on the Brown House, the September 2017 quote submitted by R-Anell was the offer, and Homemax's signing and returning this quote was the acceptance. *See* (R. p. 235) (arguing for directed verdict that there is no way to deny a contract because “we have heard in this case that there is a signed quote from Homemax that gets returned to R-Anell . . .”); (R. pp. 41-44). Thus,

the March 24 invoice, which was sent out the day of shipment (after the construction was completed) was not part of the exchange of boilerplate pre-contract documents and therefore is simply not a confirmatory memorandum. (R. p. 44) (R-Anell testifying the invoice was sent out the day of shipment). Similarly, a confirmatory writing cannot function to modify a contract once made.

In its brief, R-Anell argues that under Subsection 36-2-207(2) the March 24 invoice (as a purported confirmatory writing) functioned to establish the undisputable sum certain contract amount. However, because the amount R-Anell demands in its invoice is different than the amount of the quote, it follows that the March 24 invoice could only establish a sum certain contract amount if it functioned as a modification to the previously made contract. This is a problem for R-Anell because Subsection 36-2-207(3) makes plain that a confirmatory writing cannot function as a modification, providing: “Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this act.” S.C. Code Ann. § 36-2-207(3).

Here, the writings do not agree—*i.e.*, the September 2017 “quote” in the amount \$142,660.80 is different than the March 24 invoice for \$142,292.80. Because subsection (3) provides the contract is limited to “those terms on which the writings agree,” even if the March 24, invoice was deemed a confirmatory writing, it would not establish a sum certain contract price to support the imposition of statutory prejudgment interest. Thus, just as it did by abridging the language from *Calhoun* (see above), by ignoring subsection 36-2-207(3), R-Anell has misapprehended, or misrepresented, the law regarding confirmatory writings.

Ultimately, the issue comes back to that set out in Homemax's initial brief. The law requires an agreed upon formula for determining the amount owed. The law does not permit a party to create a sum certain simply by unilaterally generating an invoice, and this Court should reject R-Anell's request to find otherwise.

C. There is no evidence the amount claimed was payable as of March 24, 2018.

Homemax also argued the trial court erred in awarding prejudgment interest from March 24, 2018, because there is no evidence the amount (even if was a sum certain) was due on that date. *See* S.C. Code Ann. § 34-31-20(A) (requiring the amount claimed be both for sum certain, “**and due**”) (emphasis added); *S. Welding Works, Inc. v. K & S Constr. Co.*, 286 S.C. 158, 164, 332 S.E.2d 102, 106 (Ct. App. 1985) (providing that statutory prejudgment interest requires “(1) that the account is actually stated; and (2) that the parties either expressly or impliedly agreed that it is a true statement **and is due to be paid then** or at some other specified time”) (emphasis added). In response, R-Anell again relies on a misapplication of the UCC as if the UCC somehow allows R-Anell (and the trial court) to simply ignore the facts and evidence. It does not.

R-Anell claims that the payment was due on March 24, 2018, because the invoice bears this date and says it is due on receipt. Notwithstanding that there is no evidence of when the invoice was actually received, R-Anell again misses the bigger picture. The invoice is not the agreement. R-Anell seems to rely on some creative interpretations of the UCC to claim that in any commercial transaction an invoice generated by the seller trumps any previously agreed to terms of the transaction. It simply does not.

For instance, R-Anell claims that payment was due because the “default rule” under the UCC is that “when goods are shipped, payment is due at the time and place of delivery.” *See* (Resp. Br. p. 14) *citing* (S.C. Code Ann. § 36-2-310 (a)). However, and consistent with its habit of creative

editing, R-Anell ignores the first three words of Section 36-2-310 which make clear this default rule only applies “**Unless otherwise agreed.**” S.C. Code Ann. § 36-2-310 (emphasis added). Conveniently, R-Anell also ignores the testimony of their own witnesses which confirm that R-Anell was not expecting payment on delivery because they had agreed otherwise—*i.e.*, agreed payment would be made at a later date through floorplan financing. *See* (R. p. 79) (In explaining why no money was collected on delivery, Phillip Hathcock, general manager of R-Anell, testified it was because a “floor plan [financier] was supposed to pay for it **not COD.**”) (emphasis added); *see also* (R. p. 117) (explaining why funds were not demanded on delivery Albert Gurner testified that R-Anell was of the expectation that the house was to be paid by a floor plan financier and that as a result “**we weren’t looking for a COD check at that point.**”) (emphasis added); (R. pp. 125-26) (Melissa Allen testified that she spoke with Mr. Fautley—the owner of Homemax—and both she and Mr. Fautley were of the understanding the Brown House would be financed through a floor plan financier and not COD).⁶

Thus, the fact that Homemax did not pay for the Brown House on delivery was not, nor could it be, the act of breach. The breach (assuming there was a breach) occurred when the floor plan financing was not received. Because R-Anell’s “claim” for payment could not arise until this purported breach occurred, prejudgment interest (even if proper) could not begin to accrue until the payment from the floorplan financier was due. *See Church v. McGee*, 391 S.C. 334, 348, 705 S.E.2d 481, 488 (Ct. App. 2011) (“To answer this question [of whether and when to award prejudgment interest] this court must first determine **when the claim arose**, and then decide if the measure of recovery was fixed by conditions existing at that time.”) (emphasis added).

