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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

H. Steven DeBerry, IV, Circuit Court Judge

Case No. 2020-CV-21-01817

Appellate Case No. 2023-001713

Barbara Sarb.....Respondent/Appellant,

v.

Julie W. Phillips and Joseph M. Phillips.....Appellants/Respondents.

RECORD ON APPEAL

Vol. 1 of 5

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v.

Julie W. Phillips and Joseph M. Phillips.....Appellants/Respondents.

CERTIFICATE OF COUNSEL

The Undersigned, Edward A. Love, hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties (with the exception of Defendants' Pretrial Brief and videos) and not any other material.

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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

C/A No.: 2020-CP-21-01817

Barbara L. Sarb,

Plaintiff,

VERDICT

vs.

Julie W. Phillips and Joseph M. Phillips,

Defendants,

1) As to the Violation of The Residential Property Condition Disclosure Act do you find

Defendants:

☒ Liable

☐ Not Liable

2) As to the Fraud do you find the Defendants:

☐ Liable

☒ Not Liable

3) As to Constructive Fraud do you find the Defendants:

☐ Liable

☒ Not Liable

4) As to Negligent Misrepresentation do you find the Defendants:

☐ Liable

☒ Not Liable

5) As to Negligence do you find the Defendants:

☐ Liable

☒ Not Liable

6) As to Breach of Contract do you find the Defendants:

☐ Liable

☒ Not Liable

7) As to Breach of Contract Accompanied by a Fraudulent Act do you find the Defendants:

☐ Liable

☒ Not Liable

If you find the Defendants liable on any one, or all causes of action, place the total amount of damages in the space provided:

\$ 70,000

8) As to Defendant's claim for Failing to Adequately Inspect the Property do you find the Plaintiff:

☒ Liable

☐ Not Liable

If you find the Plaintiff liable on the Defendant's cause of action, place the amount of damages in the space provided:

\$ ~~0.00~~ 1,000 CAL14SF-P2023

Foreperson's Signature: C. A. 2

09/14/2023

September 14, 2023

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2101817

Barbara L Sarb
 PLAINTIFF(S)

Julie W Phillips et al
 DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

The Jury rendered a verdict in favor of the Plaintiff against the Defendants in the amount of \$69,000.00. Both parties have ten (10) days to submit post trial motions.

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 09/15/2023 .

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.



Florence Common Pleas

Case Caption: Barbara L Sarb VS Julie W Phillips , defendant, et al
Case Number: 2020CP2101817
Type: Order/Electronic Form 4

H. Steven DeBerry, IV

Circuit Court Judge 2771

Electronically signed on 2023-09-15 11:11:39 page 3 of 3

ELECTRONICALLY FILED - 2023 Sep 15 11:19 AM - FLORENCE - COMMON PLEAS - CASE#2020CP2101817

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020-CP-2101817

Barbra Sarb
PLAINTIFF(S)

Joseph Phillips & Julie Phillips
DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Barbra Sarb	Joseph & Julie Phillips	\$ 61,788.84
Joseph & Julie Phillips	Barbra Sarb	\$ 57,703.11
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

DeBerry IV
Circuit Court Judge

2771
Judge Code

11/21/2023
Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Barbara L. Sarb,

Plaintiff,

vs.

Julie W. Phillips and Joseph M. Phillips,

Defendants,

IN THE COURT OF COMMON PLEAS

C/A No.: 2020-CP-21-01817

**ORDER
ATTORNEY'S FEES
&
COURT COSTS**

Having carefully considered the Motions for Fees and Costs filed by each party in this matter the court makes the following findings and rulings;

Pursuant to Baron Data Sys., Inc. vs. Loter, 297 SC 382, (1989), the court has taken all six factors into consideration. There is no finding that this matter was extremely complex, nor that the trial of the case took an inordinate amount of time to conclude. The professional standing of all attorneys is exceptionally high without question. The fees and costs submitted are reasonable, although some are mandated by contract and some are at the discretion of the court.

The jury award and outcome conformed to and supported the facts of the case in the court's opinion. The court further finds that any further financial burden imposed on either side would be significantly unjust and unfair after hearing the facts and considering the outcome of the case.

Therefore, the court awards the following:

- a. Plaintiff's Fees in the amount of \$55,393.00
- b. Plaintiff's Costs in the amount of \$6,395.84
- c. Defendant's Fees in the amount of \$55, 393.00
- d. Defendant's Costs in the amount of \$2,310.11

IT IS SO ORDERED.

The Honorable H. Steven DeBerry, IV

Florence, South Carolina

This ___ day of _____, 2023.



Florence Common Pleas

Case Caption: Barbara L Sarb VS Julie W Phillips , defendant, et al
Case Number: 2020CP2101817
Type: Order/Other

H. Steven DeBerry, IV

Circuit Court Judge 2771

Electronically signed on 2023-11-21 13:13:46 page 5 of 5

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R. 0011

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2101817

Barbara L Sarb
 PLAINTIFF(S)

Julie W Phillips et al
 DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

The court respectfully denies both the Defendant's and the Plaintiff's motions for Judgement Notwithstanding the Verdict and in the Alternative for a New trial. The court finds that the jury was attentive through out the trial and returned a reasonable verdict according the facts and evidence introduced at trial.

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 10/02/2023 .

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.



Florence Common Pleas

Case Caption: Barbara L Sarb VS Julie W Phillips , defendant, et al
Case Number: 2020CP2101817
Type: Order/Electronic Form 4

H. Steven DeBerry, IV

Circuit Court Judge 2771

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
C/A NO.: 2020-CP-21_____

Barbara L. Sarb,

Plaintiff,

vs.

Julie W. Phillips and Joseph M. Phillips,

Defendants.

SUMMONS

21624.2

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the attorney for the aforesaid Plaintiff, at the law offices McCabe, Trotter & Beverly, PC, 4500 Fort Jackson Boulevard, Suite 250 (29209), Post Office Box 212069, Columbia, South Carolina, 29221, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

/s/ Ely O. Grote

Ely O. Grote, SC Bar No. 75379

MCCABE, TROTTER & BEVERLY, P.C.

4500 Fort Jackson Blvd., Suite 250 (29209)

P.O. Box 212069, Columbia, SC 29221

Phone: (803) 724-5000 Fax: (803) 724-5001

Email: Ely.Grote@mccabetrotter.com

ATTORNEY FOR PLAINTIFF

August 6, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
C/A NO.: 2020-CP-21_____

Barbara L. Sarb,

Plaintiff,

vs.

Julie W. Phillips and Joseph M. Phillips,

Defendants.

COMPLAINT
(JURY TRIAL DEMANDED)

21624.2

Plaintiff, complaining of the Defendants would respectfully allege and show unto this Honorable Court, the following:

PARTIES AND JURISDICTION

1. Plaintiff is a citizen and resident of Florence County and Horry County, South Carolina.
2. Upon information and belief, Defendants are citizens and residents of Florence County, South Carolina.
3. Plaintiff purchased the real property located at 550 Wisteria Drive, Florence, South Carolina 29501 (hereinafter, the “**Subject Property**”) from Defendants.
4. The Subject Property is located in Florence County, South Carolina.
5. The most substantial part of the acts or omissions giving rise to this action occurred in the Florence County, South Carolina.
6. The Court has jurisdiction over the parties and the subject matter of this action.
7. Venue is proper in Florence County.

FACTUAL BACKGROUND

8. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

9. Defendants took title to the Subject Property by deed dated October 22, 2010, and recorded on October 29, 2010 in the Office of the Clerk of Court for Florence County, South Carolina in Book B325 at Page 1147.

10. In 2019, Defendants marketed and advertised the Subject Property for sale. Among other things, Defendants advertised the Subject Property as having: “Small mancave on lower level is heated and cooled.”

11. On or about June 15, 2019, Plaintiff and Defendants entered into an agreement/contract for the sale/purchase of the Subject Property (hereinafter, the “**Contract**”).

12. The Contract set forth a purchase price of \$241,750.00 for the Subject Property.

13. Prior to the Contract being entered into, Defendants executed and furnished to Plaintiff a South Carolina Residential Property Condition Disclosure Statement (hereinafter, the “**Disclosure Statement**”).

14. The Disclosure Statement provides that “Owners should answer the questions fully, honestly, and appropriately”, and further provides in part:

If owner fails to check “yes” or make a disclosure and owner knows there is a problem, owner may be liable for making an intentional or negligent misrepresentation and may owe the purchaser actual damages, court costs, and attorney fees. If a question is answered “no” for any question, the owner is stating that owner has no actual knowledge of any problem.

If a question is answered “no representation” for any question, owner is stating that owner is making no representation regarding the conditions or characteristics of the property, but owner still may have a duty to disclose information that is known or should have been known.

If a question is answered and subsequently new information is obtained or something changes to render the owner’s answer incorrect, inaccurate, or misleading (example: roof

begins to leak), owner must promptly correct the disclosure. In some situations, the owner may notify the purchaser of the correction. In some situations, the owner may correct or repair the issue.

15. Among other things, Defendants represented in the Disclosure Statement that they had no actual knowledge of any problems concerning:

- a. Foundation;
- b. Slab;
- c. Basement; or
- d. Plumbing system

16. Among other things, Defendants also represented in the Disclosure Statement that they had no actual knowledge or notice concerning:

- a. Problems caused by water to the Subject Property during their ownership; or
- b. Drainage, soil stability, atmosphere, or underground problems affecting the property

17. Among other things, Defendants also represented in the Disclosure Statement that they had no knowledge of any present pest infestation.

18. The Disclosure Statement was incorporated into the Contract.

19. Prior to closing on the Subject Property, Plaintiff performed reasonable due diligence to investigate the condition of the Subject property, including having a home inspection performed by HouseMaster and a CL-100/South Carolina Wood Infestation inspection performed by Dodson Brothers Exterminating Company.

20. Prior to closing, Plaintiff, through her real estate agent (John Ethridge), also specifically made an inquiry to Defendants through their real estate agent regarding whether were

ever any flooding or water issues with the house, and Defendants responded through their real estate agent that there was never any water in the house.

21. Plaintiff materially, reasonably, and justifiably relied upon the representations of Defendants, which were material to inducing her to place a bid on the Subject Property, to entering into the Contract, and to ultimately closing on the Subject Property.

22. On or about July 26, 2019, Plaintiff closed on the Subject Property.

23. After closing, Plaintiff has experienced numerous issues with the condition of Subject Property, including without limitation, issues with water not properly draining through the sewer line, debris backing up through the sewer line, persistent and pervasive water penetration into the basement area, persistent and pervasive standing water in the basement area, and a severe cockroach infestation.

FOR A FIRST CAUSE OF ACTION

(Violation of The Residential Property Condition Disclosure Act, S.C. Code Ann. § 27-50-10 et seq.)

24. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

25. Prior to the Contract being entered into, Defendants executed and furnished to Plaintiff the Disclosure Statement.

26. Plaintiff materially, reasonably, and justifiably relied upon the representations of Defendants in the Disclosure Statement, which were material to inducing her to place a bid on the Subject Property, to entering into the Contract, and to ultimately close on the Subject Property.

27. S.C. Code Ann. § 27-50-65 provides:

An owner who knowingly violates or fails to perform any duty prescribed by any provision of this article or who discloses any material information on the disclosure statement that he knows to be false, incomplete, or misleading is

liable for actual damages proximately caused to the purchaser and court costs. The court may award reasonable attorney fees incurred by the prevailing party.

28. Defendants, as sellers of the Subject Property, knowingly concealed and failed to disclose defects in the Subject Property, and knowingly made material false, incomplete, and/or otherwise misleading representations concerning the condition of the Subject Property in the Disclosure Statement, including without limitation:

- a. failing to fully, truthfully, and accurately disclose the condition of the property with respect to the basement area, including issues with persistent and pervasive water penetration into the basement area and persistent and pervasive standing water in the basement area, which were known or should have been known by Defendants;
- b. failing to fully, truthfully, and accurately disclose the condition of the property with respect the sewer system, including issues with water not properly draining through the sewer line and debris backing up through the sewer line, which were known or should have been known by Defendants; and
- c. failing to fully, truthfully, and accurately disclose a severe cockroach infestation, which was known or should have been known by Defendants; and
- d. in such other particulars as may be revealed through discovery or shown at trial;

all of which constitute violations of the The Residential Property Condition Disclosure Act (hereinafter, the “**Act**”) and entitle Plaintiff to relief under the Act.

29. Prior to closing on the Subject Property, Plaintiff performed reasonable due diligence, including having reasonable inspections performed, to investigate the condition of the Subject property.

30. Plaintiff’s due diligence, including the reasonable inspections performed, did not uncover or reveal Defendants’ misrepresentations, and specifically did not reveal problems with

the sewer drain line, issues with water penetration into/standing water in the basement area, or a severe cockroach infestation, and Plaintiff was not on notice of such conditions prior to closing on the Subject Property.

31. Plaintiff has suffered and continues to suffer damages as a direct and proximate result of Defendants' failure to properly disclose the condition of the Subject Property, including without limitation:

- a. Plaintiff has and will continue to incur costs and expenses to investigate, address, and repair the condition the Subject Property, in addition to diminution in value of the Subject Property.
- b. Plaintiff has suffered bodily injury, including without limitation, migraine headaches, exacerbation of her asthma, and joint pain; which has and will cause her to undergo great physical pain, suffering, mental anguish, emotional distress, loss of enjoyment of life, and impairment of health and bodily efficiency; and has caused her to spend money for medical services.
- c. Plaintiff had to move out of the Subject Property, causing her to have to commute between Myrtle Beach and Florence for work for a period of time and to incur rental costs for an alternate place to live in Florence.
- d. in such other particulars as may be revealed through discovery or shown at trial.

32. Pursuant to S.C. Code Ann. § 27-50-65, Plaintiff is entitled to judgment against Defendant for actual damages, court costs, and an award of attorney's fees.

FOR A SECOND CAUSE OF ACTION
(Fraud)

33. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

34. Defendants made material false representations to Plaintiff concerning the condition of the Subject Property, including without limitation:

- a. false statements in the Disclosure Statement concerning the condition of the basement area, as set forth hereinabove;
- b. false statements in the Disclosure Statement concerning the condition of the sewer lines, as set forth hereinabove;
- c. false statements in the Disclosure Statement concerning the existence of a severe cockroach infestation, as set forth hereinabove;
- d. false statements concerning the existence of flooding or water issues with the Subject Property in response to an inquiry made by Plaintiff through her real estate agent, as set forth hereinabove; and
- e. in such other particulars as may be revealed through discovery or shown at trial.

35. Defendants knew that the representations made to Plaintiff were false and/or made such representations with reckless disregard as to their truth or falsity.

36. Defendants knew, expected, and intended that Plaintiff would rely upon and act upon the false representations, and Plaintiff did materially, reasonably, and justifiably rely on the representations when deciding to place a bid on the Subject Property, to enter into the Contract, and to ultimately close on the Subject Property.

37. Plaintiff had a right to rely on Defendants' representations.

38. Plaintiff did not have knowledge of the falsity of Defendants' representations.

39. Plaintiff has suffered and continues to suffer damages (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' fraud.

40. Plaintiff is entitled to judgment against Defendants for actual damages, punitive damages, and any and all other recoverable damages.

FOR A THIRD CAUSE OF ACTION
(Constructive Fraud)

41. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

42. Defendants made material false representations to Plaintiff concerning the condition of the Subject Property, including without limitation:

- a. false statements in the Disclosure Statement concerning the condition of the basement area, as set forth hereinabove;
- b. false statements in the Disclosure Statement concerning the condition of the sewer lines, as set forth hereinabove;
- c. false statements in the Disclosure Statement concerning the existence of a severe cockroach infestation, as set forth hereinabove;
- d. false statements concerning the existence of flooding or water issues with the Subject Property in response to an inquiry made by Plaintiff through her real estate agent, as set forth hereinabove; and
- e. in such other particulars as may be revealed through discovery or shown at trial.

43. Defendants knew or ought to/should have known that the representations made to Plaintiff were false.

44. Defendants knew, expected, and intended that Plaintiff would rely upon and act upon the false representations, and Plaintiff did materially, reasonably, and justifiably rely on the representations when deciding to place a bid on the Subject Property, to enter into the Contract, and to ultimately close on the Subject Property.

45. Plaintiff had a right to rely on Defendants' representations.
46. Plaintiff did not have knowledge of the falsity of Defendants' representations.
47. Plaintiff has suffered and continues to suffer damages (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' constructive fraud.
48. Plaintiff is entitled to judgment against Defendants for actual damages, punitive damages, and any and all other recoverable damages.

FOR A FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)

49. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.
50. Defendants made material false representations to Plaintiff concerning the condition of the Subject Property, including without limitation:
- f. false statements in the Disclosure Statement concerning the condition of the basement area, as set forth hereinabove;
 - g. false statements in the Disclosure Statement concerning the condition of the sewer lines, as set forth hereinabove;
 - h. false statements in the Disclosure Statement concerning the existence of a severe cockroach infestation, as set forth hereinabove;
 - i. false statements concerning the existence of flooding or water issues with the Subject Property in response to an inquiry made by Plaintiff through her real estate agent, as set forth hereinabove; and
 - j. in such other particulars as may be revealed through discovery or shown at trial.
51. Defendants had a pecuniary interest in selling the Subject Property and in making these false representations to Plaintiff.

52. Defendants owed a duty of care to see that truthful information was communicated to Plaintiff concerning the condition of the Subject Property.
53. Defendants, by making false representations concerning the condition of the Subject Property, breached their duty of care owed to Plaintiff.
54. Plaintiff did materially, reasonably, and justifiably rely on the Defendants' representations when deciding to place a bid on the Subject Property, to enter into the Contract, and to ultimately close on the Subject Property.
55. Plaintiff has suffered and continues to suffer damages and pecuniary loss (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' negligent misrepresentations.
56. Plaintiff is entitled to judgment against Defendants for actual damages, punitive damages, and any and all other recoverable damages.

FOR A FIFTH CAUSE OF ACTION
(Negligence, Gross Negligence, and Negligence Per Se)

57. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.
58. Defendants, as sellers of the Subject Property, owed a duty to Plaintiff to exercise due care in disclosing, representing, and providing information concerning the condition of the Subject Property.
59. Defendants breached the duty of care owed to Plaintiff and were negligent, careless, reckless, grossly negligent, willful, and/or wanton, including but not limited to, in the following particulars:
- a) In failing to fully, truthfully, and accurately disclose or represent the condition of the Subject Property with respect to the basement area, including without limitation, failing to disclose issues with water penetration and standing water

in the basement area;

- b) In failing to fully, truthfully, and accurately disclose or represent the condition of the Subject Property with respect to the sewer system/sewer lines, including without limitation, failing to disclose problems with issues with water not properly draining through the sewer line and debris backing up through the sewer line;
- c) In failing to fully, truthfully, and accurately disclose or represent the condition of the subject property with respect to pest infestations, including without limitation, failing to disclose a severe cockroach infestation;
- d) In failing to properly repair/remedy issues with water penetration and standing water in the basement area prior to closing;
- e) In failing to properly repair/remedy issues with the sewer system/sewer lines prior to closing;
- f) In failing to properly remedy the severe cockroach infestation prior to closing;
- g) In making efforts or taking actions to conceal or attempt to conceal the issues with the sewer lines/sewer system, with water penetration and standing water in the basement area, and with respect to pest infestation issues; and
- h) In such other particulars as may be revealed through discovery or shown at trial.

60. The foregoing also constitute violations of the Act and Plaintiff is a member of the class of persons the Act is intended to protect; therefore, the foregoing constitute negligence *per se*.

61. Plaintiff has suffered and continues to suffer damages (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' negligence, gross negligence, and/or negligence *per se*.

62. Plaintiff is entitled to judgment against Defendants for actual damages, punitive damages, and any and all other recoverable damages.

FOR A SIXTH CAUSE OF ACTION

(Breach of Contract/Breach of Implied Covenant of Good Faith and Fair Dealing)

63. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.
64. Plaintiff and Defendants entered into the Contract.
65. Among other things, the Contract acknowledges that, prior to the Contract, Defendants had delivered to Plaintiff a South Carolina Residential Property Condition Disclosure Statement (referred to in the Contract as the “CDS”) as required by South Carolina law, in particular, S.C. Code Ann. § 27-50-10, *et seq.*
66. Among other things, the Contract also provides in part: “If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer/making reasonable repairs prior to Closing).”
67. Further, there is an implied covenant of good faith and fair dealing in the Contract.
68. Defendants breached the Contract with Plaintiff (including the implied covenant of good faith and fair dealing), including without limitation, in the following particulars:
- a. In providing Plaintiff with a South Carolina Residential Property Condition Disclosure Statement that was inaccurate, false, untruthful, and/or misleading, including without limitation, with respect to the condition of the basement area, the sewer system/sewer lines, and with respect to the existence of a severe cockroach infestation, as set forth hereinabove;
 - b. In failing to correct the inaccuracies in the Disclosure Statement and in failing to provide Plaintiff with a corrected South Carolina Residential Property Condition Disclosure Statement;

- c. In failing to properly repair/remedy issues with water penetration and standing water in the basement area prior to closing;
 - d. In failing to properly repair/remedy issues with the sewer system/sewer lines prior to closing;
 - e. In failing to properly address or eliminate a severe cockroach infestation prior to closing;
 - f. In making inaccurate, false, untruthful, and/or misleading statements concerning the existence flooding or water issues with the Subject Property in response to an inquiry made by Plaintiff through her real estate agent, as set forth hereinabove; and
 - g. In such other particulars as may be revealed through discovery or shown at trial.
69. Plaintiff has suffered and continues to suffer damages (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' breaches of contract (including breaches of the implied covenant of good faith and fair dealing).
70. The Contract, specifically Section 23, provides for the recovery of attorney's fees and costs of litigation by Plaintiff if Defendants are found in default/breach of the Contract.
71. Plaintiff is entitled to judgment against Defendants for actual damages, attorney's fees, costs, and any and all other recoverable damages.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract/Breach of Implied Covenant of Good Faith and Fair Dealing
Accompanied By a Fraudulent Act)

72. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.
73. Plaintiff and Defendants entered into the Contract.

74. Among other things, the Contract acknowledges that, prior to the Contract, Defendants had delivered to Plaintiff a South Carolina Residential Property Condition Disclosure Statement (referred to in the Contract as the “CDS”) as required by South Carolina law, in particular, S.C. Code Ann. § 27-50-10, *et seq.*
75. Among other things, the Contract also provides in part: “If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer/making reasonable repairs prior to Closing).”
76. Further, there is an implied covenant of good faith and fair dealing in the Contract.
77. Defendants breached the Contract with Plaintiff (including the implied covenant of good faith and fair dealing), including without limitation, in the following particulars:
- a. In providing Plaintiff with a South Carolina Residential Property Condition Disclosure Statement that was inaccurate, false, untruthful, and/or misleading, including without limitation, with respect to the condition of the basement area, the sewer system/sewer lines, and with respect to the existence of a severe cockroach infestation, as set forth hereinabove;
 - b. In failing to correct the inaccuracies in the Disclosure Statement and in failing to provide Plaintiff with a corrected South Carolina Residential Property Condition Disclosure Statement;
 - c. In failing to properly repair/remedy issues with water penetration and standing water in the basement area prior to closing;
 - d. In failing to properly repair/remedy issues with the sewer system/sewer lines prior to closing;

- e. In failing to properly address or eliminate a severe cockroach infestation prior to closing;
- f. In making inaccurate, false, untruthful, and/or misleading statements concerning the existence flooding or water issues with the Subject Property in response to an inquiry made by Plaintiff through her real estate agent, as set forth hereinabove; and
- g. In such other particulars as may be revealed through discovery or shown at trial.

78. Defendants had a fraudulent intent relating to the breaches of the Contract (including breaches of the implied covenant of good faith and fair dealing).

79. Defendants breaches of the Contract (including breaches of the implied covenant of good faith and fair dealing) were accompanied by fraudulent acts.

80. Plaintiff has suffered and continues to suffer damages (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' breaches of contract accompanied by fraudulent acts (including breaches of the implied covenant of good faith and fair dealing).

81. The Contract, specifically Section 23, provides for the recovery of attorney's fees and costs of litigation by Plaintiff if Defendants are found in default/breach of the Contract.

82. Plaintiff is entitled to judgment against Defendants for actual damages, punitive damages, attorney's fees, costs, and any and all other recoverable damages.

WHEREFORE, Plaintiff respectfully prays for judgment against Defendants jointly and severally for actual damages, punitive damages, costs, attorney's fees, and any and all other recoverable damages, and for such other and further relief as this Court deems just and proper.

Plaintiff demands a jury trial.

Respectfully submitted,

/s/ Ely O. Grote

Ely O. Grote, SC Bar No. 75379

MCCABE, TROTTER & BEVERLY, P.C.

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ATTORNEY FOR PLAINTIFF

August 6, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Docket No.: 2020-CP-21-01817
	)	
Barbara Sarb,	)	
	)	
Plaintiff,	)	
	)	ANSWER AND COUNTERCLAIM
vs.	)	(Jury Trial Requested)
	)	
Julie W. Phillips and Joseph M. Phillips,	)	
	)	
Defendants.	)	
_____	)	

Come now the Defendants, Julie W. Phillips and Joseph M. Phillips, and file this, their Answer to the Plaintiff's Complaint and shows this Court the following:

FOR A FIRST DEFENSE

1. The Defendants admit the allegations contained in Paragraph 1 of the Plaintiff's Complaint.
2. The Defendants admit the allegations contained in Paragraph 2 of the Plaintiff's Complaint.
3. The Defendants admit the allegations contained in Paragraph 3 of the Plaintiff's Complaint.
4. The Defendants admit the allegations contained in Paragraph 4 of the Plaintiff's Complaint.
5. The Defendants admit the allegations contained in Paragraph 5 of the Plaintiff's Complaint.
6. The Defendants admit the allegations contained in Paragraph 6 of the Plaintiff's Complaint.

7. The Defendants admit the allegations contained in Paragraph 7 of the Plaintiff's Complaint.

8. The allegations contained in Paragraph 8 of the Plaintiff's Complaint require no response. Insofar as a response is required, the Defendants deny the same.

9. The Defendants admit the allegations contained in Paragraph 9 of the Plaintiff's Complaint.

10. The Defendants deny the allegations contained in Paragraph 10 of the Plaintiff's Complaint. By way of further response the Defendants contend that marketing and advertising the property were functions performed by the listing agent.

11. The Defendants admit the allegations contained in Paragraph 11 of the Plaintiff's Complaint.

12. The Defendants admit the allegations contained in Paragraph 12 of the Plaintiff's Complaint.

13. The Defendants admit that they signed the disclosure statement but otherwise deny the allegations contained in Paragraph 13 of the Complaint as pled.

14. As to the allegations contained in Paragraph 14 of the Plaintiff's Complaint, the Defendants crave reference to the Disclosure Statement for the terms and conditions outlined therein.

15. As to the allegations contained in Paragraph 15 of the Plaintiff's Complaint, including all sub-parts, the Defendants crave reference to the Disclosure Statement for the terms and conditions outlined therein.

16. As to the allegations contained in Paragraph 16 of the Plaintiff's Complaint, including all sub-parts, the Defendants crave reference to the Disclosure Statement for the terms and conditions outlined therein.

17. As to the allegations contained in Paragraph 17 of the Plaintiff's Complaint the Defendants crave reference to the Disclosure Statement for the terms and conditions outlined therein.

18. The Defendants deny the allegations contained in Paragraph 18 of the Plaintiff's Complaint.

19. The Defendants admit only so much of the allegations contained in Paragraph 19 of the Plaintiff's Complaint as could be construed to allege that a home inspection was performed by HouseMaster and a CL-100 was performed by Dodson Brothers Exterminating Company. The Defendants deny the remaining allegations contained in said Paragraph including any and all inferences drawn therefrom.

20. The Defendants admit only so much of the allegations contained in Paragraph 20 of the Plaintiff's Complaint as could be construed to allege that the Defendants were aware of water intrusion during the flood of 2015, but otherwise have no actual knowledge of water intrusion being a problem. The Defendants deny the remaining allegations contained in said Paragraph including any and all inferences drawn therefrom.

21. The Defendants deny the allegations contained in Paragraph 21 of the Plaintiff's Complaint.

22. The Defendants admit the allegations contained in Paragraph 22 of the Plaintiff's Complaint.

23. The Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Plaintiff's Complaint, and therefore, denies the same.

24. The allegations contained in Paragraph 24 of the Plaintiff's Complaint require no response. Insofar as a response is required, the Defendants deny the same.

25. The Defendants admit that they signed the disclosure statement but otherwise deny the allegations contained in Paragraph 13 of the Complaint as pled.

26. The Defendants deny the allegations contained in Paragraph 21 of the Plaintiff's Complaint.

27. The allegations contained in Paragraph 27 of the Plaintiff's Complaint state a legal conclusion for which no response is required. To the extent a response is required the Defendants deny the same.

28. The Defendants deny the allegations contained in Paragraph 28 of the Plaintiff's Complaint, including all sub-parts.

29. The Defendants deny the allegations contained in Paragraph 29 of the Plaintiff's Complaint.

30. The Defendants deny the allegations contained in Paragraph 30 of the Plaintiff's Complaint as pled.

31. The Defendants deny the allegations contained in Paragraph 31 of the Plaintiff's Complaint, including all sub-parts.

32. The Defendants deny the allegations contained in Paragraph 32 of the Plaintiff's Complaint.

33. The allegations contained in Paragraph 33 of the Plaintiff's Complaint require no response. Insofar as a response is required, the Defendants deny the same.

34. The Defendants deny the allegations contained in Paragraph 34 of the Plaintiff's Complaint, including all sub-parts.

35. The Defendants deny the allegations contained in Paragraph 35 of the Plaintiff's Complaint.

36. The Defendants deny the allegations contained in Paragraph 36 of the Plaintiff's Complaint.

37. The Defendants deny the allegations contained in Paragraph 37 of the Plaintiff's Complaint as pled.

38. The Defendants deny the allegations contained in Paragraph 38 of the Plaintiff's Complaint as pled.

39. The Defendants deny the allegations contained in Paragraph 39 of the Plaintiff's Complaint.

40. The Defendants deny the allegations contained in Paragraph 40 of the Plaintiff's Complaint.

41. The allegations contained in Paragraph 41 of the Plaintiff's Complaint require no response. Insofar as a response is required, the Defendants deny the same.

42. The Defendants deny the allegations contained in Paragraph 42 of the Plaintiff's Complaint, including all sub-parts.

43. The Defendants deny the allegations contained in Paragraph 43 of the Plaintiff's Complaint.

44. The Defendants deny the allegations contained in Paragraph 44 of the Plaintiff's Complaint.

45. The Defendants deny the allegations contained in Paragraph 45 of the Plaintiff's Complaint as pled.

46. The Defendants deny the allegations contained in Paragraph 46 of the Plaintiff's Complaint as pled.

47. The Defendants deny the allegations contained in Paragraph 47 of the Plaintiff's Complaint.

48. The Defendants deny the allegations contained in Paragraph 48 of the Plaintiff's Complaint.

49. The allegations contained in Paragraph 49 of the Plaintiff's Complaint require no response. Insofar as a response is required, the Defendants deny the same.

50. The Defendants deny the allegations contained in Paragraph 50 of the Plaintiff's Complaint, including all sub-parts.

51. The Defendants admit only so much of the allegations contained in Paragraph 51 of the Plaintiff's Complaint as could be construed to allege that the Defendants had a pecuniary interest in selling the Subject Property, but deny the remaining allegations contained in said Paragraph.

52. The Defendants admit only so much of the allegations contained in Paragraph 52 of the Plaintiff's Complaint as could be construed to allege that the Defendants owed a duty to communicate truthful information, but that such duty is limited to that information over which the Defendants have control and/or actual knowledge.

53. The Defendants deny the allegations contained in Paragraph 53 of the Plaintiff's Complaint.

54. The Defendants deny the allegations contained in Paragraph 54 of the Plaintiff's Complaint.

55. The Defendants deny the allegations contained in Paragraph 55 of the Plaintiff's Complaint.

56. The Defendants deny the allegations contained in Paragraph 56 of the Plaintiff's Complaint.

57. The allegations contained in Paragraph 57 of the Plaintiff's Complaint require no response. Insofar as a response is required, the Defendants deny the same.

58. The allegations contained in Paragraph 58 of the Plaintiff's Complaint state a legal conclusion for which no response is required. To the extent a response is required, the Defendants deny the same.

59. The Defendants deny the allegations contained in Paragraph 59 of the Plaintiff's Complaint, including all sub-parts.

60. The allegations contained in Paragraph 60 of the Plaintiff's Complaint state a legal conclusion for which no response is required. To the extent a response is required, the Defendants deny the same.

61. The Defendants deny the allegations contained in Paragraph 61 of the Plaintiff's Complaint.

62. The Defendants deny the allegations contained in Paragraph 62 of the Plaintiff's Complaint.

63. The allegations contained in Paragraph 63 of the Plaintiff's Complaint state a legal conclusion for which no response is required. To the extent a response is required, the Defendants deny the same.

64. The Defendants admit the allegations contained in Paragraph 64 of the Plaintiff's Complaint.

65. In response to Paragraph 65 of the Plaintiff's Complaint the Defendants crave reference to the Contract for the terms and conditions contained therein.

66. In response to Paragraph 66 of the Plaintiff's Complaint the Defendants crave reference to the Contract for the terms and conditions contained therein.

67. The Defendants admit the allegations contained in Paragraph 67 of the Plaintiff's Complaint.

68. The Defendants deny the allegations contained in Paragraph 68 of the Plaintiff's Complaint, including all sub-parts.

69. The Defendants deny the allegations contained in Paragraph 69 of the Plaintiff's Complaint.

70. The Defendants deny the allegations contained in Paragraph 70 of the Plaintiff's Complaint.

71. The Defendants deny the allegations contained in Paragraph 71 of the Plaintiff's Complaint.

72. The allegations contained in Paragraph 72 of the Plaintiff's Complaint require no response. Insofar as a response is required, the Defendants deny the same.

73. The Defendants admit the allegations contained in Paragraph 73 of the Plaintiff's Complaint.

74. In response to Paragraph 74 of the Plaintiff's Complaint the Defendants crave reference to the Contract for the terms and conditions contained therein.

75. In response to Paragraph 75 of the Plaintiff's Complaint the Defendants crave reference to the Contract for the terms and conditions contained therein.

76. The Defendants admit the allegations contained in Paragraph 76 of the Plaintiff's Complaint.

77. The Defendants deny the allegations contained in Paragraph 77 of the Plaintiff's Complaint, including all sub-parts.

78. The Defendants deny the allegations contained in Paragraph 78 of the Plaintiff's Complaint.

79. The Defendants deny the allegations contained in Paragraph 79 of the Plaintiff's Complaint.

80. The Defendants deny the allegations contained in Paragraph 80 of the Plaintiff's Complaint.

81. The Defendants deny the allegations contained in Paragraph 81 of the Plaintiff's Complaint.

82. The Defendants deny the allegations contained in Paragraph 82 of the Plaintiff's Complaint.

FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

83. The Defendants reincorporate and reallege Paragraphs 1 through 82 of their Answer as if fully repeated herein.

84. The Plaintiff's claim is barred by the affirmative defense of accord and satisfaction.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Contributory Negligence)

85. The Defendants reincorporate and reallege Paragraphs 1 through 84 of their Answer as if fully repeated herein.

86. The Defendants allege that if any injuries and damages were sustained by the Plaintiff, said injuries and damages were caused by the greater negligence and/or willfulness of the Plaintiff which exceeds the negligence and/or willfulness, if any, on the part of the Defendants, without which greater negligence and/or willfulness on the part of the Plaintiff, said alleged injury or damage would not have occurred or been sustained and for that reason, the Plaintiff is totally barred from recovery.

87. Alternatively, the Defendants allege that if any injuries and damages were sustained by the Plaintiff, said injuries and damages were caused by the negligence and/or willfulness of the Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of the Defendants, and for that reason the recovery of the Plaintiff, if any, shall be reduced in proportion to the amount of her negligence.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Assumption of Risk)

88. The Defendants reincorporate and reallege Paragraphs 1 through 84 of their Answer as if fully repeated herein.

89. The Plaintiff's Complaint is barred by the defense of assumption of the risk.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Performance)

90. The Defendants reincorporate and reallege Paragraphs 1 through 89 of their Answer as if fully repeated herein.

91. The Plaintiff's Complaint is barred by the affirmative defense of performance in that the Defendants have performed any and all obligations under the Contract.

FOR A SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Negligence of a Third Party)

92. The Defendants reincorporate and reallege Paragraphs 1 through 91 of their Answer as if fully repeated herein.

93. The Defendants allege that any injury and damage sustained by the Plaintiff was due to and caused solely by the negligent acts or omissions of some person or persons other than the Defendants over whom the Defendants exercised no authority or control, for which reason the Defendants are not liable to the Plaintiff in any sum whatsoever.

FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Failure to Mitigate)

94. The Defendants reincorporate and reallege Paragraphs 1 through 93 of their Answer as if fully repeated herein.

95. The Plaintiff's Complaint should be dismissed for failure to mitigate her damages.

FOR AN EIGHTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Failure to State a Claim)

96. The Defendants reincorporate and reallege Paragraphs 1 through 95 of their Answer as if fully repeated herein.

97. The Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A NINTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(S.C. Code Ann. §27-50-60)

98. The Defendants reincorporate and reallege Paragraphs 1 through 97 of their Answer as if fully repeated herein.

99. Defendants complied with S.C. Code Ann. §27-50-60 by way of payment of additional consideration for any repairs Plaintiff alleges were inconsistent with the owner disclosures and therefore, Plaintiff's claims must be dismissed.

FOR A TENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Waiver, Estoppel and Laches)

100. The Defendants reincorporate and reallege Paragraphs 1 through 99 of their Answer as if fully repeated herein.

101. Plaintiff's equitable claims are barred by the affirmative defenses of waiver, estoppel and laches.

FOR AN ELEVENTH DEFENSE
AND BY WAY OF COUNTERCLAIM

102. The Defendants reincorporate and reallege Paragraphs 1 through 101 of their Answer as if fully repeated herein.

103. On or about June 14, 2019, Plaintiff, signed a Contract for the purchase of 550 Wisteria Drive, Florence, South Carolina 29501 offering the purchase price of Two Hundred Forty-one Thousand Seven Hundred Fifty and 00/100 (\$241,750) Dollars which was accepted by Defendants on or about June 15, 2019 ("Contract").

104. On or about June 21, 2019, Dodson Brothers Exterminating Company performed a pest inspection of the Subject Property producing a CL-100 as a result thereof (“CL-100”).

105. On or about June 25, 2019, Kevin Watford of HouseMaster Home Inspections conducted an inspection of the subject property issuing a thirty-three (33) page report containing recommendations and comments to Plaintiff (“Inspection”).

106. On or about June 26, 2019, Dodson Brothers Exterminating Company issued an Addendum to the Wood Infestation Report (CL-100).

107. On or about June 27, 2019, Plaintiff forwarded to the Defendants a Repair Addendum/Amendment to Agreement to Buy and Sell Real Estate. In the Repair Addendum, Plaintiff demanded that the Defendants repair all items listed in the Summary of Inspector Comments on the Inspection report as well as all items recommended on the CL-100; and that the foundation be inspected by John Sims on July 1, 2019.

108. On or about July 1, 2019, Ben Jerome of Pee Dee Renovating inspected the Subject Property for the purpose of estimating the repairs contained within the CL-100 and Inspection report. The total estimate for repairs equaled Six Thousand Eight Hundred Ninety-four and 00/100 (\$6,894.00) Dollars.

109. On or about July 26, 2019, the closing on the Subject Property occurred at the law office of Willcox, Buyck & Williams, P.A. in Florence, South Carolina. As a part of that closing and evidenced on the ALTA Settlement Statement, Defendants credited Plaintiff with Five Thousand Six Hundred Sixty-nine and 00/100 (\$5,669.00) Dollars to make repairs outlined on the Inspection report as well as the CL-100.

FOR DEFENDANTS' FIRST CAUSE OF ACTION
(South Carolina Frivolous Civil Proceedings Sanctions Act (the "Act"))

110. The Defendants reincorporate and reallege Paragraphs 1 through 109 of their Answer as if fully repeated herein.

111. Plaintiff has filed a frivolous Complaint in that under the facts as alleged and the facts known to the Plaintiff, the Complaint is unwarranted under existing law nor does there exist a good faith argument for the extension, modification or reversal of existing law.

112. As a result of Plaintiff's frivolous Complaint, Defendants have been damaged in an amount to be proven at the request of the court.

113. Furthermore, Defendants are entitled to an award of sanctions against Plaintiff pursuant to the Act.

114. As required under the Act, the Defendants hereby put the court on notice that they have informed the Plaintiff of their intent to seek damages and sanctions under the Act.

