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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. 4 of 5

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1 Q: February 12th, okay. Have you reviewed the CL-100 since
2 the time of your report?

3 A: I have.

4 Q: Okay. Did you find any -- or based on the CL-100, do you
5 think in your professional opinion, did that reveal any of the
6 problems that you have described here today to the jury?

7 A: No. It did identify that there were non-active fungal
8 based decay. So, that would indicate something that's not
9 active. But, we're not -- didn't talk about the issues that
10 were talking about today.

11 Q: Did the CL-100 report identify -- in your review of it
12 did it identify any sort of concerns about standing water in
13 the basement or groundwater infiltration?

14 A: No.

15 Q: Now, Mr. Stewart, you're an engineer, correct?

16 A: Yes.

17 Q: Okay. Do engineers get paid for their time?

18 A: We try to.

19 Q: All right. Do you bill all of your clients for your
20 time?

21 A: Yes.

22 Q: Is that the general practice in the engineering field?

23 A: Yes. You know, in fact, in this file I established a
24 budget, went over the budget, and I charged the budget.

25 Q: Okay. So, in fact, you took a break off of your invoice?

1 A: I did.

2 Q: Okay.

3 MR. GROTE: No further questions.

4 THE COURT: All right. Anything further.

5 MR. LOVE: No, Your Honor. Thank you.

6 THE COURT: All right. Mr. Stewart, thank you for being
7 here, sir. You are welcome to step down.

8 Is there any objection to him being released from -- I
9 don't know if he's under subpoena or not, but ---

10 MR. GROTE: He's not under subpoena, but there's no
11 objection to letting him go.

12 THE COURT: Okay. Thank you, sir.

13 MR. GROTE: At least not our subpoena, anyway.

14 MR. LOVE: I don't have them under subpoena either. He
15 is free to go.

16 THE COURT: All right.

17 All right. Mr. Grote, are you ready to call your next
18 witness?

19 MR. GROTE: Yes, Your Honor. Plaintiff would call John
20 Etheridge.

21 THE COURT: All right.

22 JOHN ETHERIDGE, HAVING BEEN SWORN,
23 TESTIFIED AS FOLLOWS:

24 THE CLERK: Please be seated and state your name for the
25 record.

1 THE COURT REPORTER: Can you spell your last name for me,
2 please?

3 MR. ETHERIDGE: Yes. My name is John Etheridge, III, and
4 that's E-T-H-E-R-I-D-G-E.

5 DIRECT EXAMINATION OF JOHN ETHERIDGE, III BY MR. GROTE:

6 Q: Good afternoon, Mr. Etheridge. Where do you currently
7 work?

8 A: E&A Realty and PLC Commercial.

9 Q: Okay. And what do you do for them?

10 A: Broker-in-charge for both.

11 Q: How long have you worked there?

12 A: We started PLC Commercial in June of this year, and E&A
13 Realty, I've worked there -- either been broker-in-charge or
14 owner for several years.

15 Q: Where did you work before that?

16 A: RE/MAX professionals.

17 Q: How long did you work for RE/MAX?

18 A: I believe two years.

19 Q: Are you a licensed real estate broker?

20 A: Yes, I am.

21 Q: How long have you been a licensed real estate broker?

22 A: I think I got licensed in 2009, 2010, as an agent, and
23 then a broker somewhere in 2015.

24 Q: Okay. Do you have any other sort of real estate
25 licenses?

1 A: I do not.

2 Q: How long have you been -- or what type of work do you do?
3 Do you do residential, commercial?

4 A: Both.

5 Q: How long have you been in the, I guess, real estate
6 business?

7 A: Including mortgages?

8 Q: Just in the real estate agent type business.

9 A: 2009, 2008.

10 Q: Okay. Did you act as Dr. Sarb's real estate agent in
11 connection with her purchase of 550 Wisteria?

12 A: I did.

13 Q: Okay. Do you recall how you got in touch with her or how
14 she got in touch with you?

15 A: I believe it was through my wife. Either she contacted
16 me, or I contacted her; I'm not exactly sure which way.

17 Q: Okay. And did you help Dr. Sarb, I guess, look at a
18 variety of houses before 550 Wisteria?

19 A: I did.

20 Q: How did 550 Wisteria come up as a potential option?

21 A: Either I showed her, or she saw it on the Internet, one
22 of the two.

23 Q: Okay. Did you know the sellers of 550 Wisteria?

24 A: No.

25 Q: At least prior to the transaction.

1 A: Prior to, yeah, at the time.

2 Q: So, to Dr. Sarb end up making an offer on 550 Wisteria?

3 A: She did.

4 Q: Okay. Was the offer initially accepted?

5 A: I believe it was countered, or I -- if I remember

6 correct, it was a multiple offer situation, if I remember

7 correctly.

8 Q: Okay. Do you recall there being a request for highest

9 and best?

10 A: I would think so; yeah, I believe so.

11 Q: What does that mean in realtor terms?

12 A: There's multiple offers, and at that time everybody is

13 aware that there are multiple offers, and you just give your

14 highest and best offer.

15 Q: Okay. Did the sellers of 550 Wisteria have a real estate

16 agent?

17 A: They did.

18 Q: And who was that?

19 A: Adam Crosson.

20 Q: Did y'all actually work in the same firm at that time?

21 A: He was my broker-in-charge.

22 Q: Now, when Dr. Sarb made an offer, there was a written

23 form that was on it or it was on a written form, was it not?

24 A: The state -- you're talking about the state form?

25 Q: The actual purchase agreement or the offer.

1 A: Yes, a state form, yeah. We use that.
2 Q: Where does that form come from?
3 A: LLR, and it's through our MLS.
4 Q: The purchase agreement is a state form?
5 A: Uh-huh, (affirmative response).
6 Q: Is that a yes?
7 A: Yes, yes.
8 Q: Okay. And is that what you used for Dr. Sarb when she
9 made the offer?
10 A: I believe so; I don't see why wouldn't.
11 Q: Okay. If you'd like to see it, I can get you a copy of
12 it.
13 A: Yeah. Whatever y'all would prefer, I mean...
14 Q: Okay. How about we take a look at -- I'm gonna show you
15 Plaintiff's Exhibit 2.
16 A: Yes. That's the state approved application -- I mean,
17 sales agreement.
18 Q: And is that just kind of a standard boilerplate agreement
19 ---
20 A: Yes.
21 Q: --- provided by LLR?
22 A: Uh-huh, (affirmative response).
23 Q: Is that a yes?
24 A: Yes, it is. I'm sorry.
25 Q: I don't mean to correct you ---

1 A: I understand; that was my fault.

2 Q: The court reporter, if you say uh-huh or huh-uh, nobody
3 is gonna know what you mean at the end of the day.

4 A: I understand.

5 Q: All right. So, in that standard form, is there an option
6 to purchase the property without a disclosure statement or to
7 require a disclosure statement?

8 A: Yes, there is.

9 Q: Okay. Do you recall what Dr. Sarb elected as part of her
10 offer?

11 A: I do not. I'm looking now to see, because this contract
12 has changed since then. Yes. She asked for the sellers'
13 disclosure.

14 Q: Okay. Do you recall anything about when that disclosure
15 statement was received in connection with this purchase?

16 A: From what I remember, it came in a little later than
17 normal. Usually, it's at the time of listing that it came in
18 later; I don't remember what part of the process when we
19 received it.

20 Q: Did Dr. Sarb, in fact, actually receive it before the
21 closing, though?

22 A: Yes.

23 Q: Was there some sort of -- excuse me -- do you believe
24 there's some sort of verbal conversation that may have
25 occurred before actually receiving it?

1 MR. LOVE: Objection, leading.

2 THE COURT: Overruled. If you know the answer to that
3 question, you can answer it.

4 A: Could you ask that question again?

5 Q: Were there any verbal conversations about what the
6 disclosure -- what was being disclosed before the actual form
7 was received?

8 A: That's kind of -- can you be a little more specific? I
9 mean, I'm not sure I understand your question.

10 Q: Well, before actually getting the form, were there any
11 discussions that took place back and forth between the parties
12 about verbally what was being disclosed before the document
13 was received?

14 A: Yes. We had conversations about the property before we
15 received that, I think.

16 Q: Okay. Did you go over the seller's disclosure statement
17 with Dr. Sarb?

18 A: I believe so.

19 Q: Do you recall anything of significance being disclosed on
20 that form?

21 A: I do not remember. If you had the form, I'd be more than
22 happy to look through it.

23 Q: No, I think that's fine. Just whatever you remember.

24 A: Yeah, I mean, you know...

25 Q: All right. Did Dr. Sarb end up having the property

1 inspected as part of the process?

2 A: Yes.

3 Q: Do you recall who inspected the property for her?

4 A: House Masters out of Sumter.

5 Q: How did the name House Master come up, or do you know how
6 she found House Master?

7 A: I believe it was my recommendation.

8 Q: And why did you recommend House Master?

9 A: We use them a good bit, and Kevin Watford is the owner of
10 that franchise, and he is also a licensed contractor, I
11 believe. And of the ones that do home inspections, he is the
12 only one that I know that was aware -- I was aware of that
13 was, and he has also inspected my other properties.

14 Q: Okay. So, you've used them on other properties?

15 A: I have.

16 Q: Did you have confidence in his abilities?

17 A: I did.

18 Q: Was CL-100 inspection performed?

19 A: It was.

20 Q: Can you describe generally for the jury what CL-100
21 means, if you know?

22 A: Yeah. CL -- I don't know what the CL -- I should, but I
23 don't. But it's a moisture and infestation report that is
24 done by a licensed company such as -- I think Dotson did
25 theirs, but Terminix would do one -- so, you know, any kind of

1 bug control, they go and they determine the moisture levels
2 and any kind of infestation of either mildew, mold, water,
3 bugs, that kind of...

4 Q: Was Dr. Sarb present for these inspections ---

5 A: She was.

6 Q: --- by Dotson and by House Master?

7 A: She was.

8 Q: Okay. Were you present?

9 A: I was. By present, I was there; I didn't go underneath
10 the house or anything.

11 Q: Did you ever go into the basement?

12 A: Yes.

13 Q: Did you ever see water in the basement before closing?

14 A: I did not. I didn't -- I did not. Are you talking about
15 doing the inspections?

16 Q: Before closing ---

17 A: No, I did not, not before closing.

18 Q: Were written inspection reports issued from the CL-100
19 inspection and by House Master?

20 A: They were.

21 Q: Did you go over those with Dr. Sarb?

22 A: I did.

23 Q: And so, in your experience as a real estate agent, did
24 you recommend any other inspections?

25 A: I did not.

1 Q: In your experience, at least with your clients, what is
2 sort of the normal and customary inspections that are done in
3 the residential purchase?

4 A: Those two inspections; the home inspection and the CL-
5 100.

6 Q: Have you ever had an engineer come out for any
7 residential inspection prior to closing in any of your
8 transactions?

9 A: I have not.

10 Q: Do you know John Sims?

11 A: I do.

12 Q: How do you know John Sims?

13 A: He's a contractor in town.

14 Q: Okay. Is John Sims somebody that you work with or
15 recommend to clients?

16 A: I do.

17 Q: Why is that?

18 A: I trust John in the work he does.

19 Q: Do you recall what John Sims' involvement was with 550
20 Wisteria before closing?

21 A: I believe he gave us -- I know he was involved, but I
22 don't know exactly in what capacity. I would assume he looked
23 at either the report and gave us an estimate, or at least gave
24 us his opinion on what it said.

25 Q: I think I may have asked you this, but did you go over

1 the CL-100 and House Master inspection reports with Dr. Sarb?

2 A: I did.

3 Q: And what was the, I guess, the results of that?

4 A: I believe we would have sent over a repair addendum at
5 that time.

6 Q: And do you recall a repair addendum being submitted?

7 A: I do not recall, but I'm confident it was.

8 Q: Okay. I will show you what we've marked as Plaintiff's
9 Exhibit Number 7.

10 A: Yes. That would've been the repair addendum.

11 Q: What did Dr. Sarb request be repaired?

12 A: Items that were listed, 30, 31, and 32 in the home
13 inspection, and then items that were recommended by the CL-
14 100, to clear the CL-100.

15 Q: Okay.

16 A: And then there was siding and foundational -- I believe
17 there was -- if I remember correct, there may have been one
18 siding that was coming in for some reason. And then also to
19 have John -- and it says here a foundation inspection to take
20 place on July 1st, July 1 of 2019.

21 Q: Did John Sims go back out at the property and look at
22 whatever that issue was?

23 A: I believe he did.

24 Q: Do you know how many times you may have been out at the
25 property prior to closing?

1 A: I can range it for you, if that works.
2 Q: Sure.
3 A: I would say five to 10, at least.
4 Q: Do you remember -- or did you ever see any type of water
5 in the basement during any of those?
6 A: Not during our -- during our walk-throughs.
7 Q: Did you ever see any severe cockroach infestation during
8 that time?
9 A: I did not.
10 Q: Did you ever see any issues with the, I guess, the sewer
11 line or the plumbing backing up when you are out of the
12 property?
13 A: I did not.
14 Q: Do you have any idea or recollection as to how many times
15 Dr. Sarb visited the property prior to closing?
16 A: I do not.
17 Q: Okay. And so, did Dr. Sarb ever have you ask the sellers
18 through their agent about whether there had been any water in
19 the basement?
20 A: I believe she did.
21 Q: That that occur prior to closing?
22 A: It did; it did.
23 Q: Okay. And tell us how that occurred. Was it a text, was
24 it emails, was it just a phone call?
25 A: As my memory recalls, I called Adam, which was the other

1 broker, and asked him the question.

2 Q: Okay. And what was the response that was relayed back to
3 you?

4 A: There was none in the house.

5 Q: No what?

6 A: There was no water, no damage -- no water damage to the
7 house.

8 Q: Did they relay to you that there hadn't been any water
9 problems in the house?

10 A: No, they did not.

11 Q: Excuse me. What did they relay to you?

12 THE COURT: Is there an objection?

13 MR. LOVE: There is an objection, asked and answered. He
14 answered the question, and he's asking it again because he
15 didn't like the answer.

16 MR. GROTE: I'm clarifying what his answer is.

17 THE COURT: Ask the question again.

18 BY MR. GROTE:

19 Q: What was the question posed to the defendant's real
20 estate agent about whether there was any water in the
21 basement?