⁶ In testifying for R-Anell, both Jeremy Crosby (R. p. 102) and Melissa Allen (R. p. 125) conceded that Homemax had never purchased a home from R-Anell on COD terms before.

Here R-Anell presented no evidence of when payment from the floorplan financier was specifically required, but it suffices it was not on March 24, 2018, but some date after that. *See (Infra)*. Thus, application of interest from this date was error. The UCC does not change that.

II. THE TRIAL COURT ERRED IN DIRECTING A VERDICT AGAINST HOMEMAX’S CLAIM FOR NEGLIGENCE BASED ON THE ECONOMIC LOSS RULE.

The South Carolina Supreme Court has carved out an exception to the economic loss rule where the product at issue is a residential home. *See Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 341, 384 S.E.2d 730, 734 (1989). Here, the damages alleged were to a residential home. Notwithstanding, R-Anell claims *Kennedy* should not apply here because the Christofoli House was not Homemax’s “single largest investment.” (Resp. Br. p. 20). However, R-Anell is confused, the holding of *Kennedy* is not limited to only those residential structures that constitute a plaintiff’s single largest investment—if it were a plaintiff that owned multiple homes could only pursue a construction defect claim on their most expensive home. That is not the law. As is common in its brief, R-Anell’s “single largest investment” quote is offered with limited context.

For certain, *Kennedy* marked a distinct change in the law applicable to negligence claims regarding residential homes. While this decision was based on many public policy considerations, the notion that a residence may be the buyer’s “single largest investment” is not specifically among them. The “single largest investment” language first appeared as dicta in *Sapp v. Ford Motor Co.*, 386 S.C. 143, 148, 687 S.E.2d 47, 49 (2009) where, ten years after *Kennedy*, the Court summarized some of the public policy considerations that supported its decision not to extend the *Kennedy* exception beyond residential property. *See Id.* at 150, 687 S.E.2d 47 at 51 (holding “the exception announced in *Kennedy* is a very narrow one, applicable only in the residential real estate

construction context”)⁷. Thus, while this “single largest investment” concept may be a reason not to expand *Kennedy* beyond the residential construction context, it is certainly not a reason to limit *Kennedy*’s application within the residential construction context.⁸

Finally, R-Anell makes a summary suggestion that the trial court’s grant of summary judgment was harmless because R-Anell’s purported negligence and purported breach of contract were based on the same conduct. Although R-Anell makes passing citation to *Henson v. City of Georgetown*, 358 S.C. 133, 140, 594 S.E.2d 499, 502 (Ct. App. 2004), it offers no explanation of how this decision applies here. In *Henson*, this Court found the trial court properly directed a verdict on a plaintiff’s claim for attractive nuisance. The *Henson* Court went on to offer, albeit in dicta, that even if this was error, it was harmless. *Id.* Importantly however, in *Henson*, the jury was specifically asked to answer a series of interrogatories in support of their verdict, and the answers

⁷ Because the exception to economic loss rule adopted by *Kennedy* is limited to the residential construction context, R-Anell’s contention that it would “eviscerate” the UCC to allow a tort action in this case is simply colorful rhetoric disguising a total lack of substance. Similarly, although R-Anell cites to various US District Court rulings, none offer any compelling analogy here. See (Resp. Br. p. 18). For example, R-Anell quotes *Besley v. FCA US LLC*, Civil Action No. 1:15-cv-01511-JMC, 2016 U.S. Dist. LEXIS 2200, at *3 (D.S.C. Jan. 8, 2016)—a case concerning a car, not a residential home—for the claim that “authority simply does not exist under South Carolina law to allow an alleged violation of either statutory law or a regulatory standard to serve as an exception to the economic loss rule.” *Id.* While this observation is true where the product at issue is a car, *Kennedy* confirms this observation is entirely false in the context of a residential home—as is the case here. This just serves to illustrate another example of R-Anell resting its arguments on legal support that is offered out of context.

⁸ R-Anell seems to look at this issue backward—asserting because it had contract duties, it therefore had no tort duties. This reasoning is backward because contract duties are not necessarily mutually exclusive of tort duties, nor *vice versa*. The fact that it may have the same duty under **both** tort and contract does not invoke the economic loss rule. Instead, the economic loss rule would only apply where the duty is exclusively a contract duty. See *Sapp*, 386 S.C. at 149, 687 S.E.2d at 50 (quoting *Kennedy*, 299 S.C. at 347, 384 S.E.2d at 737 for the proposition that “[t]he ‘economic loss rule’ will still apply where duties are created solely by contract.”); see also (App. Br. pp. 17-19).

to these interrogatories necessarily would have precluded a verdict on the plaintiff's attractive nuisance claim—specifically the jury found the plaintiff's fault for his own injuries exceeded the defendant's fault. *See Henson v. Int'l Paper Co.*, 374 S.C. 375, 385, 650 S.E.2d 74, 79 (2007) (affirming, as modified the Court of Appeal's decision in *Henson v. City of Georgetown*).