FOR DEFENDANTS' SECOND CAUSE OF ACTION
(Breach of Contract - Indemnification and hold harmless)

115. The Defendants reincorporate and reallege Paragraphs 1 through 114 of their Answer and Counterclaim as if fully repeated herein.

116. Plaintiff's damages are based upon issues and/or problems that were either discovered or undiscovered during the inspection process.

117. Plaintiff agreed in the Contract to hold the Defendants harmless for any damages resulting from the inspection process.

118. Plaintiff's failure to hold the Defendants harmless in accordance with the terms and provisions of the contract, constitute a breach of said Contract.

119. As such, Defendants are entitled to damages to include, but not limited to, attorney's fees and costs of defending this action.

FOR DEFENDANTS' THIRD CAUSE OF ACTION
(Breach of Contract – Failure to Inspect)

120. The Defendants reincorporate and reallege Paragraphs 1 through 119 of their Answer and Counterclaim as if fully repeated herein.

121. Pursuant to the Contract as well as S.C. Code Ann §27-50-80, Plaintiff was required to adequately inspect the Subject Property prior to purchasing same.

122. If the allegations as pled by Plaintiff are proven true as to the condition of the property at the time of the closing, Plaintiff failed to adequately inspect the property to make known the alleged defects.

123. Plaintiff's failure to adequately inspect the property is a breach of the Contract and a violation of South Carolina statutory law.

124. As a result of Plaintiff's breach of the Contract, Defendant is entitled to damages to include, but not limited to, attorney's fees and costs of defending this action.

FOR DEFENDANTS' FOURTH CAUSE OF ACTION
(Breach of Contract – Implied Covenant of Good Faith and Fair Dealing)

125. The Defendants reincorporate and reallege Paragraphs 1 through 124 of their Answer and Counterclaim as if fully repeated herein.

126. In entering the Contract, Plaintiff agreed to the inspection and repair process as outlined therein.

127. If the allegations as pled by Plaintiff are proven true as to the condition of the property at the time of the closing, Plaintiff failed to adequately inspect the property to make known the alleged defects.

128. Plaintiff's failure to adequately inspect the property is a breach of the Contract and its implied covenant of good faith and fair dealing.

129. As a result of Plaintiff's breach of the Contract, Defendant is entitled to damages to include, but not limited to, attorney's fees and costs of defending this action.

WHEREFORE, having fully answered the Plaintiff's complaint, the Defendants seek a judgment against the Plaintiff for actual damages, punitive damages, attorneys fees, costs, and sanctions. Defendants further pray that the Plaintiff's Complaint against them be dismissed with prejudice and for such other a further relief as this court may deem just and proper.

Florence, South Carolina

KING, LOVE, HUPFER & NANCE, LLC

September 10, 2020

BY: /s/Edward A. Love

EDWARD A. LOVE

I.D. No.: 75118

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ATTORNEY FOR DEFENDANTS

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
C/A No.: 2020-CP-21-01817

Barbara L. Sarb,

Plaintiff,

v.

Julie W. Phillips and Joseph M. Phillips,

Defendants.

**PLAINTIFF'S MOTION FOR LEAVE
TO AMEND COMPLAINT**

21624.2

COMES NOW, the Plaintiff, Barbara L. Sarb, by and through her undersigned counsel, and hereby moves the Court for an Order granting Plaintiff leave to amend her complaint pursuant to Rule 15(a), SCRPC. In support of this motion, Plaintiff asserts as follows.

1. Plaintiff filed her complaint in this action on August 6, 2020. Plaintiff desires to amend her complaint for two primary purposes. First, based on information currently available, including information gathered through the discovery process, Plaintiff believes it is necessary to and desires to revise the allegations in her complaint regarding the timing of Plaintiff's receipt of the South Carolina Residential Property Condition Disclosure Statement in order to correct any potential inaccuracies in those allegations. Second, during the course of discovery, Defendants have produced additional documents that Plaintiff did not have at the time of filing her complaint, including an Exclusive Right to Sell Agreement Listing Agreement between Defendants and RE/MAX Professionals (the "Listing Agreement"). Plaintiff contends that the Listing Agreement gives rise to a third-party beneficiary breach of contract claim and desires to amend her complaint to add a third-party beneficiary breach of contract claim as well. A copy of Plaintiff's proposed Amended Complaint is attached hereto as **Exhibit A**.

2. Pursuant to Rule 15(a), SCRCP, leave to amend “shall be freely given when justice so requires and does not prejudice any other party.” “The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 716 (Ct. App. 2005). See also, Patton v. Miller, 420 S.C. 471, 491, 804 S.E.2d 252, 263-264 (2017) (“The prejudice contemplated by Rule 15 is not that the non-moving party is forced to defend the merits of a valid claim. Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend.”). “The party opposing the amendment has the burden of establishing prejudice.” Parker, 362 S.C. at 286, 607 S.E.2d at 716. “This rule strongly favors amendments and the court is encouraged to freely grant leave to amend.” Patton, 420 S.C. at 489, 804 S.E.2d at 261 (quoting Parker, 362 S.C. at 286, 607 S.E.2d at 717). Further, the Supreme Court of South Carolina has observed that Rule 15(a), SCRCP is substantially the same as the Federal Rule, and has noted that the “Supreme Court of the United States has referred to the Rule’s ‘freely given’ provision as a ‘mandate’ that ‘is to be heeded’”. Patton, 420 S.C. at 490, 804 S.E.2d at 262 (citing Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222, 226 (1962)). The South Carolina courts have also cited with approval Federal case law recognizing that in the absence of a substantial reason to deny leave to amend, such as undue delay, bad faith, dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, or undue prejudice against the opposing party, leave to amend should be freely given. See Forrester v. Smith & Steele Builders, Inc., 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988); and Patton, 420 S.C. at 490, 804 S.E.2d at 262. Further, the South Carolina Courts have cited with approval Federal jurisprudence

recognizing that “[i]n the absence of a proper reason, such as bad faith, undue delay, or prejudice, a denial of leave to amend is an abuse of discretion.” Forrester, 295 S.C.at 507, 369 S.E.2d at 158.

3. Plaintiff has not previously amended her complaint.

4. There is no undue delay, bad faith, or dilatory motive on the Plaintiff's part, and allowing Plaintiff to amend her complaint will promote the ends of justice.

5. No depositions have been taken yet, and discovery remains ongoing. Further, this action has not yet been set for trial. Therefore, Defendants will not be prejudiced if Plaintiff is granted leave to amend her complaint.

WHEREFORE, Plaintiff respectfully requests that the Court grant her leave to amend her complaint.

I hereby certify that I have communicated with opposing counsel and attempted in good faith to resolve the matter contained in this Motion.

Respectfully submitted,

/s/ Ely O. Grote

Ely O. Grote, SC Bar No. 75379

MCCABE, TROTTER & BEVERLY, P.C.

4500 Fort Jackson Blvd., Suite 250 (29209)

P.O. Box 212069, Columbia, SC 29221

Phone: (803) 724-5000 Fax: (803) 724-5001

Email: Ely.Grote@mccabetrotter.com

ATTORNEY FOR PLAINTIFF

March 2, 2021
Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Barbara L. Sarb,

Plaintiff,

vs.

Julie W. Phillips and Joseph M. Phillips,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
C/A NO.: 2020-CP-21-01817

AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

21624.2

Plaintiff, complaining of the Defendants would respectfully allege and show unto this Honorable Court, the following:

PARTIES AND JURISDICTION

1. Plaintiff is a citizen and resident of Florence County and Horry County, South Carolina.
2. Upon information and belief, Defendants are citizens and residents of Florence County, South Carolina.
3. Plaintiff purchased the real property located at 550 Wisteria Drive, Florence, South Carolina 29501 (hereinafter, the “**Subject Property**”) from Defendants.
4. The Subject Property is located in Florence County, South Carolina.
5. The most substantial part of the acts or omissions giving rise to this action occurred in the Florence County, South Carolina.
6. The Court has jurisdiction over the parties and the subject matter of this action.
7. Venue is proper in Florence County.

ELECTRONICALLY FILED - 2021 Mar 02 1:59 PM - FLORENCE - COMMON PLEAS - CASE#2020CP2101817

FACTUAL BACKGROUND

8. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

9. Defendants took title to the Subject Property by deed dated October 22, 2010, and recorded on October 29, 2010 in the Office of the Clerk of Court for Florence County, South Carolina in Book B325 at Page 1147.

10. In 2019, Defendants marketed and advertised the Subject Property for sale. Among other things, Defendants advertised the Subject Property as having: "Small mancave on lower level is heated and cooled."

11. On or about June 15, 2019, Plaintiff and Defendants entered into an agreement/contract for the sale/purchase of the Subject Property (hereinafter, the "**Contract**").

12. The Contract set forth a purchase price of \$241,750.00 for the Subject Property.

13. Prior to closing, Defendants executed and furnished to Plaintiff a South Carolina Residential Property Condition Disclosure Statement (hereinafter, the "**Disclosure Statement**").

14. The Disclosure Statement provides that "Owners should answer the questions fully, honestly, and appropriately", and further provides in part:

If owner fails to check "yes" or make a disclosure and owner knows there is a problem, owner may be liable for making an intentional or negligent misrepresentation and may owe the purchaser actual damages, court costs, and attorney fees. If a question is answered "no" for any question, the owner is stating that owner has no actual knowledge of any problem.

If a question is answered "no representation" for any question, owner is stating that owner is making no representation regarding the conditions or characteristics of the property, but owner still may have a duty to disclose information that is known or should have been known.

If a question is answered and subsequently new information is obtained or something changes to render the owner's answer incorrect, inaccurate, or misleading (example: roof begins to leak), owner must promptly correct the disclosure. In some situations, the owner

may notify the purchaser of the correction. In some situations, the owner may correct or repair the issue.

15. Among other things, Defendants represented in the Disclosure Statement that they had no actual knowledge of any problems concerning:

- a. Foundation;
- b. Slab;
- c. Basement; or
- d. Plumbing system

16. Among other things, Defendants also represented in the Disclosure Statement that they had no actual knowledge or notice concerning:

- a. Problems caused by water to the Subject Property during their ownership; or
- b. Drainage, soil stability, atmosphere, or underground problems affecting the property

17. Among other things, Defendants also represented in the Disclosure Statement that they had no knowledge of any present pest infestation.

18. The Disclosure Statement was incorporated into the Contract.

19. Prior to closing on the Subject Property, Plaintiff performed reasonable due diligence to investigate the condition of the Subject property, including having a home inspection performed by HouseMaster and a CL-100/South Carolina Wood Infestation inspection performed by Dodson Brothers Exterminating Company.

20. Prior to closing, Plaintiff, through her real estate agent (John Etheridge), also specifically made an inquiry to Defendants through their real estate agent regarding whether there were ever any flooding or water issues with the house, and Defendants responded through their real estate agent that there was never any water in the house.

21. Plaintiff materially, reasonably, and justifiably relied upon the representations of Defendants, which were material to inducing her to close on the Subject Property.

22. On or about July 26, 2019, Plaintiff closed on the Subject Property.

23. After closing, Plaintiff has experienced numerous issues with the condition of Subject Property, including without limitation, issues with water not properly draining through the sewer line, debris backing up through the sewer line, persistent and pervasive water penetration into the basement area, persistent and pervasive standing water in the basement area, and a severe cockroach infestation.

FOR A FIRST CAUSE OF ACTION

(Violation of The Residential Property Condition Disclosure Act, S.C. Code Ann. § 27-50-10 et seq.)

24. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

25. Prior to closing, Defendants executed and furnished to Plaintiff the Disclosure Statement.

26. Plaintiff materially, reasonably, and justifiably relied upon the representations of Defendants in the Disclosure Statement, which were material to inducing her to close on the Subject Property.

27. S.C. Code Ann. § 27-50-65 provides:

An owner who knowingly violates or fails to perform any duty prescribed by any provision of this article or who discloses any material information on the disclosure statement that he knows to be false, incomplete, or misleading is liable for actual damages proximately caused to the purchaser and court costs. The court may award reasonable attorney fees incurred by the prevailing party.

28. Defendants, as sellers of the Subject Property, knowingly concealed and failed to disclose defects in the Subject Property, and knowingly made material false, incomplete, and/or

otherwise misleading representations concerning the condition of the Subject Property in the Disclosure Statement, including without limitation:

- a. failing to fully, truthfully, and accurately disclose the condition of the property with respect to the basement area, including issues with persistent and pervasive water penetration into the basement area and persistent and pervasive standing water in the basement area, which were known or should have been known by Defendants;
- b. failing to fully, truthfully, and accurately disclose the condition of the property with respect the sewer system, including issues with water not properly draining through the sewer line and debris backing up through the sewer line, which were known or should have been known by Defendants; and
- c. failing to fully, truthfully, and accurately disclose a severe cockroach infestation, which was known or should have been known by Defendants; and
- d. in such other particulars as may be revealed through discovery or shown at trial;

all of which constitute violations of the The Residential Property Condition Disclosure Act (hereinafter, the “**Act**”) and entitle Plaintiff to relief under the Act.

29. Prior to closing on the Subject Property, Plaintiff performed reasonable due diligence, including having reasonable inspections performed, to investigate the condition of the Subject property.

30. Plaintiff’s due diligence, including the reasonable inspections performed, did not uncover or reveal Defendants’ misrepresentations, and specifically did not reveal problems with the sewer drain line, issues with water penetration into/standing water in the basement area, or a severe cockroach infestation, and Plaintiff was not on notice of such conditions prior to closing on the Subject Property.

31. Plaintiff has suffered and continues to suffer damages as a direct and proximate result of Defendants' failure to properly disclose the condition of the Subject Property, including without limitation:

- a. Plaintiff has and will continue to incur costs and expenses to investigate, address, and repair the condition the Subject Property, in addition to diminution in value of the Subject Property.
- b. Plaintiff has suffered bodily injury, including without limitation, migraine headaches, exacerbation of her asthma, and joint pain; which has and will cause her to undergo great physical pain, suffering, mental anguish, emotional distress, loss of enjoyment of life, and impairment of health and bodily efficiency; and has caused her to spend money for medical services.
- c. Plaintiff had to move out of the Subject Property, causing her to have to commute between Myrtle Beach and Florence for work for a period of time and to incur rental costs for an alternate place to live in Florence.
- d. in such other particulars as may be revealed through discovery or shown at trial.

32. Pursuant to S.C. Code Ann. § 27-50-65, Plaintiff is entitled to judgment against Defendant for actual damages, court costs, and an award of attorney's fees.

FOR A SECOND CAUSE OF ACTION
(Fraud)

33. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

34. Defendants made material false representations to Plaintiff concerning the condition of the Subject Property, including without limitation:

- a. false statements in the Disclosure Statement concerning the condition of the basement area, as set forth hereinabove;
- b. false statements in the Disclosure Statement concerning the condition of the sewer lines, as set forth hereinabove;
- c. false statements in the Disclosure Statement concerning the existence of a severe cockroach infestation, as set forth hereinabove;
- d. false statements concerning the existence of flooding or water issues with the Subject Property in response to an inquiry made by Plaintiff through her real estate agent, as set forth hereinabove; and
- e. in such other particulars as may be revealed through discovery or shown at trial.

35. Defendants knew that the representations made to Plaintiff were false and/or made such representations with reckless disregard as to their truth or falsity.

36. Defendants knew, expected, and intended that Plaintiff would rely upon and act upon the false representations, and Plaintiff did materially, reasonably, and justifiably rely on the representations, which were material to inducing her to close on the Subject Property.

37. Plaintiff had a right to rely on Defendants' representations.

38. Plaintiff did not have knowledge of the falsity of Defendants' representations.

39. Plaintiff has suffered and continues to suffer damages (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' fraud.

40. Plaintiff is entitled to judgment against Defendants for actual damages, punitive damages, and any and all other recoverable damages.

FOR A THIRD CAUSE OF ACTION
(Constructive Fraud)

41. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

42. Defendants made material false representations to Plaintiff concerning the condition of the Subject Property, including without limitation:

- a. false statements in the Disclosure Statement concerning the condition of the basement area, as set forth hereinabove;
- b. false statements in the Disclosure Statement concerning the condition of the sewer lines, as set forth hereinabove;
- c. false statements in the Disclosure Statement concerning the existence of a severe cockroach infestation, as set forth hereinabove;
- d. false statements concerning the existence of flooding or water issues with the Subject Property in response to an inquiry made by Plaintiff through her real estate agent, as set forth hereinabove; and
- e. in such other particulars as may be revealed through discovery or shown at trial.

43. Defendants knew or ought to/should have known that the representations made to Plaintiff were false.

44. Defendants knew, expected, and intended that Plaintiff would rely upon and act upon the false representations, and Plaintiff did materially, reasonably, and justifiably rely on the representations, which were material to inducing her to close on the Subject Property.

45. Plaintiff had a right to rely on Defendants' representations.

46. Plaintiff did not have knowledge of the falsity of Defendants' representations.

47. Plaintiff has suffered and continues to suffer damages (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' constructive fraud.

48. Plaintiff is entitled to judgment against Defendants for actual damages, punitive damages, and any and all other recoverable damages.

FOR A FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)

49. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

50. Defendants made material false representations to Plaintiff concerning the condition of the Subject Property, including without limitation:

- f. false statements in the Disclosure Statement concerning the condition of the basement area, as set forth hereinabove;
- g. false statements in the Disclosure Statement concerning the condition of the sewer lines, as set forth hereinabove;
- h. false statements in the Disclosure Statement concerning the existence of a severe cockroach infestation, as set forth hereinabove;
- i. false statements concerning the existence of flooding or water issues with the Subject Property in response to an inquiry made by Plaintiff through her real estate agent, as set forth hereinabove; and
- j. in such other particulars as may be revealed through discovery or shown at trial.

51. Defendants had a pecuniary interest in selling the Subject Property and in making these false representations to Plaintiff.

52. Defendants owed a duty of care to see that truthful information was communicated to Plaintiff concerning the condition of the Subject Property.

53. Defendants, by making false representations concerning the condition of the Subject Property, breached their duty of care owed to Plaintiff.

54. Plaintiff did materially, reasonably, and justifiably rely on the Defendants' representations, which were material to inducing her to close on the Subject Property.
55. Plaintiff has suffered and continues to suffer damages and pecuniary loss (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' negligent misrepresentations.
56. Plaintiff is entitled to judgment against Defendants for actual damages, punitive damages, and any and all other recoverable damages.

FOR A FIFTH CAUSE OF ACTION
(Negligence, Gross Negligence, and Negligence Per Se)

57. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.
58. Defendants, as sellers of the Subject Property, owed a duty to Plaintiff to exercise due care in disclosing, representing, and providing information concerning the condition of the Subject Property.
59. Defendants breached the duty of care owed to Plaintiff and were negligent, careless, reckless, grossly negligent, willful, and/or wanton, including but not limited to, in the following particulars:
- a) In failing to fully, truthfully, and accurately disclose or represent the condition of the Subject Property with respect to the basement area, including without limitation, failing to disclose issues with water penetration and standing water in the basement area;
 - b) In failing to fully, truthfully, and accurately disclose or represent the condition of the Subject Property with respect to the sewer system/sewer lines, including without limitation, failing to disclose problems with issues with water not properly draining through the sewer line and debris backing up through the sewer line;
 - c) In failing to fully, truthfully, and accurately disclose or represent the condition of the subject property with respect to pest infestations, including without

limitation, failing to disclose a severe cockroach infestation;

- d) In failing to properly repair/remedy issues with water penetration and standing water in the basement area prior to closing;
- e) In failing to properly repair/remedy issues with the sewer system/sewer lines prior to closing;
- f) In failing to properly remedy the severe cockroach infestation prior to closing;
- g) In making efforts or taking actions to conceal or attempt to conceal the issues with the sewer lines/sewer system, with water penetration and standing water in the basement area, and with respect to pest infestation issues; and
- h) In such other particulars as may be revealed through discovery or shown at trial.

60. The foregoing also constitute violations of the Act and Plaintiff is a member of the class of persons the Act is intended to protect; therefore, the foregoing constitute negligence *per se*.

61. Plaintiff has suffered and continues to suffer damages (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' negligence, gross negligence, and/or negligence *per se*.

62. Plaintiff is entitled to judgment against Defendants for actual damages, punitive damages, and any and all other recoverable damages.

FOR A SIXTH CAUSE OF ACTION
(Breach of Contract/Breach of Implied Covenant of Good Faith and Fair Dealing)

63. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

64. Plaintiff and Defendants entered into the Contract.

65. Among other things, the Contract acknowledges that Defendants were required to deliver to Plaintiff a South Carolina Residential Property Condition Disclosure Statement (referred

to in the Contract as the “CDS”) as required by South Carolina law, in particular, S.C. Code Ann. § 27-50-10, *et seq.*

66. Among other things, the Contract also provides in part: “If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer/making reasonable repairs prior to Closing).”

67. Further Defendants entered into an Exclusive Right To Sell Agreement Listing Agreement with RE/MAX Professionals (the “Listing Agreement”).

68. Among other things, the Listing Agreement provides, in part:

Owner warrants that, to Owner's knowledge, there are no material defects, hidden or obvious, in or on the property, which have not been disclosed to Broker in writing. Owner further warrants that Owner has reviewed and completed a Seller's Property Disclosure Statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, *et. seq.*, attached to and made a part of this Agreement, and that all such information is accurate to the best of Owner's knowledge. If the Owner discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the owner shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. An owner who knowingly violates or fails to perform any duty prescribed by any provision of this article or who discloses any material information on the disclosure statement that he knows to be false, incomplete, or misleading is liable for actual damages proximately caused to the Buyer and court costs. ... Owner agrees to disclose to the Broker any known latent defects of the herein described property which are not readily ascertainable upon view including land, improvements, and personal property to be conveyed....

69. Plaintiff is a third-party beneficiary of the Listing Agreement.

70. Further, there is an implied covenant of good faith and fair dealing in the Contract and the Listing Agreement.

71. Defendants breached the Contract and the Listing Agreement (including the implied covenant of good faith and fair dealing), including without limitation, in the following particulars:

- a. In providing Plaintiff with a South Carolina Residential Property Condition Disclosure Statement that was inaccurate, false, untruthful, and/or misleading, including without limitation, with respect to the condition of the basement area, the sewer system/sewer lines, and with respect to the existence of a severe cockroach infestation, as set forth hereinabove;
- b. In failing to correct the inaccuracies in the Disclosure Statement and in failing to provide Plaintiff with a corrected South Carolina Residential Property Condition Disclosure Statement;
- c. In failing to properly repair/remedy issues with water penetration and standing water in the basement area prior to closing;
- d. In failing to properly repair/remedy issues with the sewer system/sewer lines prior to closing;
- e. In failing to properly address or eliminate a severe cockroach infestation prior to closing;
- f. In making inaccurate, false, untruthful, and/or misleading statements concerning the existence flooding or water issues with the Subject Property in response to an inquiry made by Plaintiff through her real estate agent, as set forth hereinabove; and
- g. In such other particulars as may be revealed through discovery or shown at trial.

72. Plaintiff has suffered and continues to suffer damages (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' breaches of contract (including breaches of the implied covenant of good faith and fair dealing).
73. The Contract, specifically Section 23, provides for the recovery of attorney's fees and costs of litigation by Plaintiff if Defendants are found in default/breach of the Contract.
74. Plaintiff is entitled to judgment against Defendants for actual damages, attorney's fees, costs, and any and all other recoverable damages.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract/Breach of Implied Covenant of Good Faith and Fair Dealing
Accompanied By a Fraudulent Act)

75. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.
76. Plaintiff and Defendants entered into the Contract.
77. Among other things, the Contract acknowledges that Defendants were required to deliver to Plaintiff a South Carolina Residential Property Condition Disclosure Statement (referred to in the Contract as the "CDS") as required by South Carolina law, in particular, S.C. Code Ann. § 27-50-10, *et seq.*
78. Among other things, the Contract also provides in part: "If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer/making reasonable repairs prior to Closing)."
79. Further, Defendants entered into the Listing Agreement with RE/MAX Professionals.
80. Among other things, the Listing Agreement provides, in part:

Owner warrants that, to Owner's knowledge, there are no material defects, hidden or obvious, in or on the property, which have not been disclosed to Broker in

writing. Owner further warrants that Owner has reviewed and completed a Seller's Property Disclosure Statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et. seq., attached to and made a part of this Agreement, and that all such information is accurate to the best of Owner's knowledge. If the Owner discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the owner shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. An owner who knowingly violates or fails to perform any duty prescribed by any provision of this article or who discloses any material information on the disclosure statement that he knows to be false, incomplete, or misleading is liable for actual damages proximately caused to the Buyer and court costs. ... Owner agrees to disclose to the Broker any known latent defects of the herein described property which are not readily ascertainable upon view including land, improvements, and personal property to be conveyed....

81. Plaintiff is a third-party beneficiary of the Listing Agreement.
82. Further, there is an implied covenant of good faith and fair dealing in the Contract and the Listing Agreement
83. Defendants breached the Contract and the Listing Agreement (including the implied covenant of good faith and fair dealing), including without limitation, in the following particulars:
 - a. In providing Plaintiff with a South Carolina Residential Property Condition Disclosure Statement that was inaccurate, false, untruthful, and/or misleading, including without limitation, with respect to the condition of the basement area, the sewer system/sewer lines, and with respect to the existence of a severe cockroach infestation, as set forth hereinabove;
 - b. In failing to correct the inaccuracies in the Disclosure Statement and in failing to provide Plaintiff with a corrected South Carolina Residential Property Condition Disclosure Statement;

- c. In failing to properly repair/remedy issues with water penetration and standing water in the basement area prior to closing;
 - d. In failing to properly repair/remedy issues with the sewer system/sewer lines prior to closing;
 - e. In failing to properly address or eliminate a severe cockroach infestation prior to closing;
 - f. In making inaccurate, false, untruthful, and/or misleading statements concerning the existence flooding or water issues with the Subject Property in response to an inquiry made by Plaintiff through her real estate agent, as set forth hereinabove; and
 - g. In such other particulars as may be revealed through discovery or shown at trial.
84. Defendants had a fraudulent intent relating to the breaches of the Contract and Listing Agreement (including breaches of the implied covenant of good faith and fair dealing).
85. Defendants breaches of the Contract and Listing Agreement (including breaches of the implied covenant of good faith and fair dealing) were accompanied by fraudulent acts.
86. Plaintiff has suffered and continues to suffer damages (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' breaches of contract accompanied by fraudulent acts (including breaches of the implied covenant of good faith and fair dealing).
87. The Contract, specifically Section 23, provides for the recovery of attorney's fees and costs of litigation by Plaintiff if Defendants are found in default/breach of the Contract.
88. Plaintiff is entitled to judgment against Defendants for actual damages, punitive damages, attorney's fees, costs, and any and all other recoverable damages.

WHEREFORE, Plaintiff respectfully prays for judgment against Defendants jointly and severally for actual damages, punitive damages, costs, attorney's fees, and any and all other recoverable damages, and for such other and further relief as this Court deems just and proper.

Plaintiff demands a jury trial.

Respectfully submitted,

Ely O. Grote, SC Bar No. 75379
MCCABE, TROTTER & BEVERLY, P.C.
4500 Fort Jackson Blvd., Suite 250 (29209)
P.O. Box 212069, Columbia, SC 29221
Phone: (803) 724-5000 Fax: (803) 724-5001
Email: Ely.Grote@mccabetrotter.com
ATTORNEY FOR PLAINTIFF

March ____, 2021
Columbia, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020- CP-21-01817

BARBARA L. SARB,

JULIE W. PHILLIPS AND JOSEPH M.
PHILLIPS

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: ELY GROTE

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

--

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

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

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Barbara L. Sarb,

Plaintiff,

v.

Julie W. Phillips and Joseph M. Phillips,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
C/A No.: 2020-CP-21-01817

**ORDER GRANTING PLAINTIFF
LEAVE TO AMEND COMPLAINT**

This matter came before me on August 10, 2021, for a hearing on Plaintiff's Motion For Leave to Amend Complaint filed on March 2, 2021. At the hearing, attorney Ely O. Grote appeared on behalf of Plaintiff, and attorney Edward A. Love appeared on behalf of the Defendants. After hearing oral argument, reviewing Plaintiff's motion, reviewing the materials submitted by the parties, and after fully considering the facts and circumstances, I find as follows:

1. Plaintiff seeks to amend her Complaint to revise the allegations in her Complaint regarding the timing of Plaintiff's receipt of the South Carolina Residential Property Condition Disclosure Statement (the "Disclosure Statement"), including adding an allegation or allegations regarding the Defendants' failure to timely provide the Disclosure Statement. Plaintiff also seeks to amend her Complaint to add a third-party beneficiary breach of contract claim based on an Exclusive Right to Sell Agreement Listing Agreement produced by Defendants during the course of discovery and which was not in the possession of Plaintiff at the time of the filing of her Complaint.

2. Pursuant to Rule 15(a), SCRCP, leave to amend “shall be freely given when justice so requires and does not prejudice any other party.” “The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 716 (Ct. App. 2005). See also, Patton v. Miller, 420 S.C. 471, 491, 804 S.E.2d 252, 263-264 (2017) (“The prejudice contemplated by Rule 15 is not that the non-moving party is forced to defend the merits of a valid claim. Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend.”). “The party opposing the amendment has the burden of establishing prejudice.” Parker, 362 S.C. at 286, 607 S.E.2d at 716. “This rule strongly favors amendments and the court is encouraged to freely grant leave to amend.” Patton, 420 S.C. at 489, 804 S.E.2d at 261 (quoting Parker, 362 S.C. at 286, 607 S.E.2d at 717).
3. Plaintiff has not previously amended her Complaint; no depositions have been taken yet; discovery remains ongoing; and this matter has not yet been set for trial.
4. I find that granting Plaintiff leave to amend her Complaint is in the interest of justice and does not prejudice Defendants.

THEREFORE, IT IS ORDERED that Plaintiff is granted leave to amend to amend her Complaint pursuant to Rule 15(a), SCRCP. Plaintiff shall have thirty (30) days from the date of this Order to file an amended Complaint.

IT IS SO ORDERED.



Florence Common Pleas

Case Caption: Barbara L Sarb VS Julie W Phillips , defendant, et al

Case Number: 2020CP2101817

Type: Order/Leave to Amend

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
C/A NO.: 2020-CP-21-01817

Barbara L. Sarb,

Plaintiff,

vs.

Julie W. Phillips and Joseph M. Phillips,

Defendants.

SUMMONS

21624.2

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Amended Complaint on the attorney for the aforesaid Plaintiff, at the law offices McCabe, Trotter & Beverly, PC, 4500 Fort Jackson Boulevard, Suite 250, Columbia, South Carolina, 29209, within fifteen (15) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

/s/ Ely O. Grote

Ely O. Grote, SC Bar No. 75379

MCCABE, TROTTER & BEVERLY, P.C.

4500 Fort Jackson Blvd., Suite 250

Columbia, SC 29209

Phone: (803) 724-5000 Fax: (803) 724-5001

Email: Ely.Grote@mccabetrotter.com

ATTORNEY FOR PLAINTIFF

September 9, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
C/A NO.: 2020-CP-21-01817

Barbara L. Sarb,

Plaintiff,

vs.

Julie W. Phillips and Joseph M. Phillips,

Defendants.

AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

21624.2

Plaintiff, complaining of the Defendants would respectfully allege and show unto this Honorable Court, the following:

PARTIES AND JURISDICTION

1. Plaintiff is a citizen and resident of Florence County and Horry County, South Carolina.
2. Upon information and belief, Defendants are citizens and residents of Florence County, South Carolina.
3. Plaintiff purchased the real property located at 550 Wisteria Drive, Florence, South Carolina 29501 (hereinafter, the “**Subject Property**”) from Defendants.
4. The Subject Property is located in Florence County, South Carolina.
5. The most substantial part of the acts or omissions giving rise to this action occurred in the Florence County, South Carolina.
6. The Court has jurisdiction over the parties and the subject matter of this action.
7. Venue is proper in Florence County.

FACTUAL BACKGROUND

8. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

9. Defendants took title to the Subject Property by deed dated October 22, 2010, and recorded on October 29, 2010 in the Office of the Clerk of Court for Florence County, South Carolina in Book B325 at Page 1147.

10. In 2019, Defendants marketed and advertised the Subject Property for sale. Among other things, Defendants advertised the Subject Property as having: “Small mancave on lower level is heated and cooled.”

11. On or about June 15, 2019, Plaintiff and Defendants entered into an agreement/contract for the sale/purchase of the Subject Property (hereinafter, the “**Contract**”).

12. The Contract set forth a purchase price of \$241,750.00 for the Subject Property.

13. Prior to closing, Defendants executed and furnished to Plaintiff a South Carolina Residential Property Condition Disclosure Statement (hereinafter, the “**Disclosure Statement**”).

14. The Disclosure Statement provides that “Owners should answer the questions fully, honestly, and appropriately”, and further provides in part:

If owner fails to check “yes” or make a disclosure and owner knows there is a problem, owner may be liable for making an intentional or negligent misrepresentation and may owe the purchaser actual damages, court costs, and attorney fees. If a question is answered “no” for any question, the owner is stating that owner has no actual knowledge of any problem.

If a question is answered “no representation” for any question, owner is stating that owner is making no representation regarding the conditions or characteristics of the property, but owner still may have a duty to disclose information that is known or should have been known.

If a question is answered and subsequently new information is obtained or something changes to render the owner’s answer incorrect, inaccurate, or misleading (example: roof begins to leak), owner must promptly correct the disclosure. In some situations, the owner

may notify the purchaser of the correction. In some situations, the owner may correct or repair the issue.

15. Among other things, Defendants represented in the Disclosure Statement that they had no actual knowledge of any problems concerning:

- a. Foundation;
- b. Slab;
- c. Basement; or
- d. Plumbing system.

16. Among other things, Defendants also represented in the Disclosure Statement that they had no actual knowledge or notice concerning:

- a. Problems caused by water to the Subject Property during their ownership; or
- b. Drainage, soil stability, atmosphere, or underground problems affecting the property.

17. Among other things, Defendants also represented in the Disclosure Statement that they had no knowledge of any present pest infestation.

18. The Disclosure Statement was incorporated into the Contract.

19. Prior to closing on the Subject Property, Plaintiff performed reasonable due diligence to investigate the condition of the Subject property, including having a home inspection performed by HouseMaster and a CL-100/South Carolina Wood Infestation inspection performed by Dodson Brothers Exterminating Company.

20. Prior to closing, Plaintiff, through her real estate agent (John Etheridge), also specifically made an inquiry to Defendants through their real estate agent regarding whether there were ever any flooding or water issues with the house, and Defendants responded through their real estate agent that there was never any water in the house.

21. Plaintiff materially, reasonably, and justifiably relied upon the representations of Defendants, which were material to inducing her to close on the Subject Property.

22. On or about July 26, 2019, Plaintiff closed on the Subject Property.

23. After closing, Plaintiff has experienced numerous issues with the condition of Subject Property, including without limitation, issues with water not properly draining through the sewer line, debris backing up through the sewer line, persistent and pervasive water penetration into the basement area, persistent and pervasive standing water in the basement area, and a severe cockroach infestation.

FOR A FIRST CAUSE OF ACTION

(Violation of The Residential Property Condition Disclosure Act, S.C. Code Ann. § 27-50-10 et seq.)

24. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

25. Prior to closing, Defendants executed and furnished to Plaintiff the Disclosure Statement.

26. Plaintiff materially, reasonably, and justifiably relied upon the representations of Defendants in the Disclosure Statement, which were material to inducing her to close on the Subject Property.

27. S.C. Code Ann. § 27-50-65 provides:

An owner who knowingly violates or fails to perform any duty prescribed by any provision of this article or who discloses any material information on the disclosure statement that he knows to be false, incomplete, or misleading is liable for actual damages proximately caused to the purchaser and court costs. The court may award reasonable attorney fees incurred by the prevailing party.

28. Defendants, as sellers of the Subject Property, knowingly concealed and failed to disclose defects in the Subject Property, and knowingly made material false, incomplete, and/or

otherwise misleading representations concerning the condition of the Subject Property in the Disclosure Statement, including without limitation:

- a. failing to fully, truthfully, and accurately disclose the condition of the property with respect to the basement area, including issues with persistent and pervasive water penetration into the basement area and persistent and pervasive standing water in the basement area, which were known or should have been known by Defendants;
- b. failing to fully, truthfully, and accurately disclose the condition of the property with respect the sewer system, including issues with water not properly draining through the sewer line and debris backing up through the sewer line, which were known or should have been known by Defendants; and
- c. failing to fully, truthfully, and accurately disclose a severe cockroach infestation, which was known or should have been known by Defendants; and
- d. in such other particulars as may be revealed through discovery or shown at trial;

all of which constitute violations of the The Residential Property Condition Disclosure Act (hereinafter, the “**Act**”) and entitle Plaintiff to relief under the Act.

29. Defendants further knowingly failed to timely provide the Disclosure Statement to Plaintiff in accordance with the requirements of S.C. Code Ann. § 27-50-50, which also constitutes a violation of the Act and entitles Plaintiff to relief under the Act.

30. Prior to closing on the Subject Property, Plaintiff performed reasonable due diligence, including having reasonable inspections performed, to investigate the condition of the Subject property.

31. Plaintiff’s due diligence, including the reasonable inspections performed, did not uncover or reveal Defendants’ misrepresentations, and specifically did not reveal problems with the sewer drain line, issues with water penetration into/standing water in the basement area, or a severe cockroach infestation, and Plaintiff was not on notice of such conditions prior to closing on the Subject Property.

32. Plaintiff has suffered and continues to suffer damages as a direct and proximate result of Defendants' failure to properly disclose the condition of the Subject Property and other violation(s) of the Act, including without limitation:

- a. Plaintiff has and will continue to incur costs and expenses to investigate, address, and repair the condition the Subject Property, in addition to diminution in value of the Subject Property.
- b. Plaintiff has suffered bodily injury, including without limitation, migraine headaches, exacerbation of her asthma, and joint pain; which has and will cause her to undergo great physical pain, suffering, mental anguish, emotional distress, loss of enjoyment of life, and impairment of health and bodily efficiency; and has caused her to spend money for medical services.
- c. Plaintiff had to move out of the Subject Property, causing her to have to commute between Myrtle Beach and Florence for work for a period of time and to incur rental costs for an alternate place to live in Florence.
- d. in such other particulars as may be revealed through discovery or shown at trial.

33. Pursuant to S.C. Code Ann. § 27-50-65, Plaintiff is entitled to judgment against Defendant for actual damages, court costs, and an award of attorney's fees.

FOR A SECOND CAUSE OF ACTION
(Fraud)

34. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

35. Defendants made material false representations to Plaintiff concerning the condition of the Subject Property, including without limitation:

- a. false statements in the Disclosure Statement concerning the condition of the basement area, as set forth hereinabove;
- b. false statements in the Disclosure Statement concerning the condition of the sewer lines, as set forth hereinabove;
- c. false statements in the Disclosure Statement concerning the existence of a severe cockroach infestation, as set forth hereinabove;

- d. false statements concerning the existence of flooding or water issues with the Subject Property in response to an inquiry made by Plaintiff through her real estate agent, as set forth hereinabove; and
- e. in such other particulars as may be revealed through discovery or shown at trial.

36. Defendants knew that the representations made to Plaintiff were false and/or made such representations with reckless disregard as to their truth or falsity.

37. Defendants knew, expected, and intended that Plaintiff would rely upon and act upon the false representations, and Plaintiff did materially, reasonably, and justifiably rely on the representations, which were material to inducing her to close on the Subject Property.

38. Plaintiff had a right to rely on Defendants' representations.

39. Plaintiff did not have knowledge of the falsity of Defendants' representations.

40. Plaintiff has suffered and continues to suffer damages (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' fraud.

41. Plaintiff is entitled to judgment against Defendants for actual damages, punitive damages, and any and all other recoverable damages.

FOR A THIRD CAUSE OF ACTION
(Constructive Fraud)

42. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

43. Defendants made material false representations to Plaintiff concerning the condition of the Subject Property, including without limitation:

- a. false statements in the Disclosure Statement concerning the condition of the basement area, as set forth hereinabove;
- b. false statements in the Disclosure Statement concerning the condition of the sewer lines, as set forth hereinabove;

- c. false statements in the Disclosure Statement concerning the existence of a severe cockroach infestation, as set forth hereinabove;
- d. false statements concerning the existence of flooding or water issues with the Subject Property in response to an inquiry made by Plaintiff through her real estate agent, as set forth hereinabove; and
- e. in such other particulars as may be revealed through discovery or shown at trial.