22 THE COURT: All right. I'll allow the question.
23 You can answer it.

24 A: There was not.

25 Q: No water or no answer?

1 A: Now you got me a little -- do you mind repeating that
2 question one more time?

3 Q: Okay. So, when you reached out to the sellers' real
4 estate agent and asked about whether there was any water in
5 the basement, did that indicate whether there was any water in
6 the basement previously?

7 A: It's my recollection Adam told me that he did not believe
8 there had been any water in the basement.

9 Q: Okay. Do you recall when that discussion took place?

10 A: I do not.

11 Q: Was it pre-closing?

12 A: It was.

13 Q: Did Dr. Sarb, after closing, ever reach out to you about
14 any concerns about water in the basement?

15 A: Yes.

16 Q: Okay. Did you do anything in response?

17 A: Yeah. I don't remember how far along after closing it
18 was, but she called and said there was water in the basement,
19 do I know anybody that could look at it, and I called some --
20 I believe it was Jamie Hoover and John Sims, and we met over
21 there.

22 Q: Was there water in the basement when you went over there?

23 A: I believe there was.

24 Q: In your experience as a real estate agent, based on what
25 you saw, is that something that should be listed on the

1 property disclosures?

2 A: After closing?

3 Q: I'm sorry?

4 MR. LOVE: Objection.

5 THE COURT: Sustained.

6 Don't answer that question. It calls for speculation.

7 Ask another question, please.

8 BY MR. GROTE:

9 Q: Did you have any other involvement after that?

10 A: I believe we tried to help her find someone to mitigate
11 it. And then after that, I was -- I believe a fair way to say
12 I was phased out of that process.

13 Q: Okay.

14 MR. GROTE: I beg the Court's indulgence.

15 BY MR. GROTE:

16 Q: Mr. Etheridge, when you received the, I guess, written
17 disclosure statement, did you -- was that form provided to
18 House Master to review?

19 A: No.

20 MR. GROTE: I don't believe I have any further questions,
21 Your Honor.

22 THE COURT: Mr. Love?

23 MR. LOVE: Thank you, Your Honor.

24 CROSS-EXAMINATION OF JOHN ETHERIDGE, III, BY MR. LOVE:

25 Q: Good afternoon, Mr. Etheridge. How are you?

1 A: Good.

2 Q: Let's try that again. One second.

3 Good afternoon, Mr. Etheridge. How are you?

4 A: I'm good.

5 Q: Good to see you again.

6 A: You, too.

7 Q: I'm gonna show you what's been marked as Defendant's

8 Exhibit 1. Can you tell me what that is?

9 A: That is the MLS agent information sheet.

10 Q: Is that a document that RE/MAX creates, I guess using a

11 computer program?

12 A: No, it's not. It's through LLR -- excuse me -- the

13 Realtors Association.

14 Q: Okay. So, in conjunction with -- in this scenario it

15 would be the Phillips, but in conjunction with the sellers of

16 the home, you interview them and take down information, you

17 take pictures of the home, and you post it online.

18 A: Yes.

19 Q: Okay. Do y'all have somebody -- and I know you're not

20 there anymore, so if I say do y'all, I meant did y'all, and I

21 apologize about that.

22 A: Fair enough.

23 Q: Did y'all have someone on staff who would go in and take

24 those pictures?

25 A: Yeah. I believe at this point we did.

1 Q: Okay. And you have somebody who'd type up the little
2 synopsis and make it look professional and attractive, I
3 guess.

4 A: Depending on the agent, but yes, Adam did.

5 Q: Okay. And I know you probably weren't there when that
6 happened because he was the listing agent, but did you hear
7 word-of-mouth in the office or on the street when they were
8 taking those pictures, you hear anybody in the office like, oh
9 my gosh, this house is ratchet?

10 A: No. We didn't discuss properties.

11 Q: Oh, this -- there was water all in the basement when we
12 were there?

13 A: No.

14 Q: There were roaches everywhere?

15 A: No.

16 Q: There were toilets backing up and gargling?

17 A: No.

18 Q: There were cracks all in the walls and in the ceiling?

19 A: No.

20 Q: Well, let's go ahead and list it. Anybody say that?

21 A: No.

22 Q: Okay. Your first visit -- I believe your first visit to
23 the house was June 14th, 2019, which is when Dr. Sarb said her
24 first visit was. Is that accurate?

25 A: Yes.

1 Q: You didn't go in that house before then?

2 A: No. My first time in the house was with Dr. Sarb.

3 Q: All right. When you went in the house on June the 14th

4 -- it was listed on the 13th, right?

5 A: Yep.

6 Q: Okay. Y'all went in there on the 14th, when you went in

7 that house with Dr. Sarb, was anybody else there?

8 A: I do not remember. I don't.

9 Q: Okay. All right. I guess they had a little lockbox on

10 the front-door?

11 A: They do.

12 Q: All right. And you opened the lockbox, got the key, put

13 the key in, open the door?

14 A: We -- that's exactly right.

15 Q: Turn the lights on?

16 A: Yep.

17 Q: See a bunch of roaches scatter when you turned the lights

18 on?

19 A: Nope.

20 Q: Okay. You walk through the house. Did you notice any

21 toilets gurgling on that day?

22 A: No.

23 Q: Did you notice any sewage backup?

24 A: No.

25 Q: Did you go in the basement?

1 A: Yes.

2 Q: Did you notice any flooding in the basement?

3 A: No.

4 Q: Did you notice the basement wall seeping or peeing where
5 water was just flowing out of it like a fountain?

6 A: No.

7 Q: Did you notice on the floor there were stains or water
8 stains or big puddles?

9 A: No.

10 Q: Did you notice furniture in the basement?

11 A: Yes.

12 Q: Do you remember seeing a couch?

13 A: I believe so.

14 Q: An ottoman?

15 A: Yeah.

16 Q: A rug?

17 A: I do not remember the rug, but ---

18 Q: Okay. We'll skip rug. Kids sports equipment?

19 A: Yes.

20 Q: A weight bench?

21 A: Yes.

22 Q: Another weight bench in the other part of the basement?

23 A: I just remember one.

24 Q: Okay. Did you notice any mold down there?

25 A: No.

1 Q: Was there any mold down there?

2 A: I didn't see any.

3 Q: Okay. Any mildew on the furniture, like you may want to
4 watch out, this is like white mildew?

5 A: No.

6 Q: Okay. I know you testified that you were in there five
7 or 10 times. And I believe that Dr. Sarb you were in there or
8 around the house when John Sims looked at one item, and then
9 also did his repair list.

10 A: Sure. I was there with John.

11 Q: So, I'm going to try to chop this down. I'm not going to
12 go through all of those times you were at the house. Is it
13 fair to say that no matter when it was that you were at this
14 house and no occasion did you see toilets gurgling?

15 A: No.

16 Q: Roaches everywhere?

17 A: No.

18 Q: Water in the basement?

19 A: No.

20 Q: A little bit louder, sorry.

21 A: No.

22 Q: Walls seeping or peeing?

23 A: No.

24 Q: Cracks all in the walls and ceiling?

25 A: May've noticed some settling. I think there was a little

1 bit of settling near one doorjamb.

2 Q: But nothing like some earthquake or foundation shifting
3 that's been going on, right?

4 A: No.

5 Q: Let me see here. On June 26th, 2019, so that would've
6 been some 12 days after you went in there, do you remember Dr.
7 Sarb texting you indicating that there was dampness up in the
8 crawlspace, and she wanted to know what had happened to that
9 brick up in the front right corner?

10 A: I don't recall, but I don't have the text if you -- I
11 mean I don't mind looking at it. Yeah, I mean, that -- that
12 clearly happened, yeah.

13 Q: And you got a response on that, didn't you?

14 A: I did.

15 Q: And that says, that's where a car -- before the Phillips
16 owned it, that's where a car hit the front right corner of
17 that house. It came down Park Avenue, didn't stop, hit the
18 front right corner of that house and caused that brick to
19 crack; isn't that right?

20 A: That's right.

21 Q: And that's what John Sims was inspecting, wasn't it?

22 A: It was.

23 Q: And that's the text that the plaintiff -- the only text,
24 the only communication about dampness in the crawlspace?

25 A: I believe that's right.

1 Q: We don't have any other text about flooding or water or
2 water damage that you have produced to me, do you?

3 A: I agree with that.

4 Q: And you produced your entire file, it was texts, it was
5 emails, it was what, 300 pages, wasn't it?

6 A: All the information I had on the ---

7 Q: In fact, the last text that you produced to me was
8 between you and Dr. Sarb, and it was after I sent you a
9 subpoena. Do you remember that text?

10 A: I do not. I'm pretty sure I ---

11 Q: I sent you a subpoena and asked for a copy of your file,
12 and you texted Dr. Sarb asking if you should produce it, and
13 she told you no. Do you remember that?

14 A: I do not, but if you -- that's what happened.

15 MR. LOVE: That's all I have, Judge. Thank you.

16 THE COURT: All right. Is there any redirect?

17 MR. GROTE: Your Honor, may we approach?

18 THE COURT: Yes, sir.

19 (REPORTER'S NOTE: Bench conference is held off the record in
20 the presence but outside the hearing of the jury.)

21 THE COURT: All right. Is there any redirect?

22 MR. GROTE: Just very briefly, Your Honor.

23 THE COURT: All right.

24 REDIRECT EXAMINATION OF JOHN ETHERIDGE, III, BY MR. GROTE:

25 Q: Mr. Etheridge, I'll try to be brief here. As a real

1 estate agent, do you list properties for sellers as well as
2 help buyers find property?

3 A: I do. I'm a buyer and seller rep; uh-huh, (affirmative
4 response).

5 Q: Okay. So, when you are a listing agent, do you have your
6 clients prepare their house in good shape to be shown?

7 A: Sure.

8 Q: Okay. I mean, would you advise or recommend that your
9 clients leave the house in in a, I guess, unclean or
10 dilapidated condition if they're trying to sell it?

11 A: No.

12 MR. GROTE: No further questions.

13 MR. LOVE: I got nothing, Your Honor. Thank you.

14 BY THE COURT:

15 THE COURT: Thank you, Mr. Etheridge, for being here.
16 You may step down. You're free to go.

17 All right. Is there any member of the jury panel that
18 needs to take a break or are we ready hear the next witness?

19 All right. We're gonna take about a 10-minute break.
20 Please don't discuss this case while you're out, and I
21 appreciate your attention.

22 (REPORTER'S NOTE: Jury exits courtroom @ 2:51 p.m. The
23 following takes place outside the presence of the jury.)

24 THE COURT: Is there anything we need to discuss?

25 MR. LOVE: I have him subpoenaed as well. I didn't know

1 if I needed to say on the record that I release him or tell
2 him, but he's going on out, so ---

3 MR. GROTE: We had them under subpoena, too, so we
4 released him.

5 MR. LOVE: At any rate, he's gone.

6 THE COURT: All right. Well, if we need them back, I
7 imagine we can find him.

8 MR. LOVE: Okay.

9 **RECESS - 2:52 P.M.**

10 *****OFF THE RECORD*****

11 **ON THE RECORD - 3:07 P.M.**

12 (REPORTER'S NOTE: Jury enters courtroom @ 3:08 p.m.)

13 THE COURT: All right. Is plaintiff ready to call your
14 next witness?

15 MS. GIOVANOLI: We are, Your Honor.

16 THE COURT: All right.

17 MS. GIOVANOLI: We'd call to the stand Tara Bair.

18 THE COURT: Okay.

19 TARA BAIR, HAVING BEEN SWORN,

20 TESTIFIED AS FOLLOWS:

21 THE CLERK: Please be seated and state your name for the
22 record.

23 MS. BAIR: Tara Bair.

24 THE COURT REPORTER: Can you spell your last name,
25 please?

1 MS. BAIR: B-A-I-R.

2 DIRECT EXAMINATION OF TARA BAIR BY MS. GIOVANOLI:

3 Q: Good afternoon, Ms. Bair. Thank you for being here.

4 A: Thank you.

5 Q: Where are you from?

6 A: Hartsville, South Carolina.

7 Q: Where do you live now?

8 A: Florence, South Carolina.

9 Q: How long have you lived in Florence?

10 A: For at least 10 years.

11 Q: And what do you do? What is your profession?

12 A: I'm a nurse for pain management -- the nursing supervisor
13 for pain management.

14 Q: Where do you work?

15 A: Florence Neurosurgery & Spine at McLeod.

16 Q: How do you know Dr. Sarb?

17 A: I work for her. I'm her nurse.

18 Q: And how long have you known her?

19 A: Six years.

20 Q: Were you aware that Dr. Sarb was searching for a house in
21 2019 to purchase?

22 A: I was.

23 Q: Did you know that Dr. Sarb purchased 550 Wisteria in July
24 2019?

25 A: I did; yes, ma'am.

1 Q: Have you ever seen the house?

2 A: I have.

3 Q: In real life or in pictures?

4 A: Yes. In pictures when she was getting ready to purchase
5 it, and I have been to the house one time.

6 Q: How many times have you been to the house?

7 A: Just once.

8 Q: Okay. Did you ever go into the basement when you went to
9 the house?

10 A: I did.

11 Q: And when was that when you visited the house?

12 A: It was this past summer. She had given -- or it might've
13 been the summer before last. She gave my daughter some -- a
14 bed that she was -- that was her daughter's and -- when she
15 was cleaning out her previous house. And my husband and I
16 were over there to get it, and some things were down in the
17 basement. And then my -- no, that was a different time. I
18 apologize. I was not at the house that day. This was when we
19 were helping her pack things to take to her daughter. It was
20 like a lounge set and everything. And my husband came over,
21 because she was having trouble to get it into the trailer
22 because the trailer was so small. My husband went to her
23 house at the beach that previous time, and it was not at her
24 residence here in Florence to get the bedding. I just got it
25 switched.

1 Q: Okay. So, was that about 2022?

2 A: Yes.

3 Q: Okay. Up until when she purchased the house in July
4 2019, what was Dr. Sarb like?

5 A: She was bubbly, happy, talkative.

6 Q: And how was Dr. Sarb leading up to the closing on the
7 house at 550 Wisteria?

8 A: She was very excited.

9 Q: Did she talk about the house?

10 A: She did.

11 Q: What did she say?

12 A: Just plans that she had for the house, what she wanted to
13 do, and she was just excited to make a place her own and make
14 a home for herself in Florence because she had been renting
15 for so long, and she was just very excited.