Unlike *Henson*, the jury in this case was not asked any special interrogatories but instead asked to render a general verdict on the prompt “as to Homemax’s claim for breach of contract we find in favor of _____. ” (R. p. 308). As a result, it is not known why the jury found in favor of R-Anell, and this ruling does not necessarily preclude a verdict on a negligence theory that the jury was never allowed to consider. Thus, it does not follow that the failure to submit Homemax’s negligence claim to the jury was harmless. *See Id.* (finding harmless error where the verdict necessarily precluded recovery on the claim on which directed verdict was granted). Therefore, R-Anell’s arguments in support of the trial court’s grant of directed verdict are not compelling, and this Court should reverse.

III. THE TRIAL COURT ERRED IN EXCLUDING RELEVANT EMAIL EVIDENCE.

Finally, Homemax argues the trial court erred by excluding certain email evidence on the basis that it was not relevant. (R. pp. 81-2) (ruling “it is not relevant to the ultimate issue in this case.”). In response, R-Anell first summarily claims (without explanation or legal authority) that this issue is not preserved because the email is “not preserved in the trial court record.” (Resp. Br. p. 21).

As a threshold matter, this Court has already dismissed R-Anell’s claim that this email is not in the record. On February 14, 2022, R-Anell filed a motion with this Court to strike this email from the record on appeal. Homemax replied to R-Anell’s motion by pointing out several pages of discussion on this email in the trial transcript, as well as providing certified copies of this

exhibit—which was marked for identification at trial and maintained by the Lexington County Clerk of Court. *See* Rule 606(a), SCACR (“the clerk of court for the county shall retain possession of all exhibits admitted into evidence **or marked for identification** during a hearing or trial before the circuit or family court”) (emphasis added). On March 23, 2022, this Court issued an Order denying R-Anell’s motion to strike this email from the Record. Thus, R-Anell’s claim that this email is not part of the Record is simply wrong.

As to the merits of this issue, R-Anell argues against the relevance of this email by disputing the inferences Homemax claims arise from it. For example, R-Anell disputes the inference that the wrapping could have been damaged when moving the excess parts from Unit A to B because the doors on the house can be opened without damaging the wrapping. (Resp. Br. pp. 22-23). However, R-Anell’s contention only holds water if it assumed the “parts” referenced in this email could be removed through the door. R-Anell cites nothing to support this assumption.

Perhaps acknowledging that the e-mail is relevant, R-Anell’s primary assertion, as an alternative sustaining ground, is that this evidence should be excluded under Rule 403, SCRE, because its “minimal relevance would be substantially outweighed by the prejudice to R-Anell.” (Resp. Br. p. 24). The prejudice R-Anell claims is the possibility of confusion that the wrapping problems referenced in the email relate to another house, not the Christofoli House. (Resp. Br. p. 24). However, this risk is nearly non-existent. Even R-Anell acknowledged this apparent confusion only exists “at a glance,” and that a “closer inspection” of the email makes clear the wrapping problems mentioned related to a different house—one that was sent the day before the Christofoli House. (Resp. Br. p. 24). Certainly, a jury could keep this straight.

Finally, R-Anell closes its argument by claiming that there was no prejudice from the exclusion of this email because “the law and facts . . . established that Homemax assumed the risk

of loss.” (Resp. Br. p. 24). Citing the UCC for the principle that the risk of loss shifted to Homemax upon delivery, R-Anell asserts the “only logical conclusion is that Homemax bore the risk of loss when the damage to the Christofoli House occurred.” Accordingly, R-Anell infers the exclusion of the email evidence made no difference. (Resp. Br. p. 25). *Contra Burke v. Republic Parking Sys.*, 421 S.C. 553, 561, 808 S.E.2d 626, 630 (Ct. App. 2017) (recognizing that generally there is “a reasonable probability the jury’s verdict was influenced by the excluded evidence [when] the jury was not permitted to hear and consider all relevant evidence relating to” the issues before it.).

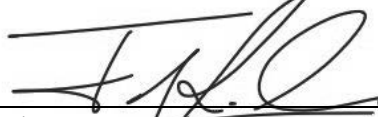
However, R-Anell’s reasoning is fatally circular—assuming as a premise the very thing in dispute. R-Anell’s assumption that the risk of loss was on Homemax when the damage occurred presumes to know when the damage occurred and could only be true if it is assumed that the damage occurred *after* the Christofoli House was delivered to Homemax. However, the question of when the damage occurred was one of the primary disputed issues in this case. *See* (R. p. 250) (the trial court denying R-Anell’s Motion for Summary Judgment and stating, “But no one can say whether it was damaged before it left R-Anell, in transit, [or] once it arrived at Homemax.”). It is precisely this point (which R-Anell takes for granted) that the email is relevant to. *See* (App. Br. pp. 19-24). Thus, exclusion of the email cannot be harmless and this Court should reverse. *See* Rule 401, SCRE (defining relevant evidence as “having **any** tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”)(emphasis added); *State v. Sweat*, 362 S.C. 117, 126-27, 606 S.E.2d 508, 513 (Ct. App. 2004) (“Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears, and it is not required that the inference sought should necessarily follow from the fact proved.”).

CONCLUSION

For the reasons stated above, together with those set forth in Homemax's initial brief, this Court should reverse the trial court's award of prejudgment interest, and additionally, or in the alternative, reverse and remand the matter for a new trial.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2021-000658

R-Anell Housing Group, LLC, Respondent,

v.

Homemax, LLC, Appellant.