44. Defendants knew or ought to/should have known that the representations made to Plaintiff were false.

45. Defendants knew, expected, and intended that Plaintiff would rely upon and act upon the false representations, and Plaintiff did materially, reasonably, and justifiably rely on the representations, which were material to inducing her to close on the Subject Property.

46. Plaintiff had a right to rely on Defendants' representations.

47. Plaintiff did not have knowledge of the falsity of Defendants' representations.

48. Plaintiff has suffered and continues to suffer damages (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' constructive fraud.

49. Plaintiff is entitled to judgment against Defendants for actual damages, punitive damages, and any and all other recoverable damages.

FOR A FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)

50. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

51. Defendants made material false representations to Plaintiff concerning the condition of the Subject Property, including without limitation:

- a. false statements in the Disclosure Statement concerning the condition of the basement area, as set forth hereinabove;

- b. false statements in the Disclosure Statement concerning the condition of the sewer lines, as set forth hereinabove;
- c. false statements in the Disclosure Statement concerning the existence of a severe cockroach infestation, as set forth hereinabove;
- d. false statements concerning the existence of flooding or water issues with the Subject Property in response to an inquiry made by Plaintiff through her real estate agent, as set forth hereinabove; and
- e. in such other particulars as may be revealed through discovery or shown at trial.

52. Defendants had a pecuniary interest in selling the Subject Property and in making these false representations to Plaintiff.

53. Defendants owed a duty of care to see that truthful information was communicated to Plaintiff concerning the condition of the Subject Property.

54. Defendants, by making false representations concerning the condition of the Subject Property, breached their duty of care owed to Plaintiff.

55. Plaintiff did materially, reasonably, and justifiably rely on the Defendants' representations, which were material to inducing her to close on the Subject Property.

56. Plaintiff has suffered and continues to suffer damages and pecuniary loss (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' negligent misrepresentations.

57. Plaintiff is entitled to judgment against Defendants for actual damages, punitive damages, and any and all other recoverable damages.

FOR A FIFTH CAUSE OF ACTION
(Negligence, Gross Negligence, and Negligence Per Se)

58. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

59. Defendants, as sellers of the Subject Property, owed a duty to Plaintiff to exercise due care in disclosing, representing, and providing information concerning the condition of the Subject Property.

60. Defendants breached the duty of care owed to Plaintiff and were negligent, careless, reckless, grossly negligent, willful, and/or wanton, including but not limited to, in the following particulars:

- a) In failing to fully, truthfully, and accurately disclose or represent the condition of the Subject Property with respect to the basement area, including without limitation, failing to disclose issues with water penetration and standing water in the basement area;
- b) In failing to fully, truthfully, and accurately disclose or represent the condition of the Subject Property with respect to the sewer system/sewer lines, including without limitation, failing to disclose problems with issues with water not properly draining through the sewer line and debris backing up through the sewer line;
- c) In failing to fully, truthfully, and accurately disclose or represent the condition of the subject property with respect to pest infestations, including without limitation, failing to disclose a severe cockroach infestation;
- d) In failing to properly repair/remedy issues with water penetration and standing water in the basement area prior to closing;
- e) In failing to properly repair/remedy issues with the sewer system/sewer lines prior to closing;
- f) In failing to properly remedy the severe cockroach infestation prior to closing;
- g) In making efforts or taking actions to conceal or attempt to conceal the issues with the sewer lines/sewer system, with water penetration and standing water in the basement area, and with respect to pest infestation issues; and
- h) In failing to timely provide the Disclosure Statement to Plaintiff; and
- i) In such other particulars as may be revealed through discovery or shown at trial.

61. The foregoing also constitute violations of the Act and Plaintiff is a member of the class of persons the Act is intended to protect; therefore, the foregoing constitute negligence *per se*.

62. Plaintiff has suffered and continues to suffer damages (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' negligence, gross negligence, and/or negligence *per se*.

63. Plaintiff is entitled to judgment against Defendants for actual damages, punitive damages, and any and all other recoverable damages.

FOR A SIXTH CAUSE OF ACTION
(Breach of Contract/Breach of Implied Covenant of Good Faith and Fair Dealing)

64. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

65. Plaintiff and Defendants entered into the Contract.

66. Among other things, the Contract acknowledges that Defendants were required to deliver to Plaintiff a South Carolina Residential Property Condition Disclosure Statement (referred to in the Contract as the "CDS") as required by South Carolina law, in particular, S.C. Code Ann. § 27-50-10, *et seq.*

67. Among other things, the Contract also provides in part: "If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer/making reasonable repairs prior to Closing)."

68. Further Defendants entered into an Exclusive Right To Sell Agreement Listing Agreement with RE/MAX Professionals (the "Listing Agreement").

69. Among other things, the Listing Agreement provides, in part:

Owner warrants that, to Owner's knowledge, there are no material defects, hidden or obvious, in or on the property, which have not been disclosed to Broker in writing. Owner further warrants that Owner has reviewed and completed a Seller's Property Disclosure Statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et. seq., attached to and made a part of this Agreement, and that all such information is accurate to the best of Owner's knowledge. If the Owner discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the owner shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. An owner who knowingly violates or fails to perform any duty prescribed by any provision of this article or who discloses any material information on the disclosure statement that he knows to be false, incomplete, or misleading is liable for actual damages proximately caused to the Buyer and court costs. ... Owner agrees to disclose to the Broker any known latent defects of the herein described property which are not readily ascertainable upon view including land, improvements, and personal property to be conveyed....

70. Plaintiff is a third-party beneficiary of the Listing Agreement.

71. Further, there is an implied covenant of good faith and fair dealing in the Contract and the Listing Agreement.

72. Defendants breached the Contract and the Listing Agreement (including the implied covenant of good faith and fair dealing), including without limitation, in the following particulars:

- a. In providing Plaintiff with a South Carolina Residential Property Condition Disclosure Statement that was inaccurate, false, untruthful, and/or misleading, including without limitation, with respect to the condition of the basement area, the sewer system/sewer lines, and with respect to the existence of a severe cockroach infestation, as set forth hereinabove;
- b. In failing to correct the inaccuracies in the Disclosure Statement and in failing to provide Plaintiff with a corrected South Carolina Residential Property Condition Disclosure Statement;
- c. In failing to properly repair/remedy issues with water penetration and standing water in the basement area prior to closing;

- d. In failing to properly repair/remedy issues with the sewer system/sewer lines prior to closing;
- e. In failing to properly address or eliminate a severe cockroach infestation prior to closing;
- f. In making inaccurate, false, untruthful, and/or misleading statements concerning the existence flooding or water issues with the Subject Property in response to an inquiry made by Plaintiff through her real estate agent, as set forth hereinabove; and
- g. In such other particulars as may be revealed through discovery or shown at trial.

73. Plaintiff has suffered and continues to suffer damages (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' breaches of contract (including breaches of the implied covenant of good faith and fair dealing).

74. The Contract, specifically Section 23, provides for the recovery of attorney's fees and costs of litigation by Plaintiff if Defendants are found in default/breach of the Contract.

75. Plaintiff is entitled to judgment against Defendants for actual damages, attorney's fees, costs, and any and all other recoverable damages.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract/Breach of Implied Covenant of Good Faith and Fair Dealing
Accompanied By a Fraudulent Act)

76. Plaintiff reasserts and realleges each and every preceding allegation, as fully as if set forth verbatim herein.

77. Plaintiff and Defendants entered into the Contract.

78. Among other things, the Contract acknowledges that Defendants were required to deliver to Plaintiff a South Carolina Residential Property Condition Disclosure Statement (referred to in the Contract as the "CDS") as required by South Carolina law, in particular, S.C. Code Ann. § 27-50-10, *et seq.*

79. Among other things, the Contract also provides in part: "If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer/making reasonable repairs prior to Closing)."

80. Further, Defendants entered into the Listing Agreement with RE/MAX Professionals.

81. Among other things, the Listing Agreement provides, in part:

Owner warrants that, to Owner's knowledge, there are no material defects, hidden or obvious, in or on the property, which have not been disclosed to Broker in writing. Owner further warrants that Owner has reviewed and completed a Seller's Property Disclosure Statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et. seq., attached to and made a part of this Agreement, and that all such information is accurate to the best of Owner's knowledge. If the Owner discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the owner shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. An owner who knowingly violates or fails to perform any duty prescribed by any provision of this article or who discloses any material information on the disclosure statement that he knows to be false, incomplete, or misleading is liable for actual damages proximately caused to the Buyer and court costs. ... Owner agrees to disclose to the Broker any known latent defects of the herein described property which are not readily ascertainable upon view including land, improvements, and personal property to be conveyed....

82. Plaintiff is a third-party beneficiary of the Listing Agreement.

83. Further, there is an implied covenant of good faith and fair dealing in the Contract and the Listing Agreement

84. Defendants breached the Contract and the Listing Agreement (including the implied covenant of good faith and fair dealing), including without limitation, in the following particulars:

- a. In providing Plaintiff with a South Carolina Residential Property Condition Disclosure Statement that was inaccurate, false, untruthful, and/or misleading, including without limitation, with respect to the condition of the basement area, the sewer system/sewer lines, and with respect to the existence of a severe cockroach infestation, as set forth hereinabove;
- b. In failing to correct the inaccuracies in the Disclosure Statement and in failing to provide Plaintiff with a corrected South Carolina Residential Property Condition Disclosure Statement;
- c. In failing to properly repair/remedy issues with water penetration and standing water in the basement area prior to closing;
- d. In failing to properly repair/remedy issues with the sewer system/sewer lines prior to closing;
- e. In failing to properly address or eliminate a severe cockroach infestation prior to closing;
- f. In making inaccurate, false, untruthful, and/or misleading statements concerning the existence flooding or water issues with the Subject Property in response to an inquiry made by Plaintiff through her real estate agent, as set forth hereinabove; and
- g. In such other particulars as may be revealed through discovery or shown at trial.

85. Defendants had a fraudulent intent relating to the breaches of the Contract and Listing Agreement (including breaches of the implied covenant of good faith and fair dealing).

86. Defendants breaches of the Contract and Listing Agreement (including breaches of the implied covenant of good faith and fair dealing) were accompanied by fraudulent acts.

87. Plaintiff has suffered and continues to suffer damages (including without limitation, as set forth hereinabove) as a direct and proximate result of Defendants' breaches of contract accompanied by fraudulent acts (including breaches of the implied covenant of good faith and fair dealing).

88. The Contract, specifically Section 23, provides for the recovery of attorney's fees and costs of litigation by Plaintiff if Defendants are found in default/breach of the Contract.

89. Plaintiff is entitled to judgment against Defendants for actual damages, punitive damages, attorney's fees, costs, and any and all other recoverable damages.

WHEREFORE, Plaintiff respectfully prays for judgment against Defendants jointly and severally for actual damages, punitive damages, costs, attorney's fees, and any and all other recoverable damages, and for such other and further relief as this Court deems just and proper.

Plaintiff demands a jury trial.

Respectfully submitted,

/s/ Ely O. Grote

Ely O. Grote, SC Bar No. 75379

MCCABE, TROTTER & BEVERLY, P.C.

4500 Fort Jackson Blvd., Suite 250

Columbia, SC 29209

Phone: (803) 724-5000 Fax: (803) 724-5001

Email: Ely.Grote@mccabetrotter.com

ATTORNEY FOR PLAINTIFF

September 9, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Docket No.: 2020-CP-21-01817
	)	
Barbara Sarb,	)	
	)	
Plaintiff,	)	DEFENDANTS' ANSWER AND
	)	COUNTERCLAIMS TO PLAINTIFF'S
vs.	)	AMENDED COMPLAINT
	)	
Julie W. Phillips and Joseph M. Phillips,	)	
	)	
Defendants.	)	
_____	)	

Come now the Defendants, Julie W. Phillips and Joseph M. Phillips, and file this, their Answer to the Plaintiff's Amended Complaint and would show this Court the following:

FOR A FIRST DEFENSE

1. The Defendants admit the allegations contained in Paragraph 1 of the Plaintiff's Amended Complaint.
2. The Defendants admit the allegations contained in Paragraph 2 of the Plaintiff's Amended Complaint.
3. The Defendants admit the allegations contained in Paragraph 3 of the Plaintiff's Amended Complaint.
4. The Defendants admit the allegations contained in Paragraph 4 of the Plaintiff's Amended Complaint.
5. The Defendants admit the allegations contained in Paragraph 5 of the Plaintiff's Amended Complaint.
6. The Defendants admit the allegations contained in Paragraph 6 of the Plaintiff's Amended Complaint.

7. The Defendants admit the allegations contained in Paragraph 7 of the Plaintiff's Amended Complaint.

8. The allegations contained in Paragraph 8 of the Plaintiff's Amended Complaint require no response. Insofar as a response is required, the Defendants deny the same.

9. The Defendants admit the allegations contained in Paragraph 9 of the Plaintiff's Amended Complaint.

10. The Defendants deny the allegations contained in Paragraph 10 of the Plaintiff's Amended Complaint. By way of further response the Defendants contend that marketing and advertising the property were functions performed by the listing agent.

11. The Defendants admit the allegations contained in Paragraph 11 of the Plaintiff's Amended Complaint.

12. The Defendants admit the allegations contained in Paragraph 12 of the Plaintiff's Amended Complaint.

13. The Defendants admit that they signed the disclosure statement but otherwise deny the allegations contained in Paragraph 13 of the Amended Complaint as pled.

14. As to the allegations contained in Paragraph 14 of the Plaintiff's Amended Complaint, the Defendants crave reference to the Disclosure Statement for the terms and conditions outlined therein.

15. As to the allegations contained in Paragraph 15 of the Plaintiff's Amended Complaint, including all sub-parts, the Defendants crave reference to the Disclosure Statement for the terms and conditions outlined therein.

16. As to the allegations contained in Paragraph 16 of the Plaintiff's Amended Complaint, including all sub-parts, the Defendants crave reference to the Disclosure Statement for the terms and conditions outlined therein.

17. As to the allegations contained in Paragraph 17 of the Plaintiff's Amended Complaint the Defendants crave reference to the Disclosure Statement for the terms and conditions outlined therein.

18. The Defendants deny the allegations contained in Paragraph 18 of the Plaintiff's Amended Complaint.

19. The Defendants admit only so much of the allegations contained in Paragraph 19 of the Plaintiff's Amended Complaint as could be construed to allege that a home inspection was performed by HouseMaster and a CL-100 was performed by Dodson Brothers Exterminating Company. The Defendants deny the remaining allegations contained in said Paragraph including any and all inferences drawn therefrom.

20. The Defendants admit only so much of the allegations contained in Paragraph 20 of the Plaintiff's Amended Complaint as could be construed to allege that the Defendants were aware of water intrusion during the flood of 2015, but otherwise have no actual knowledge of water intrusion being a problem. The Defendants deny the remaining allegations contained in said Paragraph including any and all inferences drawn therefrom.

21. The Defendants deny the allegations contained in Paragraph 21 of the Plaintiff's Amended Complaint.

22. The Defendants admit the allegations contained in Paragraph 22 of the Plaintiff's Amended Complaint.

23. The Defendants lack information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Plaintiff's Amended Complaint, and therefore, denies the same.

24. The allegations contained in Paragraph 24 of the Plaintiff's Amended Complaint require no response. Insofar as a response is required, the Defendants deny the same.

25. The Defendants admit that they signed the disclosure statement but otherwise deny the allegations contained in Paragraph 25 of the Amended Complaint as pled.

26. The Defendants deny the allegations contained in Paragraph 26 of the Plaintiff's Amended Complaint.

27. The allegations contained in Paragraph 27 of the Plaintiff's Amended Complaint state a legal conclusion for which no response is required. To the extent a response is required the Defendants deny the same.

28. The Defendants deny the allegations contained in Paragraph 28 of the Plaintiff's Amended Complaint, including all sub-parts.

29. The Defendants deny the allegations contained in Paragraph 29 of the Plaintiff's Amended Complaint.

30. The Defendants deny the allegations contained in Paragraph 30 of the Plaintiff's Amended Complaint as pled.

31. The Defendants deny the allegations contained in Paragraph 31 of the Plaintiff's Amended Complaint.

32. The Defendants deny the allegations contained in Paragraph 32 of the Plaintiff's Amended Complaint, including all sub-parts.

33. The Defendants deny the allegations contained in Paragraph 33 of the Plaintiff's Amended Complaint.

34. The allegations contained in Paragraph 34 of the Plaintiff's Amended Complaint require no response. Insofar as a response is required, the Defendants deny the same.

35. The Defendants deny the allegations contained in Paragraph 35 of the Plaintiff's Amended Complaint, including all sub-parts.

36. The Defendants deny the allegations contained in Paragraph 36 of the Plaintiff's Amended Complaint.

37. The Defendants deny the allegations contained in Paragraph 37 of the Plaintiff's Amended Complaint.

38. The Defendants deny the allegations contained in Paragraph 38 of the Plaintiff's Amended Complaint as pled.

39. The Defendants deny the allegations contained in Paragraph 39 of the Plaintiff's Amended Complaint as pled.

40. The Defendants deny the allegations contained in Paragraph 40 of the Plaintiff's Amended Complaint.

41. The Defendants deny the allegations contained in Paragraph 41 of the Plaintiff's Amended Complaint.

42. The allegations contained in Paragraph 42 of the Plaintiff's Amended Complaint require no response. Insofar as a response is required, the Defendants deny the same.

43. The Defendants deny the allegations contained in Paragraph 43 of the Plaintiff's Amended Complaint, including all sub-parts.

44. The Defendants deny the allegations contained in Paragraph 44 of the Plaintiff's Amended Complaint.

45. The Defendants deny the allegations contained in Paragraph 45 of the Plaintiff's Amended Complaint.

46. The Defendants deny the allegations contained in Paragraph 46 of the Plaintiff's Amended Complaint as pled.

47. The Defendants deny the allegations contained in Paragraph 47 of the Plaintiff's Amended Complaint as pled.

48. The Defendants deny the allegations contained in Paragraph 48 of the Plaintiff's Amended Complaint.

49. The Defendants deny the allegations contained in Paragraph 49 of the Plaintiff's Amended Complaint.

50. The allegations contained in Paragraph 50 of the Plaintiff's Amended Complaint require no response. Insofar as a response is required, the Defendants deny the same.

51. The Defendants deny the allegations contained in Paragraph 51 of the Plaintiff's Amended Complaint, including all sub-parts.

52. The Defendants admit only so much of the allegations contained in Paragraph 52 of the Plaintiff's Amended Complaint as could be construed to allege that the Defendants had a pecuniary interest in selling the Subject Property, but deny the remaining allegations contained in said Paragraph.

53. The Defendants admit only so much of the allegations contained in Paragraph 53 of the Plaintiff's Amended Complaint as could be construed to allege that the Defendants owed a

duty to communicate truthful information, but that such duty is limited to that information over which the Defendants have control and/or actual knowledge.

54. The Defendants deny the allegations contained in Paragraph 54 of the Plaintiff's Amended Complaint.

55. The Defendants deny the allegations contained in Paragraph 55 of the Plaintiff's Amended Complaint.

56. The Defendants deny the allegations contained in Paragraph 56 of the Plaintiff's Amended Complaint.

57. The Defendants deny the allegations contained in Paragraph 57 of the Plaintiff's Amended Complaint.

58. The allegations contained in Paragraph 58 of the Plaintiff's Amended Complaint require no response. Insofar as a response is required, the Defendants deny the same.

59. The allegations contained in Paragraph 59 of the Plaintiff's Amended Complaint state a legal conclusion for which no response is required. To the extent a response is required, the Defendants deny the same.

60. The Defendants deny the allegations contained in Paragraph 60 of the Plaintiff's Amended Complaint, including all sub-parts.

61. The allegations contained in Paragraph 61 of the Plaintiff's Amended Complaint state a legal conclusion for which no response is required. To the extent a response is required, the Defendants deny the same.

62. The Defendants deny the allegations contained in Paragraph 62 of the Plaintiff's Amended Complaint.

63. The Defendants deny the allegations contained in Paragraph 63 of the Plaintiff's Amended Complaint.

64. The allegations contained in Paragraph 64 of the Plaintiff's Amended Complaint state a legal conclusion for which no response is required. To the extent a response is required, the Defendants deny the same.

65. The Defendants admit the allegations contained in Paragraph 65 of the Plaintiff's Amended Complaint.

66. In response to Paragraph 66 of the Plaintiff's Amended Complaint the Defendants crave reference to the Contract for the terms and conditions contained therein.

67. In response to Paragraph 67 of the Plaintiff's Amended Complaint the Defendants crave reference to the Contract for the terms and conditions contained therein.

68. The Defendants admit the allegations contained in Paragraph 68 of the Plaintiff's Amended Complaint.

69. In response to Paragraph 69 of the Plaintiff's Amended Complaint the Defendants crave reference to the Listing Agreement for the terms and conditions contained therein.

70. The Defendants deny the allegations contained in Paragraph 70 of the Plaintiff's Amended Complaint.

71. The allegations contained in Paragraph 71 of the Plaintiff's Amended Complaint state a legal conclusion for which no response is required. To the extent a response is required, the Defendants deny the same.

72. The Defendants deny the allegations contained in Paragraph 72 of the Plaintiff's Amended Complaint, including all sub-parts.

73. The Defendants deny the allegations contained in Paragraph 73 of the Plaintiff's Amended Complaint.

74. In response to Paragraph 74 of the Plaintiff's Amended Complaint the Defendants crave reference to the Contract for the terms and conditions contained therein.

75. The Defendants deny the allegations contained in Paragraph 75 of the Plaintiff's Amended Complaint.

76. The allegations contained in Paragraph 76 of the Plaintiff's Amended Complaint require no response. Insofar as a response is required, the Defendants deny the same.

77. The Defendants admit the allegations contained in Paragraph 77 of the Plaintiff's Amended Complaint.

78. In response to Paragraph 78 of the Plaintiff's Amended Complaint the Defendants crave reference to the Contract for the terms and conditions contained therein.

79. In response to Paragraph 79 of the Plaintiff's Amended Complaint the Defendants crave reference to the Contract for the terms and conditions contained therein.

80. The Defendants admit the allegations contained in Paragraph 80 of the Plaintiff's Amended Complaint.

81. In response to Paragraph 81 of the Plaintiff's Amended Complaint the Defendants crave reference to the Listing Agreement for the terms and conditions contained therein.

82. The Defendants deny the allegations contained in Paragraph 82 of the Plaintiff's Amended Complaint.

83. The allegations contained in Paragraph 83 of the Plaintiff's Amended Complaint state a legal conclusion for which no response is required. To the extent a response is required, the Defendants deny the same.

84. The Defendants deny the allegations contained in Paragraph 84 of the Plaintiff's Amended Complaint, including all sub-parts.

85. The Defendants deny the allegations contained in Paragraph 85 of the Plaintiff's Amended Complaint.

86. The Defendants deny the allegations contained in Paragraph 86 of the Plaintiff's Amended Complaint.

87. The Defendants deny the allegations contained in Paragraph 87 of the Plaintiff's Amended Complaint.

88. In response to Paragraph 88 of the Plaintiff's Amended Complaint the Defendants crave reference to the Contract for the terms and conditions contained therein.

89. The Defendants deny the allegations contained in Paragraph 89 of the Plaintiff's Amended Complaint.

FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

90. The Defendants reincorporate and reallege Paragraphs 1 through 89 of their Answer as if fully repeated herein.

91. The Plaintiff's claim is barred by the affirmative defense of accord and satisfaction.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Contributory Negligence)

92. The Defendants reincorporate and reallege Paragraphs 1 through 91 of their Answer as if fully repeated herein.

93. The Defendants allege that if any injuries and damages were sustained by the Plaintiff, said injuries and damages were caused by the greater negligence and/or willfulness of the Plaintiff which exceeds the negligence and/or willfulness, if any, on the part of the Defendants, without which greater negligence and/or willfulness on the part of the Plaintiff, said alleged injury or damage would not have occurred or been sustained and for that reason, the Plaintiff is totally barred from recovery.

94. Alternatively, the Defendants allege that if any injuries and damages were sustained by the Plaintiff, said injuries and damages were caused by the negligence and/or willfulness of the Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of the Defendants, and for that reason the recovery of the Plaintiff, if any, shall be reduced in proportion to the amount of her negligence.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Assumption of Risk)

95. The Defendants reincorporate and reallege Paragraphs 1 through 94 of their Answer as if fully repeated herein.

96. The Plaintiff's Amended Complaint is barred by the defense of assumption of the risk.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Performance)

97. The Defendants reincorporate and reallege Paragraphs 1 through 96 of their Answer as if fully repeated herein.

98. The Plaintiff's Amended Complaint is barred by the affirmative defense of performance in that the Defendants have performed any and all obligations under the Contract.

FOR A SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Negligence of a Third Party)

99. The Defendants reincorporate and reallege Paragraphs 1 through 98 of their Answer as if fully repeated herein.

100. The Defendants allege that any injury and damage sustained by the Plaintiff was due to and caused solely by the negligent acts or omissions of some person or persons other than the Defendants over whom the Defendants exercised no authority or control, for which reason the Defendants are not liable to the Plaintiff in any sum whatsoever.

FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Failure to Mitigate)

101. The Defendants reincorporate and reallege Paragraphs 1 through 100 of their Answer as if fully repeated herein.

102. The Plaintiff's Amended Complaint should be dismissed for failure to mitigate her damages.

FOR AN EIGHTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Failure to State a Claim)

103. The Defendants reincorporate and reallege Paragraphs 1 through 102 of their Answer as if fully repeated herein.

104. The Plaintiff's Amended Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A NINTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(S.C. Code Ann. §27-50-60)

105. The Defendants reincorporate and reallege Paragraphs 1 through 104 of their Answer as if fully repeated herein.

106. Defendants complied with S.C. Code Ann. §27-50-60 by way of payment of additional consideration for any repairs Plaintiff alleges were inconsistent with the owner disclosures and therefore, Plaintiff's claims must be dismissed.

FOR A TENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE
(Waiver, Estoppel and Laches)

107. The Defendants reincorporate and reallege Paragraphs 1 through 106 of their Answer as if fully repeated herein.

108. Plaintiff's equitable claims are barred by the affirmative defenses of waiver, estoppel and laches.

FOR AN ELEVENTH DEFENSE
AND BY WAY OF COUNTERCLAIM

109. The Defendants reincorporate and reallege Paragraphs 1 through 108 of their Answer as if fully repeated herein.

110. On or about June 14, 2019, Plaintiff, signed a Contract for the purchase of 550 Wisteria Drive, Florence, South Carolina 29501 offering the purchase price of Two Hundred Forty-one Thousand Seven Hundred Fifty and 00/100 (\$241,750) Dollars which was accepted by Defendants on or about June 15, 2019 (“Contract”).

111. On or about June 21, 2019, Dodson Brothers Exterminating Company performed a pest inspection of the Subject Property producing a CL-100 as a result thereof (“CL-100”).

112. On or about June 25, 2019, Kevin Watford of HouseMaster Home Inspections conducted an inspection of the subject property issuing a thirty-three (33) page report containing recommendations and comments to Plaintiff (“Inspection”).

113. On or about June 26, 2019, Dodson Brothers Exterminating Company issued an Addendum to the Wood Infestation Report (CL-100).

114. On or about June 27, 2019, Plaintiff forwarded to the Defendants a Repair Addendum/Amendment to Agreement to Buy and Sell Real Estate. In the Repair Addendum, Plaintiff demanded that the Defendants repair all items listed in the Summary of Inspector Comments on the Inspection report as well as all items recommended on the CL-100; and that the foundation be inspected by John Sims on July 1, 2019.

115. On or about July 1, 2019, Ben Jerome of Pee Dee Renovating inspected the Subject Property for the purpose of estimating the repairs contained within the CL-100 and Inspection report. The total estimate for repairs equaled Six Thousand Eight Hundred Ninety-four and 00/100 (\$6,894.00) Dollars.

116. On or about July 26, 2019, the closing on the Subject Property occurred at the law office of Willcox, Buyck & Williams, P.A. in Florence, South Carolina. As a part of that closing

and evidenced on the ALTA Settlement Statement, Defendants credited Plaintiff with Five Thousand Six Hundred Sixty-nine and 00/100 (\$5,669.00) Dollars to make repairs outlined on the Inspection report as well as the CL-100.

FOR DEFENDANTS' FIRST CAUSE OF ACTION
(South Carolina Frivolous Civil Proceedings Sanctions Act (the "Act"))

117. The Defendants reincorporate and reallege Paragraphs 1 through 116 of their Answer as if fully repeated herein.

118. Plaintiff has filed a frivolous Complaint and Amended Complaint in that under the facts as alleged and the facts known to the Plaintiff, the Complaint and Amended Complaint is unwarranted under existing law nor does there exist a good faith argument for the extension, modification or reversal of existing law.

119. As a result of Plaintiff's frivolous Complaint and Amended Complaint, Defendants have been damaged in an amount to be proven at the request of the court.

120. Furthermore, Defendants are entitled to an award of sanctions against Plaintiff pursuant to the Act.

121. As required under the Act, the Defendants hereby put the court on notice that they have informed the Plaintiff of their intent to seek damages and sanctions under the Act.

FOR DEFENDANTS' SECOND CAUSE OF ACTION
(Breach of Contract - Indemnification and hold harmless)

122. The Defendants reincorporate and reallege Paragraphs 1 through 121 of their Answer and Counterclaim as if fully repeated herein.

123. Plaintiff's damages are based upon issues and/or problems that were either discovered or undiscovered during the inspection process.

124. Plaintiff agreed in the Contract to hold the Defendants harmless for any damages resulting from the inspection process.

125. Plaintiff's failure to hold the Defendants harmless in accordance with the terms and provisions of the contract, constitute a breach of said Contract.

126. As such, Defendants are entitled to damages to include, but not limited to, attorney's fees and costs of defending this action.

FOR DEFENDANTS' THIRD CAUSE OF ACTION
(Breach of Contract – Failure to Inspect)

127. The Defendants reincorporate and reallege Paragraphs 1 through 126 of their Answer and Counterclaim as if fully repeated herein.

128. Pursuant to the Contract as well as S.C. Code Ann §27-50-80, Plaintiff was required to adequately inspect the Subject Property prior to purchasing same.

129. If the allegations as pled by Plaintiff are proven true as to the condition of the property at the time of the closing, Plaintiff failed to adequately inspect the property to make known the alleged defects.

130. Plaintiff's failure to adequately inspect the property is a breach of the Contract and a violation of South Carolina statutory law.

131. As a result of Plaintiff's breach of the Contract, Defendant is entitled to damages to include, but not limited to, attorney's fees and costs of defending this action.

FOR DEFENDANTS' FOURTH CAUSE OF ACTION
(Breach of Contract – Implied Covenant of Good Faith and Fair Dealing)

132. The Defendants reincorporate and reallege Paragraphs 1 through 131 of their Answer and Counterclaim as if fully repeated herein.

133. In entering the Contract, Plaintiff agreed to the inspection and repair process as outlined therein.

134. If the allegations as pled by Plaintiff are proven true as to the condition of the property at the time of the closing, Plaintiff failed to adequately inspect the property to make known the alleged defects.

135. Plaintiff's failure to adequately inspect the property is a breach of the Contract and its implied covenant of good faith and fair dealing.

136. As a result of Plaintiff's breach of the Contract, Defendant is entitled to damages to include, but not limited to, attorney's fees and costs of defending this action.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint, the Defendants seek a judgment against the Plaintiff for actual damages, punitive damages, attorneys fees, costs, and sanctions. Defendants further pray that the Plaintiff's Amended Complaint against them be dismissed with prejudice and for such other a further relief as this court may deem just and proper.

Florence, South Carolina

KING, LOVE, HUPFER & NANCE, LLC

October 8, 2021

BY: /s/Edward A. Love

EDWARD A. LOVE

I.D. No.: 75118

Post Office Box 1764

135 South Dargan Street, Suite 201

Florence, SC 29503

(843) 407-5525 – Tel

(843) 407-5782 – Fax

ATTORNEY FOR DEFENDANTS

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Barbara L. Sarb,

Plaintiff,

vs.

Julie W. Phillips and Joseph M. Phillips,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
C/A No.: 2020-CP-21-01817

**PLAINTIFF'S REPLY TO
DEFENDANTS' ANSWER AND
COUNTERCLAIMS TO PLAINTIFF'S
AMENDED COMPLAINT
(JURY TRIAL REQUESTED)**

21624.2

TO: EDWARD A. LOVE, ESQ., ATTORNEY FOR DEFENDANTS:

The Plaintiff, Barbara L. Sarb, responding and replying to the Defendants' Answer and Counterclaims to Plaintiff's Amended Complaint, would respectfully allege and show unto this Honorable Court as follows:

**FOR A FIRST DEFENSE
(General and Specific Denial)**

1. Plaintiff reaffirms and restates all allegations contained in her Amended Complaint filed on September 9, 2021.

2. Each and every allegation of Defendants' Answer and Counterclaims to Plaintiff's Amended Complaint not specifically admitted herein is denied. To the extent any allegation or part thereof is not expressly referred to and specifically answered it is hereby denied and legal proof thereof is demanded.

3. Paragraphs 1 through 108 of Defendants' Answer and Counterclaims to Plaintiff's Amended Complaint appear to be Defendants' answer to Plaintiff's Amended Complaint, thus no response from Plaintiff is necessary. To the extent a response is deemed necessary, paragraphs 1 through 108 are denied and strict proof thereof is demanded.

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4. As to Paragraph 109, Plaintiff repeats and reiterates her responses to Paragraphs 1 through 108 set forth hereinabove as if fully set forth verbatim herein.

5. Paragraph 110 is admitted.

6. Paragraph 111 is admitted, upon information and belief.

7. Paragraph 112 is admitted.

8. As to Paragraph 113, Plaintiff admits that the CL-100 South Carolina Wood Infestation Report prepared by Dodson Brothers Exterminating Company includes an addendum dated June 26, 2019; otherwise, Plaintiff lacks sufficient knowledge or information to form a belief as to any remaining allegations of Paragraph 113 and therefore denies the same and demands strict proof thereof.

9. Paragraph 114 is admitted.

10. As to Paragraph 115, Plaintiff admits that Pee Dee Renovating prepared an estimate dated July 1, 2019 for the repair of certain issues identified in the CL-100 and the Inspection report, and that the estimate totals \$6,894.00; otherwise, Plaintiff lacks sufficient knowledge or information to form a belief as to any remaining allegations of Paragraph 115 and therefore denies the same and demands strict proof thereof.

11. Paragraph 116 is admitted.

12. As to Paragraph 117, Plaintiff repeats and reiterates her responses to Paragraphs 1 through 116 set forth hereinabove as if fully set forth verbatim herein.

13. Paragraphs 118, 119, and 120 are denied.

14. To the extent that Paragraph 121 is an allegation of law, Plaintiff is not required to admit or deny that Paragraph; subject to the above, Plaintiff craves reference to South Carolina law and denies Paragraph 121 to the extent that anything alleged therein conflicts with the applicable law of this State. Further, as to Paragraph 121, Plaintiff admits that her counsel received

a letter dated August 19, 2020 from attorney Edward A. Love expressing an intent to seek sanctions if Plaintiff did not voluntarily dismiss this action; otherwise, Paragraph 121 is denied.

15. As to Paragraph 122, Plaintiff repeats and reiterates her responses to Paragraphs 1 through 121 set forth hereinabove as if fully set forth verbatim herein.

16. As to Paragraph 123, Plaintiff craves reference to her Complaint and denies any allegations of Paragraph 123 inconsistent therewith.

17. Paragraph 124 is denied as stated.

18. Paragraphs 125 and 126 are denied.

19. As to Paragraph 127, Plaintiff repeats and reiterates her responses to Paragraphs 1 through 126 set forth hereinabove as if fully set forth verbatim herein.

20. Paragraph 128 is denied as stated.

21. Paragraphs 129, 130, and 131 are denied.

22. As to Paragraph 132, Plaintiff repeats and reiterates her responses to Paragraphs 1 through 131 set forth hereinabove as if fully set forth verbatim herein.

23. As to Paragraph 133, Plaintiff craves reference to the Contract as to its terms and conditions, and denies any allegations of Paragraph 133 inconsistent therewith.

24. Paragraphs 134, 135, and 136 are denied.

FOR A SECOND DEFENSE
(Failure to Mitigate)

25. Plaintiff would show, upon information and belief, that Defendants have failed to mitigate their damages as required by law.

FOR A THIRD DEFENSE
(Waiver and Estoppel)

26. Plaintiff would show, upon information and belief, that Defendants' counterclaims are barred by the Doctrines of Waiver and Estoppel.

FOR A FOURTH DEFENSE
(Dismissal Pursuant to Rule 12(b)(6), SCRPC)

27. Plaintiff would show, upon information and belief, that Defendants' counterclaims fail to state a claim against Plaintiff for which relief can be granted, therefore, they should be dismissed pursuant to Rule 12(b)(6), SCRPC.

FOR A FIFTH DEFENSE
(Defendants' Prior Material Breach of Contract)

28. Plaintiff would show, upon information and belief, that the Defendants' counterclaims for breach of contract are barred by Defendants' prior material breach of the Contract.

FOR A SIXTH DEFENSE
(Frivolous Proceedings)

29. Plaintiff would show, upon information and belief, that Defendants' counterclaims are frivolous, and that sanctions are appropriate under the South Carolina Frivolous Proceedings Sanctions Act.

FOR A SEVENTH DEFENSE
(Fraud)

30. Plaintiff would show, upon information and belief, that Defendants' counterclaims are barred as a result of fraud by Defendants.

FOR AN EIGHTH DEFENSE
(Mistake)

31. Plaintiff would show, upon information and belief, that Defendants' counterclaims are barred by the doctrine of mistake.

FOR A NINTH DEFENSE
**(Defendants' Answer and Counterclaims to Plaintiff's Amended Complaint
Is Untimely)**

32. Plaintiff would show, upon information and belief, that Defendants' Answer and Counterclaims to Plaintiff's Amended Complaint is untimely as it was not served/filed in

accordance with the time specified in Rule 15(a), SCRCF, and therefore, Defendants' Answer and Counterclaims to Plaintiff's Amended Complaint should be stricken and the Defendants' counterclaims dismissed.

FOR A TENTH DEFENSE
(Reservation and Non-Waiver)

33. Plaintiff reserves and does not waive any additional or further defenses as may be revealed by additional information acquired through discovery or otherwise.

WHEREFORE, Plaintiff, having fully responded to Defendants' Answer and Counterclaims to Plaintiff's Amended Complaint, prays this Honorable Court as follows:

- (a) That Defendants' counterclaims be dismissed with prejudice;
- (b) That Plaintiff be granted judgment against Defendants as requested in her Amended Complaint;
- (c) For an award of costs and attorney's fees;
- (d) For sanctions against Defendants pursuant to the South Carolina Frivolous Proceedings Sanctions Act; and
- (e) For such other and further relief as this Court may deem just and proper.

Plaintiff requests a jury trial.

Respectfully submitted,

s/ Ely O. Grote

Ely O. Grote, SC Bar No. 75379

MCCABE, TROTTER & BEVERLY, P.C.

4500 Fort Jackson Blvd., Suite 250

Columbia, South Carolina 29209

Phone: (803) 724-5000 Fax: (803) 724-5001

Email: Ely.Grote@mccabetrotter.com

ATTORNEY FOR PLAINTIFF

October 19, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
C/A No.: 2020-CP-21-01817

Barbara L. Sarb,

Plaintiff,

v.

Julie W. Phillips and Joseph M. Phillips,

Defendants.

**PLAINTIFF'S RESPONSES TO
DEFENDANTS' REQUESTS FOR
ADMISSION**

21624.2

Plaintiff by and through her undersigned counsel, hereby responds to Defendants' Requests for Admission as follows:

1. Please admit that Plaintiff signed the Contract (as that term is defined in Plaintiffs Complaint) on June 14, 2019.

RESPONSE: Plaintiff admits that she signed the Contract on June 14, 2019, but would further note that she subsequently initialed a price change and subsequently signed a repair addendum.

2. Please admit that Plaintiff received and executed the Disclosure Statement (as that term is defined in Plaintiffs Complaint) on June 25, 2019.

RESPONSE: Plaintiff admits that she signed the Disclosure Statement on June 25, 2019, and that she had received the Disclosure Statement at least by that time.

3. Please admit that Plaintiffs' counsel was in possession of the Disclosure

Statement when the Complaint was filed in this matter on August 6, 2020.

RESPONSE: Admitted.

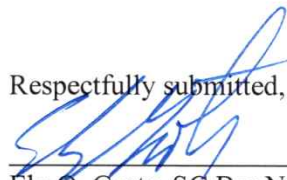
4. Please admit that the allegations contained in paragraphs 13, 21, 25, 26, 36, 44 and 54 of the Plaintiffs Complaint are false.