16 Q: Did she talk about any problems with 550 Wisteria prior
17 to her purchase of -- prior to the closing on the house?

18 A: No, nothing other than like aesthetic stuff that she
19 wanted to change for herself.

20 Q: So then after the closing, did Dr. Sarb change in anyway?

21 A: After the closing? Yes.

22 Q: And how is that? Can you describe that for the jury?

23 A: She was just really stressed because she had some issues,
24 and she talked to the staff about some of the issues that she
25 was having. And she was, I could tell, more tired, I feel

1 like, because she just wasn't sleeping well because she
2 started coughing, and she was just having problems with her
3 breathing and her acid reflux. And I know she wasn't getting
4 a good night's rest. She wasn't much of a complainer, but she
5 would indicate that she was tired because she wasn't able to
6 sleep well, and she was coughing a lot, and that was leading
7 up towards like COVID. So, we were really -- you know,
8 patients, we had to explain to patients that's not what's
9 going on because everybody was very stressed with the COVID
10 situation, and if you so much as coughed, anybody was
11 concerned. So, we make sure to let them know, you know, this
12 is more of an acid reflux issue; it's not COVID.

13 Q: So, before she closed on the house, would you describe
14 Dr. Sarb as a complainer?

15 A: Not at all. That's one thing I can definitely say.

16 Q: So, other than the cough, did she have any other symptoms
17 that she talked about with you?

18 A: She was just fatigued, and the cough was mainly what I
19 noticed.

20 Q: Okay. Did she have to reschedule patients?

21 A: Not due to health, but due to her having to meet the
22 contractors, yes, because again, everything kind of happened
23 around COVID, so she was at the mercy of when someone could
24 meet her. So, they'd tell her the time, she'd tell us, we'd
25 tentatively move everybody, and then she'd say they'd

1 cancelled, because she normally wouldn't know until right at
2 the last minute that they had canceled, and often she went --
3 had left to meet them and then they didn't show up and
4 something had to be rescheduled, and she'd have to reschedule
5 patients again.

6 Q: Did she tell you about the problems with 550 Wisteria
7 after she closed on the property?

8 A: She didn't disclose much. She's very private. She's
9 talked about it, you know, very little about some things that
10 were going on, but not to the full extent.

11 Q: Did you at that time know anything about water intrusion
12 in her basement?

13 A: I knew that she had water in the home. I went out on
14 maternity leave, and when I got back she was not able to stay
15 there. So, a lot of, like, that had escalated up into the
16 situation. I know it was holding water, and there were often
17 times that she said she was worried when it would rain a lot.
18 She was worried what the state of the home was going to be.
19 She was nervous to go out of town because she really wasn't
20 sure what she was gonna come back to and what the home was
21 gonna look like if we were gonna get water a lot. We talked
22 about weather a lot as far as the home, and she was just
23 really nervous anytime there were lots of days with rain. She
24 talked about that often.

25 Q: Did she talk to you about any other problems with the

1 house?

2 A: Mainly the basement issues.

3 Q: Did you talk to you about any issues with plumbing?

4 A: Not to my knowledge, not that I recall.

5 Q: So, you're aware that she moved out of the house. Do you
6 know when she moved out of the house at 550 Wisteria?

7 A: I know it was while I was on maternity leave. So, I had
8 my daughter -- I went out on maternity leave on January 6th.
9 I had her on the 7th, and I think I returned to work on the
10 24th of February. So, it was during that timeframe. And I --
11 I had a replacement for me. She was a friend of mine. And
12 Dr. Sarb talked to me as well, and I was -- it was
13 communicated to me that she was having to move out during that
14 time when I was on maternity leave. So, I just know it was
15 within that timeframe.

16 Q: Okay. So then, when you get back from maternity leave,
17 how would you describe Dr. Sarb?

18 A: She seemed more fatigued, and she was coughing a lot
19 more, and she kept saying, you know, her acid reflux was a lot
20 -- a lot worse. She was just -- she was very just tired and
21 kind of worn down. She was very stressed, very, very stressed
22 about the situation with the house.

23 Q: Once she moved out of the house, did you notice any
24 change in her symptoms?

25 A: It took a little while, but yeah, the coughing started to

1 get better when she was not in the home anymore.

2 Q: Do you still work with Dr. Sarb?

3 A: I do.

4 Q: Yeah. How is she today?

5 A: Like this -- today?

6 Q: How would you describe Dr. Sarb today as in ---

7 A: Present time just working with her currently? She's just
8 been very stressed, very emotional. I've never seen her be
9 emotional. We've -- as working with her for six years, you
10 see a lot of things happen the staff members and yourself.
11 And I would say that it's changed her a lot in her emotional
12 response to things, because I can see that she outwardly
13 carries her stress a lot more than I noticed before. Like I
14 said, she was a very private person, and I think that it's
15 kind of worn on her a lot.

16 Q: Does she still have any coughing problems?

17 A: I do see flareups of coughing that she has; yes, ma'am.

18 Q: And how about acid reflux?

19 A: Yeah. We talk about it because there's been an issue
20 with her getting her medication that she is supposed to take,
21 and I know that she, you know, we talk about the sleeping
22 aspect of it more so than anything at how she has to sleep, so
23 that the acid reflux is not as bad, and she can sleep through
24 the night.

25 Q: Is her cough now any better or worse than it was when she

1 first moved into 550 Wisteria?

2 A: It's probably better now than the original, because she
3 is on a medication that she could not originally get.

4 Q: Thank you for answering my questions. Answer any
5 questions that counsel may have.

6 A: Okay.

7 THE COURT: Mr. Love?

8 MR. LOVE: Thank you, Your Honor.

9 CROSS-EXAMINATION OF TARA BAIR BY MR. LOVE:

10 Q: Ms. Bair, did I understand you correctly that Dr. Sarb is
11 your supervisor at work?

12 A: I work for her, but my direct supervisor is Tammy
13 Williams, so she is who has control over me as far as
14 clinical.

15 Q: All right. Dr. Sarb is a doctor in the same office you
16 work in where you are a nurse at Florence Neurosurgery,
17 correct?

18 A: Correct.

19 Q: Okay. Prior to June 14th, 2019, had you ever set foot in
20 550 Wisteria Drive?

21 A: No.

22 Q: You indicated that Dr. Sarb has showed you pictures of
23 the house prior to purchasing it; is that right?

24 A: We just saw it on Zillow, and she showed me pictures;
25 yes, sir.

1 Q: In any of the pictures did you notice cockroaches
2 everywhere?

3 A: No.

4 Q: Did you notice that the toilets or sewage were backing
5 up?

6 A: No.

7 Q: Did you notice that the basement was flooded?

8 A: No, sir.

9 Q: Did you notice that the walls were peeling?

10 A: No, sir.

11 Q: Did you notice that there was any seeping coming out of
12 the walls?

13 A: No, sir.

14 Q: Are you familiar at all with Dr. Sarb's medical history
15 prior to June 2019?

16 A: I am not.

17 Q: And your husband went to move furniture, I think I was a
18 little confused on the year, but I think it was the summer of
19 '22?

20 A: I believe so.

21 Q: Was it '22 or '21?

22 A: I think it was '22; it was last year.

23 Q: Okay.

24 A: I was -- gotten confused. She gave me the bedding in
25 2021, because my daughter was about to turn one, and I was

1 gonna put her in a toddler bed. But, we decided instead of
2 doing that we should just do a big girl bed. So, that was
3 2021, and that was not at the Wisteria residence. I got
4 confused. I was thinking about her giving me the furniture.
5 We went over to her house that one day because she was having
6 trouble putting outdoor furniture, patio furniture that she
7 was carrying to Sarah in Atlanta. So, my husband stopped by
8 to kind of help her organize the trailer because it was just a
9 tight fit.

10 Q: Okay. So, the summer of '21 is when you went to her
11 house at the beach to get a toddler bed.

12 A: 2022. It was last year. I want to say it was in Sept --
13 it might've been in September. My husband had just come home
14 from a work trip, and I want to say it was like towards the
15 end of September 2022.

16 Q: Okay. But I'm asking about the toddler bed. That was in
17 the summer of '21 you went to the beach to her house?

18 A: I did not; my husband did.

19 Q: Okay. Your husband went to the beach in the summer of
20 '21 to pick up the toddler bed; is that right?

21 A: Yes.

22 Q: Okay. I assume -- are you familiar with Dr. Sarb's
23 personnel file at the office?

24 A: What do you mean? In regards to ---

25 Q: Florence Neurosurgery has a personnel file for each

1 employee as far as the work history and stuff like that.

2 A: No, I do not.

3 Q: Are you familiar with anything in her personnel file that
4 would limit her activities at Florence Neurosurgery or say
5 that she couldn't perform certain tasks or could perform
6 certain tasks?

7 A: No. I'm not privy as to any information like that.

8 Q: Thank you.

9 MS. GIOVANOLI: No further questions, Your Honor.

10 THE COURT: All right.

11 Ms. Bair, thank you for being here, and you are free to
12 step down.

13 Is there any issue with her being released or if she is
14 on subpoena?

15 MS. GIOVANOLI: No objection.

16 MR. LOVE: I don't have her subpoenaed, no.

17 MS. GIOVANOLI: Our next witness is Lynn Dennis.

18 THE COURT: All right.

19 LYNN DENNIS, HAVING BEEN SWORN,

20 TESTIFIED AS FOLLOWS:

21 THE CLERK: Please be seated and state your name for the
22 record.

23 MS. DENNIS: Lynn Dennis.

24 DIRECT EXAMINATION OF LYNN DENNIS BY MS. GIOVANOLI:

25 Q: Good afternoon, Ms. Dennis. Thank you for being here.

1 Where are you from?

2 A: I am from Hemingway, South Carolina.

3 Q: Okay. And do you live in Florence now?

4 A: No, ma'am.

5 Q: Okay. How long have you lived in Hemingway?

6 A: I have been in Hemingway for seven years.

7 Q: What is your current occupation?

8 A: I am a certified medical assistant.

9 Q: And where do you work?

10 A: At Florence Neurosurgery & Spine.

11 Q: Do you know Dr. Sarb?

12 A: Yes, ma'am.

13 Q: And how do you know Dr. Sarb?

14 A: She is my boss.

15 Q: Were you aware in 2019 that she was looking for a house

16 to purchase?

17 A: Yes, ma'am.

18 Q: And leading up to July 2019, did she ever discuss with

19 you anything about 550 Wisteria Drive?

20 A: Yes, ma'am.

21 Q: Were you aware that she was looking at the house to

22 purchase?

23 A: Yes, ma'am.

24 Q: How would you describe how she felt about 550 Wisteria

25 prior to her purchase of 550?

1 A: She was excited.

2 Q: Up until she purchased 550 Wisteria, how would you
3 describe Dr. Sarb in general?

4 A: Very outgoing, bubbly, you know, she was very in tune to
5 her patients and to her staff.

6 Q: Was she a complainer at all?

7 A: No.

8 Q: Were you ever able to visit 550 Wisteria?

9 A: Yes, ma'am.

10 Q: Okay. And was that prior to her purchasing?

11 A: No, ma'am; it was after.

12 Q: How was Dr. Sarb leading up to the closing of 550
13 Wisteria?

14 A: As I said, you know, very outgoing, very bubbly. You
15 know, she cared about us, she cared about her patients, you
16 know, she still does, but it has just taken a very big toll on
17 her.

18 Q: Did she show you any pictures of 550 Wisteria?

19 A: Yes, ma'am.

20 Q: Prior to her closing on it?

21 A: No, ma'am, after.

22 Q: Did you talk about the house before she actually
23 purchased it?

24 A: Yeah.

25 Q: What did she say about it?

1 A: She was excited about, you know, buying it and getting
2 ready to move in and everything.

3 Q: Did she tell you about any problems that the house had
4 prior to her closing on the house?

5 A: No, ma'am.

6 Q: Did Dr. Sarb change in any way after she purchased 550
7 Wisteria?

8 A: When all the issues started taking place, you know, and
9 coming to a head, she -- her disposition changed, I guess you
10 would say.

11 Q: Okay. And can you kind of explain what you mean by that?

12 A: She was, you know, worried. You know, she wasn't
13 sleeping. We need to ask her, you know, how she was doing,
14 and she was just like, you know, I'm not sleeping, I'm not --
15 you know, I'm having a hard time right now.

16 Q: And what is your understanding as to why her disposition
17 changed?

18 A: Due to the water issues, the mold, the mildew that was
19 found. It took a toll on her health, also.

20 Q: Did you have any other symptoms that you knew about?

21 A: Before or ---

22 Q: After.

23 A: After, yeah. She got really sick after purchasing the
24 home, and for about six months to a year she was having
25 respiratory issues.

1 Q: Did you have any other symptoms?

2 A: Not that I can think of.

3 Q: Did she have a cough?

4 A: Yes, a very bad cough. There were some days where she
5 could hardly breathe or talk at times.

6 Q: I know you testified that she is your boss, but how
7 closely do you all work from day to day?

8 A: Very close.

9 Q: Could you kind of describe that for the jury?

10 A: I'm her MA. So, I do all of her medications for her
11 patients. She will bring out, you know, I order a lot of MRIs
12 and et cetera for her. So, I have interactions with her all
13 day long.

14 Q: At any point between the time that -- well, let me say
15 this way. After she closed on the purchase of this home, did
16 she have to reschedule patients?

17 A: Yes, ma'am.

18 Q: And why did she have to reschedule patients?

19 A: That was to meet with the contractors and stuff once, you
20 know, the issues were found.

21 Q: When did she move out of the house?

22 A: I don't know a date to be honest with you, but ---

23 Q: Well, let me put it this way. Were you aware that she
24 moved out of the house?

25 A: Yes.

1 Q: After she moved out of the house, did you notice any
2 change in Dr. Sarb?

3 A: Her health improved drastically, you know, being able to
4 breathe better, being able to sleep better. But, you know,
5 she was still concerned about what was happening there.

6 Q: Do you know about how long after she moved out of the
7 house when you noticed those changes?

8 A: Probably within 3 to 4 months.

9 Q: And how -- describe generally how Dr. Sarb is today in
10 present-day, not actually today but at present now that -- you
11 continue to work with her.