Certification of Counsel

The undersigned certifies that the enclosed complies with Rule 211, SCACR.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
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The Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case No.: 2021-000658

R-Anell Housing Group, LLC, ... Respondent,
v.
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PETITION FOR REHEARING

Appellant herein petitions this honorable Court for rehearing pursuant to Rule 221, SCACR. On August 9, 2023, this Court issued Opinion No. 2023-UP-289 which, *inter alia*, determined (1) the trial court properly awarded pre-judgment interest, despite not being plead; (2) changed the law regarding the residential home exception to the economic loss rule, despite this being an unpublished opinion, and despite this being inconsistent with prior decisions of the South Carolina Supreme Court; and (3) affirmed the trial court’s exclusion of certain email evidence as irrelevant.

REINTRODUCTION AND SUMMARY OF FACTS

R-Anell (“Respondent”) is a manufacturer of modular homes, and Homemax (“Appellant”) is a retailer. This dispute concerns two homes manufactured by Respondent—the “Christofoli House” and the “Brown House.” Respondent sued Appellant for breach of contract, alleging non-payment of the Brown House. Appellant answered and counterclaimed for negligence and breach

of contract related to the Christofoli House which was damaged by water intrusion. After the trial court granted directed verdict on Appellant's negligence claim, the case went to the jury on the competing claims for breach of contract, and the jury returned a verdict for Respondent. This appeal concerns three alleged errors: (I) the trial court erred in awarding statutory prejudgment interest under S.C. Code Ann. § 34-31-20(A); (II) the trial court erred in granting directed verdict on Appellant's claim for negligence based on the economic loss rule; and (III) the trial court erred by excluding email evidence as irrelevant. On August 9, 2023, this Court affirmed. This Petition for Rehearing timely follows.

ARGUMENT

I. This Court Should Grant Rehearing on the Issue of Pre-Judgment Interest

Appellant argued the trial court's award of prejudgment interest from March 24, 2018, was error because statutory prejudgment interest was not plead for in the complaint, and because the amount at issue was neither a sum certain nor was it demandable on March 24, 2018. This Court affirmed, finding that the failure to plead statutory prejudgment interest (although indisputable) was not preserved. This Court also made the summary conclusion that the amount sought was a sum-certain and was also demandable on March 24, 2018. This Court misapprehended or overlooked that its conclusions are supported by neither law nor evidence.

A. This Court should grant rehearing because it misapplied or misapprehended the rules of issue preservation in finding Respondent's failure to plead statutory prejudgment interest was not preserved.

Section 34-31-20(A) establishes the statutory prejudgment interest rate at 8.75%. It is well-settled that statutory prejudgment interest must be plead to be awarded. *See Dixie Bell, Inc. v. Redd*, 376 S.C. 361, 367, 656 S.E.2d 765, 768 (Ct. App. 2007) (holding "our Supreme Court held pre-judgment interest should not be included in the judgment [when] it was not pled in the

complaint or prayer”) (citing *Town of Bennettsville v. Bledsoe*, 226 S.C. 214, 219, 84 S.E.2d 554, 556 (1954)). It cannot be disputed that Respondent did not seek statutory prejudgment interest in its complaint. Instead, it sought contractual interest at the rate of 7%. *See* (R. p. 13).

During the trial—at the close of Respondent’s case—Appellant moved for directed verdict on Respondent’s claim of interest. At which point Respondent first acknowledged that statutory interest must be plead, and then conceded the 7% interest set out in the complaint was: “actually, **that is not the statutory prejudgment interest.**” (R. p. 151, lines 24-25) (emphasis added). Appellant likewise pointed out there was neither evidence of a right for interest nor “a claim for a right to interest against [Appellant].” (R. p. 151, lines 11-12). Therefore, when the topic of interest arose again after the verdict was rendered, there was no need for Respondent’s counsel to raise the issue again. The trial court was already aware of the fact that the claimed 7% was not statutory interest. Thus, Appellant simply renewed his “object[ion] to the application of any interest”—either statutory or contractual. (R. p. 311) (“There was no agreement in contract or in writing for the recovery of interest. I don’t think that there is any statute within the UCC that expressly allows for the recovery of interest in this situation.”)

Respondent’s acknowledgment that the 7% interest it sought was not statutory interest, is tantamount to a waiver of such relief. *See Dixie Bell, Inc. v. Redd*, 376 S.C. 361, 367, 656 S.E.2d 765, 768 (Ct. App. 2007) (discussing the error of granting prejudgment what it is not plead because the party “waived any claim to receive prejudgment interest by not pleading it”) (citing *Goodson v. Carolina Container Corp., Inc.*, 283 S.C. 575, 324 S.E.2d 67 (1984)). In the face of Respondent’s concession, the trial court was aware that Respondent did not claim statutory prejudgment interest but was clearly resolved to award it regardless. Thus, at the close of all evidence, Appellant’s renewed “object[ion] to the application of any interest” was sufficient under

the rules of issue preservation which neither require magic language nor charge a litigant with pestering the trial court. *See Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) (“[A] party is not required to use the exact name of a legal doctrine in order to preserve the issue.”); *see also Evans v. Wabash Life Ins. Co.*, 247 S.C. 464, 466, 148 S.E.2d 153, 153 (1966) (the renewal of a motion for directed verdict at the close of all evidence is sufficient to preserve the issues); *accord Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998) (a general objection is sufficient to preserve an issue where the context demonstrates the trial court had sufficient information to understand the issue and rule on it.).