RESPONSE: Plaintiff only admits that any allegations contained in paragraphs 13, 21, 25, 26, 36, 44, and 54 of her Complaint filed on August 6, 2020 that assert or allege that Plaintiff had received and/or relied upon the Disclosure Statement prior to entering into the Contract are false or incorrect; otherwise, Request to Admit #4 is denied. Plaintiff would further state that has heretofore moved to amend her Complaint to, in part, modify the allegations contained in said paragraphs.

5. Please admit that Plaintiff had no knowledge of and did not rely upon any statements contained in the Disclosure Statement when she signed the Contract.

RESPONSE: Admitted.

Respectfully submitted,



Ely O. Grote, SC Bar No. 75379
MCCABE, TROTTER & BEVERLY, P.C.
4500 Fort Jackson Blvd., Suite 250 (29209)
P.O. Box 212069, Columbia, SC 29221
Phone: (803) 724-5000 Fax: (803) 724-5001
Email: Ely.Grote@mccabetrotter.com
ATTORNEY FOR PLAINTIFF

April 21, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
C/A No.: 2020-CP-21-01817

Barbara L. Sarb,

Plaintiff,

vs.

Julie W. Phillips and Joseph M. Phillips,

Defendants.

CERTIFICATE OF SERVICE

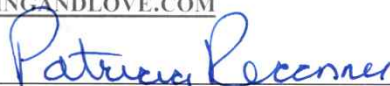
I, Patricia Reconnu, an employee of the law offices of McCabe, Trotter & Beverly, P.C., attorneys for the Plaintiff hereby certify that I have served or caused to be served a copy of the foregoing document upon the below named individual and or counsel this April 21, 2021, via Regular Mail and e-mail as follows:

DOCUMENTS SERVED:

Plaintiff's Responses to Defendants' Requests for Admissions

PARTIES SERVED

Edward Andrew Love, Esq.
King, Love, Hupfer & Nance LLC
Post Office Box 1764
Florence, South Carolina 29503
ELOVE@KINGANDLOVE.COM


Patricia Reconnu, Paralegal

Physical Address:
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Mailing Address:
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Locations in:
Columbia, SC
Mount Pleasant, SC



McCABE, TROTTER & BEVERLY, P.C.
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Ely O. Grote
Shareholder

Ely.Grote@mccabetrotter.com
Direct: (803) 724-5018

Licensed to practice in South Carolina

April 21, 2021

VIA REGULAR MAIL & EMAIL: ELove@KINGANDLOVE.COM

Edward Andrew Love, Esq.
King, Love, Hupfer & Nance LLC
Post Office Box 1764
Florence, South Carolina 29503

Re: Barbara Sarb v. Julie W. Phillips and Joseph M. Phillips
Subject Property: 550 Wisteria Dr., Florence, SC 29501
MTB File No.: 21624.2

Dear Ed:

Enclosed, for service upon you, please find Plaintiff's Responses to Defendants' Requests for Admissions and Certificate of Service in the above-referenced matter.

Should you have questions or concerns, please do not hesitate to let me know.

Sincerely,

Ely O. Grote

EOG/pr
cc: Barbara Sarb (via email)

DEFENDANT'S PRETRIAL BRIEF IS OMITTED AS SAME WAS NOT MADE PART OF THE TRIAL RECORD AND THEREFORE CANNOT BE MADE PART OF THE RECORD ON APPEAL PURSUANT TO RULE 16(C), SCRCP AND RULE 210(C), SCRAP.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Barbara Sarb,

Plaintiff,

vs.

Julie W. Phillips and Joseph M. Phillips,

Defendants,

IN THE COURT OF COMMON PLEAS

C/A No.: 2020-CP-21-01817

**PLAINTIFF'S MOTION IN LIMINE, AND
MOTION TO DISMISS DEFENDANTS'
FRIVOLOUS PROCEEDINGS
COUNTERCLAIM OR IN THE
ALTERNATIVE TO BIFURCATE SUCH
CLAIM**

21624.2

**TO: EDWARD A. LOVE, ESQ., COUNSEL FOR THE ABOVE-NAMED
DEFENDANTS:**

COMES NOW, the Plaintiff Barbara L. Sarb, by and through her undersigned counsel, and hereby moves the Court for an Order to exclude the following evidence from trial: any assertion or reference to, directly or indirectly, that Plaintiff should have sued or pursued recovery from persons retained by Plaintiff to perform pre-closing inspections (namely HouseMaster and Dodson Brothers Exterminating) or the real estate agents involved in Plaintiff's purchase of the subject property from Defendants, or that the foregoing are liable for the damages asserted by Plaintiff in this case. Plaintiff further moves to dismiss Defendants' counterclaim under the South Carolina Frivolous Civil Proceedings Sanctions Act or in the alternative to bifurcate such claim from the jury trial of this matter, and Plaintiff moves to exclude any evidence pertaining to claims of frivolous proceedings during the jury trial of this matter.

INTRODUCTION

The case currently appears on the trial roster for the term of Court commencing on September 11, 2023. This is an action for damages by Plaintiff arising from Plaintiff's purchase of a home located at 550 Wisteria Drive in Florence, South Carolina (the "Subject Property") from the Defendants in 2019. A copy of the purchase contract is attached as **Exhibit A**. In connection with the real estate transaction, among other things, Defendants completed and provided to Plaintiff a Residential Property Condition Disclosure statement, a copy of which is attached as **Exhibit B** (the "Disclosure Statement"). In a nutshell, this action arises out of the Defendants' failure to properly disclose the condition of the Subject Property and/or misrepresentations concerning the condition of the Subject Property in connection with the sale, primarily relating to: (1) issues with water in the basement areas; (2) issues with the sewer system/sewer line; and (3) a severe cockroach infestation. Plaintiff's Amended Complaint asserts seven causes of action: (1) Violation of The Residential Property Condition Disclosure Act, S.C. Code Ann. § 27-50-10 *et seq.*; (2) Fraud; (3) Constructive Fraud; (4) Negligent Misrepresentation; (5) Negligence, Gross Negligence, and Negligence Per Se; (6) Breach of Contract/Breach of Implied Covenant of Good Faith and Fair Dealing; and (7) Breach of Contract/Breach of Implied Covenant of Good Faith and Fair Dealing Accompanied By a Fraudulent Act.

In connection with real estate transaction, both Plaintiff and Defendants were represented by real estate agents. Further, as part of her pre-closing due diligence, Plaintiff did have a home inspection performed by HouseMaster. A copy of the Housemaster inspection report is attached as **Exhibit C**, and a copy of Plaintiff's contract with HouseMaster is attached as **Exhibit D**. Additionally, Plaintiff had a wood infestation inspection performed by Dodson Brothers Exterminating, and a copy of the inspection report is attached as **Exhibit E**.

MOTION IN LIMINE

Plaintiff seeks a ruling excluding the following from trial: any assertion or reference to, directly or indirectly, that Plaintiff should have sued or pursued recovery from persons retained by Plaintiff to perform pre-closing inspections (namely HouseMaster and Dodson Brothers Exterminating) or the real estate agents involved in Plaintiff's purchase of the Subject Property from Defendants, or that the foregoing are liable for the damages asserted by Plaintiff in this case (collectively, the "Information Requested to Be Excluded").

I. LEGAL STANDARD

"The admission or exclusion of evidence is left to the sound discretion of the trial judge." State v. Tucker, 319 S.C. 425, 462 S.E.2d 263 (1995). Generally, a motion in limine seeks a pretrial evidentiary ruling to prevent the disclosure of potentially prejudicial matter to the Finder of Fact. State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999) (citing State v. Hill, 331 S.C. 94, 501 S.E.2d 122 (1998); State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988)).

II. ARGUMENT

Both the HouseMaster report and the HouseMaster contract indicate that the home inspection performed by HouseMaster was a limited time and scope inspection, and that it was not a substitute for seller disclosures. Further, under the terms of the HouseMaster contract, HouseMaster's liability was generally limited to the amount paid for the inspection, which was \$350.00. See Paragraph C. of the HouseMaster contract (Exhibit D). The South Carolina Courts have upheld limit of liability clauses in home inspector agreements. Gladden v. Boykin 402 S.C. 140, 739 S.E.2d 882 (2013).

In Gladden, after purchasing a home found to have undisclosed defects, Gladden brought suit against the seller, real estate agents, and home inspector. As to the home inspector, Gladden alleged breach of contract for failure to conduct the inspection in a “thorough and workmanlike manner and to report defective conditions in the home.” Id. at 142, 739 S.E.2d at 883. The inspector’s contract with Gladden contained a limitation of liability provision, which limited liability to the fee paid for the inspection. Id. With cross-motions for summary judgment pending, the trial court granted summary judgment to the home inspector, finding that the provision limiting recovery to the fee paid was enforceable, and the inspector had already returned the fee to Gladden. Id. Posed with questions of whether the limitation on liability contravened public policy and whether the provision was unconscionable, the South Carolina Supreme Court answered both in the negative. The Court reasoned that it must defer to the legislature’s judgment and that the General Assembly, when constructing the statutory scheme, had the opportunity to prohibit such limitations on liability but did not. Id. at 144, 739 S.E.2d at 884. Further, the Court stated, “even without this legislative policy, we would be reluctant to expand our judicially crafted public policy affording heightened protections to home purchasers.” Id. The Court found it was the legislature’s intent and more logical to vest liability with the party having the greatest access to information, the seller. Id. Finally, the Court highlighted that the expansion of protections for home buyers is not needed based on the specific consumer protections related to undisclosed defects already provided by the Residential Property Condition Disclosure Act. Id.

Additionally, the terms of the Official South Carolina Infestation Report completed by Dodson Brothers Exterminating (attached as Exhibit E) indicates that it is a limited time and scope inspection.

Under the Residential Property Condition Disclosure Act (S.C. Code Ann. §§ 27-50-10 to -110) (hereinafter the “Disclosure Act”), sellers are liable for failing to properly disclose the condition of the property on the disclosure statement. S.C. Code Ann. § 27-50-65. While the Disclosure Act does not limit the obligation of the purchaser to inspect the property,¹ nothing therein relieves a seller from liability for failing to properly disclose the condition of the property in the event that a purchaser has the property inspected by qualified individuals but the inspectors negligently perform the inspections. In other words, a seller cannot claim that negligence by the purchaser’s inspector relieves the seller from liability for the seller’s failure to fulfill its disclosure obligations under the Disclosure Act. Based on the foregoing, the issues pertinent to Defendants’ liability for Plaintiff’s damages include whether Defendants properly disclosed the condition of the property and whether Plaintiff had the property inspected, not whether the inspectors may have been negligent in the performance of their inspections.

Further, under the Disclosure Act, real estate agents are generally not liable or responsible for the condition of the property or the seller’s failure to properly disclose. Pursuant to S.C. Code Ann. § 27-50-70, a real estate agent is not liable to a purchaser if the seller provides the purchaser an inaccurate disclosure statement and the real estate agent did not know or have reasonable cause to suspect the information in the disclosure agreement is inaccurate. Further, pursuant to S.C. Code Ann. § 27-50-80, real estate agents have no duty to inspect the condition of the property. Additionally, in this case, in the purchase contract, the parties agreed that the

¹ S.C. Code Ann. § 27-50-80.

real estate agents had met their obligations under the Disclosure Act and that the real estate agents were not liable for any information in the Disclosure Statement.²

Additionally, Plaintiff's right to choose her defendant has been recognized in South Carolina jurisprudence for almost two hundred years. Little v. Robert G. Lassiter & Co., 156 S.C. 286, 287, 153 S.E. 128, 128 (1930). "Additional parties are not necessary to a complete determination of [a] controversy unless they have rights which must be ascertained and settled before the rights of the parties to the suit can be determined." Doctor v. Robert Lee, Inc., 215 S.C. 332, 335, 55 S.E.2d 68, 69 (1949). If the parties sought to be brought in are joint tortfeasors with the defendant, "the defendant would have no right to bring in as an additional defendant a joint tortfeasor who was not made a party by the plaintiff." Simon v. Strock, 209 S.C. 134, 138, 39 S.E.2d 209, 211 (1946). "Perhaps the most often cited is the 'plaintiff chooses' rule," which states, "'one who is injured by the wrongful act of two or more joint tort-feasors has an election or option to sue each of such tort-feasors separately or to join them as parties in a single action.'" Smith v. Tiffany, 419 S.C. 548, 562, 799 S.E.2d 479, 487 (2017); (quoting Simon, 209 S.C. at 138, 39 S.E.2d at 211).

The option of electing parties "is given to the plaintiff and not to the defendant." Id. at 138, 39 S.E.2d at 211. "To allow a defendant against the will of the plaintiff to bring in other joint tortfeasors as defendants would deny the plaintiff the right to name whom he should sue." Doctor, 215 S.C. at 335, 55 S.E.2d at 69. The "plaintiff has the choice of designating the party who she claims committed the tort alleged in the complaint." Simon, 209 S.C. at 139, 39 S.E.2d at 211. "She should not be required to sue someone against whom she makes no claim." Id.

² See Paragraph 16 of the purchase contract attached as Exhibit D. See also Paragraph 9 of the Defendants' listing agreement with their real estate agent attached as Exhibit F hereto.

Based on all of the foregoing, the issues pertinent to Defendants' liability for Plaintiff's damages include whether Defendants properly disclosed the condition of the property and whether Plaintiff inspected the property, not whether any inspectors retained by Plaintiff were negligent in the performance of their inspections, nor whether the real estate agents met their duties. Likewise, as set forth above, Plaintiff is not denied recovery, nor are Defendants relieved from liability if Plaintiff has the property inspected, but the inspectors fail to catch an issue known to Defendants or by a real estate agent's failure to provide information concerning the condition of the property.

Based on all of the foregoing, the Information Requested to Be Excluded should be excluded because it is not relevant to Plaintiff's causes of action, Defendant's liability, or the damages recoverable by Plaintiff against Defendants. See Rules 401 and 402, SCRE. In the instant case, Plaintiff seeks damages for Defendants' misrepresentations and omissions related to the true condition of the Subject Property, which were relied upon by Plaintiff in her decision to go forward with the closing on the Subject Property. The Defendants had a duty to disclose certain defects under the parties' contract and under the Disclosure Act. See S.C. Code Ann. §§ 27-50-40 to -65. In calculating Plaintiff's damages under breach of contract, courts are to hold the breaching party liable for whatever damages follow as a natural consequence and a proximate result of such breach. Branche Builders, Inc., v. Coggins, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009) (quoting Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)). Damages serve to place the nonbreaching party in the position they would have enjoyed had the contract been performed. Id. (citing S.C. Fed. Sav. Bank v. Thorton-Crosby Dev. Co., 303 S.C. 74, 77, 399 S.E.2d 8, 10 (Ct. App. 1990)). Damages for violation of the Disclosure Act are prescribed by statute, and include actual damages proximately caused to the purchaser. S.C.

Code Ann. § 27-50-65. The Information Requested to Be Excluded is simply not relevant to Plaintiff's damages, nor to Defendants' liability.

Further, based on all of the foregoing, the Information Requested to Be Excluded should also be excluded under Rule 403, SCRE. Under Rule 403, SCRE, even if 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. Based on all of the foregoing, including the liability protections afforded to home inspectors and real estate agents³ and the lack of relevance of the Information Requested to Be Excluded, the Information Requested to Be Excluded would result in a significant danger of confusion of the issues and misleading the jury, as well as unfair prejudice. Plaintiff asserts that the court should exclude any mention or insinuation of missing parties or, technically speaking, that Plaintiff *could* pursue a claim against HouseMaster, Dodson Brothers Exterminating, or the real estate agents. The topic is a collateral issue irrelevant to Defendants' liability here. Further, the danger of unfair prejudice or confusion of the issues substantially outweighs any probative value.

**MOTION TO DISMISS DEFENDANTS' FRIVOLOUS PROCEEDINGS
COUNTERCLAIM OR IN THE ALTERNATIVE TO BIFURCATE SUCH CLAIM**

Defendants' have purported to assert a counterclaim against Plaintiff under the South Carolina Frivolous Civil Proceedings Sanctions Act (the "FCPSA"). However, under the FCPSA, such a claim is improper as a counterclaim and should be brought as a motion after the trial. The FCPSA establishes that claims under the FCPSA are to be decided "at the conclusion

³ Due to the liability protections afforded to home inspectors and real estate agents, suing them is generally not a financially viable option.

of a trial and . . . upon motion of the prevailing party.” S.C. Code Ann. § 15-36-10(C)(1). It is only at this time, “the court shall proceed to determine if the claim or defense was frivolous.” Id. Further, “Whether to impose sanctions under the FCPSA is a decision for the judge, not the jury.” Father v. South Carolina Dept. of Social Services, 353 S.C. 254, 578 S.E.2d 11 (2003).

Plaintiff asserted a 12(b)(6) defense in its reply to Defendants’ counterclaims. Pursuant to Rule 12(d), SCRCP, Rule 12(b)(6) defenses “shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.” Based on the foregoing, Plaintiff is entitled to dismissal of Defendants FCPSA as an improper counterclaim and any issue of frivolous proceedings would be a matter for a judge (and not a jury) to decide upon proper motion upon the conclusion of trial. See S.C. Code Ann. § 15-36-10(C) & (D).

However, in the event Defendants’ FCPSA counterclaim is not dismissed, Plaintiff requests for Defendants’ claim to be bifurcated from the trial pursuant to Rule 42(b), SCRCP and also requests this court to exclude any evidence related to Defendants’ FCPSA claim during trial, as FCPSA matters are to be decided by a judge and not a jury, and any evidence of FCPSA claims prior to the conclusion of trial would result in unfair prejudice to Plaintiff.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully that the court exclude the Information Requested to Be Excluded and either dismiss Defendants’ FCPSA counterclaim or bifurcate it until after the trial and exclude any evidence of the FCPSA claim during trial.

There is no duty of consultation under Rule 11 for a motion to dismiss. Further, to the extent Rule 11 consultation is required for anything else in this motion, consultation under Rule 11 could not timely be held due to the proximity to trial and required notice for motions.

Respectfully submitted,

MCCABE, TROTTER & BEVERLY

/s/ Ely O. Grote

Valerie Garcia Giovanoli, SC Bar No. 102524

Ely O. Grote, SC Bar No. 75379

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ATTORNEYS FOR PLAINTIFF

September 1, 2023
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
C/A No.: 2020-CP-21-01817

Barbara L. Sarb,

Plaintiff,

v.

Julie W. Phillips and Joseph M. Phillips,

Defendants.

**PLAINTIFF'S MOTION FOR
JUDGMENT NOTWITHSTANDING
THE VERDICT**

21624.2

COMES NOW, the Plaintiff, Barbara L. Sarb, by and through her undersigned counsel, and hereby moves the Court for Judgment Notwithstanding the Verdict as to Defendants' counterclaim(s) pursuant to Rule 50(b), SCRPC. In particular, Plaintiff moves the Court for an order setting aside the jury verdict as to Defendants' counterclaim(s) (and any judgment entered thereon), and entering judgment in favor of Plaintiff as to Defendants' counterclaim(s). In support of this motion, Plaintiff asserts as follows.

The jury trial of this matter took place from September 11, 2023 through September 14, 2023. At the close of Defendants' case, Plaintiff moved for directed verdict as to Defendants' counterclaims. Defense counsel stipulated to the dismissal of the counterclaim for indemnity/hold harmless¹, but the directed verdict motion was otherwise denied.

"When upon a trial the case presents only questions of law the judge may direct a verdict." Rule 50(a), SCRPC. "In deciding motions for a directed verdict or judgment notwithstanding the verdict, the trial judge must consider the evidence in the light most favorable to the nonmoving

¹ Defendants' purported counterclaim under the South Carolina Frivolous Proceeds Sanctions Act had also been previously been bifurcated prior to the start of trial.

party.” Brady Dev. Co. v. Town of Hilton Head Island, 312 S.C. 73, 78, 439 S.E.2d 266, 269 (1993). “If only one reasonable inference can be drawn from the evidence, the motion must be granted.” Id.

In this case, Plaintiff respectfully asserts that her directed verdict motion should have been granted and that the jury verdict as to Defendants’ counterclaim(s) (and any judgment entered thereon) should now be set aside and judgment entered in favor of Plaintiff as to Defendants’ counterclaim(s) for several reasons.

I. No Duty to “Adequately Inspect”

First, Plaintiff, as the purchaser, owed no duty to the Defendants to “adequately inspect” the property that would give rise to any cognizable or recognized cause of action for damages by the Defendants (the sellers). Plaintiff asserts that there is no duty by contract, statute, common law, or otherwise that would support or give rise to any cognizable claim by Defendants against Plaintiff for damages for failing to “adequately inspect”. Further, Plaintiff respectfully asserts that South Carolina law does not recognize any cause of action by a seller against a purchaser for damages for failure to “adequately inspect.”

II. No Evidence of Failure to “Adequately Inspect”

Second, there was simply no evidence at trial that Plaintiff failed to “adequately inspect” the property in question. There was undisputed testimony and evidence at trial that prior to closing Plaintiff: (1) personally visited the property on multiple occasions; (2) had a wood infestation inspection (CL-100) performed by Dodson Brothers Exterminating Company; (3) had a home inspection performed by HouseMaster; and (4) had a contractor, John Sims, involved in looking at the property. Further, Plaintiff’s real estate agent, John Etheridge, testified that he didn’t recommend any further inspections and that the inspections performed by or on behalf of Plaintiff

were what were normal and customary for this type of real estate transaction. Even when viewing the evidence in the light most favorable to Defendants, only one reasonable inference can be drawn from the evidence, which is that Plaintiff performed reasonable due diligence and inspections prior to closing.

III. No Evidence of Damages

Third, there was no evidence presented at trial that Defendants had sustained any recoverable damages as a result of Plaintiff's alleged failure to "adequately inspect". "[T]he existence or amount of damages cannot be left to conjecture, guess, or speculation." Proctor v. Dep't of Health & Env't Control, 368 S.C. 279, 317, 628 S.E.2d 496, 516 (Ct. App. 2006). During the trial, Defendants did not present any evidence of any damages. In fact, the lack of any evidence of any damages is further highlighted by the fact that the jury initially found damages to be \$0.00.

Based on all of the foregoing, Plaintiff respectfully requests that judgment notwithstanding the verdict be granted as to Defendants' counterclaim(s).

Pursuant to the Court's September 18 and 25, 2023 emails to counsel, it is understood that any motions dealing with the recovery of attorney's fees and/or costs need not be submitted until after other post-trial motions are ruled upon by the Court. Based on the foregoing, Plaintiff reserves the right to submit a motion or motions for attorney's fees² and/or costs after other post-trial motions are ruled upon, and Plaintiff is not waiving the right to do so.

SIGNATURE PAGE TO FOLLOW

² Including pursuant to S.C. Code Ann. § 27-50-65.

Respectfully submitted,

MCCABE, TROTTER & BEVERLY, P.C.

/s/ Ely O. Grote

Valerie Garcia Giovanoli, SC Bar No. 102524

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ATTORNEYS FOR PLAINTIFF

September 25, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Docket No.: 2020-CP-21-01817
	)	
Barbara Sarb,	)	
	)	
Plaintiff,	)	NOTICE OF MOTION FOR
	)	JNOV OR IN THE ALTERNATIVE
vs.	)	FOR NEW TRIAL
	)	
Julie W. Phillips and Joseph M. Phillips,	)	
	)	
Defendants.	)	
	)	

TO: ELY GROTE AND/OR VALERIE GIOVANOLI, ATTORNEYS FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE, that the Defendants, Julie W. Phillips and Joseph M. Phillips ("Defendants") hereby move this Court pursuant to Rule 59 of the South Carolina Rules of Civil Procedure for a judgment notwithstanding the verdict "JNOV"; or in the alternative for a new trial; or in the alternative for a new trial nisi remittitur. Defendants also request a hearing pursuant to underlying Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (S.C. 1991). In so moving, GEICO shows the following grounds for such Motion:

1. Pursuant to Rule 59, SCRPC, the Defendants are entitled to judgment notwithstanding the verdict (JNOV) as the verdict, on its face, fails as inconsistent. The jury was to consider seven (7) different causes of action upon which they could base an award of damages against the Defendants. Two causes of action were for Breach of Contract; four of those causes of action sounded in tort and one cause of action was based on the S.C. Uniform Residential Disclosures Act ("Act") (which arguably is a combination of tort and contract). The jury returned a verdict for damages based on the Act. An essential element of the Act is that the Defendants made some sort of misrepresentation which also happens to be an essential element of each of the four tort causes of action. However, the jury failed to find the Defendants liable under any of those additional causes of action. Because the jury failed to find the Defendants made a misrepresentation under those four causes of action, by law,

they could not find that the Defendants made a misrepresentation under the Act. Therefore, the verdict is inconsistent.

2. Pursuant to Rule 59, SCRCP, the Defendants are entitled to judgment notwithstanding the verdict (JNOV) and/or new trial as the verdict is unsupported by the evidence in that Plaintiff had no right to rely on any statements made by Defendants in consummating the real estate transaction at issue. See McLaughlin v. Williams, 379 S.C. 451, 458, 665 S.E.2d 667, 671 (Ct. App. 2008); Isaac v. Onions, 2023 S.C. App. Unpub. LEXIS 313, *16-17 (citing Buchanan v. Improved Properties, LLC, 2014- Ohio 263, 7 N.E.3d 634, 642 (Ohio Ct. App. 2014) (holding a buyer cannot justifiably rely upon any representations of the seller when the purchase is contingent upon an inspection.)); see also Linares-Acevedo v. Acevedo, 38 F. Supp. 3d 222, 229 (D.P.R. 2012); Gruber v. Santee Frozen Foods, Inc., 309 S.C. 13, 20, 419 S.E.2d 795 (Ct. App. 1992)); Adrian v. Mesirow Fin. Structured Settlements, LLC, 736 F. Supp. 2d 404, 423-424 (D.P.R. 2009). Here, the Plaintiff was present for at least two inspections and estimates; the CL-100 inspection and the HouseMasters inspection. The CL-100 inspection (Plaintiff's exhibit 4) showed that there was wood rot and wood decay in the basement of the home. The Housemaster's inspection (Plaintiff's Exhibit 6) showed that there was rotten wood and decayed wood in the basement area and also indication "water intrusion" and "water penetration." Witness John Sims testified that he replaced rotten/decayed wood in the basement and that he addressed "water intrusion" in the front of the crawl space in accordance with his estimate (Plaintiff's Exhibit 9). The Plaintiff was not only present for the inspections, but she also testified that she received the reports, reviewed the reports and discussed them with her realtor, John Ethridge (who also testified to same on direct examination). Because Plaintiff possessed all of this information and because the Contract for Sale (Plaintiff's Exhibit 2) was contingent upon inspection, the Plaintiff had no right to rely on ANY statements of Defendants – whether they were truthful or not. Defendants move for JNOV independently and also as a renewal of their Motion

for Directed Verdict at the conclusion of Plaintiff's case-in-chief and their Motion for Judgment as a Matter of Law propounded at the conclusion of the presentation of all evidence at trial.

3. Pursuant to Rule 59, SCRCP, the Defendants are entitled to judgment notwithstanding the verdict (JNOV) and/or new trial as Plaintiff failed to prove that her tort claims should survive for the jury to consider pursuant to the economic loss rule and/or any exception thereto. 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. See Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc., 320 S.C. 49, 55, 463 S.E.2d 85, 88 (1995); see also Carroll v. Isle of Palms Pest Control, 2023 S.C. App. LEXIS 92, *17. Here, each tort-based cause of action is alleged to have stemmed from the initial disclosures and contract for purchase the property at issue. As such, Defendants were entitled to a directed verdict and/or judgment as a matter of law regarding same.
4. Pursuant to Rule 59, SCRCP, the Defendants are entitled to a new trial as the court erred in not instructing the jury as to Defendants' Request to charge based upon South Carolina Caselaw governing reliance upon initial disclosures. See McLaughlin v. Williams, 379 S.C. 451, 458, 665 S.E.2d 667, 671 (Ct. App. 2008); Isaac v. Onions, 2023 S.C. App. Unpub. LEXIS 313, *16-17; Linares-Acevedo v. Acevedo, 38 F. Supp. 3d 222, 229 – USDC in Puerto Rico; Gruber v. Santee Frozen Foods, Inc., 309 S.C. 13, 20, 419 S.E.2d 795 (Ct. App. 1992)); Adrian v. Mesirow Fin. Structured Settlements, LLC, 736 F. Supp. 2d 404, 423-424 -- USDC in Puerto Rico; Buchanan v. Improved Properties, LLC, 2014- Ohio 263, 7 N.E.3d 634, 642 (Ohio Ct. App. 2014) (holding a buyer cannot justifiably rely upon any representations of the seller when the purchase is contingent upon an inspection.")
5. Pursuant to Rule 59, SCRCP, the Defendants are entitled to a new trial as the court erred in admitting Plaintiff's Exhibit 182 into evidence as a summary under Rule 1006 of the South Carolina

Rules of Evidence over Defendants' objection. The documents summarized by exhibit 182 consisted of 16-20 pages therefore not requiring summarization under the rule. Allowing Plaintiff's Exhibit 182 into evidence was prejudicial to Defendants and influenced the jury's award of damages.

WHEREFORE, Defendants request that this Court grant its judgment notwithstanding the verdict "JNOV" or in the alternative for a new trial and any further relief this Court may deem just and equitable.

Florence, South Carolina

KING, LOVE, HUPFER & NANCE, LLC

September 25, 2023

BY: /s/ Edward A. Love
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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
C/A No.: 2020-CP-21-01817

Barbara L. Sarb,

Plaintiff,

v.

Julie W. Phillips and Joseph M. Phillips,

Defendants.

**PLAINTIFF'S MOTION FOR
ATTORNEY'S FEES AND COSTS**

21624.2

COMES NOW, the Plaintiff, Barbara L. Sarb, by and through her undersigned counsel, and hereby moves the Court for an award of attorney's fees and costs. In support of this motion, Plaintiff asserts as follows.

First and foremost, this motion is a vital part of Plaintiff's case. The Residential Property Condition Disclosure Act, S.C. Code Ann. § 27-50-10 to -110 (hereinafter, the "**Disclosure Act**") is intended to be a consumer protection statute to protect a buyer against the risks associated with undisclosed defects in property, and to provide a remedy to buyers for undisclosed defects. See Gladden v. Boykin, 402 S.C. 140, 144, 739 S.E.2d 882, 884 (2013). In connection therewith, the ability to recover attorney's fees is **essential** to make many such claims economically viable for aggrieved home owners and to further public policy that defects in property be properly disclosed and to ensure that those who fail to properly disclose defects be held accountable. If attorney's fees were not awarded to prevailing buyers in such cases, a seller could simply vigorously contest a claim to the point where it ceased to be economically viable to pursue the claim, thus frustrating the legislature's intent and public policy behind the Disclosure Act – this is a result the Disclosure Act seeks to avoid by allowing the recovery of attorney's fees.

This is especially true in the case at hand, where Plaintiff was forced to go to great lengths and expense to ensure that Defendants were held accountable for their failure to disclose the condition of the Subject Property, and justice cannot be truly done unless Plaintiff is awarded her attorney's fees. **Absent an award of attorney's fees, Plaintiff would be essentially left with a net-negative recovery in this matter. Avoiding such an outcome was clearly the intent of the legislature.**

1. STATEMENT OF THE FACTS & CASE

Plaintiff purchased the property located at 550 Wisteria Drive in Florence, South Carolina (hereinafter, the "**Subject Property**") from Defendants in 2019. This action arises out of Plaintiff's assertions that the Defendants failed to properly disclose the condition of the Subject Property and/or made misrepresentations concerning the condition of the Subject Property in connection with the sale. Plaintiff's original Complaint and Amended Complaint both asserted seven causes of action, including a cause of action for violation of The Disclosure Act.¹ Plaintiff's cause of action for violation of the Disclosure Act specifically cited to the Disclosure Act and specifically alleged violations of the Disclosure Act, in particular under S.C. Code Ann. § 27-50-65. Plaintiff's cause of action for violation of the Disclosure Act sought relief and damages under the Disclosure Act, and specifically sought an award of attorney's fees and costs. With respect to an award of attorney's fees and costs, the Disclosure Act provides:

An owner who knowingly violates or fails to perform any duty prescribed by any provision of this article or who discloses any material information on the disclosure statement that he knows to be false, incomplete, or misleading is liable for actual damages proximately caused to the purchaser and court costs. The court may award reasonable attorney fees incurred by the prevailing party.

S.C. Code Ann. § 27-50-65 (emphasis added).

¹ Plaintiff's original Complaint was filed on August 6, 2020. Plaintiff's Amended Complaint was filed on September 9, 2021.

The jury trial of this matter took place from September 11, 2023 through September 14, 2023. The jury found Defendants liable under Plaintiff's cause of action for violation of the Disclosure Act, and awarded damages to Plaintiff in the amount of \$70,000 under Plaintiff's cause of action for violation of the Disclosure Act.² Plaintiff, as the prevailing party³ on her claim for violation of the Disclosure Act, seeks an award of **\$189,743.24** of attorney's fees and court costs pursuant to S.C. Code Ann. § 27-50-65 incurred as of October 12, 2023, which represents the following amounts:

- Attorney's fees: \$183,347.40; and
- Court costs: \$6,395.84.

Plaintiff is also additionally and/or alternatively entitled to costs pursuant to Rule 54, SCRPC. Plaintiff further requests leave to supplement this request to include any attorney's fees and/or costs subsequently incurred in connection with this matter.

2. ATTORNEY'S FEES

"In awarding reasonable attorney's fees, there are six factors to be considered." Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989). The six factors to be considered are: (1) the nature, extent and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. Id. at 384-85, 377 S.E.2d at 297. "Consideration should be given

² See Verdict form filed on September 15, 2023. A copy is attached as **Exhibit A**.

³ "In the context of statutes allowing attorney fees, our supreme court has defined a 'prevailing party' as '[t]he one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered.'" Seckinger v. Vessel Excalibur, 326 S.C. 382, 388, 483 S.E.2d 775, 777-78 (Ct. App. 1997) (quoting Heath v. County of Aiken, 302 S.C. 178, 182-83, 394 S.E.2d 709, 711 (1990)).

to all six criteria in establishing reasonable attorney's fees; none of these six factors is controlling.” Id. at 384, 377 S.E.2d at 297. The amount of recovery is only one factor to be considered and a court may award attorney's fees exceeding the verdict obtained. See Id. at 385, 377 S.E.2d at 297-98. “[T]here is no requirement that an attorney's fee be less than or comparable to a party's monetary judgment.” Taylor v. Medenica, 331 S.C. 575, 582, 503 S.E.2d 458, 462 (1998). Further, in Taylor, the South Carolina Supreme Court noted it “has approved an award of attorney's fees where the fee substantially exceeded the actual recovery,” and the Court affirmed an award of \$500,000 in attorney's fees in a case where trebled damages under the South Carolina Unfair Trade Practices Act were \$108,726. Further, “when an action in which attorney fees are recoverable by statute is joined with alternative theories of recovery based on the same transaction, no allocation of attorney's services need be made except to the extent counsel admits that a portion of the services was totally unrelated to the statutory claim or it is shown that the services related to issues which were clearly beyond the scope of the statutory claim proceeding.” Taylor v. Nix, 307 S.C. 551, 557, 416 S.E.2d 619, 622 (1992).

This approach requires the party asserting the right to attorney fees to produce an itemized affidavit of their fees that they believe are related to the statutory claim. The opposing party then has the burden of showing which of the fees are clearly unrelated.

Id. The factors set forth above are applied to this case as follows, as supported by the affidavits of attorneys Ely O. Grote and Valerie Garcia Giovanoli attached as **Exhibits B and C**, including the redacted itemized time records/billing statements with individual time entries documenting the amount of the attorney's fees as well as the work performed that are included as an attachment to the affidavit of Ely O. Grote.

1. *The nature, extent and difficulty of the legal services rendered; The time and labor necessarily devoted to the case*

This case involved complex legal and factual matters. Due to the nature of Plaintiff's claim for violations of the Disclosure Act and due to Defendants' response to the same, significant time and effort was required to be devoted to proving the claim. Throughout the course of the history of this matter, Defendants denied Plaintiff's assertions of violations of the Disclosure Act and vigorously contested and defended against those allegations. Defendants' denial of the allegations and vigorous defense of the same necessitated that significant time and effort to be expended to fully work up and establish Plaintiff's claim for violations of the Disclosure Act. In fact, as will be further noted below, Defendants also alleged that Plaintiff's claim was frivolous pursuant to the South Carolina Frivolous Civil Proceedings Sanction Act, further incentivizing and requiring Plaintiff's counsel to fully, thoroughly, and vigorously work up and establish Plaintiff's claim of violations of the Disclosure Act.

Redacted time records/billing statements are attached to and included with the Affidavit of Ely O. Grote⁴, which set forth and document the time devoted to this matter, and the nature and extent of the legal services provided. However, some of the key factors regarding the nature, difficulty, and extent of the legal services as well as the time required to be spent on this matter are set forth below.⁵

Prior to filing suit, time and effort was required to be expended by Plaintiff's counsel to investigate and evaluate the claim, including communicating with Plaintiff, reviewing and analyzing a substantial amount of records and information provided by Plaintiff, interviewing

⁴ The Affidavit of Ely O. Grote is attached as **Exhibit B**.

⁵ See Affidavits of Ely O. Grote and Valerie Garcia Giovanoli attached as **Exhibit B** and **Exhibit C**.

witnesses, investigating the assets of Defendants, securing a qualified expert, and having a qualified expert evaluate the Subject Property. Reasonable efforts were made by Plaintiff's counsel on behalf of Plaintiff to resolve the claim without having to resort to litigation. On February 28, 2020, Plaintiff's counsel sent Defendants a detailed letter setting forth the basis of the claim and damages sustained by Plaintiff, and seeking to resolve the matter. This letter specifically advised of Plaintiff's intent to seek reimbursement of Plaintiff's attorney's fees under S.C. Code Ann. § 27-50-65 in the event that the matter could not be resolved short of litigation. Ultimately, the parties participated in a pre-suit mediation on June 11, 2020, which resulted in an impasse. Time was required to be spent in preparing for and participating in the pre-suit mediation.

Thereafter, Plaintiff instituted this lawsuit on August 6, 2020. Plaintiff's Complaint (and subsequently her Amended Complaint) asserted seven causes of action: (1) Violation of The Residential Property Condition Disclosure Act, S.C. Code Ann. § 27-50-10 *et seq.*; (2) Fraud; (3) Constructive Fraud; (4) Negligent Misrepresentation; (5) Negligence, Gross Negligence, and Negligence Per Se; (6) Breach of Contract/Breach of Implied Covenant of Good Faith and Fair Dealing; and (7) Breach of Contract/Breach of Implied Covenant of Good Faith and Fair Dealing Accompanied By a Fraudulent Act. However, all of these alternate theories of are recovery based on the same transaction (Plaintiff's purchase of the Subject Property from Defendants) and involved the same core allegations under different theories of recovery, such core allegations being that Defendants failed to properly disclose the condition of the Subject Property and/or made misrepresentations concerning the condition of the Subject Property in connection with the sale. Therefore, the time spent by Plaintiff's counsel with respect to the statutory claim is indistinguishable from the other six causes of action based on the same transaction, operative facts, and core allegations. As such, under South Carolina law, no allocation of attorneys between the

various alternate theories of recovery need be made, and in fact, it would not be possible to do so in this case given that the time spent pursuing all such causes of action is indistinguishable. See Taylor, 307 S.C. at 557, 416 S.E.2d at 622.

Among other things, Defendants' Answers and Counterclaims, both as to the original Complaint and as to Plaintiff's Amended Complaint, asserted that Plaintiff's Complaint was frivolous under the South Carolina Frivolous Civil Proceedings Sanctions Act. This case has been litigated for over three (3) years and involved difficult legal and factual issues, necessitating that significant time and labor be devoted to the case. Some of the key factors regarding the nature, difficulty, and extent of the legal services as well as the time required to be spent on the litigation include:

- Defendants vigorously contested Plaintiff's claim throughout the litigation, including at trial.
- Significant investigation and discovery was required in order to prepare the case for trial, and the case involved a significant number of documents, text messages, photos, videos, and potential witnesses. Further, since Defendants generally denied having knowledge of the issues claimed with the Subject Property, Plaintiff was required to engage in significant investigation and discovery to further establish that Defendants had knowledge of the issues with the Subject Property prior to the sale to Plaintiff. Likewise, Defendants also engaged in significant discovery pertaining to Plaintiff's claims, requiring Plaintiff's counsel to expend significant time and effort responding to discovery requests and producing requested records. Some significant highlights of discovery include:
 - Defendants served detailed Interrogatories and Requests for Production on Plaintiff, totaling thirty-five (35) interrogatories and thirteen (13) requests to

produce. Plaintiff's initial written responses (not including documents produced) constituted forty-two (42) pages. Further, Plaintiff's responses were supplemented several times during the course of the litigation. Ultimately, throughout the course of discovery, Plaintiff identified approximately fifty (50) persons and/or businesses as potential witnesses (or otherwise potentially having relevant information). Further, throughout the course of discovery, Plaintiff produced over 1,300 pages of documents, and additionally produced over 1,100 digital images and videos.