12 A: She's very stressed. You know, she doesn't show that to
13 us, but we can tell, you know, that she's very stressed with
14 everything that has taken place.

15 Q: I have no further questions. If you will, answer any
16 questions that counsel may have.

17 A: Okay.

18 THE COURT: Mr. Love?

19 MR. LOVE: Thank you, Your Honor.

20 CROSS-EXAMINATION OF LYNN DENNIS BY MR. LOVE:

21 Q: Is the word bubbly a word that y'all typically use around
22 the office to describe each other?

23 A: Yes, sir.

24 Q: It is?

25 A: Uh-huh, (affirmative response).

1 Q: And on June 14th, or as of June 14th, 2019, had you ever
2 been in 550 Wisteria Drive?

3 A: If that was before she bought the house, no, sir; I had
4 not been in it.

5 Q: Yes, ma'am. So, before June 14th, 2019, you had never
6 been in Wisteria?

7 A: No, sir.

8 Q: Okay. Are you familiar with Dr. Sarb's medical history?

9 A: I've worked with her 10 years, so, I mean, prior to, you
10 know, me working with her, I don't have a clue. But, after I
11 started working with 10 years ago, you know, she had very
12 little health issues that I acknowledge.

13 Q: Were you aware that she has had shortness of breath
14 before?

15 A: Excuse me?

16 Q: Were you aware that she had shortness of breath?

17 A: No, sir.

18 Q: Are you familiar with Dr. Sarb's personnel file in the
19 office?

20 A: No, sir.

21 Q: Okay. So, you wouldn't know whether there is anything
22 that would have limited her ability to function or perform as
23 a provider in your office; is that accurate?

24 A: That's accurate.

25 Q: Thank you.

1 THE COURT: Anything further?

2 MS. GIOVANOLI: No redirect questions, Your Honor.

3 THE COURT: All right. Ms. Dennis, thank you for being
4 here. You are free to go.

5 MS. DENNIS: Thank you.

6 THE COURT: All right.

7 MR. GROTE: Just for the record, Your Honor, we would
8 release her from her subpoena.

9 THE COURT: Okay.

10 MR. GROTE: The plaintiff next calls Heath McCollum.

11 THE COURT: Okay.

12 HEATH MCCOLLUM, HAVING BEEN SWORN,
13 TESTIFIED AS FOLLOWS:

14 THE CLERK: Please be seated, and state your name for the
15 record.

16 MR. MCCOLLUM: Thank you. My name is Heath McCollum.

17 THE COURT REPORTER: Can you spell your last name for me
18 please?

19 MR. MCCOLLUM: M-C-C-O-L-L-U-M.

20 THE COURT REPORTER: Thank you.

21 THE COURT: Mr. Grote?

22 DIRECT EXAMINATION OF HEATH MCCOLLUM BY MR. GROTE:

23 Q: Good afternoon, Mr. McCollum. How are you?

24 A: Doing good. How are you?

25 Q: Good. I'll try to keep it brief with you here today.

1 What kind of work do you do?

2 A: Man, you got a minute? We do a little bit of everything,
3 but land management, drainage solutions, mainly.

4 Q: What does drainage solutions encompass?

5 A: If you've got any kinds of water intrusion issues, not
6 from supply lines and plumbing standpoints but water intrusion
7 from weather, acts of God, grading, collection or corrections,
8 stuff of that nature.

9 Q: How long have you been in that business?

10 A: About 26 years.

11 Q: Do you install something called French drains or
12 foundation drains?

13 A: We do.

14 Q: How long have you been doing that?

15 A: Probably about 12 years.

16 Q: All right. Did you perform some work for Dr. Sarb at 550
17 Wisteria?

18 A: I did.

19 Q: And before I get into that, what is the name of your
20 company?

21 A: Nature's Barber.

22 Q: All right. Can you just generally describe what -- well,
23 let's back up. Did you install some sort of French drainage
24 system for Dr. Sarb at 550 Wisteria?

25 A: We did.

1 Q: Would you generally describe what that is and what it
2 entailed?

3 A: We did French drains around the perimeter of the
4 foundation, as well as curtain drains, downspout drains, and
5 surface drains.

6 Q: Okay. Did that require digging a trench around the
7 house?

8 A: It did.

9 Q: Okay. Can you tell me or tell this jury, you know, what
10 y'all saw when you started digging around the house?

11 A: Sure. So, we dug a trench around the foundation, around
12 the entire house to reveal the foundation and where the wall
13 and the foundation come together, the brick in the foundation.
14 And once we dug the trench around the house, it relieved a lot
15 of pressure, so a lot of water was flowing around the house,
16 and that actually took a few days to stop flowing, because we
17 couldn't do our job until the water was gone. So, once you
18 dig the trench around the house and you put -- it's called
19 EPDM, it's a roofing membrane type deal, it's 60 mil, about
20 1.5 millimeters thick, and you put it around the entire house
21 where the foundation and the brick met, as well as a liquid
22 membrane, a sealant. And you have to wait 24 hours or so for
23 that cure, depending on what you use. And then after that
24 secure, we was able to fill the trench with washed stone, as
25 well as perforated drain pipe, and that was your French drain

1 portion. And then we would tie the downspouts in where the
2 gutters go around the house as well, and run them out with
3 separate lines. And so then once that was all done, we could
4 fill it all back in with washed stone to about eight inches
5 before the top of the surface to have a decent seedbed for
6 grass and/or bed material.

7 Q: How much water -- or how would you describe the amount of
8 water that you saw when you do around the house?

9 A: It was a lot. I mean, like I said, it took the better
10 part of two days, maybe just under -- I mean, including that
11 night, 2 1/2 days for the water to stop, and there was no rain
12 between the time we dug the trench to the time we covered the
13 trench up. I don't know exactly how much water, but it was a
14 lot.

15 Q: Okay. And in your many years of doing this, had you ever
16 seen that much water before?

17 A: Not around a house I haven't, not to keep coming out like
18 that. But, you know, it's a higher grade in front of it, so
19 there was a lot of pressure. Once that pressure was relieved,
20 that water released.

21 Q: Would you say that this would be one of the, I guess,
22 worst that you've seen?

23 A: Probably.

24 Q: Could you tell, based on digging, where the water was
25 coming from?

1 A: No, it seemed to be trapped in the basement area. We
2 were hoping that it was maybe water coming from ahead, maybe
3 the higher street nearby. But once a trench was dug, no
4 border visibly came into our trench from the unbothered
5 grounds ahead of it, above it. So, I'm not sure where water
6 come from. We were thinking maybe a supply line busted or
7 something, but that wasn't the case.

8 Q: Was the water tested to make sure that wasn't the case?

9 A: That water was tested to make sure there was no chlorine
10 content or any kind of supply line or sewage.

11 Q: So, would you describe the water found as so-called
12 groundwater?

13 A: Definitely.

14 Q: Okay. Did you ever go into the basement area of 550
15 Wisteria?

16 A: I did.

17 Q: Okay. Now, was there kind of a -- I guess when you go
18 through the door, was there sort of a, I guess, what's been
19 described as a man cave or a more finished room and then a
20 more unfinished back room?

21 A: Yeah. I went to -- through both of those.

22 Q: Okay. How many times do you think you were back there?

23 A: Ten.

24 Q: All right. Did you ever see water back there?

25 A: Seven out of 10 times before the fix.

1 Q: All right. How much water do you think you saw out
2 there?

3 A: Well, I remember specifically before we performed any
4 work when we were looking at the job, that it rained about an
5 eighth an inch in Florence that day. And I remember there
6 being a couple of inches of water in the basement, because the
7 sump pump that was already there wasn't performing at that
8 time. And then it would slowly subside. And if it rained,
9 it'd come right back.

10 Q: Okay. As part digging the trench, did you have to remove
11 a fence that was kind of on the property line?

12 A: I did, a brick fence.

13 Q: Okay. What about some brick stairs, did that have to be
14 removed to do your work?

15 A: They did in order to get the trench.

16 Q: What about the back patio?

17 A: What's that?

18 Q: What about the back patio?

19 A: We had to remove that as well. We had to remove enough
20 of that to get the trench through to wrap the entire system.

21 Q: Did the driveway have to be replaced due to your work?

22 A: The driveway had to be removed to do grading to stop the
23 water from running so fast down the side of the house, and
24 that was the only way we could grade it.

25 Q: Okay.

1 A: It was an asphalt driveway.

2 MR. GROTE: I beg the Court's indulgence.

3 No further questions -- no further questions for the
4 witness, Your Honor.

5 THE COURT: Mr. Love?

6 MR. LOVE: One second, Your Honor, please, sir.

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION OF HEATH MCCOLLUM BY MR. LOVE:

9 Q: Mr. McCollum?

10 A: Yes, sir.

11 Q: How you doing?

12 A: Good.

13 Q: Good to see you again.

14 A: Good to see you.

15 Q: It's been a few years.

16 A: It has.

17 Q: Prior to June 14th, 2019, had you ever gone to 550
18 Wisteria Drive?

19 A: I don't know the answer to that question. I had never
20 been there I went the first time, but I don't know what date
21 that was.

22 Q: All right. So, that would've been the date that Dr. Sarb
23 entered into the contract to purchase the property. So, what
24 I'm asking you is, I guess, generally speaking, before she
25 owned the property had you ever been to 550 Wisteria?

1 A: No.

2 Q: Did you have any information available to you from Dr.
3 Sarb or anybody else that prior to June of 2019 there was any
4 problems with water in this basement, flooding, walls leaking,
5 stuff like that?

6 A: No.

7 Q: As part of your project, I believe, correct me if I'm
8 wrong, you pulled up a Magnolia that had some root issues,
9 roots were growing all over the place or something; is that
10 right?

11 A: There was a decent size tree in front of the house that
12 had to be removed, yes.

13 Q: It was a big old Magnolia, wasn't it?

14 A: It was huge.

15 Q: And those roots were growing towards the house?

16 A: Roots going towards the house, yeah.

17 Q: And everywhere else, probably.

18 A: They were -- it was a big root system.

19 Q: I'm gonna show you what has been marked previously as
20 Plaintiff's Exhibit 182. Do you need my readers?

21 A: No, I got it.

22 Q: All right. Plaintiff paid you a number of invoices. It
23 looks like you charged on one invoice 44,745; is that right?

24 A: That's correct.

25 Q: The next invoice is 13,300, correct?

1 A: Correct.

2 Q: The next invoice is 3800, correct?

3 A: Correct.

4 Q: The next invoice is \$4,750, correct?

5 A: Correct.

6 Q: And the last invoice it looks like is \$6,240; is that
7 right?

8 A: Correct.

9 Q: Somewhere in the neighborhood of, give or take a little
10 bit, \$70,000; is that right?

11 A: Correct.

12 Q: Just for purposes of disclosure and candor, the way that
13 you and I know each other is that in July of 2020 you were
14 working on my backyard; is that right?

15 A: That's right.

16 MR. LOVE: No further questions, Your Honor.

17 THE COURT: All right.

18 Any redirect?

19 MR. GROTE: No further questions, Your Honor.

20 THE COURT: All right, Mr. McCollum. Thank you for being
21 here and you're free to go unless they think they might need
22 you again.

23 MR. MCCOLLUM: Thank you.

24 THE COURT: Mr. Grote?

25 MR. GROTE: Just for purposes of the record, we do

1 release him from his subpoena.

2 THE COURT: Okay.

3 MR. GROTE: Plaintiff next calls Robin Hatchell.

4 THE COURT: Okay.

5 ROBIN HATCHELL, HAVING BEEN SWORN,

6 TESTIFIED AS FOLLOWS:

7 THE CLERK: You can have a seat.

8 THE COURT REPORTER: Can you spell your last name for me,
9 please, ma'am?

10 MS. HATCHELL: H-A-T-C-H-E-L-L.

11 THE COURT: And, Ms. Hatcher, if you will, just make sure
12 you speak into the microphone.

13 MS. HATCHELL: Okay.

14 THE COURT: Thank you so much.

15 Mr. Grote?

16 DIRECT EXAMINATION OF ROBIN HATCHELL BY MR. GROTE:

17 Q: Good afternoon, Ms. Hatchell. How are you today?

18 A: Good.

19 Q: Good. Give us a little background. Where did you grow
20 up?

21 A: I've been in Florence most of my life.

22 Q: What property did you grow up at? What address?

23 A: 548 Wisteria. We moved in when I was four.

24 Q: Okay. Do you have any idea roughly what year that would
25 be? I hate to ask your age.

1 A: 1960, 1960.

2 Q: I'm sorry, what was that?

3 A: 1960.

4 Q: Okay. If you're looking from the street and you're
5 looking at 550 Wisteria, where is that address in relation to
6 550 Wisteria?

7 A: Looking at the front of the house?

8 Q: Yes.

9 A: We would be to the left.

10 Q: Okay. So, if you're looking from the street you would go
11 up to the house just to the left of 550 Wisteria?

12 A: Uh-huh, (affirmative response).

13 Q: Is that yes?

14 A: Yes, sorry.

15 Q: And I don't want to pick on you, you just have to say yes
16 or no so the court reporter can understand what you are
17 saying. Okay? How long did you live there next to 550
18 Wisteria?

19 A: Until college, and I got married. So, that was '77.

20 Q: Did you move back into the house at some point?

21 A: I did in the early '80s, '82 or '83 to take care of my
22 father.

23 Q: How long did you -- or do you still live there?

24 A: I just sold the house four years ago.

25 Q: So, you lived there from 1982 or '83 through ---

1 A: To 2019, yeah.

2 Q: --- to 2022?

3 A: To 2019, yeah.

4 Q: Oh, 2019. Had you lived there most of your life?

5 A: Yes.

6 Q: So, when you were growing up, did you ever go over to 550
7 Wisteria?

8 A: Yes. We -- there was four boys and the -- with me and my
9 three siblings, we are all about the same age, and we played
10 with them all the time in the backyard, front yard, we kept
11 bicycles and toys down in the basement.