To require a litigant to restate a point already admitted by the opposing party—like here—is an overly technical misapplication of the rules of issue preservation. *See generally, Long v. Norris & Assocs. Ltd.*, 342 S.C. 561, 578, 538 S.E.2d 5, 14 (Ct. App. 2000) (“So long as the judge had an opportunity to rule on an issue, and did so, it was not incumbent upon counsel to harass the judge by parading the issue before him again.”).

B. This Court should grant rehearing because the evidence does not demonstrate that the amount at issue was a sum-certain, and this Court’s assumption that the amount is a sum-certain because it was set out in an invoice is unsupported by the law.

This Court’s reasoning is flawed because it draws a false equivalency between the existence of an invoice and a claim on an account stated or “sum-certain.” In other words, simply because a plaintiff has transcribed the amount claimed into an invoice does not mean the claim is for a sum-certain. Otherwise, a litigant could make every case one for a sum-certain simply by transcribing the claimed amount into an invoice.

Rather, the question of whether a claim is for a sum-certain turns on the particulars of what the parties agreed to *before* the amount was claimed due. To be a sum-certain, the law demands the amount was “capable of being reduced to certainty based on a mathematical calculation

previously agreed to by the parties.” *Dixie Bell*, 376 S.C. at 370, 656 S.E.2d at 769 (citing *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 258-59 (2006)) (all emphasis added). “[W]here the sum cannot be determined by a fixed formula” agreed to by the parties **before** the invoice is submitted, then it cannot be a sum certain. *Id.* (citing *Lewis v. Congress of Racial Equality*, 275 S.C. 556, 274 S.E.2d 287 (1981)) (emphasis added).

Here, there was an initial quote/offer proposed by Respondent on September 1, 2017, in the amount of \$142,660.80. (R. pp. 313-16). Subsequently, on March 24, 2018, Respondent issued an invoice for a different amount—*i.e.*, \$142,292.80—this being the amount it now claims to be the “sum-certain.” (R. p. 317). However, for this invoice amount to be considered a sum-certain, the law requires there to be a “fixed formula” that was agreed to by the parties **before** March 24, 2018. *See supra*. This Court has misapprehended or overlooked that there is no evidence of any agreed upon formula for calculating the invoice amount.¹

Quite simply if all the law required for an amount to be a sum-certain was that it appear on an invoice, then the Legislature could have drafted Section 34-31-20 to say as much. But it did not. If this case truly concerned a sum-certain (as defined by the law) then Respondent would be able to provide evidence that the parties agreed to a means, or “formula,” by which the alleged invoice amount was calculated—*i.e.*, a formula that explains the difference between the quoted price and the invoice price. But Respondent could not present this evidence because no such agreement existed. Having overlooked this lack of evidentiary support, this Court should grant rehearing.

¹ Under Respondent’s reasoning, if this were a sum-certain to hold water, then it must be accepted that the “formula” for determining the amount due would be something akin to “whatever Respondent says it is.” To accept such a claim as being sufficient to establish a sum-certain would render the law on the topic meaningless.

C. This Court should grant rehearing because it misapprehended or overlooked that Respondent’s own witnesses acknowledged the alleged debt was not due on March 24, 2018, and therefore, there is no evidence to support the trial court’s ruling to apply interest from this date.

The trial court granted prejudgment interest effective from March 24, 2018. In affirming, this Court overlooked that there is no evidence that the amount claimed was due on March 24, 2018. In fact, Respondent’s own representative testified the amount was **not** due on March 24, 2018.

Even assuming the amount claimed by Respondent was a sum certain (which it is not), it remains that statutory prejudgment interest only accrues from the time the amount was due. *See Tilley v. Pacesetter Corp.*, 355 S.C. 361, 375, 585 S.E.2d 292, 299 (2003) (“If pre-judgment interest is pled” it is permitted only “**from the time the payment is demandable**, either by agreement of the parties or by operation of law.”) (emphasis added). A claim for prejudgment interest is properly denied where there is no evidence of any specified time for when the account is due or where there is no evidence the parties “agreed to a contract price” before the plaintiff performed. *See S. Welding Works, Inc. v. K & S Constr. Co.*, 286 S.C. 158, 164, 332 S.E.2d 102, 106 (Ct. App. 1985).

Although the March 24, 2018, invoice bears the designation COD (*i.e.*, “cash on delivery”), the undisputed evidence presented at trial was that neither Appellant nor Respondent intended or agreed that the invoice was payable upon delivery. To the contrary, the only testimony presented at trial by Respondent was that payment was to be made at a later date through the floor-plan financing procedures. *See* (R. p. 79) (In explaining why no money was collected on delivery, Phillip Hathcock, general manager of R-Anell, testified it was because a “floor plan [financier] was supposed to pay for it **not COD.**”) (emphasis added); *see also* (R. p. 117) (explaining why

funds were not demanded on delivery Albert Gurner testified that Respondent was expecting the house would be paid by a floor plan financier and that as a result “**we weren’t looking for a COD check at that point.**”) (emphasis added); (R. pp. 125-26) (Melissa Allen testified that she spoke with Mr. Fautley—the owner of Appellant—and both she and Mr. Fautley were of the understanding the Brown House would be financed through a floor plan financier and not COD).