- Plaintiff also served detailed Interrogatories and Requests for Production on Defendants, totaling thirty-nine (39) interrogatories and thirty-five (35) requests to produce, and Defendants' initial written responses (not including documents produced) constituted twenty-two (22) pages. Further, throughout the course of discovery, based on the bates labels used by Defendants, Defendants produced over 1,400 pages of documents; however, it is believed that the number of pages of records produced by Defendants is actually over 1,700 pages, as it appears that some of the bates numbers were duplicated. Defendants also identified approximately nine (9) additional witnesses not also identified by Plaintiffs.
- Plaintiff also served at least twelve (12) records subpoenas and at least two (2) Freedom of Information Act requests throughout the course of discovery, which were aimed at obtaining information relevant to the condition of the Subject Property prior to Plaintiff's ownership of the same and Defendants' knowledge of issues with condition of the Subject Property prior to selling it to Plaintiff.

- Three (3) depositions were taken in the case. Plaintiff's counsel deposed both Defendants, and defense counsel deposed Plaintiff. Additionally, several witness interviews were conducted by Plaintiff's counsel.
 - Defendants served Requests to Admit, which Plaintiff was required to respond to.
- Plaintiff's damages claim was complex, and included claims for repair costs, bodily injury, rental expenses, mileage, and costs incurred for a qualified expert to assess the issues with the Subject Property. The complex nature of the damages claimed required significant effort to document, itemize, and establish the damages, including evaluating and sorting out which expenses would be claimed as damages against Defendants and which expenses incurred by Plaintiff would not be claimed as damages.
- Defendants would not consent to Plaintiff amending her Complaint, which necessitated preparing and filing a Motion for Leave to Amend Complaint on behalf of Plaintiff. This also necessitated Plaintiff's counsel attending a hearing on the motion to amend. Plaintiff was ultimately granted leave to amend her complaint by the Court and time was also required time to be devoted by Plaintiff's counsel to preparing the proposed order.
- Defendants filed a motion for summary judgment which raised complex legal and factual issues, and required significant time to be expended to research and to properly oppose the motion both factually and legally under Rule 56, SCRPC. Significant time was required to be devoted on behalf of Plaintiff to preparing a memorandum in opposition to Defendants' motion for summary judgment, which was filed with the Court.⁶ This included getting several affidavits. It also required significant time to be expended to review and compile other materials/exhibits in opposition to Defendant's motion for

⁶ See Plaintiff's Memorandum in Opposition to Defendants' Amended Motion for Summary Judgment filed on November 23, 2022.

summary judgment, including: (1) reviewing deposition transcripts, citing to relevant portions of the deposition transcripts, and compiling excerpts from the deposition transcripts; (2) reviewing extensive records and selecting appropriate records for exhibits; and (3) reviewing extensive digital photos and videos (over 1,100) and compiling select photos for use as exhibits. Plaintiff's Memorandum in Opposition to Defendants' Amended Motion for Summary Judgment, together with the Exhibits thereto, totaled 277 pages. Likewise, Defendants filed a Memorandum in Support of Defendants' Motion for Summary Judgment, which with exhibits, totaled 245 pages,⁷ and required time to review. Due to the complexity of the issues and the volume of materials, a significant amount of time was required to prepare for the hearing on the motions for summary judgment. Ultimately, all motions for summary judgment were denied.⁸

- Although the matter had been mediated pre-suit, the matter was mediated a second time during the pendency of the suit under the ADR Rules after Plaintiff's Motion for Exemption from ADR was denied. The mediation resulted in an impasse.
- Due to the large number of potential witnesses, the large amount of records and potential exhibits, and the complexity of the case, an extensive amount of time and coordination was required to prepare for the trial.
- Further, in preparation for trial, Plaintiff's counsel prepared and submitted a pretrial brief and also prepared and filed a Motion in Limine, and Motion to Dismiss Defendants' Frivolous Proceedings Counterclaim or in the Alternative to Bifurcate Claim.⁹

⁷ See Memorandum in Support of Defendants' Motion for Summary Judgment filed on December 6, 2022.

⁸ See Order filed on December 22, 2022.

⁹ See motion filed on September 1, 2023.

- The process of jury selection and trial lasted over the course of four (4) days. Ultimately, Plaintiff called eleven (11) witnesses and presented one hundred eighty-five (185) Exhibits. Defendants also presented five (5) additional witnesses.
- Following the trial, counsel for Plaintiff also prepared and filed a Motion for Judgment Notwithstanding the Verdict.¹⁰
- Time has also been expended in preparing and submitting this Motion for Attorney's Fees and Costs.

2. The professional standing of counsel

- Ely O. Grote. Ely O. Grote graduated from Drake University Law school in 2006 and has been a licensed member of the South Carolina Bar since 2006. He has also been admitted to practice in the United States District Court for the District of South Carolina since 2008. After graduation he served as a law clerk for a South Carolina Circuit Court Judge for one year. Ely O. Grote has been in private practice in South Carolina since 2007. Ely O. Grote is currently a shareholder with McCabe, Trotter & Beverly, P.C. Ely O. Grote has approximately sixteen (16) years' experience in handling civil litigation matters.
- Valerie Garcia Giovanoli. Valerie Garcia Giovanoli graduated from the University of South Carolina Law School in 2010. She is licensed to practice law in Florida and South Carolina. Valerie Garcia Giovanoli has twelve (12) years' experience as a practicing attorney. She is currently the managing shareholder with McCabe, Trotter & Beverly, P.C.

3. The contingency of compensation

Compensation in this case is based on actual time spent working on the matter by attorneys and staff at McCabe, Trotter & Beverly, P.C. The rates charged by McCabe, Trotter, & Beverly

¹⁰ Filed on September 25, 2023.

for this matter are: (1) Shareholders - \$275/hr.; (2) Associate Attorneys - \$175/hr.; and (3) Paralegals and Law Clerks - \$125/hr. Itemized statements of work performed through October 12, 2023 on this matter are attached to the Affidavit of Ely O. Grote.¹¹ The fees (excluding costs), after discounts were given, total \$183,347.40 for work performed through October 12, 2023, and which is the amount Plaintiff is seeking as an award of attorney's fees in this motion.

4. *The fee customarily charged in the locality for similar legal services*

As set forth the in the affidavits of Ely O. Grote and Valerie Garcia Giovanoli attached as **Exhibits B and C** to this motion, based on their experience and familiarity with rates customarily charged, the rates and fees charged in this matter are reasonable and in accord with rates and fees customarily charged for similar services. Further, as set forth in the affidavit of Valerie Garcia Giovanoli attached as **Exhibit C**, she spent a significant amount of additional time on this matter that was never entered on this matter and which never appeared on any statement. Additionally, as documented in the time records/billing statements, the firm of McCabe, Trotter & Beverly, P.C. significantly discounted the fees ultimately billed to Plaintiff, such discounts totaling \$62,077.60 for the invoicing through October 12, 2023. Further, as can be seen from the time records/billing statements, there are many time entries for work performed that were also "no charged", further reducing the actual amount invoiced to Plaintiff in comparison to the work actually performed. It should also be further noted that on July 1, 2022, the firm of McCabe, Trotter, & Beverly, P.C. increased its hourly rates for most clients to: (1) Shareholders - \$350/hr.; (2) Associate Attorneys - \$250/hr.; and (3) Paralegals and Law Clerks - \$150/hr. However, the

¹¹ The Affidavit of Ely O. Grote is attached as Exhibit B.

hourly rates for this matter were not increased and remained at the rates stated in subpart 3 above throughout the entirety of the matter.

5. *The beneficial results obtained*

As evidenced by the verdict form filed on September 15, 2023, Plaintiff's counsel was able to secure beneficial results for Plaintiff in this action by obtaining a verdict in the amount of \$70,000. Further, a judgment against a seller in a case of this nature for failing to properly disclose the condition of property serves a public benefit to discourage or deter similar conduct.

Based on the foregoing factors and considerations, it is respectfully submitted that an award of attorney's fees in the amount of \$183,347.40 for fees for work performed through October 12, 2023 is reasonable and appropriate. Further, Plaintiff requests that leave be granted for her to supplement her request for attorney's fees to seek recovery of any attorney's fees that may be incurred after such time in connection with this matter.

3. **COSTS**

Since Plaintiff was successful in proving a violation of the Disclosure Act, she is entitled to recover "court costs" pursuant to the Disclosure Act. S.C. Code Ann. § 27-50-65. Unfortunately, there appears to be no case law interpreting what constitutes or qualifies as "court costs" under the Disclosure Act, and that term is undefined. However, it is respectfully submitted that "court costs" under the Disclosure Act must necessarily be broader than the costs allowed pursuant to Rule 54, SCRCP; otherwise, the statutory right to recover "court costs" would be meaningless. It is respectfully submitted that the following costs incurred by Plaintiff and itemized below should rightfully be considered "court costs" under S.C. Code Ann. § 27-50-65. The costs listed below are only a subset of the costs incurred by Plaintiff, and just represent those costs which

Plaintiff is seeking recovery for under S.C. Code Ann. § 27-50-65, submitting that the same should be rightfully considered as court costs pursuant to S.C. Code Ann. § 27-50-65. With the exception of the costs pertaining to litigation services of Plaintiff's expert witness, Glenn Stewart, which were or will be paid directly by Plaintiff, the remaining costs being claimed are also documented on the time records/billing statements. The costs being claimed are supported by the Affidavit of Ely O. Grote, which is attached as **Exhibit B**.

Description of Cost	Amount
Copies and printing for trial (printed in-house)	\$118.85
Copies and printing for trial (third party vendor) - NOVA Office Strategies	\$725.76
Transcripts - depositions of Joseph Phillips and Julie Phillips	\$1,405.05
Transcript - deposition of Barbara Sarb	\$420.00
Court E-filing fees	\$465.98
Process server charges for service of trial subpoenas	\$300.00
Detailed attorney jury list	\$25.00
Fees charged by third parties for records subpoena responses and FOIA responses during pendency of suit	\$403.25
Witness appearance fees for trial	\$335.35
Glenn Stewart (expert witness) litigation services - affidavit in opposition to Defendants' motion for summary judgment	\$275.00
Glenn Stewart (expert witness) litigation services - preparation for trial testimony and appearance and testimony at trial	\$1,921.60
Total:	\$6,395.84

A copy of the invoices for Glenn Stewart's litigation services noted above are attached to the Affidavit of Ely O. Grote. These invoices were not included in the invoices for work performed by Glenn Stewart that were submitted as part of Plaintiff's damages at trial, and instead are separate and distinct charges for litigation related services. While there appears to be no case law specifically interpreting what constitute "court costs" under S.C. Code Ann. § 27-50-65, it should be noted that the South Carolina courts have found that "reasonable costs" recoverable under the

South Carolina Unfair Trade Practices Act include expert witness fees. Maybank v. BB&T Corp., 416 S.C. 541, 582, 787 S.E.2d 498, 519 (2016).

Conclusion

Based on all of the foregoing, Plaintiff seeks a total award of **\$189,743.24** of attorney's fees and court costs pursuant to S.C. Code Ann. § 27-50-65 incurred as of October 12, 2023, which represents the following amounts:

- Attorney's fees: \$183,347.40; and
- Court costs: \$6,395.84.

Plaintiff further requests leave to supplement this request to include any attorney's fees and/or costs subsequently incurred in connection with this matter.

Respectfully submitted,

MCCABE, TROTTER & BEVERLY, P.C.

/s/ Valerie Garcia Giovanoli

Valerie Garcia Giovanoli, SC Bar No. 102524

/s/ Ely O. Grote

Ely O. Grote, SC Bar No. 75379

MCCABE, TROTTER & BEVERLY, P.C.

4500 Fort Jackson Blvd., Suite 250

Columbia, SC 29209

Phone: (803) 724-5000 Fax: (803) 724-5001

Email: Valerie.giovanoli@mccabetrotter.com

ely.grote@mccabetrotter.com

ATTORNEYS FOR PLAINTIFF

October 12, 2023



STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

C/A No.: 2020-CP-21-01817

Barbara L. Sarb,

Plaintiff,

vs.

Julie W. Phillips and Joseph M. Phillips,

Defendants,

VERDICT

1) As to the Violation of The Residential Property Condition Disclosure Act do you find

Defendants:

☒ Liable

☐ Not Liable

2) As to the Fraud do you find the Defendants:

☐ Liable

☒ Not Liable

3) As to Constructive Fraud do you find the Defendants:

☐ Liable

☒ Not Liable

4) As to Negligent Misrepresentation do you find the Defendants:

☐ Liable

☒ Not Liable

5) As to Negligence do you find the Defendants:

☐ Liable

☒ Not Liable

6) As to Breach of Contract do you find the Defendants:

☐ Liable

☒ Not Liable

7) As to Breach of Contract Accompanied by a Fraudulent Act do you find the Defendants:

☐ Liable

☒ Not Liable

If you find the Defendants liable on any one, or all causes of action, place the total amount of damages in the space provided:

\$ 70,000

8) As to Defendant's claim for Failing to Adequately Inspect the Property do you find the Plaintiff:

☒ Liable

☐ Not Liable

If you find the Plaintiff liable on the Defendant's cause of action, place the amount of damages in the space provided:

\$ 0.00 CAL 14 SEP 2023
\$ 1,000 CAL 14 SEP 2023

Foreperson's Signature:

G. A. 2

09/14/2023

September 14, 2023



STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
C/A No.: 2020-CP-21-01817

Barbara L. Sarb,

Plaintiff,

AFFIDAVIT OF ELY O. GROTE

v.

Julie W. Phillips and Joseph M. Phillips,

Defendants.

21624.2

PERSONALLY appeared before me Ely O. Grote, who first being duly sworn, deposes and says as follows:

1. I am an attorney for the Plaintiff in the above referenced matter.

2. This case is an action to recover damages for Defendants' failure to properly disclose the condition of the property located at 550 Wisteria Drive in Florence (the "**Subject Property**") in connection with Plaintiff's purchase of the Subject Property from Defendants. Plaintiff's original Complaint and Amended Complaint in this action both asserted seven causes of action, including a cause of action for violation of The Residential Property Condition Disclosure Act, S.C. Code Ann. § 27-50-10 to -110 (hereinafter, the "**Disclosure Act**"). Plaintiff seeks an award of attorney's fees and court costs pursuant to the Disclosure Act, namely S.C. Code Ann. § 27-50-65. It is also asserted that Plaintiff is also additionally and/or alternatively entitled to costs pursuant to Rule 54, SCRPC.

3. Under Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989), the Supreme Court of South Carolina has set forth the factors to be considered in an award of attorneys' fees. These factors include the nature, extent, and difficulty of the legal services

rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fees charged in the locality for similar services, and the beneficial result obtained. These factors, as applied in this case, are as follows:

- a) *The nature, extent and difficulty of the legal services rendered; The time and labor necessarily devoted to the case*

This case involved complex legal and factual matters. Due to the nature of Plaintiff's claim for violations of the Disclosure Act and due to Defendants' response to the same, significant time and effort was required to be devoted to proving the claim. Throughout the course of the history of this matter, Defendants denied Plaintiff's assertions of violations of the Disclosure Act and vigorously contested and defended against those allegations. Defendants' denial of the allegations and vigorous defense of the same necessitated that significant time and effort to be expended to fully work up and establish Plaintiff's claim for violations of the Disclosure Act. In fact, as will be further noted below, Defendants also alleged that Plaintiff's Complaint was frivolous pursuant to the South Carolina Frivolous Civil Proceedings Sanction Act, further incentivizing and requiring Plaintiff's counsel to fully, thoroughly, and vigorously work up and establish Plaintiff's claim of violations of the Disclosure Act.

Redacted time records/billing statements are attached hereto as **Exhibit 1**, which set forth and document the time devoted to this matter, and the nature and extent of the legal services provided by the firm of McCabe, Trotter & Beverly, P.C. on behalf of Plaintiff. However, some of the key factors regarding the nature, difficulty, and extent of the legal services as well as the time required to be spent on this matter are set forth below.

Prior to filing suit, time and effort was required to be expended by Plaintiff's counsel to investigate and evaluate the claim, including communicating with Plaintiff, reviewing and

analyzing a substantial amount of records and information provided by Plaintiff, interviewing witnesses, investigating the assets of Defendants, securing a qualified expert, and having a qualified expert evaluate the Subject Property. Reasonable efforts were made by Plaintiff's counsel on behalf of Plaintiff to resolve the claim without having to resort to litigation. On February 28, 2020, Plaintiff's counsel sent Defendants a detailed letter setting forth the basis of the claim and damages sustained by Plaintiff, and seeking to resolve the matter. This letter specifically advised of Plaintiff's intent to seek reimbursement of Plaintiff's attorney's fees under S.C. Code Ann. § 27-50-65 in the event that the matter could not be resolved short of litigation. Ultimately, the parties participated in a pre-suit mediation on June 11, 2020, which resulted in an impasse. Time was required to be spent in preparing for and participating in the pre-suit mediation.

Thereafter, Plaintiff instituted this lawsuit on August 6, 2020. Plaintiff's Complaint (and subsequently her Amended Complaint) asserted seven causes of action: (1) Violation of The Residential Property Condition Disclosure Act, S.C. Code Ann. § 27-50-10 *et seq.*; (2) Fraud; (3) Constructive Fraud; (4) Negligent Misrepresentation; (5) Negligence, Gross Negligence, and Negligence Per Se; (6) Breach of Contract/Breach of Implied Covenant of Good Faith and Fair Dealing; and (7) Breach of Contract/Breach of Implied Covenant of Good Faith and Fair Dealing Accompanied By a Fraudulent Act. However, all of these alternate theories of recovery are based on the same transaction (Plaintiff's purchase of the Subject Property from Defendants) and involved the same core allegations under different theories of recovery, such core allegations being that Defendants failed to properly disclose the condition of the Subject Property and/or made misrepresentations concerning the condition of the Subject Property in connection with the sale. Therefore, I am of the belief that the time spent by Plaintiff's counsel with respect to the statutory

claim is indistinguishable from the other six causes of action based on the same transaction, operative facts, and core allegations.

Among other things, Defendants' Answers and Counterclaims, both as to the original Complaint and as to Plaintiff's Amended Complaint, asserted that Plaintiff's Complaint was frivolous under the South Carolina Frivolous Civil Proceedings Sanctions Act. This case has been litigated for over three (3) years and involved difficult legal and factual issues, necessitating that significant time and labor be devoted to the case. Some of the key factors regarding the nature, difficulty, and extent of the legal services as well as the time required to be spent on the litigation include:

- Defendants vigorously contested Plaintiff's claim throughout the litigation, including at trial.
- Significant investigation and discovery was required in order to prepare the case for trial, and the case involved a significant number of documents, text messages, photos, videos, and potential witnesses. Further, since Defendants generally denied having knowledge of the issues claimed with the Subject Property, Plaintiff was required to engage in significant investigation and discovery to further establish that Defendants had knowledge of the issues with the Subject Property prior to the sale to Plaintiff. Likewise, Defendants also engaged in significant discovery pertaining to Plaintiff's claims, requiring Plaintiff's counsel to expend significant time and effort responding to discovery requests and producing requested records. Some significant highlights of discovery include:
 - Defendants served detailed Interrogatories and Requests for Production on Plaintiff, totaling thirty-five (35) interrogatories and thirteen (13) requests to produce. Plaintiff's initial written responses (not including documents produced)

constituted forty-two (42) pages. Further, Plaintiff's responses were supplemented several times during the course of the litigation. Ultimately, throughout the course of discovery, Plaintiff identified approximately fifty (50) persons and/or businesses as potential witnesses (or otherwise potentially having relevant information). Further, throughout the course of discovery, Plaintiff produced over 1,300 pages of documents, and additionally produced over 1,100 digital images and videos.

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- Plaintiff also served at least twelve (12) records subpoenas and at least two (2) Freedom of Information Act requests throughout the course of discovery, which were aimed at obtaining information relevant to the condition of the Subject Property prior to Plaintiff's ownership of the same and Defendants' knowledge of issues with condition of the Subject Property prior to selling it to Plaintiff.

- Three (3) depositions were taken in the case. Plaintiff's counsel deposed both Defendants, and defense counsel deposed Plaintiff. Additionally, several witness interviews were conducted by Plaintiff's counsel.
 - Defendants served Requests to Admit, which Plaintiff was required to respond to.
- Plaintiff's damages claim was complex, and included claims for repair costs, bodily injury, rental expenses, mileage, and costs incurred for a qualified expert to assess the issues with the Subject Property. The complex nature of the damages claimed required significant effort to document, itemize, and establish the damages, including evaluating and sorting out which expenses would be claimed as damages against Defendants and which expenses incurred by Plaintiff would not be claimed as damages.
- Defendants would not consent to Plaintiff amending her Complaint, which necessitated preparing and filing a Motion for Leave to Amend Complaint on behalf of Plaintiff. This also necessitated Plaintiff's counsel attending a hearing on the motion to amend. Plaintiff was ultimately granted leave to amend her complaint by the Court and time was also required time to be devoted by Plaintiff's counsel to preparing the proposed order.
- Defendants filed a motion for summary judgment which raised complex legal and factual issues, and required significant time to be expended to research and to properly oppose the motion both factually and legally under Rule 56, SCRC. Significant time was required to be devoted on behalf of Plaintiff to preparing a memorandum in opposition to Defendants' motion for summary judgment. This included getting several affidavits. It also required significant time to be expended to review and compile other materials/exhibits in opposition Defendant's motion for summary judgment, including: (1) reviewing deposition transcripts, citing to relevant portions of the deposition transcripts,

and compiling excerpts from the deposition transcripts; (2) reviewing extensive records and selecting appropriate records for exhibits; and (3) reviewing extensive digital photos and videos (over 1,100) and compiling select photos for use as exhibits. Plaintiff's Memorandum in Opposition to Defendants' Amended Motion for Summary Judgment, together with the Exhibits thereto, totaled 277 pages. Likewise, Defendants filed a Memorandum in Support of Defendants' Motion for Summary Judgment, which with exhibits, totaled 245 pages, and required time to review. Due to the complexity of the issues and the volume of materials, a significant amount of time was required to prepare for the hearing on the motions for summary judgment. Ultimately, all motions for summary judgment were denied.

- Although the matter had been mediated pre-suit, the matter was mediated a second time during the pendency of the suit under the ADR Rules after Plaintiff's Motion for Exemption from ADR was denied. The mediation resulted in an impasse.
- Due to the large number of potential witnesses, the large amount of records and potential exhibits, and the complexity of the case, an extensive amount of time and coordination was required to prepare for the trial.
- Further, in preparation for trial, Plaintiff's counsel prepared and submitted a pretrial brief and also prepared and filed a Motion in Limine, and Motion to Dismiss Defendants' Frivolous Proceedings Counterclaim or in the Alternative to Bifurcate Claim.
- The process of jury selection and trial lasted over the course of four (4) days. Ultimately, Plaintiff called eleven (11) witnesses, and according to counsel's notes, presented one hundred eighty-five (185) Exhibits. Defendants also presented five (5) additional witnesses.

- Following the trial, counsel for Plaintiff also prepared and filed a Motion for Judgment Notwithstanding the Verdict.
- Time has also been expended in preparing and submitting this Motion for Attorney's Fees and Costs.

b) *The professional standing of counsel*

I graduated from Drake University Law school in 2006 and have been a licensed member of the South Carolina Bar since 2006. I have also been admitted to practice in the United States District Court for the District of South Carolina since 2008. After graduation I served as a law clerk for a South Carolina Circuit Court Judge for one year. I have been in private practice in South Carolina since 2007. I am currently a shareholder with McCabe, Trotter & Beverly, P.C. I have approximately sixteen (16) years' experience in handling civil litigation matters.

c) *The contingency of compensation*

Compensation in this case is based on actual time spent working on the matter by attorneys and staff at McCabe, Trotter & Beverly, P.C. The rates charged by McCabe, Trotter, & Beverly for this matter are: (1) Shareholders - \$275/hr.; (2) Associate Attorneys - \$175/hr.; and (3) Paralegals and Law Clerks - \$125/hr. True and accurate itemized statements of work performed through October 12, 2023 on this matter are attached as **Exhibit 1**. The fees (excluding costs), after discounts were given, total \$183,347.40 for work performed through October 12, 2023, and which is the amount Plaintiff is seeking as an award of attorney's fees in the current motion.

d) *The fee customarily charged in the locality for similar legal services*

Based on my experience and familiarity with rates customarily charged, I believe the rates and fees charged in this matter are reasonable and in accord with rates and fees customarily charged for similar services. I would note that, as documented in the time records/billing statements, the firm of McCabe, Trotter & Beverly, P.C. significantly discounted the fees ultimately billed to Plaintiff, such discounts totaling \$62,077.60 for the invoicing through October 12, 2023. Further, as can be seen from the time records/billing statements, there are many time entries for work performed that were also “no charged”, further reducing the actual amount invoiced to Plaintiff in comparison to the work actually performed. I would also note that on July 1, 2022, the firm of McCabe, Trotter, & Beverly, P.C. increased its hourly rates for most clients to: (1) Shareholders - \$350/hr.; (2) Associate Attorneys - \$250/hr.; and (3) Paralegals and Law Clerks - \$150/hr. However, the hourly rates for this matter were not increased and remained at the rates stated in subpart c) above throughout the entirety of the matter.

e) *The beneficial results obtained*

As evidenced by the verdict form filed on September 15, 2023, Plaintiff’s counsel was able to secure beneficial results for Plaintiff in this action by obtaining a verdict in the amount of \$70,000. Further, I believe that judgment against a seller in a case of this nature for failing to properly disclose the condition of property serves a public benefit to discourage or deter similar conduct.

4. After due consideration of the nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fee charged in the locality for similar services, and the beneficial result obtained, I respectfully submit that an award of attorneys’ fees to the full extent set forth in this Affidavit is appropriate and reasonable; therefore, Plaintiffs should be

entitled to recover the attorneys' fees in the amount of \$183,347.40 for work performed through October 12, 2023.

5. Plaintiff also seeks an award of "court costs" pursuant to the Disclosure Act. S.C. Code Ann. § 27-50-65. While there appears to be no case law interpreting what constitutes or qualifies as "court costs" under the Disclosure Act, it is respectfully submitted that the following costs incurred by Plaintiff and itemized below should rightfully be considered "court costs" under S.C. Code Ann. § 27-50-65. The costs listed below are only a subset of the costs incurred by Plaintiff, and just represent those costs which Plaintiff is seeking recovery for under S.C. Code Ann. § 27-50-65, submitting that the same should be rightfully considered as court costs pursuant to S.C. Code Ann. § 27-50-65. The listing below is a true and accurate statement of such costs incurred by Plaintiff. With the exception of the costs pertaining to litigation services of Plaintiff's expert witness, Glenn Stewart, which were or will be paid directly by Plaintiff, the remaining costs being claimed are also documented on the time records/billing statements attached as Exhibit 1.

Description of Cost	Amount
Copies and printing for trial (printed in-house)	\$118.85
Copies and printing for trial (third party vendor) - NOVA Office Strategies	\$725.76
Transcripts - depositions of Joseph Phillips and Julie Phillips	\$1,405.05
Transcript - deposition of Barbara Sarb	\$420.00
Court E-filing fees	\$465.98
Process server charges for service of trial subpoenas	\$300.00
Detailed attorney jury list	\$25.00
Fees charged by third parties for records subpoena responses and FOIA responses during pendency of suit	\$403.25
Witness appearance fees for trial	\$335.35
Glenn Stewart (expert witness) litigation services - affidavit in opposition to Defendants' motion for summary judgment	\$275.00
Glenn Stewart (expert witness) litigation services - preparation for trial testimony and appearance and testimony at trial	\$1,921.60
Total:	\$6,395.84

A copy of the invoices for Glenn Stewart's litigation services noted above are attached hereto as **Exhibit 2**. These invoices were not included in the invoices for work performed by Glenn Stewart that were submitted as part of Plaintiff's damages at trial, and instead are separate and distinct charges for litigation related services.

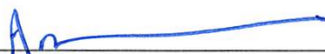
FURTHER AFFIANT SAYETH NOT.

MCCABE, TROTTER & BEVERLY, P.C.



Ely O. Grote SC Bar No. 75379
4500 Ft. Jackson Blvd., Suite 250
Columbia, South Carolina 29209
Phone: (803) 724-5000 Fax: (803) 724-5001
Email(s): Ely.Grote@mccabetrotter.com
ATTORNEY FOR PLAINTIFF

SWORN to before me this 12 day
of October, 2023.



Notary Public for South Carolina
My Commission Expires: 06/10/2024





McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

Invoice as of 2/17/2020
Invoice no 85939

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount
01/22/2020 VG	Client call to discuss case and review of preliminary documents.	0.80	275.00	220.00
01/22/2020 LM	Receipt of new file request; Gather relevant information; Run conflict check; Open file and calendar tasks to be completed.	0.10	125.00	12.50
01/23/2020 CD	Briefed Gladden v. Boykin and begin drafting a memo on exculpatory clauses/limitation of liability clauses enforceability [REDACTED].	2.10	125.00	262.50
01/23/2020 VG	Strategy conference with Ryan McCabe; review of case law and assigned law clerk further review of issues of limitation of liability on home inspector; outlined documents needed and preparation to build case.	1.20	275.00	330.00
01/24/2020 CD	Finished drafting the case brief and memo on limitation of liability/ exculpatory clauses and [REDACTED], as well as some case law beneficial to [REDACTED].	1.50	125.00	187.50
01/24/2020 VG	Research candidates for engineering/construction assistance; discussed option of using Glenn Stewart.	0.50	275.00	137.50
01/24/2020 RM	Conference with Wendy Byars re: experts for basement issues.	0.20	275.00	55.00
01/24/2020 RM	Conference with Glenn Stewart re: facts and problems with property; email to Glenn Stewart.	0.30	275.00	82.50
01/27/2020 PR	Receipt and review email correspondence from Glenn Stewart regarding retainer and scope and save to file.	0.10	125.00	12.50
01/31/2020 PR	Review email correspondence regarding possible site inspection and place hold dates on case calendar.	0.10	125.00	12.50

Sub-total Fees: \$1,312.50

Discount:: (100.00)

Rate Summary

Cameron Degenhart	3.60 hours at \$125.00/hr	450.00
Valerie Garcia Giovanoli	2.50 hours at \$275.00/hr	687.50
Ryan McCabe	0.50 hours at \$275.00/hr	137.50

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Lindsey McCoy	0.10 hours at \$125.00/hr	12.50
Patricia Reconnu	0.20 hours at \$125.00/hr	25.00
Total hours:	<u>6.90</u>	

Total Current Billing:	<u>\$1,212.50</u>
Previous Balance Due:	\$0.00
Total Payments:	<u>\$0.00</u>
Total Now Due:	\$1,212.50

Please remit payment in the amount listed above. The Total Now Due reflects the balance due after any available payments have been applied. Such payments include any cost retainer you've paid, any payments made by the property owner, and payments you've previously submitted. If you have any questions please contact Glenda Murphy at glenda.murphy@mccabetrotter.com or 803-724-5000. Thank you!

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Invoice as of 3/16/2020
Invoice no 86501

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount	
02/04/2020 PR	Reviewing documents produced by Barbara Sarb; discussion with responsible attorney; begin preparation of detailed chronology.	5.70	125.00	712.50	
02/06/2020 VG	Confirmed time of site inspection via email with Glenn Stuart; emails with Dr. Sarb regarding witness contact; called and left voice mails for John Sims and Robin Hatchell.	0.40	275.00	110.00	
02/06/2020 VG	Two telephone calls with John Sims to discuss case and background information; made notes to document file.	0.30	275.00	82.50	
02/06/2020 VG	Telephone call with Robin Hatchell to discuss everything she knew about the home and the case; made notes to document file.	0.40	275.00	110.00	
02/11/2020 VG	Review of paralegal's document summary in conjunction with documents for reference; brief discussion with paralegal and Ely Grote regarding case.	1.20	275.00	330.00	
02/11/2020 EG	Briefly prepare for site inspection by reviewing summary of client documents and skimming relevant records and communications.	0.40	275.00	110.00	
02/11/2020 PR	Reviewing and analyzing documents produced by Barbara Sarb and continue preparation of detailed chronology and witness list; brief discussion with responsible attorney.	5.80	125.00	725.00	
02/12/2020 VG	Travel to and from Dr. Sarb's house at 550 Wisteria in Florence and attend site inspection and meeting.	5.50	0.00	0.00	No Charge
02/12/2020 EG	Round trip travel to and from Florence for site inspection (no charge).	2.60	0.00	0.00	No Charge
02/12/2020 EG	Attend and participate in site inspection at Dr. Sarb's residence in Florence.	2.80	275.00	770.00	
02/13/2020 EG	Review photos provided by Dr. Sarb; Review summary of research performed by law clerk; skim over additional materials that have been provided by Dr. Sarb; Formulate recommendations; Email correspondence with Dr. Sarb regarding [REDACTED].	0.60	275.00	165.00	
02/14/2020 VG	Assigned asset locator task to paralegal and provided detail.	0.20	275.00	55.00	

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02/14/2020	EG	Review of TransUnion searches performed on the Phillips; Review of results of search for properties owned by the Phillips performed by paralegal.	0.40	275.00	110.00
02/14/2020	DP	Perform/conduct asset search as to Phillips' (to include but not limited to person, personal property, real property, and judicial index); Update file as needed.	0.80	125.00	100.00
02/17/2020	VG	Telephone call with Dr. Sarb regarding [REDACTED] (0.4); discuss with Ely regarding preparation and contents of demand letter and potential assets of sellers (0.4); email correspondence to Glenn Stuart to determine estimated date of completion for written report (0.1); assigned & calendared tasks for professionals (0.1).	1.00	275.00	275.00
02/17/2020	EG	Perform additional research relating to real property owned by the Phillips, including searching GIS records, assessors' records, and register of deeds' records in attempt to locate additional real property owned by the Phillips, to determine the value of the same, and to assess the existence of any mortgages; Email correspondence with Dr. Sarb regarding [REDACTED].	1.40	275.00	385.00
02/17/2020	DP	Perform/conduct additional research of public information (recorded instruments) relating to Phillips; Notate file.	0.50	125.00	62.50
02/18/2020	VG	Email correspondence with Dr. Sarb regarding [REDACTED]; reviewed documents to total all costs of repairs and upgrades to include in demand and requested additional items from Dr. Sarb; assigned John Ethridge contact to Ely; updated file.	0.60	275.00	165.00
02/20/2020	VG	Brief telephone call with Glenn Stuart regarding his written report.	0.10	275.00	27.50
02/21/2020	VG	Received and reviewed Glenn Stuart's report; emailed same to Dr. Sarb for review and saved to file.	0.40	275.00	110.00
02/21/2020	EG	Begin working on initial demand letter to the Phillips; Reviewing and compiling background information and performing research necessary to prepare initial demand letter to the Phillips; Telephone conference with John Ethridge.	1.50	275.00	412.50
02/24/2020	EG	Continued reviewing client documents as necessary to assist in preparing initial demand letter to the Phillips.	2.20	275.00	605.00
02/24/2020	EG	Drafting initial demand letter to the Phillips.	1.30	275.00	357.50
02/25/2020	EG	Formulating strategy; Continue drafting detailed demand letter to the Phillips setting forth issues, liability, and damages; Performing additional legal research; Calculating damages and compiling supporting documentation.	3.80	275.00	1,045.00
02/26/2020	VG	Reviewed draft demand letter; made minor revisions/additions; emailed Dr. Sarb draft with request for additional information; emailed Dr. Sarb in response to her email requesting [REDACTED].	1.10	275.00	302.50

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02/26/2020	EG	Finish drafting and revision of first draft of detailed initial demand letter to the Phillips.	1.90	275.00	522.50
02/26/2020	PR	Performing revisions to Demand Letter as directed by Ely Grote.	0.70	125.00	87.50
02/28/2020	EG	Telephone conferences with Dr. Sarb to discuss [REDACTED]; review Best Buy Receipt provided by Dr. Sarb; Perform revisions and work finalizing demand letter to the Phillips; Email correspondence with Dr. Sarb regarding [REDACTED].	1.30	275.00	357.50
02/28/2020	PR	Revisions to Demand Letter and preparation of attachments; discussions with Ely Grote.	1.40	125.00	175.00
02/28/2020	PR	Finalize demand letter and exhibits and process for mail; email copy to Barbara Sarb; update file.	0.70	125.00	87.50
Sub-total Fees:					\$8,357.50

Rate Summary

Valerie Garcia Giovanoli	5.50 hours at \$0.00/hr	0.00
Valerie Garcia Giovanoli	5.70 hours at \$275.00/hr	1,567.50
Ely Grote	2.60 hours at \$0.00/hr	0.00
Ely Grote	17.60 hours at \$275.00/hr	4,840.00
Deanne Peele	1.30 hours at \$125.00/hr	162.50
Patricia Reconnu	14.30 hours at \$125.00/hr	1,787.50
Total hours:	47.00	

Expenses

		Units	Price	Amount
02/28/2020	Postage.	1.00	11.60	11.60
02/14/2020	TransUnion Search.	1.00	45.00	45.00
Sub-total Expenses:				\$56.60

Total Current Billing:	\$8,414.10
Previous Balance Due:	[REDACTED]
Total Payments:	[REDACTED]
Total Now Due:	[REDACTED]

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Invoice as of 4/20/2020
Invoice no 87181

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount
03/02/2020	EG Review of invoice from The Granite Store provided by Dr. Sarb.	0.10	275.00	27.50
03/13/2020	EG Review letter from attorney Ed Love responding to our demand letter; Email correspondence with Dr. Sarb regarding [REDACTED]; Email correspondence with attorney Ed Love regarding trying to resolve the matter.	0.30	275.00	82.50
03/16/2020	EG Prepare for phone conference with attorney Ed Love by reviewing and refreshing recollection of relevant information, and by formulating strategy for discussions; Telephone call to attorney Ed Love - left message.	0.40	275.00	110.00
03/17/2020	EG Telephone conference with attorney Ed Love; Email correspondence with Dr. Sarb regarding [REDACTED].	0.30	275.00	82.50
03/18/2020	VG Telephone call with Dr. Sarb regarding [REDACTED]; Update file as necessary.	0.50	275.00	137.50
03/20/2020	VG Emails with Glenn Stuart regarding foundation and contractors; assigned task to Ely to schedule mediation.	0.10	275.00	27.50
03/23/2020	EG Multiple email correspondence with Ed Love regarding mediation and potential mediators; Evaluate potential mediators and seek recommendations regarding mediators; Multiple email correspondence with Dr. Sarb regarding [REDACTED].	0.90	275.00	247.50
03/24/2020	EG Email correspondence with attorney Ed Love regarding possible mediators; Researching mediators.	0.60	275.00	165.00
03/24/2020	PR Review email correspondence from Ely Grote; email correspondence to potential mediators requesting fee schedules for mediation and whether it included out of town travel and mileage expenses.	0.30	125.00	37.50

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03/25/2020 PR	Email correspondence from Becky Lafitte in response to mediation fees; Email correspondence from Biff Sowell in response to mediation fees; Email correspondence from Ben McCoy in response to mediation fees; Email correspondence to Emily at Earl Ellis Mediation for mediation schedule; Receipt and review email correspondence from Emily with mediation fees; Receipt and review email correspondence from Careen with Beck Lafitte's office with mediation rates; email responsible attorney; update file.	0.20	125.00	25.00
03/25/2020 PR	Receipt and review email correspondence from Careen with Beck Lafitte's office with mediation rates; email responsible attorney.	0.10	125.00	12.50
03/27/2020 EG	Evaluating mediator information compiled by paralegal; Lengthy email correspondence to attorney Ed Love regarding potential mediators and conducting mediation; Email correspondence with Dr. Sarb regarding [REDACTED].	0.40	275.00	110.00

Sub-total Fees: \$1,065.00

Discount:: (192.50)

Rate Summary

Valerie Garcia Giovanoli	0.60 hours at \$275.00/hr	165.00
Ely Grote	3.00 hours at \$275.00/hr	825.00
Patricia Reconnu	0.60 hours at \$125.00/hr	75.00
Total hours:	<u> </u> 4.20	

Total Current Billing:	<u> </u> \$872.50
Previous Balance Due:	<u> </u> [REDACTED]
Total Payments:	<u> </u> [REDACTED]
Total Now Due:	<u> </u> [REDACTED]

Please remit payment in the amount listed above. The Total Now Due reflects the balance due after any available payments have been applied. Such payments include any cost retainer you've paid, any payments made by the property owner, and payments you've previously submitted. If you have any questions please contact Glenda Murphy at glenda.murphy@mccabetrotter.com or 803-724-5000. Thank you!