12 Q: Did you ever go down into the basement area of 550
13 Wisteria when you were growing up?

14 A: Uh-huh, (affirmative response). All the time to get
15 toys, bicycles, playing with the pets that we had.

16 Q: And when I say the basement, what part of the basement
17 area would you go into?

18 A: The door on the back of the house went into the first
19 part of the basement.

20 Q: Did you ever go into what, I guess, what would be the
21 room behind it?

22 A: Not all the time, because Dr. McClain asked us not to
23 play back there because he had birdwatching equipment and
24 nets, so he didn't want us getting back there entangled in the
25 nets.

1 Q: Okay. How would you describe -- did you ever see water
2 or what was the condition of the basement?

3 A: I don't recall standing water as a child. It was just
4 damp and ---

5 Q: And what part of the basement was damp?

6 A: Both the front section and the back.

7 Q: Were the Phillips your neighbors at some point?

8 A: Yes, yes.

9 Q: And did you ever go over to the house when the Phillips
10 lived there?

11 A: Only a couple of times. With the hurricanes that came
12 through, Matthew and Florence, I think that was around 2016,
13 2017. We lost power for a good long while. It was like two
14 weeks. And they had previously scheduled a trip to either
15 Disney World or Disney cruise. And since we didn't have
16 electricity and Florida was okay, they decided to go on. And
17 I fed the cat and checked in on the cat that was in the
18 basement.

19 Q: Was Mr. Phillips there?

20 A: Yes.

21 Q: And what was the condition of the basement when you went
22 in there that time?

23 A: It was standing water and flowing water through the
24 basement, about three inches deep. The cat had to jump from
25 one piece of furniture to another to keep his paws out of the

1 water, but I checked on him a couple of times and made sure
2 there was food down there.

3 Q: When you met with Mr. Phillips down there in the
4 basement, was there any discussion that took place?

5 A: Yes. He wanted to show me how that they had the sump
6 pump running, and it was cutting off on him, I think, and he
7 wanted me to see how to turn it back on. But he said a friend
8 of his would be checking on it for him while they were gone.

9 Q: Was the sump pump running at that time?

10 A: Uh-huh, (affirmative response).

11 Q: Is that a yes?

12 A: Yes, sorry.

13 Q: And again, was Mr. Phillips with you down in the basement
14 when it was wet like that?

15 A: Yes.

16 Q: Do you know the McLeans?

17 A: Yes, grew up with the boys.

18 Q: Okay. Do you know who owned 550 Wisteria after the
19 McLeans?

20 A: The Sirmons.

21 Q: Okay. Are the Sirmons still with us?

22 A: No.

23 Q: And who moved in after the Sirmons?

24 A: There was a renter for a year or maybe more, not very
25 long. And then the boys, the Sirmon boys put the house up for

1 sale, and that's when the Phillips bought it.

2 Q: All right. And when we say the Sirmons are no longer
3 with us, are they deceased?

4 A: Right. Yes. Mrs. Sirmon is deceased; I don't know where
5 he his.

6 MR. GROTE: I beg the Court's indulgence?

7 BY MR. GROTE:

8 Q: Ms. Hatchell, can you just generally describe the
9 basement for 550 Wisteria and what it entails?

10 A: Okay. It's two sections. You walk into the very back of
11 the house. You walk into a smaller area. They used to have
12 the washer and dryer down there. And then you go through
13 another doorway, which is more towards the middle of the
14 house, and you could see the foundation of the house. I
15 believe it was cemented in there at some point. No windows
16 that I remember, so it was always dark.

17 Q: When you were a kid, what portion of that did you
18 primarily go into?

19 A: I mainly just went into the front part or the back part,
20 whichever way you're looking at it.

21 Q: Where the door is?

22 A: Yeah, because that's where the toys would be and bicycles
23 and ---

24 Q: Okay.

25 MR. GROTE: No further questions, Your Honor.

1 THE COURT: Mr. Love?

2 MR. LOVE: Thank you.

3 CROSS-EXAMINATION OF ROBIN HATCHELL BY MR. LOVE:

4 Q: And that's because Dr. McLean didn't want you in the back
5 playing with his birdwatching stuff, right?

6 A: Right.

7 Q: Now, the Sirmons, Ms. Miriam passed away, but Will and
8 Jay are still alive, correct?

9 A: Yes.

10 Q: And they're the twins?

11 A: Correct.

12 Q: All right. Now, as a result of your exposure to 550
13 Wisteria Drive, do you have any kind of physical ailments or
14 breathing issues or anything growing up around that basement?

15 A: No, sir.

16 Q: Okay. And I believe your testimony on direct examination
17 was that on one occasion during a hurricane you saw standing
18 water in that basement?

19 A: Correct.

20 Q: How long did you live next to the Phillips?

21 A: I was four when we moved in until ---

22 Q: No, just the Phillips.

23 A: Oh. How long were they there?

24 Q: Yeah, when you -- were y'all there at the same time?

25 A: Oh, yes, yes.

1 Q: And how long was that that you were there the same time?

2 A: You know, I was trying to think of how many years they
3 lived there. I just don't know.

4 Q: So, they -- I'll represent to you that they purchased the
5 house in 2010 from Ms. Miriam's estate.

6 A: Okay.

7 Q: So, and then they sold it in 2019, so nine years.

8 A: Yeah. I thought it was close to 10, but...

9 Q: So, you were there those whole nine years?

10 A: Uh-huh, (affirmative response).

11 Q: You were there when Brody was growing up?

12 A: Yes.

13 Q: You were there Abby Grace came home from the hospital?

14 A: Yes.

15 Q: Are the Phillips good parents?

16 A: Excellent.

17 Q: Are the Phillips the kind of people that are going to
18 raise their child in a ratchet home that's full of squander
19 and roaches.

20 A: No.

21 MR. GROTE: Your Honor, that calls for a character ---

22 MR. LOVE: I think she can give it.

23 THE COURT: If she know it, I'm gonna allow her to
24 testify to it.

25 MR. LOVE: I think I've got what I needed; thank you,

1 Your Honor.

2 THE COURT: All right.

3 BY MR. LOVE:

4 Q: Thank you, Ms. Hatchell.

5 A: Uh-huh, (affirmative response).

6 THE COURT: All right. Is there any redirect?

7 MR. GROTE: Very briefly, Your Honor.

8 REDIRECT EXAMINATION OF ROBIN HATCHELL BY MR. GROTE:

9 Q: Ms. Hatchell, when Dr. Sarb owned 550 Wisteria, did you
10 ever have occasion to see her sweeping water out of the
11 basement?

12 A: Yes, I did.

13 Q: Can you describe for me what you saw?

14 A: She took me in there to show me something. I can't
15 remember why I was there, but we went into the second part of
16 the basement where the pump was, and she was sweeping water
17 over towards the pump because it wasn't keeping up fast enough
18 with the water that was standing.

19 MR. GROTE: No further questions, Your Honor.

20 THE COURT: All right. Thank you, Ms. Hatchell, for
21 being here. You are welcome to step down, and you are free to
22 go.

23 MS. HATCHELL: Thank you.

24 THE COURT: Thank you, ma'am.

25 Mr. Grote?

1 MR. GROTE: Plaintiff calls Joe McLean.

2 THE COURT: All right.

3 Good afternoon.

4 MR. MCLEAN: Good afternoon.

5 JOE MCLEAN, HAVING BEEN SWORN,

6 TESTIFIED AS FOLLOWS:

7 THE COURT: Mr. Grote?

8 DIRECT EXAMINATION OF JOE MCLEAN BY MR. GROTE:

9 Q: Good afternoon, Mr. McLean.

10 A: Good afternoon.

11 Q: I'll try to keep this brief with you. Where are you from
12 and where did you grow up?

13 A: I grew up in Florence.

14 Q: What property did you grow up at?

15 A: My family and I lived at 550 Wisteria Drive in Florence.

16 Q: How long did you live at 550 Wisteria Drive?

17 A: I think my parents bought that house when I was just a
18 child, in the early '60s, 1962, maybe. And I lived there
19 full-time until I went off to college after I graduated from
20 high school in 1978. And then for the next 10 years I didn't
21 live in Florence all the time, but I would be back for
22 holidays and events like that. But I lived there for
23 approximately 18 years, and then another 10 years when I was
24 in Florence that's where I would stay.

25 Q: All right. And I forgot to ask you, before we get too

1 far into that, what do you do? What's your profession?

2 A: I'm an attorney in Florence.

3 Q: Okay. Do you know either of the parties to this case,
4 the Phillips or Dr. Sarb?

5 A: I do not know them personally. I know of Dr. Sarb. I
6 know her name and that's all.

7 Q: Okay. Do you have any dog in this fight at all?

8 A: No.

9 Q: Okay. So, based on your experience living at 550
10 Wisteria, was there ever any water in the basement?

11 A: When I was growing up, during periods of heavy rain, I do
12 recall the basement flooding with maybe an inch or inch-and-a-
13 half of water, but it was not an every-time-it-rained
14 occurrence. It was during heavy rain. But the basement did
15 water to accumulate on the basement floor, yes, when I was a
16 child growing up there.

17 Q: Okay. And what would you all do to try to take care of
18 that?

19 A: Well, my father would send my brothers and me down to the
20 basement with brooms, and we would sweep it out. I remember
21 that well.

22 Q: How frequently do you think you were doing that?

23 A: Well, I couldn't put a number on it. Like I said, just
24 during the heaviest rains. I couldn't begin to guess how many
25 times, but I distinctly recall sweeping the water out with a

1 broom as a child, you know, as a teenager growing up.

2 MR. GROTE: No further questions, Your Honor.

3 THE COURT: All right. Mr. Love?

4 CROSS-EXAMINATION OF JOE MCLEAN BY MR. LOVE:

5 Q: Mr. McLean.

6 A: Sir?

7 Q: Good afternoon.

8 A: Good afternoon.

9 Q: When was the last time you were in the basement of 550
10 Wisteria Drive?

11 A: Well, my parents sold the house in the late '80s. I
12 don't remember exactly what year, '87, '88, 1987 or 1988, and
13 I helped them move out. They had bought some land out past
14 Francis Marion College -- University now -- and I helped them
15 move. So, I would've been in the basement in the late '80s.

16 Q: Your dad still have that birdwatching gear down there?

17 A: He did. He was quite the amateur ornithologist.

18 Q: When you grew up at 550 Wisteria, did you have a sump
19 pump in the basement?

20 A: No. I don't recall a sump pump, but again I was a child.
21 I don't think we had one. We swept -- my brothers and I swept
22 the water out.

23 Q: Y'all were the sump pump?

24 A: We were the sump pump. We would just sweep it out the
25 door and it would go on to the patio and then drain away.

1 Q: Thank you, sir. No further questions.

2 THE COURT: All right. Anything further?

3 MR. GROTE: No further questions.

4 THE COURT: All right. Thank you, Mr. McLean for being
5 here, and you're free to go.

6 MR. MCLEAN: Thank you, Your Honor.

7 MS. GIOVANOLI: Plaintiff would call Julie Phillips to
8 the stand.

9 THE COURT: All right.

10 MR. LOVE: Your Honor, may it please the Court?

11 THE COURT: Yes, sir.

12 MR. LOVE: Once Ms. Phillips is sworn in, can we have a
13 break? Obviously once she sworn in, I can't communicate with
14 her, and that's fine, but just a restroom break. This might
15 take some time.

16 THE COURT: Right now?

17 MR. LOVE: Not right now; once she's sworn in.

18 THE COURT: Okay.

19 JULIE PHILLIPS, HAVING BEEN SWORN,

20 TESTIFIED AS FOLLOWS:

21 THE COURT: All right. You may have a seat.

22 So, you're asking for a break right now?

23 MR. LOVE: Your Honor, we've been going awhile, and I was
24 just wondering, because of restroom and stuff.

25 THE COURT: Sure.

1 MR. LOVE: And I envision this testimony being longer
2 than these last series of witnesses. It was just for the
3 convenience of everybody. It doesn't matter to me. We can
4 roll on.

5 THE COURT: No, I don't mind at all. I was just trying
6 to understand what you are asking for. It sounds like the
7 jury might need a break, too, so we will take a short break
8 and we'll be back. And when we come back, we'll just work
9 till 5 o'clock and see where we get. Okay?

10 Please don't discuss this case.

11 (REPORTER'S NOTE: Jury exits courtroom @ 4:03 p.m.)

12 THE COURT: And, Ms. Phillips, just as I told Dr. Sarb,
13 you are welcome to step down. Talk to anybody about anything
14 you'd like to except for this case. And even if you don't
15 finish testifying today, then that will be the case overnight
16 until we get through your testimony. Okay?

17 MS. PHILLIPS: Okay.

18 THE COURT: All right. Thank you.

19 We'll be at recess.

20 **RECESS - 4:04 P.M.**

21 *****OFF THE RECORD*****

22 **ON THE RECORD - 4:14 P.M.**

23 THE COURT: Can we have the jury, please?

24 (REPORTER'S NOTE: Jury enters courtroom @ 4:15 p.m.)

25 THE COURT: All right. Ms. Giovanoli?

1 MS. GIOVANOLI: Thank you.

2 DIRECT EXAMINATION OF JULIE PHILLIPS BY MS. GIOVANOLI:

3 Q: Good afternoon, Ms. Phillips.

4 A: Good afternoon.

5 Q: You sold 550 Wisteria to my client, Dr. Sarb, didn't you?

6 A: Correct.

7 Q: And you used Adam Crosson as a real estate agent,
8 correct?

9 A: We did, yes.

10 Q: And Adam Crosson works for RE/MAX, correct?

11 A: Adam Crosson at that time did work for RE/MAX.

12 Q: Did you -- you entered into a contract with Adam Crosson,
13 we'll call it the listing agreement; is that correct?

14 A: I think so. We entrusted him to sell our home, and we
15 sold a lot -- we signed a lot of different pieces of paper.
16 So, I am assuming the answer is yes.

17 Q: I am showing you what's been marked as Plaintiff's
18 Exhibit 183. If you'll take a minute to look at that and go
19 through the pages.

20 A: Okay.

21 Q: That's the listing agreement you entered into with
22 RE/MAX, correct?

23 A: It is the listing agreement we entered into, yes.

24 Q: And are those your initials on all the pages of that
25 contract?

1 A: Yes.

2 Q: Okay. And also, your signature on the last page?

3 A: Yes, it is.

4 Q: And what's the date of that signature?

5 A: I'm sorry; my eyes are bad. 6/12/2019.

6 Q: Your attorney entered into evidence Defendant's Exhibit

7 1. I'm actually gonna show that to you as well. Do you
8 recognize that document? That was your listing, wasn't it?