It remains that if Respondent was not expecting or requesting to be paid on March 24, 2018, then the only possible inference to be drawn is that the invoice was not due on this day.

Furthermore, the evidence presented by Respondent is that “it didn’t even realize the Brown House hadn’t been paid for until months after it shipped.” (R. pp. 100-01). Thus, there can be no inference that Respondent demanded payment on March 24, 2018, if it was unaware the floor plan financier had not issued payment until several months later. *See Smith-Hunter Constr. Co. v. Hopson*, 365 S.C. 125, 128, 616 S.E.2d 419, 421 (2005) (recognizing that interest is payable from the time payment is demandable) (citing *Babb v. Rothrock*, 310 S.C. 350, 426 S.E.2d 789 (1993)).

Finally, it is noted that the terms of the invoice itself are inconsistent with the conclusion that payment was due on March 24, 2018. For example, the invoice states that payment should be remitted to Respondent at its office in Cherryville, North Carolina. (R. pp. 317-19). This is inconsistent with the sale being COD which Respondent testified would require payment be remitted immediately to the driver on delivery. Moreover, the face of the invoice states “This invoice is Due Upon Receipt **unless** the customer has special terms.” (R. p. 317) (emphasis added). In this case, those special terms were Respondent’s and Appellant’s understanding that the sale was to be financed through a floorplan financier. *Compare* (R. pp. 322-25) (the invoice for the Christofoli House—which was undisputedly floor plan financed—bears the same designation of

“Due Upon Receipt unless [there are] special terms”). These facts serve to further demonstrate that there was no agreement between the parties that payment was due on March 24, 2018. *Contra Tilley*, 355 S.C. at 375, 585 S.E.2d at 299 (“If pre-judgment interest is pled” it is permitted only “**from the time the payment is demandable**, either by agreement of the parties or by operation of law.”) (emphasis added).

Thus, this Court misapprehended, or overlooked that there is no evidence to support its conclusion that the amount at issue was due on March 24, 2018, and it should therefore grant the instant Petition for Rehearing.

II. This Court Should Grant Rehearing on the Issue of the Economic Loss Rule (i.e., the Dismissal of Appellant’s Tort Claims) because this Court’s Unpublished Opinion is Inconsistent with Prior Appellate Court Rulings.

In affirming the trial court’s grant of directed verdict on Respondent’s claim for negligence, this Court opined the negligent claim was barred by the economic loss rule. Although the South Carolina Supreme Court has plainly found an exception to the economic loss rule in the context of residential homes, this Court summarily concluded the exception does not apply here for two reasons; first because the parties had a contract that set out their expectations; and second because the exception can only be claimed by an individual plaintiff rather than a corporate/business entity. As set out below, the law does not support this Court’s suggestion that simply because certain duties might be contained in a contract that the economic loss rule automatically applies. Moreover, this Court’s suggestion that the application of residential home exception depends on whether the plaintiff is an individual or business—and is only available to an individual plaintiff rather than a business entity plaintiff—is inconsistent with prior rulings of the South Carolina Supreme Court. To the extent this Court is intending to adopt a new rule of law or otherwise narrow

the residential construction exception to the economic loss rule, it should not do so in an unpublished opinion.

A. This Court should grant rehearing because it misapprehended or overlooked that the existence of a contract does not automatically foreclose application of the residential home exception to the economic loss rule.

Relying on *Kennedy*, this Court concluded the economic loss rule applied here because “the expectations of the parties for the delivery of the Christofoli House were set entirely by contract.” (Opinion p. 2) *citing Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 384 S.E.2d 730 (1989). However, this misapprehends the law. The question is not whether the expectations of the parties might be contained in a contract, the question is whether the duties that were breached arise *solely* from the contract.

As it concerns application of the economic loss rule, our Supreme Court has been clear that “[t]he question thus, is not whether the damages are physical or economic. Rather, **the question of whether the plaintiff may maintain an action in tort for purely economic loss turns on the determination of the source of the duty plaintiff claims the defendant owed.**” *See Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 54, 463 S.E.2d 85, 88 (1995) (emphasis added). Where the duty arises **exclusively** by virtue of a contract, an action will not typically lie in tort, however, where the duty would arise independent of the contract, this will support an action in tort. *Id.* at 55, 463 S.E.2d at 88. This is true where the duties arise from both contract and some other source. *See Kennedy*, at 347, 384 S.E.2d at 737. (finding if the defendant “violates a contractual duty *only*, then his liability is only contractual. [But] if he acts in a way as to violate a legal duty, however, his liability is **both** in contract and in tort”) (italics supplied by court, bold added).

This Court’s reasoning is seemingly backwards, suggesting that because Respondent owed certain duties under contract, it therefore could not owe those same duties in tort. This reasoning is inconsistent with the established law of this State which requires the duty arise **solely** by virtue of the contract in order for the economic loss rule to apply. *See id.* at 347, 384 S.E.2d at 737 (stating the economic loss rule is to apply “where the duties are created **solely** by contract”). Thus, if there exists a duty that is either in addition to the contract duties or duplicative of the contract duties, then the economic loss rule is not implicated. *See id.*

This Court’s conclusion that the duties owed by Respondent are limited to contractual duties is flawed for two simple reasons. First, it overlooked that there is no contract setting out these duties as it relates to the Brown House. The only “contracts” between the parties are the dealer agreement and the 2017 quote for the Brown House. Neither of which address Respondent’s duties regarding the production of the Brown House. *See* (R. pp. 313-318) (Respondent’s initial quote for the Brown House); *and* (R. pp. 333-335) (the dealer agreement).