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Invoice as of 5/27/2020
Invoice no 88094

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees			Hours	Rate	Amount
04/03/2020	VG	Received and reviewed [REDACTED] email from Dr. Sarb and inquiry regarding [REDACTED]; emailed Dr. Sarb regarding [REDACTED].	0.10	275.00	27.50
04/03/2020	EG	Email correspondence with attorney Ed Love regarding possible mediation via video conference; Email correspondence with Dr. Sarb regarding [REDACTED].	0.40	275.00	110.00
04/07/2020	EG	Email correspondence with Ed Love regarding mediation.	0.20	275.00	55.00
04/15/2020	EG	Email correspondence with Ed Love regarding mediation.	0.10	275.00	27.50
04/16/2020	EG	Email correspondence with Ed Love regarding mediation; Telephone conference with Ed Love regarding mediation.	0.20	275.00	55.00
04/23/2020	VG	Email to Dr. Sarb regarding [REDACTED].	0.10	275.00	27.50
04/24/2020	VG	Telephone call with Dr. Sarb to discuss [REDACTED] (0.7); brief review of mold inspection report and ServPros written recommendations (0.1); brief discussion with Ely regarding same (0.2).	1.00	275.00	275.00
04/24/2020	VG	Received email from Dr. Sarb with [REDACTED]; informed Ely of same.	0.10	275.00	27.50
04/24/2020	EG	Search Darlington County and Georgetown County records to verify that the Phillips haven't conveyed their properties there; review SanAir report; review correspondence from ServePro.	0.40	275.00	110.00
04/27/2020	VG	Email correspondence with Dr. Sarb and brief conference with Ely on how to proceed; updated file.	0.10	275.00	27.50
04/27/2020	EG	Formulate plan of action regarding mediation and possible suit in light of [REDACTED]; Email correspondence with Ed Love regarding need to move forward with mediation.	0.30	275.00	82.50
04/28/2020	EG	Email correspondence with Ed Love regarding mediation.	0.10	275.00	27.50
04/29/2020	EG	Begin reviewing additional package of records and documents provided by Dr. Sarb.	1.30	275.00	357.50

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04/30/2020 EG	Finish reviewing additional package of records and documentation provided by Dr. Sarb.	0.40	275.00	110.00
			Sub-total Fees:	<u>\$1,320.00</u>

Rate Summary

Valerie Garcia Giovanoli	1.40 hours at \$275.00/hr	385.00
Ely Grote	3.40 hours at \$275.00/hr	935.00
Total hours:	<u>4.80</u>	

Total Current Billing:	<u>\$1,320.00</u>
Previous Balance Due:	████████
Total Payments:	<u>████████</u>
Total Now Due:	████████

Please remit payment in the amount listed above. The Total Now Due reflects the balance due after any available payments have been applied. Such payments include any cost retainer you've paid, any payments made by the property owner, and payments you've previously submitted. If you have any questions please contact Glenda Murphy at glenda.murphy@mccabetrotter.com or 803-724-5000. Thank you!

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Invoice as of 6/16/2020
Invoice no 88734

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount
05/04/2020	EG Email correspondence with Ed Love regarding mediation.	0.10	275.00	27.50
05/07/2020	EG Email correspondence with Ed Love regarding mediation.	0.10	275.00	27.50
05/13/2020	EG Email correspondence with Ed Love regarding mediation; Email correspondence with Dr. Sarb regarding [REDACTED].	0.20	275.00	55.00
05/14/2020	EG Email correspondence with Ed Love regarding mediation; Email correspondence with mediator Mike Smith's office regarding mediation.	0.20	275.00	55.00
05/15/2020	EG Email correspondence with Ed Love and mediator's office regarding mediation; Email correspondence with Dr. Sarb regarding [REDACTED].	0.20	275.00	55.00
05/26/2020	VG Email correspondence with Dr. Sarb and cursory review of chimney inspection reports and estimates; brief discussion with Ely regarding same and preparation for mediation.	0.30	275.00	82.50
05/27/2020	EG Reviewing and analyzing documentation from Chimspector provided by Dr. Sarb.	0.80	275.00	220.00
05/28/2020	VG Emails with Dr. Sarb and telephone call to Clarks.	0.20	275.00	55.00
05/29/2020	EG Review and analysis of additional/revised Chimspector records provided by Dr. Sarb.	0.50	275.00	137.50
05/29/2020	PR Calendar Pre-mediation meeting and reserve Congaree conference room from 2-5pm for meeting.	0.10	125.00	12.50
Sub-total Fees:				\$727.50

Rate Summary

Valerie Garcia Giovanoli	0.50 hours at \$275.00/hr	137.50
Ely Grote	2.10 hours at \$275.00/hr	577.50
Patricia Reconnu	0.10 hours at \$125.00/hr	12.50
Total hours:	2.70	

Total Current Billing:	\$727.50
Previous Balance Due:	[REDACTED]
Total Payments:	[REDACTED]

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Total Now Due:



Please remit payment in the amount listed above. The Total Now Due reflects the balance due after any available payments have been applied. Such payments include any cost retainer you've paid, any payments made by the property owner, and payments you've previously submitted. If you have any questions please contact Glenda Murphy at glenda.murphy@mccabetrotter.com or 803-724-5000. Thank you!

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R. 0174



Invoice as of 7/28/2020
Invoice no 89872

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount	
06/19/2020	PR	Process Freedom of Information Act Request to City of Florence Police Department for service via regular mail and fax; email copy to client and update file.	0.20	125.00	25.00
06/10/2020	EG	Multiple email correspondence with Dr. Sarb regarding [REDACTED]; revising damages summary per [REDACTED], including performing further review of records; Preparing records for distribution to attorney Ed Love; Telephone conference with Dr. Sarb regarding [REDACTED]; Email correspondence with Ed Love regarding damages documentation for purposes of mediation and videos; Email correspondence with mediator's office confirming mediation; Telephone call to mediator, Mike Smith.	2.60	275.00	715.00
06/19/2020	VG	Telephone call with Dr. Sarb to discuss [REDACTED] (0.5); further evaluation and discussion with Ely regarding same and other considerations (0.8); emailed Dr. Sarb further [REDACTED] and updated file (0.2).	1.50	275.00	412.50
06/10/2020	PR	Review and redact documents to produce to Ed Love; preparation of combined pdf of additional documents to provide to Ed Love; discussion with responsible attorney regarding the same.	0.90	125.00	112.50
06/16/2020	EG	Assess and analyze Dr. Sarb's request to [REDACTED] Review and revise draft FOIA request to City of Florence Police Department prepared by paralegal; Briefly review Freedom of Information Act law.	0.30	275.00	82.50
06/19/2020	EG	Perform further revision and final approval of FOIA request to City of Florence Police Department.	0.10	275.00	27.50
06/11/2020	VG	Travel to and from Florence and participation in mediation. (No Charge).	6.10	275.00	0.00 No Charge
06/05/2020	EG	Continue preparing for mediation and meeting with Dr. Sarb, including further reviewing records and preparing outline/agenda for meeting and summarizing relevant information for discussion.	1.50	275.00	412.50
06/19/2020	EG	Formulating analysis, strategy, and recommendations for proceeding with matter.	0.80	275.00	220.00

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R. 0175

06/05/2020	EG	Meeting with Dr. Sarb to prepare for mediation.	2.00	275.00	550.00	
06/04/2020	EG	Begin preparing for mediation and pre-mediation meeting with Dr. Sarb, including by: re-reviewing pertinent documents; formulating analysis/strategy regarding claims, damages, mediation, and future course of action; formulating analysis of and compiling additional documents and information to possibly present to the Phillips prior to mediation or at mediation; working on preparing and compiling information needed for mediation; working on preparing outline/agenda for meeting with Dr. Sarb, including recommendations, information, and thoughts for going into mediation and handling mediation; working on preparing and formulating initial statements/presentation for mediation.	5.70	275.00	1,567.50	
06/09/2020	EG	Working on preparing damages/cost summary for mediation, including supporting documentation; Email correspondence with Dr. Sarb regarding [REDACTED]	4.10	275.00	1,127.50	
06/08/2020	EG	Reviewing additional records and materials provided by Dr. Sarb; meeting with Valerie Giovanoli to roundtable discuss and formulate mediation strategy and case strategy.	1.60	275.00	440.00	
06/15/2020	DP	Obtain City of Florence Police Department contact information; Draft/prepare Freedom of Information Act Request for incident report (automobile crashing into the residence located at 550 Wisteria Drive); Update file as needed.	0.60	125.00	75.00	
06/12/2020	VG	Telephone call with Dr. Sarb to discuss [REDACTED] [REDACTED] updated file; received mediator invoice and forwarded same to Dr. Sarb via email.	0.70	275.00	192.50	
06/11/2020	EG	Meeting with Dr. Sarb; attend and participate in mediation.	3.50	275.00	962.50	
06/29/2020	EG	Review of additional records provided by City of Florence Police Department; Email correspondence with Dr. Sarb regarding [REDACTED].	0.20	275.00	55.00	
06/02/2020	VG	Telephone call with Clarks regarding delivery of estimate; emails with Dr. Sarb.	0.20	275.00	55.00	
06/30/2020	EG	Formulating analysis and plan of action for drafting complaint and contents thereof, including beginning to research and assess causes of action to assert and beginning to compile information necessary for drafting of complaint.	0.60	275.00	165.00	
06/25/2020	EG	Review of City of Florence Police Department response to our FOIA request, including review of materials provided; Email correspondence with Dr. Sarb regarding [REDACTED].	0.50	275.00	137.50	
06/03/2020	EG	Formulating analysis of options for future course of action for Dr. Sarb with respect to [REDACTED].	0.30	275.00	82.50	
06/05/2020	VG	Preparation for (2.2) and attendance at (2.0) meeting with Dr. Sarb. (No Charge).	4.20	275.00	0.00	No Charge

06/11/2020	EG	Round trip travel between MTB office in Columbia and Ed Love's office in Florence for mediation (no charge).	2.60	275.00	0.00	No Charge
06/11/2020	EG	Performing additional preparation for mediation.	1.50	275.00	412.50	
			Sub-total Fees:		\$7,830.00	
			Discount::		(2,387.50)	

Rate Summary

Valerie Garcia Giovanoli	12.70 hours at \$275.00/hr	660.00
Ely Grote	27.90 hours at \$275.00/hr	6,957.50
Deanne Peele	0.60 hours at \$125.00/hr	75.00
Patricia Reconnu	1.10 hours at \$125.00/hr	137.50
Total hours:	42.30	

Total Current Billing:	\$5,442.50
Previous Balance Due:	
Total Payments:	
Total Now Due:	

Please remit payment in the amount listed above. The Total Now Due reflects the balance due after any available payments have been applied. Such payments include any cost retainer you've paid, any payments made by the property owner, and payments you've previously submitted. If you have any questions please contact Glenda Murphy at glenda.murphy@mccabetrotter.com or 803-724-5000. Thank you!

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Invoice as of 8/26/2020
Invoice no 90588

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount
07/14/2020 DP	Continued drafting/preparation of first draft of Summons and Complaint.	2.70	125.00	337.50
07/09/2020 DP	Communicate with Attorney Love and Dr. Sarb (separately) via email, therewith providing correspondence from Attorney Grote in regard to suit and inspection; Update file.	0.10	125.00	12.50
07/20/2020 EG	Reviewing, revising, and editing draft complaint started by paralegal.	1.90	275.00	522.50
07/22/2020 DP	Draft/prepare Summons; Update file.	0.20	125.00	25.00
07/28/2020 EG	Telephone conference with Dr. Sarb regarding [REDACTED].	0.80	275.00	220.00
07/26/2020 EG	Email correspondence with Dr. Sarb regarding [REDACTED].	0.10	275.00	27.50
07/15/2020 EG	Email correspondence with Dr. Sarb regarding [REDACTED].	0.10	275.00	27.50
07/23/2020 EG	Email correspondence with Dr. Sarb regarding [REDACTED]; Email correspondence with Ed Love regarding inspection completed before French drain work begins.	0.20	275.00	55.00
07/24/2020 EG	Continued working on drafting and revising lengthy and detailed Complaint for lawsuit, including reviewing factual information and performing legal research as necessary for drafting the Complaint.	4.00	275.00	1,100.00
07/16/2020 DP	Continued drafting/preparation of draft of Complaint for attorney review.	6.50	125.00	812.50
07/28/2020 EG	Email correspondence with Ed Love regarding inspection of the property; Email correspondence with Dr. Sarb concerning [REDACTED]; Reviewing provisions of SC Notice and Opportunity to Cure Construction Dwelling Defects Act.	0.50	275.00	137.50

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R. 0178

07/06/2020	EG	Performing legal research regarding causes of action for complaint and legal defenses that may be potentially raised, including matters raised at mediation in opposition to claims; formulating analysis, strategy, and plan of action for complaint; reviewing materials as necessary to assist in formulating strategy for complaint and to assist in future preparation of complaint.	4.50	275.00	1,237.50
07/09/2020	EG	Multiple email correspondence with Dr. Sarb regarding [REDACTED]; Telephone conference with Dr. Sarb about [REDACTED]; Drafting letter to Ed Love regarding filing suit and providing opportunity to inspect.	1.40	275.00	385.00
07/17/2020	EG	Email correspondence with Ed Love regarding inspection of property; Email correspondence with Dr. Sarb regarding [REDACTED]; Briefly begin reviewing draft complaint prepared by paralegal.	0.20	275.00	55.00
07/30/2020	EG	Email correspondence with Dr. Sarb regarding [REDACTED]; Performing further legal research regarding legal and equitable remedies and damages and assess the merits of the same to [REDACTED]; Email correspondence with Dr. Sarb regarding [REDACTED]; Performing legal research regarding preservation of Defendants' assets to satisfy any judgment.	2.60	275.00	715.00
07/14/2020	EG	Review of Nature's Barber estimate provided by Dr. Sarb and analyze scope of work; Email correspondence with Dr. Sarb regarding [REDACTED] [REDACTED] Email correspondence with Ed Love regarding inspection of the property.	0.70	275.00	192.50
07/09/2020	DP	Edit/revise correspondence to Attorney Love, in regard to suit and inspection; Update file as needed.	0.20	125.00	25.00
07/23/2020	EG	Continued working on drafting and revising lengthy and detailed complaint for lawsuit, including reviewing factual information and performing legal research as necessary for drafting the complaint.	5.50	275.00	1,512.50
07/08/2020	DP	Begin preparing first draft of Complaint for attorney review.	1.20	125.00	150.00
07/21/2020	EG	Email correspondence with Dr. Sarb regarding [REDACTED].	0.20	275.00	55.00
07/07/2020	EG	Formulating further analysis, strategy and plan of action for complaint, including reviewing further materials as necessary to assist with the same; instructing paralegal on preparation of first draft of Complaint.	1.20	275.00	330.00
07/24/2020	EG	Email correspondence with Ed Love regarding inspection of the property.	0.10	275.00	27.50
07/22/2020	EG	Reviewing, revising, editing, and performing further drafting of Complaint.	2.40	275.00	660.00
Sub-total Fees:					\$8,622.50
Discount::					(3,220.63)

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R. 0179

Rate Summary

Ely Grote	26.40 hours at \$275.00/hr	7,260.00
Deanne Peele	10.90 hours at \$125.00/hr	1,362.50
Total hours:	<u>37.30</u>	

Expenses		Units	Price	Amount
06/05/2020	Copies and Printing.	9.00	0.10	0.90
06/19/2020	Copies and Printing.	2.00	0.10	0.20
06/11/2020	Copies and Printing.	40.00	0.15	6.00
06/11/2020	Copies and Printing.	158.00	0.10	15.80
06/05/2020	Copies and Printing.	9.00	0.15	1.35
06/10/2020	Copies and Printing.	44.00	0.10	4.40
Sub-total Expenses:				<u>\$28.65</u>

Total Current Billing:	<u>\$5,430.52</u>
Previous Balance Due:	<u> </u>
Total Payments:	<u> </u>
Total Now Due:	

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Invoice as of 9/25/2020
Invoice no 91600

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount
07/31/2020	EG Email correspondence with Ed Love regarding possible inspection of the subject property; Email correspondence with Dr. Sarb regarding [REDACTED].	0.20	275.00	55.00
08/03/2020	EG Email correspondence with Dr. Sarb regarding [REDACTED].	0.10	275.00	27.50
08/04/2020	EG Working on revising/finalizing Complaint based on input from Dr. Sarb.	1.00	275.00	275.00
08/05/2020	EG Performing additional drafting and revision of complaint.	2.00	275.00	550.00
08/05/2020	VG Review of final draft complaint by Ely; brief discussion with Ely regarding same.	0.50	275.00	137.50
08/06/2020	DP Review and perform final revisions to proposed Summons and Complaint as instructed by responsible attorney.	0.40	125.00	50.00
08/06/2020	DP Input information and submit Summons and Complaint for consideration of and filing with the Court.	0.30	125.00	37.50
08/06/2020	DP Receipt of electronic notification advising submission has been processed by Clerk of Court; Retrieve file-stamped Summons and Complaint; Update file and Pleading Info as needed.	0.20	125.00	25.00
08/06/2020	EG Review Valerie Giovanoli's comments to draft Complaint; Email correspondence with Dr. Sarb regarding [REDACTED]; Perform further revisions to complaint; Instruct paralegal on preparing Complaint for filing.	0.60	275.00	165.00
08/10/2020	EG Review of filed Summons and Complaint; Email correspondence with Dr. Sarb regarding [REDACTED] Email correspondence with Ed Love regarding filed complaint and accepting service of the same.	0.20	275.00	55.00
08/11/2020	DP Draft/develop Factual and Procedural Chronology; Update file.	3.20	125.00	400.00
08/13/2020	DP Draft/revise Acceptance of Service and provide same to responsible attorney for review; Submit signed Acceptance for e-filing with Court; Update file and calendar as needed.	0.40	125.00	50.00

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R. 0181

08/13/2020	EG	Multiple email correspondence with Ed Love regarding acceptance of service; instructing paralegal on preparation of acceptance of service form; Reviewing court rules regarding requirements for acceptance of service and proof regarding the same; Reviewing and revising acceptance of service form prepared by paralegal and email the same to Ed Love; Review of executed acceptance of service provided by Ed Love and then instruct paralegal regarding filing the same.	0.60	275.00	165.00
08/17/2020	EG	Email correspondence with Ed Love regarding filed acceptance of service; Email correspondence with Dr. Sarb regarding [REDACTED].	0.10	275.00	27.50
08/19/2020	EG	Review Rule 11 letter from Ed Love; analyze and assess contentions contained in Rule 11 letter; Email correspondence with Dr. Sarb regarding [REDACTED].	0.40	275.00	110.00
08/21/2020	PR	Update pleadings index with filed acceptance of service.	0.10	125.00	12.50
08/24/2020	EG	Formulating analysis/strategy with respect to damages.	0.20	275.00	55.00
08/25/2020	EG	Further assessing assertions in Ed Love's Rule 11 letter, including reviewing relevant materials and factual history to assist in assessing the same; Reviewing legal research and performing additional legal research relevant to assertions in Ed Love's Rule 11 letter; Drafting body of letter to Ed Love responding to his Rule 11 letter; Begin working on formulating discovery plan and initial discovery requests.	2.20	275.00	605.00
08/26/2020	DP	Edit/revise correspondence in response to Attorney Love's recent Rule 11 letter; Revise Procedural/Factual Chronology; Update file.	0.60	125.00	75.00
08/26/2020	DP	Communicate with Attorney Love via email, therewith providing written response to (his) recent Rule 11 letter; Update file.	0.10	125.00	12.50
08/26/2020	EG	Revise and finalize letter to Ed Love responding to his Rule 11 letter; Email correspondence with Dr. Sarb regarding [REDACTED].	0.60	275.00	165.00
08/26/2020	EG	Review of information provided by Dr. Sarb relating to interior waterproofing; Telephone conference with Dr. Sarb regarding [REDACTED]; Review of additional photos provided by Dr. Sarb.	0.90	275.00	247.50

Sub-total Fees: \$3,302.50

Discount:: (425.00)

Rate Summary

Valerie Garcia Giovanoli	0.50 hours at \$275.00/hr	137.50
Ely Grote	9.10 hours at \$275.00/hr	2,502.50
Deanne Peele	5.20 hours at \$125.00/hr	650.00
Patricia Reconnu	0.20 hours at \$125.00/hr	12.50

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R. 0182

Total hours: 15.00

Expenses

		Units	Price	Amount
08/06/2020	E-Filing Fee.	1.00	180.32	180.32
08/11/2020	Copies and Printing.	1.00	0.10	0.10
08/21/2020	Copies and Printing.	3.00	0.10	0.30
Sub-total Expenses:				<u>\$180.72</u>

Total Current Billing:	<u>\$3,058.22</u>
Previous Balance Due:	<u> </u>
Total Payments:	<u> </u>
Total Now Due:	<u> </u>

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Invoice as of 10/14/2020
Invoice no 91836

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount
09/15/2020 VG	Review of Answer and Counterclaims, interrogatories and requests for production; assigned tasks to paralegal and discussed litigation plan with Ely; correspondence with Dr. Sarb regarding [REDACTED].	0.40	275.00	110.00
09/29/2020 EG	Multiple email correspondence with Kathy Wray (claims representative with Southern Fidelity Insurance Company) regarding tender of defense and Southern Fidelity Insurance Company policy; Reviewing relevant documents to obtain information needed to respond to requests of Kathy Wray; Formulate additional analysis regarding additional insurance information needed; Email correspondence with David Jordan regarding insurance policies for Dr. Sarb and additional information needed.	0.90	275.00	247.50
09/28/2020 PR	Continue review and summary of documents and contemporaneously continue drafting answers to Defendants Interrogatories.	1.90	125.00	237.50
09/15/2020 EG	Continue working on discovery plan and topics for discovery; Instructing paralegal on beginning to implement discovery plan, including beginning to draft various discovery requests to defendants and third parties; Review of Ed Love's subpoenas to Remax, Wilcox law firm, and HouseMaster.	0.80	275.00	220.00
09/24/2020 PR	Continue review of documents and drafting responses to Defendants' discovery requests.	0.80	125.00	100.00
09/24/2020 EG	Review of Ed Love's subpoenas and associated correspondence and records certifications sent to ReMax, Housemaster, and Willcox law firm; Drafting content of letter to Ed Love requesting records produced in response to his subpoenas.	0.40	275.00	110.00
09/21/2020 EG	Reviewing and revising draft tender of defense letters prepared by paralegal, and verifying policy information; Instructing paralegal on further revisions and finalization of tender of defense letters.	0.50	275.00	137.50
09/22/2020 PR	Review case documents in preparing responses to Defendants discovery requests identifying documents and witnesses.	1.40	125.00	175.00

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R. 0184

09/21/2020	EG	Telephone conference with Dr. Sarb regarding [REDACTED].	0.20	275.00	55.00
09/25/2020	PR	Review documents provided by Dr. Sarb and prepare summary of documents and potential witnesses in preparation to respond to Defendants' discovery requests.	2.40	125.00	300.00
09/25/2020	PR	Update discovery index with recently received discovery and update file.	0.20	125.00	25.00
09/30/2020	EG	Email correspondence with Southern Fidelity Insurance Company regarding insurance claim; Review of letter from Southern Fidelity Insurance Company regarding claim.	0.20	275.00	55.00
09/23/2020	PR	Review file and assemble exhibits for Tender of Claim Letters.	0.10	125.00	12.50
09/14/2020	PR	Update pleadings index to include Answer and Counterclaim.	0.10	125.00	12.50
09/14/2020	EG	Reviewing and analyzing Answer and Counterclaims of Defendants, including comparing and contrasting with allegations in Complaint and assessing and researching factual and legal allegations asserted by Defendants and notate file accordingly; Formulating plan of action with respect to Answer and Counterclaims, including plan for responding to counterclaims; Review e-filing system records regarding filing of Answer and Counterclaims; Prepared detailed summary of Answer and Counterclaims and recommendations, and conveyed the same to Dr. Sarb via email; Email correspondence with Dr. Sarb regarding [REDACTED].	2.70	275.00	742.50
09/14/2020	EG	Review of Defendants' lengthy interrogatories and requests for production; Email correspondence with Dr. Sarb regarding [REDACTED]; Formulating plan for responding to Defendants' Interrogatories and Requests for Production and assign/delegate tasks accordingly.	0.40	275.00	110.00
09/21/2020	PR	Drafting Plaintiff's First set of Continuing Interrogatories to defendants and Plaintiff's First set of continuing Requests for Production to Defendants. Review attorney notes and other documents in preparation of the same.	3.90	125.00	487.50
09/22/2020	EG	Review of numerous photos provided by Dr. Sarb relating to French drain work; Email correspondence with Dr. Sarb regarding [REDACTED]; Formulating strategy in relation to new information provided.	0.50	275.00	137.50
09/25/2020	PR	Review email correspondence from responsible attorney and Preparation of letter to Walker H. Wilcox.	0.20	125.00	25.00
09/25/2020	PR	Review case documents to determine closing attorney at Willcox, Buyck & Williams who handled closing and provide information to responsible attorney.	0.30	125.00	37.50

09/25/2020 PR	Finalize Letter to Ed Love - requesting subpoena docs and process for mail; email copy of letter to client and update file.	0.20	125.00	25.00
09/09/2020 EG	Email correspondence with Dr. Sarb regarding [REDACTED].	0.10	275.00	27.50
09/14/2020 EG	Telephone conference with Dr. Sarb regarding [REDACTED] (.3) and notate file accordingly; Reviewing factual information/documents further and formulating additional analysis, strategy and plan of action based on discussion with Dr. Sarb.	0.70	275.00	192.50
09/23/2020 EG	Review and execution of final tender letters to Dr. Sarb's homeowners insurance carriers; Email correspondence with Kristl Gibson explaining the lawsuit and the tender of defense and indemnity; Telephone conference with David Jordan regarding tender of defense and notate file accordingly.	0.60	275.00	165.00
09/16/2020 EG	Review of additional policy declarations provided by Dr. Sarb (550 Wisteria) and formulate plan for tender of defense; instruct paralegal on drafting of tender of defense letters.	0.20	275.00	55.00
09/28/2020 EG	Email correspondence with Kathy Wray (claims adjuster for Southern Fidelity Insurance Company) regarding tender of defense of counterclaims to Southern Fidelity Insurance Company; Briefly researching whether standard homeowners insurance liability coverage would cover off-premises liability coverage.	0.40	275.00	110.00
09/23/2020 PR	Finalize Letter to Occidental Fire & Casualty (tender of Counterclaims) with exhibits and process for service via regular mail and email to Kristl Gibson;; update file.	0.30	125.00	37.50
09/25/2020 EG	Assess potential attorney-client privilege implications regarding subpoena to Willcox law firm and formulate strategy, analysis, and plan of action regarding the same; Preparing content/text of letter to Willcox law firm regarding preserving any attorney client privilege; Email correspondence with Ed Love and Walker Willcox regarding attorney client privilege applicable to Willcox law firm documents; Telephone conference with Dr. Sarb (.4).	1.10	275.00	302.50
09/14/2020 PR	Calendar response due date to Defendants' discovery requests to Plaintiff; Discussion with responsible attorney.	0.20	125.00	25.00
09/30/2020 PR	Continue review and summary of documents and contemporaneously continue drafting answers to Defendants Interrogatories; check on status of draft discovery to Defendants with responsible attorney.	2.90	125.00	362.50
09/23/2020 PR	Finalize Letter to Southern Fidelity (tender of Counterclaims) with exhibits and process for service via regular mail and email to Shannon Lilly;; update file.	0.30	125.00	37.50

09/22/2020	PR	Continuing drafting and revising Plaintiff's First set of Continuing Interrogatories to defendants and Plaintiff's First set of continuing Requests for Production to Defendants. Review attorney notes and other documents in preparation of the same.	0.60	125.00	75.00
09/15/2020	EG	Multiple email with correspondence with Dr. Sarb regarding [REDACTED]; Review of insurance policy Declarations provided by Dr. Sarb.	0.30	275.00	82.50
09/25/2020	PR	Email correspondence to Walker Willcox & Ed Love with letter regarding; subpoenas; update file.	0.10	125.00	12.50
Sub-total Fees:					\$4,847.50
Discount::					(1,000.00)

Rate Summary

Valerie Garcia Giovanoli	0.40 hours at \$275.00/hr	110.00
Ely Grote	10.00 hours at \$275.00/hr	2,750.00
Patricia Reconnu	15.90 hours at \$125.00/hr	1,987.50
Total hours:	26.30	

Expenses		Units	Price	Amount
09/23/2020	Postage.	1.00	5.20	5.20
09/25/2020	Postage.	1.00	0.50	0.50
09/25/2020	Postage.	1.00	1.00	1.00
Sub-total Expenses:				\$6.70
Total Current Billing:				\$3,854.20
Previous Balance Due:				[REDACTED]
Total Payments:				[REDACTED]
Total Now Due:				[REDACTED]

Please remit payment in the amount listed above. The Total Now Due reflects the balance due after any available payments have been applied. Such payments include any cost retainer you've paid, any payments made by the property owner, and payments you've previously submitted. If you have any questions please contact Glenda Murphy at glenda.murphy@mccabetrotter.com or 803-724-5000. Thank you!

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Invoice as of 12/1/2020
Invoice no 92850

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount	
10/06/2020	PR	0.90	125.00	112.50	
Continue review of relevant documents and information in file needed to obtain information needed to respond to Defendants' interrogatories and requests for production; Contemporaneously working on preparing draft responses to Defendants' interrogatories; Prepare detailed listing of case documents; review email correspondence from Dr. Sarb.					
10/05/2020	PR	0.20	125.00	25.00	
Draft Letter to Shannon Lilly, CSR for Tender of counterclaims to Palmetto Casualty Insurance Company.					
10/29/2020	EG	1.70	275.00	467.50	
Reviewing and analyzing records provided by Willcox Law Firm pursuant to subpoena issued by Ed Love.					
10/28/2020	EG	0.40	275.00	110.00	
Review of records provided by Florence County in response to FOIA request; Email to Dr. Sarb [REDACTED].					
10/17/2020	VG	3.40	275.00	0.00	No Charge
Finalized draft of interrogatories and requests for production to be served upon Defendants; emailed same to Dr. Sarb [REDACTED]. (No Charge).					
10/21/2020	PR	0.30	125.00	37.50	
Finalize letter to Ed Love with attachment and email to Ed Love; email copy of letter to client; process letter for mail and update file.					
10/22/2020	EG	0.90	275.00	247.50	
Reviewing and analyzing additional records provided by Dr. Sarb.					
10/01/2020	PR	2.10	125.00	262.50	
Continue review of relevant documents and information in file to obtain information and documents necessary to respond to Defendants' interrogatories and requests for production; Working on compiling documents responsive to Defendants Requests for Production and contemporaneously working on responses to Defendants' request for production.					
10/12/2020	EG	0.30	275.00	82.50	
Email correspondence with Dr. Sarb regarding [REDACTED]; Telephone conference with Jonathan Graham at Farm Bureau regarding tender of defense; Review correspondence from Farm Bureau denying tender of defense.					

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R. 0188

10/05/2020 PR	Continue review of relevant documents and information in file to obtain information and documents needed to respond to Defendants' interrogatories and requests for production; Contemporaneously working on drafting responses to Defendants' interrogatories.	1.20	125.00	150.00
10/08/2020 EG	Begin performing attorney review and revision of Plaintiff's draft Interrogatories and Requests for Production to be served on Defendants, which were prepared by paralegal.	1.00	275.00	275.00
10/15/2020 EG	Review status of discovery extension request to Ed Love; Review court temporary operating rules regarding extensions; Instructing paralegal on following upon extension request.	0.20	275.00	55.00
10/08/2020 EG	Perform further review and revision of draft reply to counterclaims.	0.50	275.00	137.50
10/22/2020 VG	Reviewed and signed final discovery package for service upon Defendants.	0.10	275.00	27.50
10/07/2020 PR	Discussion with responsible attorney; Revise letter to Ed Love for discovery extension; Revising Plaintiff's Answers to Defendants' Interrogatories, including incorporating additional information provided by Dr. Sarb.	2.10	125.00	262.50
10/22/2020 PR	Discussion with responsible attorney regarding project to assemble all documents that may be responsive to Defendants discovery. Review file documents and begin preparation of electronic copy of documents, removing duplicates.	2.80	125.00	350.00
10/09/2020 DP	Upload and submit Reply for e-filing.	0.10	125.00	12.50
10/07/2020 EG	Telephone conference with Dr. Sarb regarding [REDACTED].	0.30	275.00	82.50
10/08/2020 PR	Create a new version of Reply to Counterclaim and put it into formal pleading form and format in preparation for filing, as instructed by responsible attorney.	0.70	125.00	87.50
10/14/2020 PR	Receipt and review additional documents from Client; organize in file; update answers to Defendants' Interrogatories and document list.	1.30	125.00	162.50
10/15/2020 PR	Review email from Ed love granting extension and update calendar.	0.10	125.00	12.50
10/21/2020 PR	Discussion with responsible attorney regarding discovery; Revise letter to Ed Love giving Notice of Intent to Subpoena Pee Dee Realtors; Revisions to Florence County FOIA request; Revisions to City of Florence FOIA request.	0.50	125.00	62.50
10/23/2020 PR	Continue working on preparing document production, including removing duplicates; Updating document list in response to discovery.	2.30	125.00	287.50

10/05/2020 EG	Email correspondence with Shannon Lilly regarding Palmetto Casualty policy for 309 Ocean View Dr., including seeking clarification on policy dates; Review of Palmetto Casualty declarations for 309 Ocean View Dr. provided by Shannon Lilly; Instructing paralegal on preparing tender of defense to Palmetto Casualty, and review of draft tender of defense letter to Palmetto Casualty prepared by paralegal; Multiple email correspondence with Kristl Gibson regarding tender of defense to Occidental Fire & Casualty, including policies and dates of coverage; Review of additional declarations provided by Kristl Gibson regarding Occidental Fire & Casualty coverage; Instructing paralegal regarding preparing additional tender of defense to Occidental Fire and Casualty under prior policy, and review of additional draft tender of defense letter to Occidental prepared by paralegal; Email correspondence with Dr. Sarb regarding [REDACTED]; Email correspondence with Dr. Sarb regarding [REDACTED]; Updating insurance coverage matrix with additional information received; Telephone conference with Cathy Stoll regarding SFIC claim; Email correspondence with Dr. Sarb regarding [REDACTED].	1.80	275.00	495.00	
10/21/2020 PR	Email correspondence to chaselden@florenceco.org submitting Foia request to Florence County; update file.	0.10	125.00	12.50	
10/26/2020 EG	Reviewing, finalizing, and executing service letter for subpoena to Pee Dee Realtors Association and instructing paralegal accordingly; Reviewing and revising records custodian affidavit with information inserted by paralegal and instructing paralegal on finalizing the same.	0.30	275.00	82.50	
10/28/2020 PR	Check on status of responses to Foia requests issued to Florence County and City of Florence.	0.10	125.00	12.50	
10/09/2020 EG	Further revise reply to counterclaims to include additional defenses.	0.20	275.00	55.00	
10/02/2020 PR	Continue review of relevant documents and information in file to obtain information and documents necessary to respond to Defendants' interrogatories and requests for production; Working on compiling documents responsive to Defendants' requests for production; Contemporaneously working preparing responses to Defendants' interrogatories and requests for production; Email correspondence to Dr. Sarb requesting [REDACTED].	2.90	125.00	362.50	
10/22/2020 EG	Continued working on responding to Defendant's interrogatories and requests for production; Further instructing paralegal regarding the same.	1.60	275.00	440.00	
10/17/2020 VG	Received and reviewed video evidence of constant ground water flow; telephone call with Dr. Sarb regarding [REDACTED] documented file. (No charge).	0.50	275.00	0.00	No Charge

10/07/2020 EG	Working on preparing reply to counterclaims, including performing additional legal research regarding defenses, responses, and allegations; Revise and finalize letter to Ed Love requesting extension to respond to Defendants' interrogatories and Requests for Production; Email correspondence with Dr. Sarb regarding [REDACTED].	5.70	275.00	1,567.50
10/20/2020 PR	Prepare subpoena, certificate of service and letter to Pee Dee Realtors; Telephone call to City of Florence regarding FOIA procedure; Receipt and review email from Chavonn McCray with City of Florence FOIA form; Email correspondence to Florence County regarding FOIA and review email from Connie Haselden; Prepare FOIA request to City of Florence and Florence County requesting building permit/code enforcement authority.	1.20	125.00	150.00
10/22/2020 PR	Email correspondence to Dr. Sarb providing copies of Foia requests submitted to City of Florence and Florence County.	0.10	125.00	12.50
10/06/2020 EG	Email correspondence with Kristl Gibson regarding confirmation of submission of additional tender of defense to Occidental; Email correspondence with Lilly Shannon regarding Palmetto Casualty policy; Review of reservation of rights letter issued by Southern Fidelity Insurance Company; Telephone conference with adjuster Jonathan Graham at SC Farm Bureau Insurance; Conference with paralegal regarding status of discovery responses and potential extension request; Instructing paralegal on preparing discovery extension request and reviewing draft prepared by paralegal; Working on reply to counterclaims; Beginning to review draft responses to defendants' interrogatories and requests for production prepared by paralegal.	2.50	275.00	687.50
10/20/2020 EG	Reviewing and revising draft FOIA request to City of Florence prepared by paralegal; Reviewing and revising draft FOIA request to Florence County prepared by paralegal; Reviewing and revising draft subpoena to Pee Dee Realtors Association and associated correspondence; Researching court rules and case law regarding issuance of subpoenas; Working on reviewing and revising draft responses to Defendants' Interrogatories and Requests for Production.	2.40	275.00	660.00
10/21/2020 PR	Email correspondence to mccray@cityofflorence.com submitting FOIA Request to City of Florence. Update file.	0.10	125.00	12.50

10/19/2020 EG	Conference with Valerie Giovanoli regarding case strategy and discovery plan; Reviewing and commenting on draft of Plaintiff's Interrogatories and Requests for Production to Defendants; Instructing paralegal regarding FOIA request to permitting/code enforcement; Researching structure and organization of MLS, including researching local/regional MLS for Florence region; Instructing paralegal regarding preparation of subpoena to Pee Dee Realtor Association.	3.00	275.00	825.00	
10/21/2020 EG	Perform further review and revision of additional drafts of FOIA requests and subpoena to Pee Dee Realtors Association, including associated correspondence; Email correspondence with Dr. Sarb regarding [REDACTED]; Review of ServePro estimate provided by Dr. Sarb; Instructing paralegal regarding subpoena to Pee Dee Realtors Association and regarding FOIA requests; Researching requirements for business records hearsay exception as well as procedure for certifying the same under the SC Code in lieu of authentication at trial; Preparing template for records custodian affidavits for use in connection with records subpoenaed in this matter; Continued working on Plaintiff's responses to Defendants' interrogatories and requests for production.	2.10	275.00	577.50	
10/26/2020 PR	Draft revisions to Affidavit/Business Records Certification; Prepare the Subpoena to Pee Dee Realtor Association and attachments for service and process for mail via certified mail; serve copy of subpoena on Ed Love via regular mail; Email copy of subpoena to Barbara Sarb and update file.	0.50	125.00	62.50	
10/22/2020 PR	Draft letter to Ed Love serving Interrogatories and Requests for Production on Defendants; Draft Certificate of service; process for service; Email client with copy of documents served.	0.60	125.00	75.00	
10/01/2020 EG	Email correspondence with Shannon Lilly regarding insurance information, including review of information provided; Prepare summary of insurance coverage and status of claims; Working on formulating responses and defenses to counterclaims, including attempting to verify factual assertions; Lengthy email correspondence with Dr. Sarb regarding [REDACTED]; Email correspondence with Dr. Sarb regarding [REDACTED]; Telephone conference with Dr. Sarb regarding [REDACTED] (3) and notate file accordingly; Telephone call to Cathy Stoll at SFIC- left message; Email correspondence with Kristl Gibson regarding insurance claim.	2.80	275.00	770.00	
10/21/2020 VG	Added additional discovery requests per Dr. Sarb's recommendations/request and per Ely's recommendations; reviewed Farm Bureau's denial of coverage letter and provided same to Dr. Sarb. (No Charge).	0.80	275.00	0.00	No Charge

10/15/2020	PR	Discussion with responsible attorney; email correspondence to Ed Love following up on extension request to respond to discovery.	0.20	125.00	25.00
10/30/2020	EG	Email correspondence with Walker Willcox regarding production of closing file.	0.10	275.00	27.50

Sub-total Fees: \$10,222.50

Discount:: (3,006.97)

Rate Summary

Valerie Garcia Giovanoli	4.80 hours at \$275.00/hr	27.50
Ely Grote	27.80 hours at \$275.00/hr	7,645.00
Deanne Peele	0.20 hours at \$125.00/hr	12.50
Patricia Reconnu	20.30 hours at \$125.00/hr	2,537.50
Total hours:	<u>53.10</u>	

Expenses		Units	Price	Amount
10/21/2020	Postage.	1.00	0.50	0.50
10/22/2020	Postage.	1.00	1.60	1.60
10/26/2020	Postage.	1.00	7.70	7.70
10/05/2020	Postage.	1.00	5.20	5.20
09/25/2020	Copies and Printing.	25.00	0.10	2.50
09/15/2020	Copies and Printing.	3.00	0.15	0.45
09/23/2020	Copies and Printing.	63.00	0.10	6.30
10/19/2020	Copies and Printing.	3.00	0.10	0.30
10/26/2020	Copies and Printing.	16.00	0.10	1.60
09/22/2020	Copies and Printing.	36.00	0.10	3.60
09/15/2020	Copies and Printing.	1.00	0.10	0.10
10/21/2020	Copies and Printing.	38.00	0.10	3.80
09/25/2020	Copies and Printing.	1.00	0.10	0.10
10/05/2020	Copies and Printing.	108.00	0.10	10.80
10/27/2020	Copies and Printing.	3.00	0.10	0.30
10/07/2020	Copies and Printing.	4.00	0.10	0.40
10/05/2020	Copies and Printing.	1.00	0.10	0.10
10/22/2020	Copies and Printing.	26.00	0.10	2.60
10/08/2020	Copies and Printing.	2.00	0.15	0.30
10/20/2020	Copies and Printing.	11.00	0.10	1.10
09/23/2020	Copies and Printing.	49.00	0.10	4.90
09/14/2020	Copies and Printing.	1.00	0.10	0.10
09/28/2020	Copies and Printing.	15.00	0.15	2.25
10/08/2020	Copies and Printing.	4.00	0.10	0.40

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10/16/2020 Copies and Printing.