9 A: It appears to be, yes.

10 Q: Okay. And on the page -- the last page of the document
11 -- actually, the next to the last page of that document, Bates
12 labeled Defendant 00237, the listing said that there was a
13 small man cave on the lower level, heated and cooled; isn't
14 that correct?

15 A: That's correct.

16 Q: You reviewed this listing before it was published to the
17 public, didn't you?

18 A: I would venture to say yes, we did.

19 Q: Did you draft that comment that's on that page that
20 you're looking at?

21 A: No. I did not draft that comment.

22 Q: But you reviewed the listing, and you approved it before
23 it went public?

24 A: I feel sure we did.

25 Q: Okay. And if you didn't review and approve it, did you

1 see it after it went public?

2 A: I would have seen it online, yes.

3 Q: And if you saw that comment, man cave, and it wasn't
4 correct, you would have corrected that mistake, correct?

5 A: It's not a mistake.

6 Q: Did you have knowledge of any problems involving water in
7 the basement prior to sailing 550 Wisteria?

8 A: Can you ask me that question again? I'm sorry.

9 Q: Uh-huh, (affirmative response). Did you have knowledge
10 of any problems involving water in the basement prior to
11 selling 550 Wisteria?

12 A: We did have water in our basement on two occasions at 550
13 Wisteria.

14 Q: Isn't it true that Dr. Sarb asked you through your real
15 estate agents whether or not water had ever infiltrated the
16 home, and you guys told her no through the real estate agents;
17 isn't that correct?

18 A: That is not correct. I do not recall that conversation
19 between myself and our real estate agent.

20 Q: And is it also correct that it wasn't until after we had
21 to file this lawsuit, that then you admitted that there had
22 been two water events in the basement?

23 A: Can you repeat the question?

24 MR. LOVE: Object to form, Your Honor.

25 THE COURT: All right. Can you restate the question,

1 please?

2 MS. GIOVANOLI: Yeah.

3 BY MS. GIOVANOLI:

4 Q: My question was, but it wasn't until after this lawsuit
5 was filed that you finally admitted that there had been two
6 water events in the basement?

7 THE COURT: Is there an objection?

8 MR. LOVE: The objection -- she initially asked the
9 question she said isn't it also true and she denied the
10 question before, Your Honor. And so ---

11 THE COURT: I understand. I think it's been clarified
12 now.

13 BY MS. GIOVANOLI:

14 Q: Let me re-ask the question. It wasn't until after we had
15 to file this lawsuit that you finally admitted that there had
16 been two water events in the basement?

17 A: After the filing of the lawsuit, yes, I admitted two
18 events in the basement.

19 Q: Is it true -- it is true that you didn't disclose that on
20 the property disclosure statement that you gave to my client,
21 did you?

22 A: No, but there is a reason for that.

23 Q: The first time that you admitted that there was water in
24 the basement was after you already knew that we had spoken to
25 Robin Hatchell; isn't that true?

1 A: That is not true.

2 Q: You didn't disclose any water flooding into the house to
3 Dr. Sarb before she purchased the house?

4 MR. LOVE: Objection; asked and answered.

5 THE COURT: All right. I'm gonna allow this question,
6 and you can answer the question, and then we're gonna move on.

7 A: Can you repeat it, please?

8 BY MS. GIOVANOLI:

9 Q: The question is that you did not disclose that there had
10 been water in the basement at 550 before Dr. Sarb purchased
11 the property to Dr. Sarb? Isn't that correct?

12 A: I did not.

13 Q: And you are sitting here today admitting that you had at
14 least two water incidents in the basement of 550 Wisteria?

15 A: We did have two water instances, yes.

16 Q: So, you purchased 550 Wisteria, this home, in 2010; isn't
17 that correct?

18 A: 2010 is correct.

19 Q: And you purchased it from two fellows by the name of
20 Sirmon, the last name Sirmon, correct?

21 A: It was -- belonged to the Sirmons, yes.

22 Q: And they were selling the house after their mother, who
23 had lived in the house, passed away; is that correct?

24 A: I believe that is my understanding, yes.

25 Q: And you had a contract with the Sirmons for the purchase

1 of 550 Wisteria; is that correct?

2 A: Yes; that's correct.

3 Q: And in that contract, it indicated that you all waived
4 your right for those sellers to provide to you with a
5 disclosure statement; is that correct?

6 A: I don't know if that's correct or not. That would've
7 been 13 years ago.

8 Q: Okay. So, sitting here today, you don't remember whether
9 or not you had a disclosure statement?

10 A: I don't remember. I feel like we probably did, but I do
11 not remember.

12 Q: If you were to see the two -- your purchase contract,
13 would that refresh your recollection?

14 A: Of course.

15 Q: Take a look at that document.

16 A: Do you want this one back?

17 Q: You can just put it up on the ledge, please

18 I direct your attention to the third page, Number 19. It
19 reads, condition of property. Wasn't there a check beside
20 buyer and seller agree buyer and seller agree that seller will
21 not complete or provide buyer of sellers' property condition
22 disclosure statement in accordance with South Carolina law, as
23 amended, Section 27-60-30, Paragraph 13?

24 A: Yes.

25 Q: So, you waived your right to a seller's disclosure

1 statement at the time you purchased in 2010 550 Wisteria?

2 A: Yes. It appears we did.

3 Q: Because the disclosure statement isn't important to you,
4 is it? I'll take that back. The disclosure statement is not
5 important to you, is it?

6 A: I'm not really sure how to answer that question.

7 Q: You didn't ask for one whenever you purchase the property
8 in 2010.

9 A: No. It appears we did not from that paper.

10 Q: Because it's not important to you? It's not an important
11 document, is it? It's just a document you fill out. It
12 doesn't matter what you put in there. Isn't that correct?

13 A: I'm really not sure how to answer that question.

14 Q: Well, if it was an important document, wouldn't you want
15 one when you bought the home? In 2010, when you bought this
16 home, wouldn't you want one if you thought it was an important
17 document?

18 A: I'm really not -- again, not sure how to answer that
19 question. We had inspections, we walked through the home, we
20 did what we felt like was right. And my husband and I would
21 have together checked that box for no disclosure.

22 Q: I'm glad you brought that up. So, you had inspections.
23 Let's talk about those inspections.

24 A: Okay.

25 Q: I'm showing you what's been marked as Plaintiff's Exhibit

1 184. That's the Uniform Residential Appraisal Report that you
2 had performed at the time -- prior to your purchase in 2010 of
3 550 Wisteria; is that correct?

4 A: I'm sorry; my eyesight is very bad.

5 Q: Do you need Ed's readers?

6 A: I'm just looking for a date is all.

7 Q: Do you need Mr. Love's readers?

8 A: No. If you could point me in the direction of the date
9 that would be probably the most helpful.

10 Q: My question wasn't about the date. This is your Uniform
11 Residential Appraisal Report that you had prior to your
12 purchase of the home in 2010.

13 A: It says Uniform Residential Appraisal form. It does have
14 my name, but I don't see a date which would definitely help
15 knowing it was prior to the purchase.

16 Q: Okay. Well, let's do this. What's the property address
17 on this form?

18 A: Property address is -- I might need the readers, y'all.
19 Sorry. It's really small. Thank you. Okay. It says
20 property address 550 Wisteria Drive, yes.

21 Q: And what is the title of this document?

22 A: The title of the document is Uniform Residential
23 Appraisal form.

24 Q: And at borrower, what does it say?

25 A: I'm sorry?

1 Q: Under borrower, which is right above the address, what
2 does it say?

3 A: Borrower, Julie and Joseph Phillips.

4 Q: Okay. And what does it say next to that owner of public
5 record? Excuse me.

6 A: The owner of public record is J.H. Sirmon, and William F.
7 Sirmon.

8 Q: Okay. And then right below that report data source used
9 offering prices and dates. It starts with subject listed in
10 MLS. Do you see that?

11 A: I don't. I'm so sorry.

12 Q: Here, I'll point it out to you.

13 A: Yes. Thank you.

14 Okay. Subject -- I'm sorry. Did you want me to read
15 that?

16 Q: Yes.

17 A: Okay. Subject listed in MLS on 5/19/2010 for \$205,000,
18 then reduced to 185 -- \$185,000 on 7/01 of 2010.

19 Q: And you produce this to us in discovery; isn't that
20 correct?

21 A: I gave -- I'm assuming, yeah, if you're telling me I did,
22 then I did.

23 Q: Well, no, I'm not telling me you did. I'm ask -- I'm
24 making sure that you remember that you produced this to us in
25 discovery. You can see right there on the bottom, Defendant

1 00096. This is a document that you gave to us, correct?

2 A: It would -- yes.

3 Q: Okay. So, let me ask the question again. Is this your
4 Uniform Residential Appraisal Report that you had prior to
5 your purchase of the home in 2010?

6 A: Yes.

7 Q: And is it a true and accurate copy of that Residential
8 Appraisal Report?

9 A: Yes.

10 Q: Okay.

11 MS. GIOVANOLI: At this time, I would move it into
12 evidence as Plaintiff's Exhibit 184.

13 MR. LOVE: Your Honor, subject to any redaction that
14 might need to happen, I'm fine with that coming in.

15 MS. GIOVANOLI: Well, I'd like to know what redactions.

16 MR. LOVE: All right. Then we'll have to recess, because
17 it's a 20-something page document, so I'm gonna have to look
18 through it. This is not in our exhibit list, so I'm gonna
19 have to look through it to see what we need to redact.

20 Julie, I'm gonna need my glasses for this.

21 THE COURT: All right. Ms. Giovanoli and Mr. Love, can
22 you approach the bench for a minute?

23 (REPORTER'S NOTE: Bench conference is held off the record in
24 the presence but outside the hearing of the jury.)

25 BY MS. GIOVANOLI:

1 Q: Okay. Sorry about that.

2 A: It's okay.

3 MS. GIOVANOLI: So, I'm gonna go ahead -- I'd move to
4 admit it into evidence. The Court has agreed.

5 PLAINTIFF'S EXHIBIT NUMBER 184

6 ADMITTED INTO EVIDENCE

7 MS. GIOVANOLI: Permission to publish?

8 THE COURT: All right.

9 MR. LOVE: Subject to objection.

10 MS. GIOVANOLI: Uh-huh, (affirmative response).

11 THE COURT: All right.

12 A: Okay. Much better.

13 BY MS. GIOVANOLI:

14 Q: Perfect. So, now, what we're all looking at, Ms.
15 Phillips, is a section of that appraisal report that says
16 basement floor has a few sections that are damp, see photo.
17 If lender requires evidence of any potential damages, and
18 inspection by a licensed home inspector or contractor is
19 recommended to determine if there are any structural damages
20 due to the amount of moisture dampness in the basement a home
21 inspector, contractor, or surveyor may be able to provide info
22 in regards to if this level of dampness is typical or common
23 for the market area. Do you remember reading that?

24 A: In all honesty, no, not in 2010.

25 Q: But you did receive this report before you purchased 550

1 Wisteria, correct?

2 A: Correct. I feel sure I would have.

3 Q: And you would've reviewed this report before you made
4 this home purchase, correct?

5 A: We would have.

6 Q: So, you knew in 2010 that there was a water issue with
7 the basement, correct?

8 A: It said so on the form.

9 Q: Okay. Well, it references a photo here if you'll turn to
10 Defendant 113, bottom label, there is a photograph. It's not
11 a really good photograph, because like you said it's from
12 2010.

13 A: Can you repeat -- I'm sorry. Could you repeat what page?

14 Q: Yes. Defendant 00113.

15 Okay. Let's wait to have it up on the screen.

16 Water in the basement. Water coming from the
17 foundational walls and the floor. You saw this photo before
18 you purchased the home at 550 Wisteria; isn't that correct?

19 A: It would be in the documents we received, yes.

20 Q: So, you saw a photograph of water in the basement before
21 you purchased 550 Wisteria; is that correct?

22 A: It would be in the documents -- this document we
23 received, yes.

24 Q: But you didn't disclose it to Dr. Sarb before she
25 purchased the property?

1 A: Disclose this picture?

2 Q: Water in the basement. What the case is all about, water
3 in the basement

4 A: We did not put water in the basement on our disclosure
5 form.

6 Q: Because the disclosure form isn't important, right?

7 A: I didn't say the disclosure form was not important.

8 Q: You didn't get one before you purchased the property.

9 MS. GIOVANOLI: For the record, I'm gonna go ahead and
10 move into evidence the listing agreement that was marked as
11 Plaintiff's Exhibit 183.

12 THE COURT: 183; is there any objection?

13 MR. LOVE: I'm not sure that's what it is, Your Honor. I
14 don't have a copy of it. There probably is not an objection.

15 THE COURT: Well, you're gonna have to take a look at it.

16 MR. LOVE: No objection.

17 THE COURT: All right. 183 is into evidence.

18 PLAINTIFF'S EXHIBIT NUMBER 183

19 ADMITTED INTO EVIDENCE

20 BY MS. GIOVANOLI:

21 Q: Let's talk about sewage backups. Do you remember giving
22 your deposition in this case?

23 A: Yes, I do.

24 Q: And we did that in your attorney's office; is that
25 correct?

1 A: Yes, we did.

2 Q: Okay. And in that deposition, you told me that you had
3 at least three sewage backups; is that correct?

4 A: If memory serves, the documents would definitely tell
5 exactly what I said, maybe three to four sewage issues in our
6 nine years of living there.

7 Q: But you didn't disclose any of that to Dr. Sarb on the
8 disclosure statement, did you?

9 A: We did not.

10 Q: And you actually filed a claim on your home warranty for
11 those sewage backups; isn't that correct?

12 A: We had someone from our home warranty company come to our
13 home, yes, for a sewage backup.

14 Q: And, in fact, they denied that claim because they said
15 that there was no sewer cleanout; is that correct?

16 A: That is correct.

17 Q: This house was built in 1952; isn't that correct?

18 A: I'm not sure of the exact year. I know it was the 1950s.

19 Q: So, it's approximately 57 years old at the time that my
20 client purchased the property; does that sound about right?