Second, and even assuming there was a “contract” as it related to the Brown House (which there was not), this Court has misapprehended and overlooked that the duties Respondent breached also arise independent of any purported contract duty.

In 1984 the Legislature enacted the South Carolina Modular Building Construction Act (the “Act”). *See* S.C. Code Ann. §§ 23-43-10 *et. seq.* The Act empowers the State Building Code Council to promulgate regulations which it has done at Article 6 of Title 8 of the South Carolina Code of Regulations. *See* S.C. Code Ann. § 23-43-40; S.C. Code Regs. Ann. §§ 8-600 *et. seq.* (Modular Building Construction); *see also* 24 CFR § 3280 (federal regulations applicable to manufactured home construction and safety standards); 24 CFR § 3281.12 (federal regulations providing certain exceptions for modular homes). By law, no business may sell (whether wholesale

or retail) modular building units in South Carolina without being licensed by the Council. S.C. Code Ann. § 23-43-150; *see also* S.C. Code Regs. Ann. § 8-620(1) (setting forth the licensing requirements for a manufacturer of modular buildings).

In addition to the licensure requirements, South Carolina’s regulations provide that all manufacturers of modular homes, like Respondent, are subject to tort liability as contemplated by Section 15-3-630 of the South Carolina Code. *See* S.C. Code Ann. § 15-3-630; S.C. Code of Regs. Ann. § 6-626(1) (“All manufacturers . . . to the extent of their work, shall be subject to the provisions of Section 15-3-630.”). Section 15-3-630 contemplates tort actions against architects, engineers, and contractors upon completion of applicable portions of a construction project. Among the types of actions specifically contemplated by this statute are “action[s] to recover damages for economic or monetary loss” as well as actions against “manufacturers of components.” S.C. Code Ann. §§ 15-3-640(4) & (9).

Importantly, Respondent’s witnesses conceded it was subject to these extra-contractual duties. *See* (R. p. 281, lines 2-8) (Mr. Hathcock conceded, with regard to the Christofoli House, that “this home was subject to the National Manufactured Housing Construction and Safety Standards Act”).

In sum, this Court has overlooked that Respondent was subject to duties which arise outside of, and independent from, any contract. That Respondent might have also had similar duties under a purported contract—assuming a contract existed—does not change the analysis. As a result, this Court, like the trial court, has erred in finding Appellant’s tort claims were barred by the economic loss rule. Therefore, this Court should grant Appellant’s request for rehearing.

B. This Court should grant rehearing because its conclusion that the residential home exception to the economic loss rule is only applicable where the plaintiff is an individual is unsupported by the law of this State.

Secondly, this Court concludes this matter is not excepted from the economic loss rule because Appellant is a commercial entity rather than an individual, holding: “[Appellant’s] claim does not fall within the residential home exception because it is a commercial entity, not an individual homebuyer.” (Order p. 2).

However, at least until the issuance of this Court’s opinion in this matter, the law has never mandated that a plaintiff be an individual to assert the relevant exception to the economic loss rule. This Court’s opinion effectively creates a new rule of law that makes application of the residential construction exception to the economic loss rule turn on whether the plaintiff is an individual versus a corporation or other business entity. Notwithstanding the plethora of potential constitutional, legal, and equitable problems with adopting such a rule, this Court should not venture to change or expand the law through an unpublished and summary opinion.

Regardless, the more pressing problem is that this Court’s ruling is inconsistent with the Supreme Court’s ruling in *Kennedy*, in the most fundamental way. In *Kennedy*, the Supreme Court carved out the residential exception to the economic loss rule, and in doing so specifically overruled *Carolina Winds Owners' Ass'n v. Joe Harden Builder, Inc.*, 297 S.C. 74, 78, 374 S.E.2d 897, 900 (Ct. App. 1988)—a prior Court of Appeals decision which held there was no tort liability against a builder.

Plainly the ruling in *Kennedy*, had it been applied in *Carolina Winds*, would have commanded a different result in that case. *See Kennedy*, 299 S.C. 335, 341, 384 S.E.2d 730, 734 (stating *Carolina Winds* “reaches a result that is repugnant to [] South Carolina [public] policy”). Importantly, the plaintiff in *Carolina Winds* was a business entity—specially, an incorporated or “Inc.” entity. Thus, if the *Kennedy* Court intended that its ruling should only apply to individuals, there would be no reason for it to have specifically overruled *Carolina Winds*. Consequently, this

Court’s conclusion that *Kennedy* only applies to individual plaintiffs, rather than business entities, is not only a new rule of law, but it is also at odds with *Kennedy*. Therefore, this Court should grant Appellant’s petition for rehearing to address how and why its ruling can be reconciled with *Kennedy*.

III. This Court Should Grant Rehearing on the Issue of the Admissibility of Email Evidence.

This Court affirmed the trial court’s ruling that the subject email thread was irrelevant based on the summary conclusion that it “did not pertain to the houses or the plastic wrapping issues involved in this case.” (Order pp. 3-4) (also stating: “The emails did not address issues with the Christofoli House or Brown House, and the unspecified problems the delivery company’s drivers had with the plastic wrapping, which do not appear to have resulted in damage to the house delivered, are not relevant to the issues with the plastic wrapping on the Christofoli House.”). This misapprehends the facts.