1.00	0.10	0.10
Sub-total Expenses:		\$57.10

Total Current Billing:		\$7,272.63
Previous Balance Due:		██████████
Total Payments:		██████████
Total Now Due:		██████████

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R. 0194



Invoice as of 12/15/2020
Invoice no 93203

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount
11/03/2020	PR Updated document list with recently received documents.	0.30	125.00	37.50
11/04/2020	EG Review records produced by Pee Dee Realtors Association pursuant to our subpoena; Multiple email correspondence with Dr. Sarb regarding [REDACTED].	0.60	275.00	165.00
11/20/2020	EG Revising, editing, and finalizing Plaintiff's document production, answers to Defendants' interrogatories, responses to Defendants requests for production, and privilege log, as well as instructing paralegal regarding the same.	1.50	275.00	412.50
11/12/2020	EG Continue working on preparing responses to Defendants' interrogatories and requests for production, including revising and editing draft responses prepared by paralegal.	4.70	275.00	1,292.50
11/30/2020	EG Reviewing additional photos provided by Dr. Sarb.	0.90	275.00	247.50
11/19/2020	PR Discussion with responsible attorney regarding discovery; review file to determine status of City of Florence response to FOIA request and email City of Florence requesting status.	0.30	125.00	37.50
11/09/2020	PR Draft Subpoena to ERA Leatherman Realty; draft letter to ERA Leatherman Realty; draft notice of intent to subpoena ERA Leatherman Realty; Draft Subpoena to Berkshire Hathaway Homes Services/Burt Jordan Realtors; draft letter to Berkshire Hathaway Homes Services/Burt Jordan Realtors; draft notice of intent to subpoena Berkshire Hathaway Homes Services/Burt Jordan Realtors. Update file.	0.90	125.00	112.50
11/19/2020	VG Review of proposed production of documents; evaluated privileges to raise and documents to be withheld based on those privileges; made notes and discussed same with Ely.	0.60	275.00	165.00
11/16/2020	EG Continued working on responses Defendants' interrogatories and requests for production; Email correspondence with Ed Love regarding addition extension to respond to Defendants interrogatories and requests for production.	1.80	275.00	495.00

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11/19/2020	EG	Continued working on document production in connection with Defendants' requests for production; Revising and editing answers to Defendants' interrogatories, including incorporating additional information provided by Dr. Sarb.	2.10	275.00	577.50
11/13/2020	PR	Discussion with responsible attorney; prepare electronic copy of document production, sorting documents and bates numbering documents.	2.20	125.00	275.00
11/13/2020	EG	Telephone conference with Dr. Sarb regarding [REDACTED] (.7); Continued working on preparing responses to Defendants interrogatories and requests for production, including revising and editing draft responses prepared by paralegal; Email correspondence with Dr. Sarb regarding [REDACTED].	4.60	275.00	1,265.00
11/20/2020	PR	Bates number document production and revise to answers to Defendants Interrogatories and requests for Production to Plaintiff to reference document bates numbers and revise formatting; revise privilege log; prepare letter to Ed Love; prepare certificate of service; prepare dropbox and dropbox link; Assemble discovery responses; email discovery responses and link to Ed love; process copy for service by mail; update file.	2.10	125.00	262.50
11/11/2020	PR	Working on preparing and modifying Plaintiff's document production as directed by supervising attorney.	1.60	125.00	200.00
11/16/2020	EG	Telephone conference with Dr. Sarb regarding [REDACTED].	0.70	275.00	192.50
11/04/2020	PR	Update document list to include records produced by Pee Dee Realtors Association in response to subpoena; Revisions to Plaintiff's responses to Defendants' Request for Production. Update discovery index.	0.70	125.00	87.50
11/23/2020	EG	Email correspondence with Dr. Sarb regarding [REDACTED].	0.10	275.00	27.50
11/05/2020	EG	Working on responding to Defendants' interrogatories and requests for production, including reviewing and evaluating documents/materials compiled by paralegal and evaluating applicability of privilege and production of the same, and including reviewing and revising draft discovery responses prepared by paralegal; Reviewing file materials to assess documents subject to production per Defendants' discovery requests.	4.50	275.00	1,237.50
11/03/2020	EG	Receipt and review of proof of service of subpoena on Pee Dee Realtor Association.	0.10	275.00	27.50
11/06/2020	EG	Working on preparing responses to Defendants' interrogatories and requests for production, including reviewing and revising draft responses prepared by paralegal.	1.20	275.00	330.00
11/20/2020	EG	Email correspondence with Ed Love regarding extension for Defendants to respond to our interrogatories and requests for production.	0.10	275.00	27.50

11/20/2020 PR	Review email approving Ed Loves extension to respond to plaintiffs discovery and update calendar with extension date and update other completed calendar events.	0.10	125.00	12.50
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Sub-total Fees:	<u> </u>	\$7,487.50
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Discount::		(750.00)
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Rate Summary

Valerie Garcia Giovanoli	0.60 hours at \$275.00/hr	165.00
Ely Grote	22.90 hours at \$275.00/hr	6,297.50
Patricia Reconnu	14.00 hours at \$125.00/hr	1,025.00
Total hours:	<u> </u>	37.50

Expenses		Units	Price	Amount
11/20/2020	Postage.	1.00	2.40	2.40
11/20/2020	Copies and Printing.	145.00	0.10	14.50
11/20/2020	Copies and Printing.	5.00	0.15	0.75
11/09/2020	Copies and Printing.	21.00	0.10	2.10
11/13/2020	Copies and Printing.	1.00	0.15	0.15
11/16/2020	Copies and Printing.	5.00	0.10	0.50
11/05/2020	Copies and Printing.	20.00	0.10	2.00
11/19/2020	Copies and Printing.	1.00	0.10	0.10
11/04/2020	Copies and Printing.	24.00	0.10	2.40
Sub-total Expenses:			<u> </u>	\$24.90

Total Current Billing:	<u> </u>	\$6,762.40
Previous Balance Due:	<u> </u>	
Total Payments:	<u> </u>	
Total Now Due:	<u> </u>	

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R. 0197



Invoice as of 1/19/2021
Invoice no 93900

Barbara Sarb

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount
12/22/2020 EG	Further comparing and contrasting phone list provided by Dr. Sarb to text messages provided and to information listed in our answers to plaintiff's interrogatories; Formulating comments regarding phone list and additional information and clarification needed from Dr. Sarb for phone list; Reviewing Defendants' discovery requests to assess scope of information requested and required to be produced to assess further supplementation; Formulating plan of action for supplementing discovery responses and instructing paralegal regarding the same; Formulating listing of further documents, information, and clarifications needed from Dr. Sarb and prepare summary of the same.	0.90	275.00	247.50
12/10/2020 EG	Compiling additional documents requested by Neil Wideman (IAT insurance) and provide the same to Neil Wideman via email; Review letter from Neil Wideman at IAT Insurance.	0.40	275.00	110.00
12/11/2020 EG	Evaluating and researching potential objections to Ed Love's proposed subpoenas; Multiple lengthy email communications with Ed Love regarding objections to and issues with his proposed subpoenas; Meeting with Valerie Giovanoli regarding objections to subpoenas and Dr. Sarb's position.	1.50	275.00	412.50
12/29/2020 EG	Review of Ed Love's executed subpoenas to Florence Neurosurgery and various medical providers for Dr. Sarb, along with associated correspondence.	0.10	275.00	27.50
12/21/2020 EG	Review of phone number list provided by Dr. Sarb and compare and contrast with text messages provided; Review and analyze additional text messages provided by Dr. Sarb; Conference with Valerie Giovanoli regarding case strategy and plan of action.	1.90	275.00	522.50
12/08/2020 PR	Receipt and review email correspondence from Rebecca Brown regarding City of Florence Building Department foia request. update file with note that City of Florence found no documents responsive to request.	0.10	125.00	12.50

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12/10/2020	EG	Conference with Valerie Giovanoli regarding possible objections to the Phillips proposed subpoenas; Email correspondence with Ed Love regarding potential objections to the Phillips' proposed subpoenas.	0.40	275.00	110.00
12/13/2020	VG	Correspondence with Dr. Sarb regarding [REDACTED] [REDACTED].	0.20	275.00	55.00
12/02/2020	EG	Telephone conference with Dr. Sarb regarding [REDACTED] [REDACTED].	0.20	275.00	55.00
12/04/2020	EG	Email correspondence with Neil Wideman at IAT insurance regarding Dr. Sarb's tender of defense; Compiling information requested by Neil Wideman.	0.40	275.00	110.00
12/29/2020	VG	Reviewed text messages and phone list; brief discussion with Ely and email [REDACTED] [REDACTED] to Dr. Sarb.	0.30	275.00	82.50
12/04/2020	VG	Telephone call with Dr. Sarb to discuss [REDACTED] [REDACTED].	0.30	275.00	82.50
12/09/2020	EG	Review of Defendants' proposed subpoenas to Dr. Shelton, Dr. Patel, Dr. McCaffrey, Dr. Vinod Jona, Dr. Deepak Chowdhary, Dr. Pande, Dr. Brook, Florence Neurosurgery and Spine, and AT&T, and analyze potential objections to the same; Continue compiling additional records requested by Neil Wideman.	0.80	275.00	220.00
12/17/2020	VG	Instructed paralegal to send witness list to Dr. Sarb for purposes of obtaining all phone numbers; shared access to dropbox folder with Sarah Sarb; brief discussions with Ely regarding responses to subpoenas and additional texts.	0.20	275.00	55.00
12/20/2020	VG	Received and read all text messages between Dr. Sarb and John Etheridge via dropbox images.	1.80	275.00	495.00
12/15/2020	VG	Reviewed emails from Ed Love; emailed Dr. Sarb to [REDACTED] [REDACTED].	0.10	275.00	27.50
12/18/2020	EG	Continue reviewing and analyzing additional photos and videos provided by Dr. Sarb; Reviewing text messages provided by Dr. Sarb.	4.70	275.00	1,292.50
12/17/2020	EG	Multiple email correspondence with Ed Love regarding subpoenas and extension to respond to discovery; Conference with Valerie Giovanoli regarding discovery; Reviewing additional photos and videos provided by Dr. Sarb.	1.90	275.00	522.50
12/16/2020	VG	Telephone call with Dr. Sarb to discuss [REDACTED] [REDACTED] [REDACTED].	0.50	275.00	137.50
12/11/2020	VG	Telephone call with Dr. Sarb to discuss [REDACTED] [REDACTED]; brief discussion with Ely regarding Ed's responses and moving forward with subpoenas; updated file.	0.60	275.00	165.00

12/17/2020 PR	Review email from responsible attorney; Compile witness list; email to Dr. Sarb providing [REDACTED]; update file.	0.30	125.00	37.50
12/30/2020 VG	Received emails from Dr. Sarb with information regarding [REDACTED] emailed Dr. Sarb for [REDACTED].	0.20	275.00	55.00
12/07/2020 EG	Review of additional invoices provided by Dr. Sarb; Working on compiling additional documents requested by Neil Wideman.	0.20	275.00	55.00
12/15/2020 EG	Multiple email correspondence with Ed Love regarding subpoenas to AT&T and Florence Neurosurgery; Conference with Valerie Giovanoli regarding the same.	0.30	275.00	82.50

Sub-total Fees: \$4,972.50

Discount:: (1,017.50)

Rate Summary

Valerie Garcia Giovanoli	4.20 hours at \$275.00/hr	1,155.00
Ely Grote	13.70 hours at \$275.00/hr	3,767.50
Patricia Reconnu	0.40 hours at \$125.00/hr	50.00
Total hours:	<u>18.30</u>	

Total Current Billing: \$3,955.00

Previous Balance Due: [REDACTED]

Total Payments: [REDACTED]

Total Now Due: [REDACTED]

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R. 0200



Invoice as of 2/10/2021
Invoice no 94264

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount
01/12/2021 EG	Instructing paralegal regarding finishing preparation of Plaintiff's 1st supplemental responses to Defendants' requests for production and Plaintiff's first supplemental document production; Formulating analysis regarding potential future additional supplementation of discovery responses, including damages calculation; Formulating analysis regarding further discovery plan, including additional potential 3rd party subpoenas; Instructing paralegal regarding providing defendants' discovery responses to Dr. Sarb and setting up phone conference with her; Analyzing and assessing potentially amending complaint; Performing additional legal research regarding residential property condition disclosure statements act; Email correspondence with Dr. Sarb regarding [REDACTED]; Reviewing status of insurance tenders of defense and notate file accordingly; Email correspondence with Neil Wideman at IAT insurance regarding tender of defense; Multiple email correspondence with Cathy Stoll at SFIC regarding tender of defense, including review and assessment of coverage denial letter provided; Preparing witness phone list for distribution to Ed Love; Email correspondence with Ed Love regarding phone list; Working on drafting of content of additional subpoenas duces tecum.	4.30	275.00	1,182.50
01/21/2021 PR	Finalize plaintiffs supplemental responses to Defendants request for production; draft certificate of service; draft letter to Ed love; update file.	0.30	125.00	37.50
01/21/2021 EG	Review and execution of Plaintiff's First Supplemental Response to Defendants' Requests for Production completed by paralegal; Review of voluminous supplemental document production compiled by paralegal to ensure ready for production; Instructing paralegal on producing supplemental document production.	0.50	275.00	137.50
01/14/2021 PR	Draft Subpoena and Affidavit/Certificate of Compliance to McGowan, Rogers, Stewart & Hiller, PA; review online information for service address.	0.20	125.00	25.00

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R. 0201

01/14/2021	PR	Review Ely Grote's notes and Draft Subpoena Requests and Affidavit /Business Records Certification to ERA Leatherman and Mark Mozingo.	0.40	125.00	50.00	
01/07/2021	VG	Compiled list of outstanding items to discuss with Dr. Sarb, called Dr. Sarb and left voicemails.	0.10	275.00	27.50	
01/18/2021	VG	Telephone conference with Dr. Sarb to discuss [REDACTED] (VG no charge).	1.70	0.00	0.00	No Charge
01/18/2021	EG	Telephone conference with Dr. Sarb regarding [REDACTED] n.	1.70	275.00	467.50	
01/18/2021	PR	Review Attorney notes; draft subpoenas for document request, and Affidavit/Business Records Certifications to Berkshire Hathaway Home Services Burt Jordan REALTORS, South State Bank, Allstate Insurance Co., State Farm Insurance, American Home Shield Corporation, Bonnoitt Plumbing and Thermal Air and Electric. review file and online information for contact information to issue subpoenas; update attorney notes. Email to Ely Grote regarding status of subpoenas.	2.40	125.00	300.00	
01/14/2021	PR	Draft Subpoena Requests and Affidavit /Business Records Certification to RE/Max Professionals; review case records for service address.	0.30	125.00	37.50	
01/21/2021	DP	Serve Plaintiff's First Supplemental Response to Defendants' Requests for Production (Plaintiff - 000399) upon opposing counsel via US Mail and email; Communicate with client via email therewith providing copy of aforementioned discovery responses; Update file.	0.70	125.00	87.50	
01/13/2021	EG	Email correspondence with Ed Love regarding documents he received from subpoenas, supplementing discovery responses, and legal names of insurers.	0.20	275.00	55.00	
01/29/2021	EG	Email correspondence with Ed Love regarding touching base on proceeding with case.	0.10	275.00	27.50	
01/18/2021	EG	Prepare for phone conference with Dr. Sarb by creating agenda/outline of matters to discuss and by reviewing relevant materials necessary to prepare for phone conference.	1.70	275.00	467.50	
01/06/2021	PR	Ccalendar medical providers' deadline to respond to defendants subpoenas.	0.10	125.00	12.50	
01/22/2021	EG	Preparing draft amended complaint, including reviewing discovery materials as necessary to assist in the preparation of the same.	1.90	275.00	522.50	
01/07/2021	EG	Review of correspondence from Ed Love with subpoena to Roper St. Francis Physician Partners.	0.10	275.00	27.50	

01/13/2021	EG	Formulating additional analysis for the issuance of additional records subpoenas, including analysis of whom to issue subpoenas to; Perform research through register of deeds' website to ascertain mortgage information for the Phillips pertaining to 550 Wisteria; Briefly begin researching names and contact information for various entities to which subpoenas may be issued to; Formulating and preparing substantive content for 11 additional subpoenas, including defining the records requested.	4.00	275.00	1,100.00
01/21/2021	PR	Finalize letter to Ed Love producing supplemental documents; create compressed folder for responsible attorneys review of documents prior to production.	0.80	125.00	100.00
01/13/2021	PR	Email correspondence to Barbara Sarb to [REDACTED] [REDACTED]	0.10	125.00	12.50
01/11/2021	EG	Reviewing and analyzing Defendants' lengthy responses to our interrogatories and requests for production, including reviewing and analyzing Defendants' document production consisting of over 600 pages; Working on preparing summary/outline of the same.	6.90	275.00	1,897.50
01/08/2021	EG	Email correspondence with Neil Wideman regarding tender of defense regarding IAT Insurance; Working on drafting shell/content for First Supplemental Response to Defendants' Requests for Production.	0.70	275.00	192.50
01/12/2021	PR	Discussion with responsible attorney; Email client a copy of Defendants' Answer to Plaintiff's Interrogatories and Defendant's Responses to Plaintiffs Request for Production and update file.	0.20	125.00	25.00
01/22/2021	EG	Review of additional information and documents provided by Dr. Sarb via email.	0.20	275.00	55.00
01/12/2021	PR	Preparation of dropbox and link for Defendants Document Production and email link to client and update file.	0.60	125.00	75.00
01/22/2021	VG	Telephone call with Dr. Sarb to discuss [REDACTED] [REDACTED].	0.30	275.00	82.50
01/06/2021	EG	Working on supplementing discovery responses, including formulating plan and analysis therefor; Formulating listing of additional information and clarifications still needed from Dr. Sarb; Formulating additional case analysis and strategy.	0.90	275.00	247.50

Sub-total Fees: \$7,252.50

Discount:: (1,200.00)

Rate Summary

Valerie Garcia Giovanoli	1.70 hours at \$0.00/hr	0.00
Valerie Garcia Giovanoli	0.40 hours at \$275.00/hr	110.00
Ely Grote	23.20 hours at \$275.00/hr	6,380.00
Deanne Peele	0.70 hours at \$125.00/hr	87.50
Patricia Reconnu	5.40 hours at \$125.00/hr	675.00
Total hours:	<u>31.40</u>	

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R. 0203

Expenses		Units	Price	Amount
01/28/2021	Postage.	1.00	0.71	0.71
01/21/2021	Postage.	1.00	0.50	0.50
01/28/2021	Copies and Printing.	2.00	0.10	0.20
01/22/2021	Copies and Printing.	1.00	0.10	0.10
01/06/2021	Copies and Printing.	2.00	0.10	0.20
01/21/2021	Copies and Printing.	10.00	0.10	1.00
		Sub-total Expenses:		\$2.71

Total Current Billing:	\$6,055.21
Previous Balance Due:	
Total Payments:	
Total Now Due:	

Please remit payment in the amount listed above. The Total Now Due reflects the balance due after any available payments have been applied. Such payments include any cost retainer you've paid, any payments made by the property owner, and payments you've previously submitted. If you have any questions please contact Glenda Murphy at glenda.murphy@mccabetrotter.com or 803-724-5000. Thank you!

We now accept credit cards! Please call Glenda Murphy at 803-724-5012 to make payment via credit card.



Invoice as of 3/12/2021
Invoice no 95264

Barbara Sarb

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount
02/02/2021	EG	2.50	275.00	687.50
Reviewing and revising draft subpoenas completed by paralegal, including performing further research regarding addresses for service; Researching obtaining certified precipitation data; Draft request to DNR/state climatology office for certified precipitation data for 550 Wisteria; Instructing paralegal regarding serving notice of intent to serve subpoenas and making further revisions to subpoenas; Formulating additional discovery strategy; Researching admission and authentication of certain records.				
02/03/2021	EG	1.50	275.00	412.50
Instructing law clerk on preparing FOIA request to City of Florence regarding sewer and drainage issues along Wisteria Dr; Reviewing and revising draft FOIA request language prepared by law clerk; Email correspondence with DNR regarding precipitation data; Review of un-certified precipitation data provided by DNR.				
02/03/2021	PR	0.20	125.00	25.00
Draft Letter to Ed Love regarding Notice of intent to issue Subpoenas.				
02/03/2021	PR	0.20	125.00	25.00
Review and revise subpoena to Mark Mozingo.				
02/03/2021	RCS	0.80	125.00	100.00
Drafted and Revised FOIA Request to City of Florence for Assigning Attorney.				
02/04/2021	EG	1.70	275.00	467.50
Review draft letter to Ed Love regarding notice of intent to serve multiple subpoenas; Performing further review and analysis of precipitation data for Florence; Telephone conference with Ed Love regarding case status and discovery matters (.3); Reviewing State Farm policy Declarations and policy provided by Ed Love and instructing paralegal on completing subpoena to State Farm based on information in policy declarations; Telephone call to John Sims (.1) and notate file accordingly; Telephone call to Tara Bair - left message, notate file accordingly; Telephone call to Lynne Dennis (.2), and notate file accordingly.				

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R. 0205

02/04/2021	PR	Revise multiple subpoenas per responsible attorney's request; finalize letter to Ed Love re: Notice of Intent to issue Subpoenas; update file; Process Notice of Intent to issue Subpoenas and subpoenas for service on Ed love via regular mail; email copy to Ed Love; Email copy to client. Update file and calendar Defendants deadline to object.	2.30	125.00	287.50
02/05/2021	EG	Review of letter to Ed Love regarding notice of intent to serve subpoena on State Farm, including revised subpoena to state farm; Telephone conference with Tara Bair; Review and revise draft amended complaint; Email correspondence with Dr. Sarb regarding [REDACTED].	0.90	275.00	247.50
02/05/2021	PR	Draft subpoena to State Farm Fire and Casualty Company and certificate of compliance; draft letter to Ed Love; update file. Review SC Department of Insurance service requirements.	0.50	125.00	62.50
02/05/2021	PR	Finalize letter to Ed Love with State Farm Subpoena and process for mail; email copy to Ed love; email copy to client and update file.	0.30	125.00	37.50
02/08/2021	EG	Review of correspondence from DNR regarding certified precipitation data; Finalizing amended complaint for distribution to Ed Love, including removal of comments; Email correspondence with Dr. Sarb regarding [REDACTED]; Instructing paralegal regarding preparing amended summons; Reviewing status of action items; Preparing update of recent activity in the matter for Dr. Sarb and preparing outline of follow up/action items and convey the same to Dr. Sarb via email.	1.40	275.00	385.00
02/09/2021	PR	Draft Summons for Amended Complaint, as instructed by responsible attorney.	0.20	125.00	25.00
02/10/2021	EG	Receipt and review of Ed Love's proposed subpoena to Occidental Fire & Casualty and associated correspondence.	0.10	275.00	27.50
02/12/2021	EG	Reviewing and revising amended summons prepared by paralegal; performing final review and revision of draft amended complaint; Email correspondence with Ed Love regarding draft amended complaint; Working on preparing documents for additional discovery supplement; Telephone call to John Sims regarding Dr. McLean's son; Researching information concerning Dr. McLean and his children; Email correspondence with Dr. Sarb regarding [REDACTED].	1.50	275.00	412.50
02/15/2021	EG	Reviewing and revising records custodian affidavits prepared by paralegal for multiple subpoenas; Reviewing and executing numerous subpoenas, including reviewing and executing accompanying correspondence serving the same; Instructing paralegal regarding making revisions to final subpoena package before the same is served; Reviewing information compiled by paralegal regarding Donald McLean.	1.00	275.00	275.00
02/15/2021	PR	Review file to determine if Defendant has objected to any proposed subpoenas sent to him.	0.10	125.00	12.50

02/15/2021	PR	Revise/edit subpoenas for service upon American Home Shield, Berkshire Hathaway/Burt Jordan Realtors, Bonnoitt Plumbing, ERA Leatherman Realty, Mark Mozingo, McGowan Rogers law firm, REMAX Professionals, Thermal Air and Electric, South State Bank, and State Farm, including revising/editing accompanying records custodian affidavits and preparing correspondence serving the same.	1.50	125.00	187.50
02/15/2021	PR	Research identification information for potential witness Donald McLean in order for responsible attorney to interview him.	0.30	125.00	37.50
02/15/2021	PR	Process letters, subpoenas and affidavit/business records certifications for service via certified mail; email copies of subpoenas to Ed Love; Email copies of subpoena to client; update file.	0.50	125.00	62.50
02/16/2021	EG	Email correspondence with Ed Love regarding subpoena to McGowan Rogers law firm; Review final subpoena to State Farm and associated correspondence to State Farm and the Department of Insurance, and records custodian affidavit, and execute subpoena and associated letters.	0.30	275.00	82.50
02/16/2021	PR	Revise letters and Subpoena to State Farm.	0.20	125.00	25.00
02/16/2021	PR	Process for service Letter to SC Department of Insurance with State Farm subpoena. Email copy to client; Email copy to Ed Love; update file.	0.20	125.00	25.00
02/16/2021	PR	Calendar deadline to for non-parties to respond to subpoenas.	0.10	125.00	12.50
02/17/2021	EG	Instructing law clerk on performing legal research; Telephone conference with Don McLean (.2) and notate file accordingly; Review law clerk memo regarding legal research performed; Conference with Valerie Giovanoli regarding case strategy; Reviewing additional invoices provided by Dr. Sarb; Telephone call to Joe McLean - left message; Review voicemail from Joe McLean and return call - left message; Telephone conference with Joe McLean (.3), and notate file accordingly; Email correspondence with Dr. Sarb regarding [REDACTED].	1.80	275.00	495.00
02/17/2021	RCS	Researched Case Law/Statutes for Memorandum regarding discovery.	2.70	125.00	337.50
02/18/2021	EG	Conference with Valerie Giovanoli regarding case strategy; Email correspondence with Ed Love regarding amended complaint; Formulate plan for motion to amend complaint and delegate accordingly; Email correspondence with Dr. Sarb regarding [REDACTED].	0.30	275.00	82.50
02/19/2021	EG	Telephone call from ERA Leatherman Realty regarding our subpoena.	0.20	275.00	55.00
02/19/2021	RCS	Drafted first draft of Motion for Leave to Amend Complaint, Presented Draft to Assigning Attorney.	1.60	125.00	200.00
02/22/2021	EG	Begin reviewing materials produced by ERA Leatherman Realty pursuant to subpoena.	0.30	275.00	82.50

02/22/2021	PR	Receipt and review email correspondence from Kendall Hiller regarding status of McGowan Rogers subpoena response.	0.10	125.00	12.50	
02/23/2021	EG	Receipt and review numerous certified mail return receipts evidencing service of multiple subpoenas; Continued review of recorded produced by ERA Leatherman Realty per subpoena.	0.60	275.00	165.00	
02/23/2021	PR	Review file regarding status of FOIA Request. Discussion with responsible attorney; email correspondence to Chevonn, City of Florence requesting status on FOIA submitted on 2/3. update file.	0.30	125.00	37.50	
02/23/2021	PR	Telephone call from Rebecca Brown, City of Florence regarding status of FOIA request; update file and calendar follow-up.	0.20	125.00	25.00	
02/24/2021	VG	Telephone call with Dr. Sarb to discuss [REDACTED] [REDACTED] (No charge).	0.50	275.00	0.00	No Charge
02/25/2021	EG	Prepare summary of records produced by ERA Leatherman Realty and provide the same to Dr. Sarb along with a copy of said records.	0.20	275.00	55.00	
02/25/2021	EG	Telephone call from American Home Shield regarding subpoena response.	0.10	275.00	27.50	
02/25/2021	EG	Reviewing and revising draft motion to amend complaint.	1.50	275.00	412.50	
02/26/2021	EG	Email correspondence with Dr. Sarb regarding [REDACTED]; Email correspondence with American Home Shield regarding subpoena response; Perform further review and revision of draft motion to amend complaint.	0.20	275.00	55.00	
02/26/2021	EG	Reviewing records produced by McGowan Rogers law firm via subpoena; Instructing paralegal on completing subpoena to Allstate and sending notice of the same to Ed Love; Prepare summary of records produced by McGowan Rogers law firm via subpoena and convey the same to Dr., Sarb via email.	1.90	275.00	522.50	
02/26/2021	PR	Draft raft letter to Ed Love of Notice of Intent to subpoena Allstate Property and Casualty Insurance Company; draft subpoena to Allstate Property and Casualty Insurance Company; Draft letter to Allstate Property and Casualty Insurance Company; Draft Certificate of Compliance; Draft letter to SC Department of Insurance; update file.	0.60	125.00	75.00	
02/26/2021	RCS	Revised Motion for Leave to Amend Complaint.	0.20	125.00	25.00	
			Sub-total Fees:		\$6,587.50	
			Discount::		(1,500.00)	

Rate Summary

Valerie Garcia Giovanoli	0.50 hours at \$275.00/hr	0.00
Ely Grote	18.00 hours at \$275.00/hr	4,950.00
Patricia Reconnu	7.80 hours at \$125.00/hr	975.00

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Cameron Stephenson 5.30 hours at \$125.00/hr 662.50

Total hours: 31.60

Expenses	Units	Price	Amount
02/15/2021 Postage.	1.00	64.44	64.44
02/15/2021 Postage.	1.00	0.51	0.51
02/16/2021 Postage.	1.00	0.51	0.51
02/22/2021 Postage.	1.00	0.51	0.51
02/25/2021 Postage.	1.00	6.96	6.96
03/01/2021 Postage.	1.00	0.51	0.51
03/03/2021 Postage.	1.00	0.51	0.51
03/05/2021 Postage.	1.00	0.51	0.51
03/08/2021 Postage.	1.00	0.51	0.51
03/08/2021 Postage.	1.00	0.51	0.51
02/04/2021 Copies and Printing.	83.00	0.10	8.30
02/05/2021 Copies and Printing.	11.00	0.10	1.10
02/09/2021 Copies and Printing.	2.00	0.10	0.20
02/12/2021 Copies and Printing.	6.00	0.15	0.90
02/15/2021 Copies and Printing.	9.00	0.15	1.35
02/15/2021 Copies and Printing.	108.00	0.10	10.80
02/16/2021 Copies and Printing.	14.00	0.10	1.40
02/16/2021 Service.	1.00	10.00	10.00
02/19/2021 Records Request.	1.00	40.00	40.00
02/19/2021 Copies and Printing.	1.00	0.10	0.10
02/22/2021 Copies and Printing.	71.00	0.10	7.10
02/24/2021 Copies and Printing.	3.00	0.10	0.30
02/25/2021 Copies and Printing.	22.00	0.10	2.20
02/26/2021 Copies and Printing.	10.00	0.10	1.00
03/01/2021 Records Request.	1.00	116.00	116.00
03/02/2021 E-Filing Fee.	1.00	31.74	31.74
03/03/2021 Records Request.	1.00	100.00	100.00
03/08/2021 Records Request.	1.00	79.75	79.75
03/09/2021 Records Request.	1.00	67.50	67.50

Sub-total Expenses: \$555.22

Total Current Billing: \$5,642.72

Previous Balance Due:

Total Payments:

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R. 0209

Total Now Due:



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R. 0210



Invoice as of 5/5/2021
Invoice no 97456

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees			Hours	Rate	Amount
03/01/2021	EG	Email correspondence with Dr. Sarb regarding [REDACTED] [REDACTED] Review of notice of intent package for subpoena to Allstate prepared by paralegal.	0.20	275.00	55.00
03/01/2021	EG	Reviewing legal research performed by law clerk in support of motion to amend complaint; Performing additional legal research and revising motion to amendment complaint accordingly.	2.10	275.00	577.50
03/01/2021	EG	Email correspondence with Mark Mozingo regarding his subpoena response; Review of records produced by Mark Mozingo pursuant to subpoena; Email correspondence with Dr. Sarb regarding [REDACTED] [REDACTED]; Email correspondence with South State Bank regarding projected costs for compliance with subpoena request; Email correspondence with Dr. Sarb regarding [REDACTED].	0.80	275.00	220.00
03/01/2021	PR	Telephone from Mark Mozingo regarding subpoena he received and documents he has in response. Email responsible attorney.	0.20	125.00	25.00
03/01/2021	PR	Review invoice from McGowan Rogers for documents produced in response to subpoena; request check for payment of the same; Draft letter to McGowan Rogers.	0.30	125.00	37.50
03/01/2021	PR	Revisions to letter to Ed love, Subpoena to Allstate Property and Casualty Insurance Company and Cert compliance.	0.20	125.00	25.00
03/01/2021	PR	Finalize and process Letter to Ed Love w/ Allstate Property and Casualty Insurance Company Subpoena for service via email and us mail; update file.	0.20	125.00	25.00
03/02/2021	EG	Email correspondence with Neil Wideman regarding status of IAT coverage decision; Email correspondence with Dr. Sarb regarding [REDACTED] [REDACTED].	0.30	275.00	82.50
03/02/2021	EG	Performing further review and revision of motion to amend complaint, and amended complaint to be appended as exhibit, and instructing paralegal on finalizing and filing the same; Review and approve final motion package before submission to court.	0.50	275.00	137.50
03/02/2021	EG	Begin reviewing records produced by Burt Jordan Realtors pursuant to subpoena.	0.60	275.00	165.00

03/02/2021	PR	Review email correspondence from Ely Grote; Revisions to Motion to file Amended Complaint and Exhibit; convert documents for e-filing; e-file Motion and exhibit via courts e-file portal.	0.50	125.00	62.50
03/03/2021	EG	Email correspondence with Neil Wideman at IAT insurance regarding tender of defense; Email correspondence with Dr. Sarb regarding [REDACTED]; Email correspondence with Dr. Sarb regarding [REDACTED]; Email correspondence with South State Bank regarding scope of subpoena.	0.30	275.00	82.50
03/03/2021	EG	Finish reviewing records produced by Burt Jordan Realtors pursuant to subpoena; Prepare summary of said records and convey the summary to Dr. Sarb via email along with a copy of the records.	1.30	275.00	357.50
03/03/2021	PR	Finalize letter to McGowan Rogers forwarding payment for invoice for records and process for mail; update file; Receipt and review invoice from BHHS/ Burt Jordan Realtors; request check and draft letter to BHHS/ Burt Jordan Realtors; update file.	0.40	125.00	50.00
03/03/2021	PR	Email correspondence from Rebecca Brown regarding status of Florence FOIA response and update file. .	0.10	125.00	12.50
03/03/2021	PR	Receipt and review letter from SC Department of Insurance forwarding subpoena to State Farm Fire and casualty Co.	0.10	125.00	12.50
03/04/2021	EG	Receipt and review correspondence from SC Dept. of Insurance acknowledging acceptance of service of subpoena to State Farm; Review of update from City of Florence regarding status of processing FOIA request; Email correspondence with South State Bank regarding subpoena response.	0.20	275.00	55.00
03/05/2021	EG	Begin reviewing records produced by the City of Florence per our FOIA request.	0.60	275.00	165.00
03/05/2021	PR	Receipt and review email correspondence from the City of Florence with documents responsive to FOIA request; email copies to responsible attorneys and client; update file. mark task completed.	0.30	125.00	37.50
03/05/2021	PR	Finalize letter to BHHS/Burt Jordan Realtors with check paying invoice and process for mail and update file.	0.30	125.00	37.50
03/07/2021	EG	Finish reviewing records produced by City of Florence per additional FOIA response; Email correspondence with Dr. Sarb regarding [REDACTED]; Reviewing records produced by South State Bank pursuant to subpoena; Prepare summary of records produced by South State Bank pursuant to subpoena and convey the same to Dr. Sarb via email.	1.80	275.00	495.00
03/08/2021	EG	Reviewing records produced by American Home Shield pursuant to subpoena; Prepare summary of said records and convey the same to Dr. Sarb via email.	3.50	275.00	962.50
03/08/2021	EG	Telephone call from REMAX regarding subpoena response and notate file accordingly; Multiple email correspondence with Adam Crosson regarding subpoena to REMAX, including review of recent subpoena to REMAX; Review of IAT/Occidental coverage denial letter; Email correspondence with Dr. Sarb regarding	0.80	275.00	220.00

		subpoena on Allstate via Department of Insurance.			
03/23/2021	PR	Review case assignment; review file and prepare subpoena status chart in preparation for follow-up to obtain documents from companies that have not responded.	1.20	125.00	150.00
03/24/2021	PR	Receipt of filed Plaintiff's Motion for Leave to Amend Complaint and update pleadings index.	0.10	125.00	12.50
03/29/2021	EG	Email correspondence with Allstate regarding extension to respond to subpoena.	0.10	275.00	27.50
03/29/2021	PR	Update deadline for Allstate to respond to subpoena.	0.10	125.00	12.50
03/30/2021	EG	Begin reviewing additional documents produced by the City of Florence pursuant to supplemental response to our FOIA request.	2.00	275.00	550.00
03/31/2021	EG	Finish reviewing additional documents provided by City of Florence pursuant to FOIA request; Prepare summary of said records and convey summary to Dr. Sarb via email.	0.90	275.00	247.50
03/31/2021	PR	Review email correspondence from responsible attorney; prepare dropbox production of City of Florence Foia documents and email link to Barbara Sarb; update file.	0.40	125.00	50.00
				Sub-total Fees:	\$6,530.00
				Discount::	(3,090.00)

Rate Summary

Ely Grote	19.20 hours at \$275.00/hr	5,280.00
Patricia Reconnu	6.40 hours at \$125.00/hr	800.00
Cameron Stephenson	3.60 hours at \$125.00/hr	450.00
Total hours:	29.20	

Expenses		Units	Price	Amount
02/04/2021	Postage.	1.00	1.60	1.60
03/15/2021	Postage.	1.00	7.36	7.36
03/01/2021	Copies and Printing.	16.00	0.10	1.60
03/03/2021	Copies and Printing.	2.00	0.10	0.20
03/05/2021	Copies and Printing.	1.00	0.10	0.10
03/08/2021	Copies and Printing.	2.00	0.10	0.20
03/09/2021	Copies and Printing.	1.00	0.10	0.10
03/15/2021	Copies and Printing.	9.00	0.10	0.90
03/15/2021	Copies and Printing.	6.00	0.10	0.60
03/15/2021	Copies and Printing.	5.00	0.15	0.75
03/15/2021	Service.	1.00	10.00	10.00

03/24/2021	Copies and Printing.	1.00	0.10	0.10
		Sub-total Expenses:		\$23.51

Total Current Billing:	\$3,463.51
Previous Balance Due:	
Total Payments:	
Total Now Due:	

Please remit payment in the amount listed above. The Total Now Due reflects the balance due after any available payments have been applied. Such payments include any cost retainer you've paid, any payments made by the property owner, and payments you've previously submitted. If you have any questions please contact Glenda Murphy at glenda.murphy@mccabetrotter.com or 803-724-5000. Thank you!