21 A: If your math is right, then yes.

22 Q: It's fair to say it's an old house?

23 A: Yes.

24 Q: You didn't disclose one single thing on the disclosure
25 statement, no problems with this house. A 57-year-old house

1 and you didn't disclose one thing on the statement; isn't that
2 correct?

3 A: That's correct.

4 Q: I have no further questions. Please answer any questions
5 your attorney may have. Thank you.

6 A: Thank you.

7 MR. GROTE: Your Honor, may we approach briefly?

8 THE COURT: Sure.

9 (REPORTER'S NOTE: Bench conference is held off the record in
10 the presence but outside the hearing of the jury.)

11 MR. LOVE: Ready, Your Honor?

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION OF JULIE PHILLIPS BY MR. LOVE:

14 Q: Hey, Julie.

15 A: Hello.

16 Q: Plaintiff's Exhibit 6, this is the House Master report
17 that was done for this transaction. I want to point your
18 attention to foundation area, water penetration, Section 8.1.

19 A: Okay.

20 Q: Read those words right there.

21 A: Some water intrusion in the front section of the
22 crawlspace noted. Foundation vents in this area are near the
23 exterior grade. Recommend installing vent wells to reduce
24 water penetration.

25 Q: Thank you. And we've heard all about that throughout

1 this trial, have we not?

2 A: Yes.

3 Q: And that's the inspection that Dr. Sarb had of her own
4 home?

5 A: Yes. That appears to be that inspection.

6 Q: Okay. And you're not saying that disclosures aren't
7 important, you haven't said that, have you?

8 A: I have not said that.

9 Q: This Uniform Appraisal Report -- you're gonna need my
10 glasses.

11 A: Okay.

12 Q: I want you to read that again for me.

13 A: The very bottom?

14 Q: Yeah, down at the bottom that was displayed to the jury
15 and that you read out loud.

16 A: The response and the question or just the response?

17 Q: You can just do the response.

18 A: Okay. Basement floor has a few sections that are damp,
19 see photo. If lender requires evidence of any potential
20 damages, an inspection by a licensed home inspector or
21 contractor is recommended to determine if there are structural
22 damages due to the moisture/dampness in the basement. A home
23 inspector, contractor, or surveyor may be able to provide info
24 in regards if this level of dampness is typical/common for the
25 market area.

1 Q: So, in 2010 when that appraisal was done, there was
2 dampness in the basement, right?

3 A: Right.

4 Q: First of all, let's make sure. Does it say that that
5 basement was flooding?

6 A: It does not.

7 Q: Does it say that there were walls seeping water?

8 A: It does not.

9 Q: Does this say that walls were peeing water?

10 A: It does not.

11 Q: Does it say that there is mold and mildew in the
12 basement?

13 A: It does not.

14 Q: Has anyone come in this courtroom yet from 2010 until,
15 what was it, August the 18th saying that there was water in
16 that basement?

17 A: No one has.

18 Q: That there was dampness in that basement?

19 A: No.

20 Q: That there was standing on the floor where it looked like
21 there had been water, but it's been a dry summer and really
22 hot and it's all dried up?

23 A: No.

24 Q: Nobody, correct?

25 A: Correct.

1 Q: Julie, you didn't even have a chance to introduce
2 yourself to the jury. Tell the jury a little bit about
3 yourself.

4 A: Well, first, you know I can't see really well. I am
5 Julie Phillips. I am originally from the Orangeburg County
6 area, a community called Cope. I moved here in 1995 to go to
7 school at Francis Marion. I graduated with a bachelor's
8 degree in 1999 with -- in political science, and I thought I
9 wanted to go to law school, and I changed my mind. So, I met
10 my husband, I think it was our third year of college, and we
11 met in 1998, and we were married in 2004. 2008, we had our
12 first child Brody, who is now 14. And then in 2014, we had
13 Abby Grace, who's our youngest daughter, our daughter, and she
14 is eight. We lived in Darlington from the time we got married
15 until we bought the house at 550 Wisteria. And then, of
16 course, now we live in a different place but we're still here
17 in Florence. I am 46, as my vision tells. I do -- I'm a
18 salesperson for Janzen, a company of Johnson & Johnson.
19 That's about it, right?

20 Q: That's probably pretty good. Probably more than we need.
21 How long did you live at 550 Wisteria?

22 A: We bought Wisteria in the fall of 2011, and we did not
23 move in right away. We moved in the following spring, so we
24 moved in 2011, and we sold Wisteria in July 2019.

25 Q: So ---

1 A: So, eight-ish and half-ish, maybe

2 Q: You owned it nine, lived there at eight-and-a-half,
3 something like that?

4 A: Something like that; sounds right.

5 Q: Now, this transaction, this wasn't the first time you had
6 listed 550 Wisteria for sale, was it?

7 A: No, it wasn't.

8 Q: In fact, you listed it previously for sale. When was
9 that?

10 A: I want to say 2017, but I could be wrong. It was listed
11 for a long time, sorry.

12 Q: I apparently have that habit. Who was your listing
13 agent?

14 A: Our listing agent was David Wimberley, and I think he was
15 ERA Leatherman Realty.

16 Q: Did the house sale during that listing?

17 A: The house did not sell when we listed it the first time.

18 Q: And the listing expired?

19 A: The listing did expire.

20 Q: Did people look at the house?

21 A: About 100 times.

22 Q: Did you have any open houses?

23 A: At least two that we know of that we left home for the
24 entire weekend so he could do an open house.

25 Q: Did you get anything back from anybody that said this

1 place is nasty?

2 A: We got no feedback.

3 Q: The toilets, I heard them bubbling when we were in there.

4 A: We did not.

5 Q: Roaches everywhere?

6 A: We did not.

7 Q: Water in the basement?

8 A: None.

9 Q: All right. So, I think you had listed the property

10 again, that was, what, in 2019 right?

11 A: Correct.

12 Q: And that was with whom.

13 A: That was with Adam Crossan with RE/MAX, I think.

14 Q: That's right. And the plaintiff quickly made an offer on

15 the house, right?

16 A: It was very fast. This process was very fast.

17 Q: That wasn't the only offer on the house, though, was it?

18 A: It was not.

19 Q: And so, you guys ask for the highest and best, right?

20 A: We did.

21 Q: You've heard about that?

22 A: We did.

23 Q: And at least as of June the 15th.

24 A: I think that's right. It was really quick.

25 Q: Dr. Sarb gave you -- what was her highest and best?

1 A: 141-79 -- I can't remember the exact number it was over
2 our asking price.

3 Q: I want you to tell the jury what happened after that.

4 A: So, we were ecstatic to sell our home, first, because we
5 had tried the year before or two years before for about six
6 months and lots of lookers and nobody, you know, had made an
7 offer. So, this was all happening within the first day or two
8 that we put it on the market. And so, we were so excited that
9 we were able to sell our house. And we went to bed, I fell
10 asleep on the couch, and I woke up really early that morning
11 to my doorbell ringing, and my husband was still asleep, our
12 children were asleep. And it was the other person who had
13 been looking at our home at the same time as Dr. Sarb. And I
14 opened the door and he wanted to speak with me about
15 purchasing our home, and he introduced himself as Chris
16 Wegman, the other offer on the home that we had turned down
17 the day before.

18 And he said to me, before I go home and tell my wife that
19 we did not get this house, I wanted to come in person offer
20 you \$255,000 for your house if you will buy it right -- if you
21 will sell it to me right now. Like I said, my husband was
22 asleep, and I looked at Mr. Wegman, and I said I completely
23 understand where you are, because last year or year before,
24 when we tried to sell our house the first time, we had a
25 contingency offer on a home that I really wanted to purchase

1 that I could see our family living in, and someone bought the
2 house before we could, and it was heartbreaking. And I knew
3 what my husband felt like when he had to make that phone call
4 to me to tell me that we had lost out on the house. And so, I
5 just looked at Mr. Wegman, and I told him that even though we
6 had not -- I didn't know if we had physically signed the
7 paperwork to sell her house to Dr. Sarb, but that would not be
8 right, because we had given her verbal word that we would sell
9 her the home for the price that she offered. So, we turned
10 down \$13,000 more for our house because we said we would sell
11 it to Dr. Sarb.

12 Q: Did you ever deny access to your home to the plaintiff?

13 A: No, not once.

14 Q: During the time period that it was listed, 43 days, I
15 think it was that I calculated, did you ever take efforts to
16 cover up flooding in the basement?

17 A: Not once.

18 Q: Would you have even been able to if there were three
19 inches of water in that basement?

20 A: I don't see how you could.

21 Q: You'd have to move out all the furniture, figure out
22 where to put three inches of water, make it look like the
23 floor was dry, and put the furniture back, and raise your two
24 kids.

25 You were asked on direct examination about two instances

1 of water being in that basement.

2 A: Yes.

3 Q: One was the thousand-year flood that came through in
4 2015; isn't that right?

5 A: That's correct.

6 Q: The other was either Hurricane Matthew or Florence, and I
7 don't think anybody knows which one it is.

8 A: I do not remember. It was a hurricane and I just
9 remember that for three or four years in a row we had like
10 three pretty much natural disasters, and I -- they get a
11 little fuzzy.

12 Q: In fact, Ms. Hatchell couldn't even remember whether it
13 was -- which one it was.

14 A: No, that's right.

15 Q: And during those two events, power went out?

16 A: That's correct.

17 Q: Sump pump failed?

18 A: That's correct.

19 Q: Water came up?

20 A: That's correct.

21 Q: Did the basement at 550 Wisteria Drive flood regularly?

22 A: No.

23 Q: Did it flood every time it rained?

24 A: No.

25 Q: Did it flood and did it stay for months?

1 A: No.

2 Q: Was flooding a problem for you, Joey, and your family in
3 the basement?

4 A: No, it was not.

5 Q: Was flooding a defect or malfunction or structural issue
6 with 550 Wisteria when you sold it to the plaintiff?

7 A: No, it was not.

8 Q: Were you ever asked about flooding in your home, whether
9 during a hurricane or not, by text, email, conversation, or
10 any other method of communication commonly used?

11 A: I was not asked.

12 Q: All right. Tell this jury about the sewage. You were
13 just asked on direct examination.

14 A: We had a plumber that we used regularly when we lived in
15 Darlington. And then so, of course, when we had any issue in
16 Florence at 550 Wisteria, we would call this particular
17 plumber. One instance, it was three or four -- one instance
18 was during my weekly cleaning of the house, I flushed a
19 washcloth down my toilet, the back toilet, that got stuck in
20 the pipes. Another instance, our son was young, five, six,
21 and it was either a ball or a toy of some sort that he
22 actually physically flushed down our toilet. That eventually
23 caused backup in our pipes going out to the street. And the
24 third instance, we did not know why -- this was all over the
25 span of the eight-and-a-half years that we lived there. And

1 my plumber came in the house and asked me to please not flush
2 feminine products down the toilet anymore, because that was my
3 particular problem on that particular day. And those are the
4 three instances I recall calling a plumber for sewer issues.

5 Q: I appreciate you sharing that. Did you have a problem
6 with your sewage in your house?

7 A: We did not.

8 Q: Did you ever find yourself waking up in the middle of the
9 night hearing your toilets gurgle?

10 A: We did not.

11 Q: Did you have some defect or malfunction with your
12 toilets?

13 A: We did not.

14 Q: Did you have some structural issues with your plumbing or
15 sewer system such that your toilets were constantly
16 overflowing or anything like that?

17 A: We did not.

18 Q: Right. Last would be the pest infestation, severe pest
19 infestation, right?

20 A: So, I've been told.

21 Q: Now, I don't know that I've ever -- I'll let you tell it.
22 Tell me about your extermination.

23 A: We did not have a signed contract with any type of
24 exterminator company. We used something called -- I'm pretty
25 sure it's called Home Defense. It's very similar to what I

1 think you pay people to use in your house, you know, when you
2 sign a contract for, you know, like pest control. And we use
3 that regularly in our home. And I did that because my parents
4 do that. That is what they used in their home, and so we
5 sprayed our house regularly for prevention, not for any type
6 of maintenance, because we did not have bugs in our home.

7 Q: All right. And when Dr. Sarb bought the house, July -- I
8 guess closing date was July 26th, 2019, y'all were out of the
9 home.

10 A: We were out of the home, yes.

11 Q: Did you feel like the pests in your home were some defect
12 or problem?

13 A: We didn't have any pests in our home.

14 Q: At least none you were aware of.

15 A: None that we were aware of.

16 Q: Okay. So, obviously you didn't think that it was some
17 sort of malfunction or, in fact, a structural issue with your
18 home?

19 A: No.

20 Q: Did you lie to Dr. Sarb about the condition of 550
21 Wisteria Dr. at any point in time?

22 A: No, we didn't.

23 Q: Plaintiff's Exhibit 3, the initial disclosures, did you
24 lie to Dr. Sarb or anyone else who would've come in possession
25 of that, right?

1 A: Right.

2 Q: Did you live when you filled out the initial disclosures
3 indicated you did not have a problem with flooding, pest
4 infestation, or sewage backup in 550 Wisteria?

5 A: We did not lie.

6 Q: What was the date that you signed those?

7 A: Hang on. It was like the next day, I think, or -- can
8 you help me?

9 Q: I can. Flip to almost the last page, next to the last
10 think it is.

11 A: Okay. We signed these on 6/13/19.

12 Q: The very day you listed the property you signed those?

13 A: Yes.

14 Q: Do you remember leaving them on the counter at the house?

15 A: I do, very vividly.

16 Q: And y'all went out of town, didn't you?

17 A: We did.

18 Q: And you let Adam's office know that's where those were?

19 A: I did.

20 Q: Did you hide them in a drawer under the counter?

21 A: No. They were right on the bar -- on the island in the
22 kitchen on the counter.

23 Q: Okay. Julie, I want you to look at this jury, and I want
24 you to tell them how it has affected you having this lawsuit
25 pending against you for the last two-and-a-half years, and

1 your family.