The reference line of the subject email (Exhibit 12) reads “40876.” (R. p. 341). This is the serial number for the Christofoli House. *See* (R. p. 339) (showing the serial number for the Christofoli House). Respondent’s counsel acknowledged the same. (R. p. 75, lines 5-6). This email exchange plainly begins with discussions related to the overloading of the Christofoli House and the extraordinary efforts the delivery company went through to make sure it could meet Respondent’s delivery schedule. (R. p. 341). The suggestion that this email does not pertain to the houses at issue is incorrect—it speaks directly and specifically to the Christofoli House.

Moreover, the suggestion that the email does not relate to the issues regarding the wrapping of the house is also not supported by the evidence either. This Court, like the trial court, focused on the singular fact that the problems the delivery company had “yesterday” did not relate to the Cristofoli House. (Order p. 3-4). However, this is an overly narrow analysis. The subject of the

email is not limited to “yesterday’s” problem. To the contrary, it contains an admission by Respondent that problems with the plastic wrapping “happen from time to time.” (R. p. 341).² This acknowledgement is as relevant to the Christofoli House as it is to the house that was delivered “yesterday.” Moreover, the email reflects that even with the knowledge that problems happen from time to time, Respondent only equipped the delivery company with tape rather than mechanical fasteners. *See* (R. p. 80-81). This is all relevant information to aid the jury. Particularly in the face of Respondent’s contrary assertion that it had never had a problem with its wrapping before. *Contra* (R. p. 74) (Philip Hathcock, testifying for Respondent that “We never had a complaint [about the wrapping] until this email.”).³

Accordingly, this Court’s conclusion that this email has nothing to do with the house in question or the plastic wrapping is incorrect, and it should therefore grant rehearing.

² It also bears mention that this email is relevant to impeaching Respondent’s assertions related to the wrapping. *See* (R. p. 74, line 9-10). (Phillip Hathcock asserting “We never had a complaint [about the wrapping] until this email.”); *contra* (R. p. 341) (Exhibit 12 – email in which Melissa Allen concedes problems with the wrapping “happens from time to time”); *see also* (R. p. 81, lines 6-8) (Appellant’s counsel asserting the email is relevant because it evidences Respondent’s use of tape to secure plastic wrapping which serves to contradict or impeach the claim that plastic wrap is attached with mechanical fasteners).

³ At footnote number 1, in its opinion, this Court finds Appellant’s assertion that the email is relevant because it references the weight of the Christofoli House is not preserved. First, the fact that this Court acknowledges the email references the weight of the Christofoli House is internally inconsistent with this Court’s assertion that the email does “not pertain” to the Christofoli House. Plainly the email refers to the weight of the Christofoli House, and therefore indisputably “pertains” to the Christofoli House. Second, the issue of the weight of the Christofoli House was directly referenced in Appellant’s proffer of this evidence. *See* (R. p. 74, lines 1-8). No magic language was otherwise required to raise this fact, when Appellant’s counsel asserted these emails were relevant as circumstantial evidence of problems with Respondent’s homes being properly prepared for transport.

CONCLUSION

For the above-stated reasons, this Court should grant the instant Petition for Rehearing.

Respectfully submitted,

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Attorneys for Appellant

RECEIVED

Aug 24 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

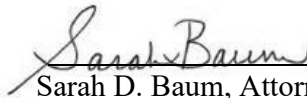
Appellate Case No.: 2021-000658

R-Anell Housing Group, LLC, ... Respondent,
v.
Homemax, LLC, ... Appellant.

PROOF OF SERVICE

The undersigned certifies that she served a copy of the foregoing **Appellant's Petition for Rehearing** to all counsel of record on August 24, 2023, by mailing a copy of same, electronically or with proper postage affixed thereto, as follows:

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August 24, 2023

VIA EMAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals Clerk of Court
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

RECEIVED

Aug 24 2023

SC Court of Appeals

Re: R-Anell Housing Group, LLC, v. Homemax, LLC // 2021-000658

Dear Ms. Kitchings:

Enclosed for filing please find Appellant's Petition for Rehearing. The filing fee for this Petition was put into today's mail. If you have any questions, please do not hesitate to contact us.

Very truly yours,

THURMOND KIRCHNER & TIMBES, P.A.


Sarah D. Baum

Enc. As Stated

The South Carolina Court of Appeals

R-Anell Housing Group, LLC, Respondent,

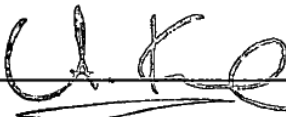
v.

Homemax, LLC, Appellant.

Appellate Case No. 2021-000658

ORDER

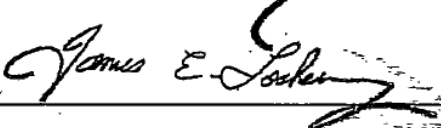
After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



A.J.

Columbia, South Carolina

cc:

Bradley Davis Hewett, Esquire
D. Michael Kelly, Esquire
Robert Perry Mangum, Esquire
James Samuel Murray, Esquire

FILED
Sep 20 2023

Thomas J. Rode, Esquire
The Honorable Jocelyn Newman