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Invoice as of 7/19/2021
Invoice no 100787

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees			Hours	Rate	Amount
04/01/2021	EG	Review of Plaintiff's requests to admit; Review of allegations of complaint referenced in requests to admit; Begin formulating strategy and responses to requests to admit.	0.40	275.00	110.00
04/05/2021	EG	Formulating further analysis regarding responding to Defendants' Requests to Admit, including reviewing Complaint and other documents as necessary to assist in formulating responses; Drafting content of responses to Defendants' Requests to Admit; Lengthy email correspondence with Dr. Sarb regarding [REDACTED]; Instructing paralegal on formalizing draft responses to Defendant's requests to admit.	1.90	275.00	522.50
04/05/2021	PR	Review email from responsible attorney; prepare revisions to draft responses to Requests for Admissions.	0.50	125.00	62.50
04/06/2021	EG	Further evaluate timeline of events surrounding house purchase and disclosure statement, including reviewing relevant records; Compile documents relating to execution and delivery of disclosure statement; Meeting with and corresponding with Valerie Giovanoli to devise further litigation plan and plan for responding to requests to admit.	1.20	275.00	330.00
04/06/2021	EG	Receipt and review letter from State Farm regarding subpoena request.	0.10	275.00	27.50
04/09/2021	PR	Update discovery index with Defendants Request for Admissions.	0.10	125.00	12.50
04/13/2021	EG	Further reviewing extensive file materials and documents to further assess, analyze, and formulate appropriate responses to Defendants' requests for admission; Further revise draft responses to requests for admission; Preparing detailed summary and explanation of draft responses to Defendants' requests to admit and convey the same to Dr. Sarb via email along with draft responses to request to admit and other relevant documents.	2.50	275.00	687.50
04/14/2021	EG	Multiple email correspondence with Dr. Sarb regarding [REDACTED].	0.40	275.00	110.00
04/19/2021	VG	Prepare for and participate in conference call with Dr. Sarb to discuss [REDACTED]	1.20	275.00	No Charge

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R. 0216

		██████████.			
04/19/2021	EG	Conference with Valerie Giovanoli to formulate case strategy and future litigation plan. (NO CHARGE).	0.60	275.00	No Charge
04/19/2021	EG	Briefly prepare for phone conference with Dr. Sarb by assessing additional information needed from her and preparing a list of the same, as well as by reviewing information relevant to requests to admit in order to discuss draft responses with her.	0.40	275.00	110.00
04/19/2021	EG	Telephone conference with Dr. Sarb regarding ██████████.	0.90	275.00	247.50
04/21/2021	EG	Further reviewing materials relevant to case timeline; Further reviewing contract terms; Finalizing responses to Requests for Admission and instructing paralegal on preparing the same for service; Briefly meeting with Valerie Giovanoli regarding responses to requests to admit and litigation plan.	1.20	275.00	330.00
04/21/2021	EG	Reviewing records produced by Allstate Pursuant to subpoena; Email correspondence with Dr. Sarb regarding ██████████; Review additional invoices/records provided by Dr. Sarb.	1.20	275.00	330.00
04/21/2021	PR	Discussion with responsible attorney; draft letter to ED love serving responses to request for admissions; draft certification of service; prepare package for review by attorney.	0.30	125.00	37.50
04/23/2021	PR	Review file regarding status of subpoena response from Bonnoitt Plumbing and Thermal Air and Electric; Review LLR to determine if still in business in order to follow-up re: subpoena.	0.30	125.00	37.50
04/23/2021	PR	Draft Subpoena to Bonnoitt Plumbing Co. Inc. at new address.	0.10	125.00	12.50
04/26/2021	EG	Multiple email correspondence with Dr. Sarb regarding ██████████; Briefly review of Defendant's notice of proposed subpoena to Allstate.	0.20	275.00	55.00
04/27/2021	PR	Telephone call to Thermal Air & Electric to follow up on subpoena request - left message: telephone from Charles Hammond, owner of Thermal Air & Electric; Note to file regarding conversation.	0.30	125.00	37.50
04/30/2021	PR	Review subpoena to AT&T Wireless and phone list attached and compare to phone number list provided to Defendant to determine if the numbers are the same; email responsible attorneys regarding the same.	0.30	125.00	37.50
05/05/2021	EG	Receipt and review of Ed Love's subpoena being served upon AT&T and associated correspondence.	0.10	275.00	27.50
05/06/2021	EG	Formulating analysis regarding recoverable damages and communicating with Valerie Giovanoli regarding the same.	0.20	275.00	No Charge
05/12/2021	VG	Received email from Dr. Sarb regarding ██████████	0.20	275.00	55.00
05/12/2021	EG	Receipt and review of revised subpoena to AT&T by Ed Love's office and associated correspondence.	0.10	275.00	27.50
05/12/2021	EG	Working on preparing supplement to prior discovery responses by evaluating and compiling additional information and documents that may need to be included	0.60	275.00	165.00

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		in a supplemental response.			
05/13/2021	EG	Working on preparing supplement to prior discovery responses by evaluating and compiling additional information and documents that may need to be included in a supplemental response; Reviewing status of subpoena responses; Formulating analysis regarding damages claims, including reviewing inspection reports; Working on updating claimed damages figures.	3.20	275.00	880.00
05/18/2021	PR	Receipt and review Ed Love's Request for court Protection and update pleadings index.	0.10	125.00	No Charge
06/07/2021	EG	Review of invoice for sump pump provided by Dr. Sarb.	0.10	275.00	27.50
06/23/2021	EG	Receipt and review of subpoena to Bonnoit Plumbing returned as unclaimed and instructing paralegal accordingly.	0.10	275.00	27.50
06/30/2021	EG	Review of fencing invoices provided by Dr. Sarb; Email correspondence with Dr. Sarb regarding [REDACTED].	0.10	275.00	27.50
06/30/2021	EG	Formulating litigation strategy and plan and instructing paralegal accordingly.	0.50	275.00	137.50
				Sub-total Fees:	<u>\$4,472.50</u>

Rate Summary

Valerie Garcia Giovanoli	1.40 hours at \$275.00/hr	55.00
Ely Grote	16.00 hours at \$275.00/hr	4,180.00
Patricia Reconnu	2.00 hours at \$125.00/hr	237.50
Total hours:	<u>19.40</u>	

Expenses		Units	Price	Amount
04/21/2021	Postage.	1.00	0.51	0.51
04/09/2021	Copies and Printing.	1.00	0.10	0.10
04/21/2021	Copies and Printing.	13.00	0.10	1.30
04/23/2021	Copies and Printing.	4.00	0.10	0.40
05/13/2021	Copies and Printing.	3.00	0.10	0.30
05/13/2021	Copies and Printing.	34.00	0.15	5.10
05/18/2021	Copies and Printing.	1.00	0.10	0.10
Sub-total Expenses:				<u>\$7.81</u>

Payments

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
		<u>[REDACTED]</u>

Total Current Billing:	\$4,480.31
Previous Balance Due:	██████████
Total Payments:	██████████
Total Now Due:	██████████

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Invoice as of 8/17/2021
Invoice no 101977

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount
07/01/2021 PR	Review Florence County Court Calendar to determine next term of court for Motions hearings.	0.10	125.00	12.50
07/21/2021 EG	Review of revised subpoena package to Bonnoit Plumbing and instructing paralegal regarding service of the same.	0.10	275.00	27.50
07/21/2021 EG	Review court notice of hearing on our motion to amend complaint and review motions roster; Email to Dr. Sarb notifying her [REDACTED].	0.20	275.00	55.00
07/21/2021 PR	Revisions to Subpoena and letter to Bonnoit Plumbing; Finalize Subpoena and letter and process for service via certified mail; email to Ed Love with subpoena; update file; calendar hearing on motion to amend complaint.	0.40	125.00	50.00
07/22/2021 EG	Email correspondence with Dr. Sarb regarding [REDACTED].	0.20	275.00	55.00
07/22/2021 EG	Telephone conference with Ed Love regarding potential settlement (.2) and notate file accordingly; Formulate strategy for potential settlement.	0.40	275.00	110.00
07/26/2021 EG	Working on preparing updated damages calculations and damages spreadsheet, including reviewing and assessing damages documentation as necessary to assist with the same; Compiling supporting documentation to support damages calculation/spreadsheet.	3.10	275.00	852.50
07/26/2021 EG	Telephone call from Bonnoit Plumbing regarding subpoena received.	0.10	275.00	27.50
07/28/2021 VG	Prepare for and participate in conference call with Dr. Sarb to discuss [REDACTED].	1.10	275.00	302.50
07/28/2021 EG	Review of additional damages information provided by Dr. Sarb and formulate analysis and comments regarding the same; Update damages spreadsheet and notes regarding the same.	0.90	275.00	247.50
07/28/2021 PR	Email to Judge seals law clerk requesting virtual attendance at motions hearing on behalf of responsible attorney.	0.10	125.00	12.50
Sub-total Fees:				\$1,752.50

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R. 0220

Rate Summary

Valerie Garcia Giovanoli	1.10 hours at \$275.00/hr	302.50
Ely Grote	5.00 hours at \$275.00/hr	1,375.00
Patricia Reconnu	0.60 hours at \$125.00/hr	75.00
Total hours:	6.70	

Expenses		Units	Price	Amount
07/21/2021	Postage.	1.00	6.96	6.96
07/16/2021	Copies and Printing.	2.00	0.10	0.20
07/21/2021	Copies and Printing.	8.00	0.10	0.80
07/28/2021	Copies and Printing.	2.00	0.10	0.20
		Sub-total Expenses:		\$8.16

Total Current Billing:	\$1,760.66
Previous Balance Due:	
Total Payments:	
Total Now Due:	

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Invoice as of 9/20/2021
Invoice no 103490

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount	
08/02/2021	EG	Review of additional damages documentation provided by Dr. Sarb and update damages spreadsheet accordingly.	0.30	275.00	82.50
08/09/2021	EG	Prepare for hearing on motion to amend complaint, including by reviewing motion, relevant pleadings, relevant correspondence, and information regarding discovery responses, by reviewing relevant legal research, by reviewing motions roster, by formulating and preparing outline of argument in support of motion, and by compiling documentation that may be needed at the hearing.	1.50	275.00	412.50
08/09/2021	PR	Review court docket and email Judge Seals law clerk to verify that hearing is in person; update file.	0.20	125.00	25.00
08/10/2021	EG	Round trip travel from office location to Florence County Courthouse for hearing on motion to amend. (NO CHARGE).	2.60	0.00	0.00 No Charge
08/10/2021	EG	Wait for presiding judge to take bench and address other motion on motion roster, then attend and participate in hearing on motion to amend; Briefly meet with Ed Love following hearing on motion to amend.	1.00	275.00	275.00
08/11/2021	PR	Review status to determine if Bonnoit Plumbing has responded to subpoena.	0.10	125.00	12.50
08/13/2021	EG	Email correspondence with Judge Seals' law clerk regarding granting of motion to amend; Email correspondence with Dr. Sarb regarding [REDACTED]; Preparing draft proposed order granting plaintiff leave to amend complaint; Instructing paralegal regarding preparing form 4 order to accompany proposed order as requested by Judge Seals.	1.40	275.00	385.00
08/16/2021	PR	Draft FORM 4 Order. update file; email draft to responsible attorney for review.	0.20	125.00	25.00
08/17/2021	EG	Revise and finalize draft Form 4 order to accompany proposed order granting motion to amend; Perform final proofread of draft proposed order granting leave to amend and combine with form 4; Instructing paralegal on submitting proposed order to Judge Seals.	0.40	275.00	110.00

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McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

08/20/2021	EG	Receipt and review of executed and filed order granting leave to amend complaint.	0.10	275.00	27.50
08/20/2021	PR	Email correspondence to client forwarding Order granting leave to file amended complaint and update file.	0.10	125.00	12.50
08/24/2021	PR	Review responsible attorney's task list; review file to determine status of various subpoenas issued in case and update Subpoena Status Chart; email to responsible attorney.	0.40	125.00	50.00
08/24/2021	PR	Email correspondence to Ed Love requesting deposition dates for his clients; update file.	0.10	125.00	12.50
08/26/2021	VG	Internal emails regarding proceeding with litigation; email to Dr. Sarb to [REDACTED]	0.20	275.00	55.00
08/26/2021	EG	Reviewing and revising draft amended complaint, including addition of additional allegations; Briefly reviewing relevant documents to assist with evaluating and revising draft amended complaint and to assist with formulating strategy and plan of action; Formulating case strategy; Briefly reviewing relevant provisions of Residential Real Estate Disclosure Statements Act to assist with preparation and finalization of amended complaint; Reviewing subpoena status chart prepared by paralegal and formulate plan for addressing outstanding responses; Drafting of content of letter to Bonnoitt Plumbing to follow up on subpoena and instructing paralegal regarding the same.	1.60	275.00	440.00
08/27/2021	PR	Finalize/edit letter to Bonnoitt plumbing; assemble attachments and submit to responsible attorney for review; update file. Process letter to Bonnoitt Plumbing for service via regular mail; update file.	0.40	125.00	50.00
08/27/2021	PR	Email correspondence to client with Letter sent to Bonnoitt Plumbing.	0.10	125.00	12.50
08/30/2021	EG	Telephone call from John Bonnoitt regarding subpoena to Bonnoitt Plumbing and notate file accordingly.	0.10	275.00	27.50
08/31/2021	EG	Briefly further reviewing revised draft amended complaint; Reviewing prior email correspondence with Dr. Sarb regarding [REDACTED]; Email to Dr. Sarb regarding [REDACTED].	0.30	275.00	82.50

Sub-total Fees: \$2,097.50

Discount:: **(75.00)**

Rate Summary

Valerie Garcia Giovanoli 0.20 hours at \$275.00/hr 55.00

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R. 0223

Ely Grote	2.60 hours at \$0.00/hr	0.00
Ely Grote	6.70 hours at \$275.00/hr	1,842.50
Patricia Reconnu	1.60 hours at \$125.00/hr	200.00
Total hours:	<u>11.10</u>	

Expenses		Units	Price	Amount
08/27/2021	Postage.	1.00	0.71	0.71
08/09/2021	Copies and Printing.	115.00	0.10	11.50
08/27/2021	Copies and Printing.	9.00	0.10	0.90
Sub-total Expenses:				<u>\$13.11</u>

Total Current Billing:	<u>\$2,035.61</u>
Previous Balance Due:	<u> </u>
Total Payments:	<u> </u>
Total Now Due:	<u> </u>

Please remit payment in the amount listed above. The Total Now Due reflects the balance due after any available payments have been applied. Such payments include any cost retainer you've paid, any payments made by the property owner, and payments you've previously submitted. If you have any questions please contact Glenda Murphy at glenda.murphy@mccabetrotter.com or 803-724-5000. Thank you!

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Invoice as of 10/18/2021
Invoice no 105296

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount
09/01/2021	EG Email correspondence with Dr. Sarb regarding [REDACTED].	0.10	275.00	27.50
09/01/2021	PR Receipt and review email correspondence from Erin Brown with dates for plaintiffs deposition. Discussion with responsible attorney; respond to email of Erin Brown; Email client requesting dates for her deposition. update file.	0.30	125.00	37.50
09/07/2021	EG Email correspondence with Dr. Sarb regarding [REDACTED].	0.10	275.00	27.50
09/07/2021	PR Email to Barbara sarb requesting deposition dates.	0.10	125.00	12.50
09/08/2021	EG Email correspondence with Dr. Sarb regarding [REDACTED].	0.20	275.00	55.00
09/09/2021	EG Email correspondence with Dr. Sarb regarding [REDACTED]; Working on finalizing amended complaint and summons for amended complaint and instructing paralegal on finalizing and filing the same.	0.70	275.00	192.50
09/09/2021	PR Revisions to Amended Summons and Amended Complaint in preparation for filing with the court.	0.40	125.00	50.00
09/09/2021	PR E-file Amended Summons and Complaint with court.	0.20	125.00	25.00
09/10/2021	EG Telephone conference with Dr. Sarb regarding [REDACTED].	0.20	275.00	55.00
09/13/2021	EG Email correspondence with Dr. Sarb regarding [REDACTED]; Communicate with Valerie Giovanoli regarding dispositions.	0.10	275.00	27.50
09/20/2021	EG Email correspondence with Dr. Sarb regarding [REDACTED], including review of attachment provided.	0.20	275.00	55.00
09/21/2021	AT Calendar the deadline to receive Amended Answer from opposing counsel .	0.10	125.00	12.50
09/21/2021	AT Edit/revise Pleadings Index to include Amended Summons & Complaint recently filed herein.	0.10	125.00	12.50
09/24/2021	EG Email correspondence with Dr. Sarb regarding [REDACTED].	0.10	275.00	27.50

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McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

09/28/2021	VG	Telephone call with Dr. Sarb (0.4); annotated file and instructed assistant to schedule depositions (0.2); emailed Dr. Sarb [REDACTED] (0.1).	0.70	275.00	192.50
09/29/2021	EG	Assess deadline for amended answer and plan regarding lack of responsive pleading to amended complaint thus far; Formulating plan for depositions.	0.10	275.00	27.50
09/30/2021	VG	Emails regarding deposition dates; discussed settlement strategy; telephone call with Ed Love regarding Phillips insurance coverage (No charge, see discount).	0.30	275.00	82.50
09/30/2021	EG	Review insurance coverage available to Phillips, including the Phillips' discovery responses to the same and relevant communications with Ed Love; Evaluate plan/strategy regarding potential insurance coverage for the Phillips; Conference with Valerie Giovanoli regarding case strategy.	0.30	275.00	82.50

Sub-total Fees: \$1,002.50

Discount:: (407.50)

Rate Summary

Valerie Garcia Giovanoli	1.00 hours at \$275.00/hr	275.00
Ely Grote	2.20 hours at \$275.00/hr	577.50
Patricia Reconnu	1.30 hours at \$125.00/hr	125.00
Ainslie Tinsley	0.30 hours at \$125.00/hr	25.00
Total hours:	<u>4.80</u>	

Expenses

	Units	Price	Amount
10/08/2021 Postage.	1.00	1.76	1.76
Sub-total Expenses:			<u>\$1.76</u>

Total Current Billing: \$596.76

Previous Balance Due: [REDACTED]

Total Payments: [REDACTED]

Total Now Due: [REDACTED]

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Invoice as of 11/21/2021
Invoice no 106154

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount
10/05/2021	VG Working on preparing demand letters to insurance company and reviewing file for appropriate insurance policies in order to craft arguments unique to same.	1.20	275.00	330.00
10/06/2021	EG Reviewing insurance information for the Phillips, including insurance company subpoena responses and available State Farm policy declaration; Assessing potential options for pressing coverage with Phillips' insurers; Conference with Valerie Giovanoli to formulate case strategy.	0.70	275.00	192.50
10/06/2021	VG Review of damages summary and emails with Dr. Sarb regarding [REDACTED]; preparing response to Ed Love regarding depositions, settlement, pursuing insurance company..	0.40	275.00	110.00
10/06/2021	VG Reviewing file; emails with Dr. Sarb regarding [REDACTED]; evaluating strategy on triggering insurance for purposes of settlement.	1.00	275.00	275.00
10/08/2021	DP Finalize tender letter and disburse same; Update file and calendar as needed.	0.20	125.00	25.00
10/08/2021	EG Review of Dr. Sarb's concerns regarding [REDACTED] and begin assessing the merits of the same by briefly skimming notes and relevant documents in file regarding [REDACTED]; Communicate with Valerie Giovanoli regarding status of Bonnoitt subpoena response, potential bathroom issues, and insurance coverage.	0.90	275.00	247.50
10/08/2021	EG Review and revise draft letter to Jim Stewart Insurance Agency regarding claim to State Farm (initial draft prepared by paralegal); Verifying State Farm insurance policy information; Instructing paralegal regarding finalizing claim letter to State Farm. .	0.60	275.00	165.00
10/11/2021	DP Edit/revise Pleadings Index to reflect Defendants' Answer and Counterclaims to Plaintiff's Amended Complaint; Calendar imposed deadline to reply to said Answer and Counterclaims; Begin drafting/preparation of Plaintiff's Reply; Update file.	0.90	125.00	112.50

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R. 0228

MCCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

10/11/2021	EG	Review and analyze Defendants' amended answer and counterclaims, including notating amended complaint with answer responses, comparing and contrasting with Defendant's original answer and counterclaims, and beginning to formulate analysis and strategy for reply to counterclaims.	1.20	275.00	330.00
10/14/2021	EG	Reviewing and revising draft reply to Defendants Counterclaims raised in Defendants' Answer to the Amended Complaint, which was prepared by paralegal, including comparing and contrasting prior and current counterclaims and referencing prior reply to counterclaims as necessary.	0.90	275.00	247.50
10/19/2021	DP	Perform final revisions/conversions to Reply to Defendants Answer and Counterclaims to Plaintiff's Amended Complaint, submitting same for filing; Update file.	0.30	125.00	37.50
10/19/2021	DP	Communicate with K. Carroll (State Farm Claim Representative) via outgoing call in regard to status of tender/claim; Update file and/or calendar, as needed.	0.20	125.00	25.00
10/19/2021	EG	Finish reviewing, revising, and editing reply to Defendants' amended counterclaims; Instructing paralegal on finalizing reply to amended counterclaims and submitting the same for filing.	0.60	275.00	165.00

Sub-total Fees: \$2,262.50

Discount:: (875.00)

Rate Summary

Valerie Garcia Giovanoli	2.60 hours at \$275.00/hr	715.00
Ely Grote	4.90 hours at \$275.00/hr	1,347.50
Deanne Peele	1.60 hours at \$125.00/hr	200.00
Total hours:	<u>9.10</u>	

Expenses		Units	Price	Amount
10/08/2021	Copies and Printing.	19.00	0.10	1.90
10/08/2021	Copies and Printing.	2.00	0.10	0.20
10/08/2021	Copies and Printing.	1.00	0.15	0.15
10/11/2021	Copies and Printing.	1.00	0.10	0.10
10/19/2021	Copies and Printing.	1.00	0.10	0.10

Sub-total Expenses: \$2.45

Total Current Billing: \$1,389.95

Previous Balance Due:

Total Payments:

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Total Now Due:



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Invoice as of 12/9/2021
Invoice no 106463

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees

		Hours	Rate	Amount	
11/03/2021 IT	Review correspondence regarding SF coverage. process to file .	0.40	0.00	0.00	No Charge
11/29/2021 EG	Review of additional damages information provided by Dr. Sarb and update revised damages spreadsheet accordingly.	0.40	275.00	110.00	
Sub-total Fees:				\$110.00	

Rate Summary

Ely Grote	0.40 hours at \$275.00/hr	110.00
Ian Thomson	0.40 hours at \$0.00/hr	0.00
Total hours:	0.80	

Total Current Billing:	\$110.00
Previous Balance Due:	[REDACTED]
Total Payments:	[REDACTED]
Total Now Due:	[REDACTED]

Please remit payment in the amount listed above. The Total Now Due reflects the balance due after any available payments have been applied. Such payments include any cost retainer you've paid, any payments made by the property owner, and payments you've previously submitted. If you have any questions please contact Glenda Murphy at glenda.murphy@mccabetrotter.com or 803-724-5000. Thank you!

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Invoice as of 1/17/2022
Invoice no 107020

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees

		Hours	Rate	Amount
12/09/2021	EG Working on further updating and revising damages spreadsheet to assist in trial preparation and supplementing discovery responses.	0.20	275.00	55.00
Sub-total Fees:				\$55.00

Rate Summary

Ely Grote	0.20 hours at \$275.00/hr	55.00
Total hours:	0.20	

Expenses

		Units	Price	Amount
01/11/2022	Postage.	1.00	0.53	0.53
01/03/2022	Copies and Printing.	3.00	0.15	0.45
Sub-total Expenses:				\$0.98

Total Current Billing:	\$55.98
Previous Balance Due:	[REDACTED]
Total Payments:	[REDACTED]
Total Now Due:	[REDACTED]

Please remit payment in the amount listed above. The Total Now Due reflects the balance due after any available payments have been applied. Such payments include any cost retainer you've paid, any payments made by the property owner, and payments you've previously submitted. If you have any questions please contact Glenda Murphy at glenda.murphy@mccabetrotter.com or 803-724-5000. Thank you!

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Invoice as of 2/16/2022
Invoice no 107823

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees

		Hours	Rate	Amount
01/03/2022 EG	Working on preparing supplemental discovery responses and document production, including (1) assessing and compiling additional records that may need to be produced, (2) assessing and compiling additional witnesses that may need to be identified, (3) further assessing damages, (4) reviewing file, discovery responses/document productions, and notes as necessary to assist with preparing supplemental discovery responses, (5) by formulating itemization of additional information/clarifications needed, and (6) by beginning to draft the supplemental responses; Locating and reviewing subpoenas served by attorney Ed Love and assessing which records have not yet been produced to us.	3.80	275.00	1,045.00
01/04/2022 EG	Continue working on preparing supplemental discovery responses and document production by further assessing and compiling additional records that may need to be produced, further assessing what additional witnesses may need to be identified, and further assessing damages, as well as further reviewing file, discovery responses/document productions, and notes as necessary; Finish preparing content for first draft of first supplemental answers to interrogatories and second supplement responses to requests for production, and instructing paralegal regarding completing the same; Instructing paralegal regarding finishing preparing supplemental document production; Editing, revising, and updating damages spreadsheet for inclusion in supplemental answers to interrogatories, and instructing paralegal on completing the same; Further assessing additional information that may be needed for discovery supplement.	4.60	275.00	1,265.00
01/04/2022 EG	Email correspondence with Ed Love regarding supplementing discovery responses.	0.20	275.00	55.00
01/04/2022 IT	Contact opposing counsel regarding deposition availability.	0.10	125.00	12.50
01/04/2022 IT	Discuss upcoming supplemental production with supervising attorney, Ely Grote; Review file regarding supplemental production documents.	0.40	125.00	50.00

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R. 0233



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COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

01/05/2022	EG	Email correspondence with Ed Love regarding supplementation of discovery responses.	0.10	275.00	27.50
01/05/2022	IT	Draft Notice of Deposition for Philips'; Draft letter/COS to opposing counsel regarding Notice of Deposition of Philips'.	0.60	125.00	75.00
01/07/2022	EG	Review of draft notices of depositions of the Phillips and associated certificate of service and correspondence prepared by paralegal, and instructing paralegal regarding revision of the same.	0.20	275.00	55.00
01/07/2022	IT	Correspond with opposing counsel regarding scheduling depos of Philips'; amend Notice/letter.	0.70	125.00	87.50
01/07/2022	IT	Begin compilation of supplemental production documents.	1.50	125.00	187.50
01/08/2022	VG	Emails with Dr. Sarb [REDACTED]	0.10	275.00	27.50
01/10/2022	IT	Amend deposition notices; Draft notice for Julie Philips.	0.80	125.00	100.00
01/10/2022	IT	Continue compilation of supplemental document production.	1.60	125.00	200.00
01/11/2022	IT	Finalize letter to opposing counsel regarding NODs of Phillips'; calendar deposition.	0.20	125.00	25.00
01/14/2022	IT	Update discovery index.	0.20	125.00	25.00
01/17/2022	IT	Review file; Further update discovery index.	0.80	125.00	100.00
01/17/2022	IT	Work to compile supplemental discovery documents for production.	1.20	125.00	150.00
01/19/2022	IT	Review file; amend calendar.	0.40	125.00	50.00
01/24/2022	IT	Communicate with opposing counsel/client regarding rescheduling Sarb deposition.	0.30	125.00	37.50
01/25/2022	EG	Conference with paralegal regarding finalizing supplemental discovery responses.	0.20	275.00	55.00
01/25/2022	IT	Review documents; complete compiling of supplemental docs for production.	1.50	125.00	187.50
01/26/2022	IT	Bates stamp all compiled docs; insert bates numbers into draft supplemental Rgs/RFP responses; review for accuracy.	2.70	125.00	337.50

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01/27/2022 EG	Further review and revision of first supplemental answers to Defendants' interrogatories and second supplemental requests for production after draft completed by paralegal; Reviewing extensive supplemental document production compiled and assembled by paralegal; Further working on supplemental document production; Further instructing paralegal regarding revising and completing 1st supplemental answers to interrogatories and 2nd supplemental responses to requests for production/document production; Compile listing of additional information needed for supplemental discovery responses; Email to Dr. Sarb [REDACTED].	1.80	275.00	495.00
01/27/2022 IT	Revise draft supplemental document production to incorporate attorney comments and instructions; edit supplemental discovery response.	1.80	125.00	225.00
01/31/2022 IT	Begin deposition notebook for phillips' depositions.	1.50	125.00	187.50

Sub-total Fees: \$5,062.50

Discount:: (1,262.50)

Rate Summary

Valerie Garcia Giovanoli	0.10 hours at \$275.00/hr	27.50
Ely Grote	10.90 hours at \$275.00/hr	2,997.50
Ian Thomson	17.10 hours at \$125.00/hr	2,037.50
Total hours:	<u> </u> 28.10	

Total Current Billing:	<u> </u> \$3,800.00
Previous Balance Due:	<u> </u> [REDACTED]
Total Payments:	<u> </u> [REDACTED]
Total Now Due:	<u> </u> [REDACTED]

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Invoice as of 3/15/2022
Invoice no 108380

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount
02/02/2022	IT Schedule deposition of Barbara Sarb.	0.30	125.00	37.50
02/02/2022	IT Complete deposition index Barbara Sarb; begin compiling documents for deposition notebook.	1.80	125.00	225.00
02/03/2022	EG Review email correspondence from Dr. Sarb regarding [REDACTED] and then revise and edit supplemental discovery response accordingly to incorporate such information; Reviewing revised document production completed by paralegal; Instructing paralegal regarding finalizing supplemental discovery responses and document production.	1.20	275.00	330.00
02/04/2022	IT Edit supplemental production documents regarding redaction; edit discovery response (add damages matrix); download to ProLaw.	1.10	125.00	137.50
02/07/2022	VG Emails with Dr. Sarb regarding [REDACTED].	0.20	275.00	55.00
02/08/2022	EG Perform further revisions and finalization of draft supplemental discovery responses and convey the same to Dr. Sarb; Instructing paralegal on finishing supplemental document production and providing the same to Dr. Sarb.	0.70	275.00	192.50
02/08/2022	IT Finalize Production Documents.	0.60	125.00	75.00
02/08/2022	IT Review pleadings to assist in preparation of deposition notebook.	0.50	125.00	62.50
02/09/2022	EG Receipt and review amended notice of deposition for Dr. Sarb for 3/16/22.	0.10	275.00	27.50
02/09/2022	EG Review and revision of final supplemental document production completed by paralegal; instructing paralegal on distributing the same to Dr. Sarb.	0.30	275.00	82.50
02/09/2022	IT Update discovery index; confirm calendar - Barbara Sarb deposition.	0.30	125.00	37.50
02/10/2022	EG Email correspondence with Dr. Sarb regarding [REDACTED]; Instructing paralegal on service of the same on opposing counsel.	0.10	275.00	27.50
02/10/2022	IT Draft letter/COS to opposing counsel regarding supplemental discovery responses.	0.50	125.00	62.50

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02/10/2022	IT	Finalize letter/COS/discovery responses to opposing counsel; produce documents.	0.40	125.00	50.00
02/10/2022	IT	Update discovery index regarding supplemental discovery responses.	0.20	125.00	25.00
02/11/2022	VG	Began preparing for deposition; Emails with opposing counsel regarding scheduling of Phillips' depositions; email to client; conference with Ely regarding Defendants' need to supplement discovery.	0.30	275.00	82.50
02/11/2022	VG	Telephone call with Dr. Sarb to discuss [REDACTED].	0.30	275.00	82.50
02/11/2022	EG	Working on preparing outline of key topics and information, as well as working on preparing list of key questions for the depositions of the Phillips assist Valerie Giovanoli in preparing for the depositions of the Phillips.	3.00	275.00	825.00
02/14/2022	VG	Telephone call with Glenn Stewart to discuss new issues in home & request site inspection.	0.10	275.00	27.50
02/15/2022	EG	Finish preparing outline of key topics, information, and questions for the depositions of the Phillips to help Valerie Giovanoli prepare for the same.	0.30	275.00	82.50
02/16/2022	IT	Update pleadings index regarding opposing counsel protection from court.	0.20	125.00	25.00
02/19/2022	VG	Followed up with opposing counsel on Phillips' deposition dates and supplemental discovery.	0.10	275.00	27.50
02/21/2022	EG	Receipt and review additional medical invoice from Dr. Sarb; Email correspondence with Dr. Sarb regarding [REDACTED]; Update medical treatment spreadsheet to include additional invoice; Update damages spreadsheet to include additional invoice; Prepare text of letter to Ed Love with supplement to Plaintiff's discovery responses; Instructing paralegal regarding completing supplement to Plaintiff's discovery responses.	0.50	275.00	137.50
02/22/2022	EG	Email correspondence with Dr. Sarb regarding [REDACTED].	0.10	275.00	27.50
02/22/2022	IT	Finalize letter to opposing counsel; finalize 3rd Supplemental production.	0.50	125.00	62.50
02/25/2022	EG	Begin reviewing Defendants' supplemental document production (DEF 613 to 1445), consisting of 833 pages of records.	2.00	275.00	550.00
02/25/2022	IT	Download docs regarding Phillips - Supplemental Production.	0.40	125.00	50.00

02/28/2022	EG	Finish reviewing and analyzing Defendants' supplemental document production (DEF 613 to 1445), consisting of 833 pages of records, including formulating analysis and preparing notes/comments regarding the same; Prepare summary of the Defendants' supplemental document production and email the same to Dr. Sarb; Instructing paralegal on distributing Defendants' supplemental document production to Dr. Sarb.	3.80	275.00	1,045.00
02/28/2022	IT	Finalize deposition notices for Joseph & Julie Phillips; calendar deposition; schedule court reporter.	0.60	125.00	75.00
02/28/2022	IT	Update discovery index regarding defendant's supplemental discovery response.	0.20	125.00	25.00

Sub-total Fees: \$4,552.50

Discount:: (1,000.00)

Rate Summary

Valerie Garcia Giovanoli	1.00 hours at \$275.00/hr	275.00
Ely Grote	12.10 hours at \$275.00/hr	3,327.50
Ian Thomson	7.90 hours at \$125.00/hr	950.00
Total hours:	<u> </u> 21.00	

Expenses

		Units	Price	Amount
02/10/2022	Postage.	1.00	0.93	0.93
02/22/2022	Postage.	1.00	0.53	0.53
02/28/2022	Postage.	1.00	0.53	0.53
Sub-total Expenses:				<u> </u> \$1.99

Total Current Billing: \$3,554.49

Previous Balance Due:

Total Payments:

Total Now Due:

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Invoice as of 4/10/2022
Invoice no 109066

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount	
03/01/2022	IT Review file; draft deposition index; deposition prep.	0.80	125.00	100.00	
03/02/2022	IT Review file; forward phone list to Client.	0.20	125.00	25.00	
03/02/2022	IT Edit deposition index; Review EOG notes regarding deposition questions for Phillips'; begin assembly of deposition notebook.	1.20	125.00	150.00	
03/02/2022	VG Telephone call with Dr. Sarb to discuss [REDACTED] [REDACTED] (Actual time 0.4, billed 0.3).	0.30	275.00	82.50	
03/02/2022	VG Telephone call with Dr. Sarb to discuss [REDACTED] [REDACTED].	0.10	275.00	27.50	
03/03/2022	IT Review home inspection report per VG regarding [REDACTED].	0.70	0.00	0.00	No Charge
03/03/2022	IT Further review EOG notes regarding deposition questions; locate documents; complete deposition prep (notebook)	3.20	125.00	400.00	
03/03/2022	VG Telephone call with Glenn Stewart; annotated file; instructed paralegal to review original inspection to ensure [REDACTED].	0.20	275.00	55.00	
03/12/2022	VG Deposition Prep.	3.50	275.00	962.50	
03/13/2022	EG Preparing outline and summary of relevant information and topics to assist in preparing Dr. Sarb for her deposition; Compiling relevant documents, notes, and information to assist in preparing Dr. Sarb for her deposition; Convey all of the same to Valerie Giovanoli to help assist in preparing Dr. Sarb for her deposition.	1.20	275.00	330.00	
03/13/2022	VG Deposition Prep.	8.00	275.00	2,200.00	
03/14/2022	VG Travel to and from Florence for depositions (No charge).	3.20	0.00	0.00	No Charge

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03/14/2022	VG	Brief pre-deposition meeting and commute to Ed Love's office for depositions (0.5); depositions of Joseph Phillips and Julie Phillips (4.9); commute back to Dr. Sarb's residence and deposition preparation (2.0).	7.40	275.00	2,035.00	
03/15/2022	IT	Cancel court reporter for Dr. Sarb's deposition rescheduling; amend calendar.	0.20	125.00	25.00	
03/15/2022	VG	Emails with Ed Love regarding cancellation of Dr. Sarb's deposition (0.2); evaluated list of witnesses to depose (0.3); telephone call with Dr. Sarb to [REDACTED] (0.2).	0.70	275.00	192.50	
03/16/2022	EG	Formulating analysis and plan for future depositions and trial preparation strategy; Briefly begin performing legal research regarding necessity of expert testimony.	1.60	0.00	0.00	No Charge
03/17/2022	EG	Formulate further analysis regarding litigation and discovery plan, and communicate with Valerie Giovanoli regarding the same and notate file accordingly.	0.50	275.00	137.50	
03/22/2022	VG	Received additional information from Dr. Sarb regarding whether [REDACTED].	0.10	275.00	27.50	
03/31/2022	IT	Receipt of deposition transcripts from Garber Reporting; process to file.	0.20	125.00	25.00	
				Sub-total Fees:	\$6,775.00	
				Discount::	(1,100.00)	

Rate Summary

Valerie Garcia Giovanoli	3.20 hours at \$0.00/hr	0.00
Valerie Garcia Giovanoli	20.30 hours at \$275.00/hr	5,582.50
Ely Grote	1.60 hours at \$0.00/hr	0.00
Ely Grote	1.70 hours at \$275.00/hr	467.50
Ian Thomson	0.70 hours at \$0.00/hr	0.00
Ian Thomson	5.80 hours at \$125.00/hr	725.00
Total hours:	33.30	

Expenses		Units	Price	Amount
03/13/2022	Copies and Printing.	41.00	0.15	6.15
03/13/2022	Copies and Printing.	190.00	0.10	19.00
Sub-total Expenses:				\$25.15

Total Current Billing: \$5,700.15
Previous Balance Due: [REDACTED]

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Total Payments:

Total Now Due:

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Invoice as of 5/10/2022
Invoice no 110345

Barbara Sarb
[REDACTED]

21624.2: Barbara Sarb v. Joseph & Julie Phillips et al.

Professional Fees		Hours	Rate	Amount
04/01/2022	BB Finishing research on noneconomic damages; Completing memo with summary of findings; Submitted for responsible attorney's review.	4.00	125.00	500.00
04/26/2022	VG Email with Dr. Sarb regarding [REDACTED].	0.10	275.00	27.50
04/27/2022	EG Prepare for witness interviews by preparing question outlines and reviewing relevant records as necessary (Daniel Williams; Heath McCollum, Adam Crosson, and James Peterson).	2.10	275.00	577.50
04/27/2022	IT Review correspondence from client; calendar client's upcoming unavailability.	0.20	125.00	25.00
04/29/2022	EG Telephone conference with Daniel Williams (.3), and notate file accordingly; Telephone call to Heath McCollum - left message; Telephone call to James Peterson - no answer.	0.70	275.00	192.50
Sub-total Fees:				\$1,322.50

Rate Summary

Bradley Bridger	4.00 hours at \$125.00/hr	500.00
Valerie Garcia Giovanoli	0.10 hours at \$275.00/hr	27.50
Ely Grote	2.80 hours at \$275.00/hr	770.00
Ian Thomson	0.50 hours at \$125.00/hr	25.00
Total hours:	7.40	

Expenses		Units	Price	Amount
04/04/2022	Postage.	1.00	0.53	0.53
04/01/2022	Court Reporter - Depositions of Phillips & Transcripts.	1.00	1,405.05	1,405.05
04/04/2022	Copies and Printing.	1.00	0.10	0.10
Sub-total Expenses:				\$1,405.68

Total Current Billing: \$2,728.18
Previous Balance Due: [REDACTED]
Total Payments: [REDACTED]

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