2 A: I am sorry, because I am an ugly crier, and I don't want
3 you to see my ugly face. But it has been extremely difficult.
4 This has hung over our heads since 2020. We lived in and
5 brought children home in a beautiful home that we loved. So
6 much so that the night we left, it was so late because I
7 wanted it to be perfect for the new person who was coming in
8 because we loved this home. And this has hung over us for so
9 long, and the lack of sleep is extremely difficult. I wake up
10 at 2 o'clock in the morning, 3 o'clock in the morning. I
11 think about our family's future, about what this could do to
12 our children. I pride myself in the best job that I have is
13 being a mother, because I love my children, and it has caused
14 me to be short with them because I am anxious and nervous, and
15 I have a lack of sleep. And I find myself apologizing to them
16 at times because of my tone with them, and it has nothing to
17 do with them. It just has to do with the level of stress that
18 something like this will have on you, and ours has been very
19 extended in time. It's been well over three years. And so, I
20 am so thankful this week is finally here, so we can put it
21 behind us, and so we can move on as a family.

22 Q: Now, you sat over there at the table, and you've seen all
23 photographs and videos ---

24 A: I have.

25 Q: --- that Dr. Sarb has put forward as evidence, right?

1 A: I have.

2 Q: And it is -- you're not sitting here saying that she
3 hasn't been through some, I guess, some flooding or tough
4 times or whatever is going on with the house ---

5 A: I am not saying that. I am not saying that.

6 Q: But that's not what you guys experienced?

7 A: That is not the house we lived in. We -- and I will say
8 this, we moved to Wisteria because we wanted to expand our
9 family. We had a son, Brody, and we lived in a very small
10 thousand-square-foot home, starter home in Darlington, two
11 bedrooms and one bathroom, but we wanted more children. And
12 so, we found a three-bedroom home in Florence, and my parents
13 would come and visit. And our home was beautiful. Our home
14 was perfect for us. It didn't have any of the problems that
15 are described here today. I would never let my children live
16 in that. I wouldn't live in it. And I would certainly not
17 bring a newborn baby home into it or raise a two-year-old son
18 in it. He was two when we moved. I don't deny the pictures
19 that she shows. There's so many of them. But we didn't live
20 in that home. That was not our home.

21 Q: Thank you. No further questions.

22 THE COURT: Can the attorneys approach for just a moment,
23 please?

24 (REPORTER'S NOTE: Bench conference is held off the record in
25 the presence but outside the hearing of the jury.)

1 THE COURT: All right. Ladies and gentlemen, we're gonna
2 continue for just a few moments for redirect, and then we'll
3 retire for the day. Okay? Thank you.

4 REDIRECT EXAMINATION OF JULIE PHILLIPS BY MS. GIOVANOLI:

5 Q: All right. So, your attorney asked you a little bit
6 about you listed the property back in 2017. And actually --
7 I'm showing you what's been marked as Plaintiff's Exhibit 185.
8 And if you'll flip to the second page of that document,
9 actually the third page of that document -- actually, flip
10 through it just so you can familiarize yourself with it.

11 A: Okay.

12 Q: Just look up when you're done.

13 A: Okay.

14 Q: That's the disclosure statement that you filled out
15 whenever you attempted to sell the house in 2017, isn't it?

16 A: '17, yes; I think so.

17 Q: And those are your initials at the bottom of each page,
18 aren't they?

19 A: Yes. I don't see a date on it, but I'm assuming yes.

20 Q: Okay. And then on the next to the last page, that's your
21 signature, isn't it?

22 A: Yes, it is.

23 Q: If you'll flip to the last page, there's also another
24 signature; that's your signature, correct?

25 A: That is my signature, yes.

1 Q: And there's a date on that page. What's that date?

2 A: There is on that page, yes. Not next to mine, but I
3 guess that's David Wimberley's signature, 6/19/17.

4 Q: And you guys produced this to us in discovery; isn't that
5 correct?

6 A: I'm assuming we did, yes.

7 Q: Is this a true and accurate copy of the disclosure
8 statement that you filled out when you attempted to sell your
9 property and 2017?

10 A: If I produced it, it would be true and accurate from my
11 files, yes.

12 MS. GIOVANOLI: Okay. And I'd move this into evidence as
13 Plaintiff's Exhibit 185.

14 MR. LOVE: No objection.

15 THE COURT: All right. Into evidence.

16 PLAINTIFF'S EXHIBIT NUMBER 185

17 ADMITTED INTO EVIDENCE

18 BY MS. GIOVANOLI:

19 Q: I want to turn your attention to the page labeled
20 Plaintiff 000984.

21 A: Okay.

22 Q: And Section 2 of that disclosure statement 7-B. It says
23 during your ownership, describe any known roof system leaks
24 and repairs, and you wrote in chimney flashing replaced, roof
25 vent resealed; is that correct?

1 A: That is what is written there, yes.

2 Q: Did you fill that out?

3 A: Yes. That looks like my handwriting. I'm sorry; I can't
4 see.

5 Q: And that wasn't included on the 2019 disclosure statement
6 that you filled and gave out -- gave to my clients, Dr. Sarb,
7 was it?

8 A: I don't think it was, no.

9 Q: So, in 2017, you guys had your house listed for about six
10 months and you didn't sell it, correct?

11 A: That's correct.

12 Q: And so, in 2019, when you went to reattempt to sell it,
13 you didn't put that same information on the 2019 disclosure
14 form, did you?

15 A: I don't think it is the same from both forms, no.

16 Q: Did anything change from 2017 to 2019?

17 A: No, it did not.

18 Q: So, you disclosed repairs to the roof in 2017, but you
19 failed to disclose them in 2019; is that correct?

20 A: That's correct.

21 Q: During -- while your attorney was asking you questions,
22 you testified that no one has come into this courtroom and
23 testified that there has been water in the basement since 2010
24 to August 18th, 2019. That's not correct, is it? Didn't you
25 testify that you had water in the basement two times during

1 that time?

2 A: I did with you; that's correct.

3 Q: That's correct? And didn't Robin Hatchell also testify
4 that she saw the water in your basement during that time?

5 A: She did, yes.

6 Q: While your attorney was also asking you some questions,
7 you said that he didn't have time to clean up the house, to
8 show the house, to clean up a bunch of water and some mold and
9 mildew; is that correct?

10 A: That is correct.

11 Q: July -- summer of 2019 was a dry summer, wasn't it?

12 A: I would have to look at these colored boards over here to
13 tell you how much rain there was.

14 Q: Sure. Here you go. You see all that orange; that was a
15 dry summer, wasn't it?

16 A: Well, April is actually spring; I think so is May, June,
17 July, August.

18 Q: So, dry spring and dry summer? The house didn't flood
19 whenever it was dry, did it?

20 A: Our house never flooded except for the two instances that
21 we spoke to.

22 Q: Your house definitely didn't flood during dry summers,
23 did it?

24 A: Our house did not flood except for the two instances that
25 I just described to you.

1 Q: Dry summer, perfect time to list a house and sell it when
2 you have a leaky basement, isn't it?

3 A: Both times we listed our house, it included the summer.

4 Q: While your attorney was asking you some questions, you
5 testified you had no pests in your house. A 57-year-old house
6 with a wet basement, at least it was in the 50s-60s when Mr.
7 MacLean was there. Jeffries Creek is only about 500 feet
8 away, and you guys didn't see one pest in your house?

9 MR. LOVE: Objection, mis --

10 Q: Is that your testimony?

11 MR. LOVE: Objection, mischaracterization of testimony,
12 Your Honor.

13 THE COURT: All right. Please rephrase your question if
14 you will.

15 BY MS. GIOVANOLI:

16 Q: You testified earlier, whenever your attorney was asking
17 you questions, that you didn't have any pests in the house; is
18 that correct?

19 A: We did not have pests in our home, no.

20 Q: Okay. So, this house is 60 years old on Jeffries Creek,
21 and you never experienced any pests in your house? Not one
22 cockroach during your 10 years of ownership; is that your
23 testimony?

24 A: It would never be right to say never. I'm sure there
25 could have been a cockroach or two, but never a pest

1 infestation up to the light sockets.

2 Q: Okay. But that's not what you said whenever you were
3 testifying. You said we didn't have pests.

4 A: Will then I'll say right now, we can never say never. I
5 am sure we had a book or two in her home but not a problem
6 with books.

7 Q: Thank you for correcting yourself.

8 A: You're welcome.

9 Q: You did not correct yourself on that 2019 disclosure
10 statement, did you?

11 A: I'm sorry?

12 Q: I appreciate that you corrected your testimony here today
13 under oath, you told the truth. But you didn't do that on the
14 2019 disclosure statement that you gave to Dr. Sarb, did you?

15 A: I didn't do what?

16 Q: Correct your mistake that there was a problem in the
17 basement with water.

18 A: We didn't have a problem with water in our basement.
19 And it was on neither the 2017 nor the 2019 disclosure form.

20 MS. GIOVANOLI: I have no further questions.

21 THE COURT: All right. Thank you.

22 Anything further at all?

23 (REPORTER'S NOTE: No response.)

24 THE COURT: All right. Thank you, Ms. Phillips.

25 MS. PHILLIPS: Thank you. I'm done?

1 THE COURT: Thank you, Ms. Phillips. You may step down.

2 A: Okay.

3 BY THE COURT:

4 THE COURT: All right. Ladies and gentlemen, thank you
5 so much for your time and your patience and your attention.
6 If you will, we're gonna resume this trial at 930 in the
7 morning and work till resolution. I appreciate so much your
8 service, and please don't discuss this case, and we'll see you
9 back in the morning please be here about 9:20.

10 Thank you so much.

11 (REPORTER'S NOTE: Jury exits courtroom @ 5:09 p.m.)

12 THE COURT: All right. Is there anything we need to
13 place on the record before we recess for the evening?

14 MS. GIOVANOLI: I don't believe so.

15 THE COURT: All right. And just for scheduling ---

16 MR. LOVE: She released from her subpoena? I don't know
17 if that needs to be on the record. Is she now released from
18 her subpoena?

19 MR. LOVE: Can you talk to her husband and to me?

20 THE COURT: Well, her testimony is over with, so, yes, I
21 think so.

22 MR. LOVE: Okay. All right.

23 MS. GIOVANOLI: Yeah. She's done, but I don't think
24 we're gonna release her from the subpoena. You know, we don't
25 know how this is gonna go.

1 THE COURT: All right. So, she's under subpoena?

2 MS. GIOVANOLI: Yes.

3 THE COURT: All right. Well, then that's up to you.

4 It's not up to the Court. But so, you just need to be
5 available, Ms. Phillips, in case there's some instance where
6 you may be recalled. Okay?

7 All right. For planning purposes, do you know how many
8 more witnesses you have?

9 MS. GIOVANOLI: One.

10 THE COURT: Okay.

11 MR. GROTE: One or two.

12 THE COURT: That's fine. I'm not trying to pressure you
13 or anything like that. I'm just trying to figure out where we
14 stand.

15 And is there anything else that anybody anticipates we
16 need to know about or talk about before we go home today.

17 MS. GIOVANOLI: Not now. I'm sure there will be other
18 times.

19 THE COURT: I understand. Now, are you gonna work on
20 whatever the redaction might be necessary and then we'll ---

21 MR. GROTE: I will.

22 THE COURT: All right. And we will -- I will find the
23 time to proffer that testimony as soon as we can figure out a
24 time that we have some time to do that. Okay?

25 MS. GIOVANOLI: Okay. Thank you, Your Honor.

1 THE COURT: Thank y'all.

2 MR. GROTE: Thank you.

3 MS. GIOVANOLI: Y'all have a good evening.

4 THE COURT: You, too.

5 **RECESS - 5:12 P.M. - END OF DAY THREE**

6 *****OFF THE RECORD*****

7 **SEPTEMBER 14, 2023 - DAY FOUR**

8 **ON THE RECORD - 9:36 A.M.**

9 THE COURT: Anything we need to get into before we
10 continue?

11 MS. GIOVANOLI: Nothing from the plaintiff.

12 THE COURT: All right.

13 MR. LOVE: Your Honor, I looked over 184, I believe it
14 was, last night.

15 THE COURT: Right.

16 MR. LOVE: The only thing I found was the next to the
17 last page speaks to Mark Chandler's errors and omissions
18 insurance policy. I mean, it's not -- it doesn't have
19 anything to do with insurance as far as this case or coverage
20 or anything. It does have the word insurance all over it
21 because it's his bond or coverage or whatever.

22 THE COURT: What's -- and the Court made a prior ruling
23 as to insurance and some other things that we weren't going to
24 get into. So, I mean, is there any issue with redacting that?

25 MS. GIOVANOLI: No objection to redacting that.

1 THE COURT: I don't know if this -- you might could take
2 that page out of it, I don't know. What y'all think?

3 MS. GIOVANOLI: Ed, what do you propose we redact?

4 MR. LOVE: We can just pull the page out, probably.

5 MR. GROTE: What page is it?

6 MS. GIOVANOLI: It's 184 -- so, it's just one 119. So,
7 we can just remove this page.

8 THE COURT: If that's suitable with everybody.

9 MR. GROTE: I think that's good.

10 MS. GIOVANOLI: All right. So just this page. My hands
11 aren't working this morning. So, we'll pull it out.

12 MR. LOVE: Looking at one thing here; I'm sorry.

13 THE COURT: No, you're fine.

14 MR. LOVE: Just checking something.

15 THE COURT: Would y'all like this redacted page or do you
16 want me to file it for you?

17 MR. GROTE: I don't think that's the page that was
18 supposed to be pulled out.

19 THE COURT: That's not it?

20 MR. GROTE: It was the general liability policy page. It
21 is Defendant 119 that should come out. Defendant 118 should
22 be put back.

23 THE COURT: So, this is 119 that's out. Do you want it
24 or do you want me to throw it away or ---

25 MR. LOVE: We can throw it away, Your Honor. I've got

1 it.

2 THE COURT: All right. Are we ready for the jury?

3 MR. LOVE: Yes.

4 THE COURT: Mr. Grote, is y'all's next witness outside?

5 MR. GROTE: Yes, Your Honor.

6 THE COURT: Whoever it is can certainly come on in. Just
7 sit in the courtroom.

8 (REPORTER'S NOTE: Jury enters courtroom @ 9:42 a.m.)

9 THE COURT: All right. Good morning, ladies and
10 gentlemen, and thank you so much again for your service this
11 week, and your time, and your attention, and your patience as
12 we work towards the resolution to this finality of the
13 evidence.

14 We are going to recognize the plaintiffs. Call your next
15 witness.

16 MR. GROTE: Thank you, Your Honor.

17 The Plaintiff calls John Sims.

18 JOHN SIMS, HAVING BEEN SWORN,
19 TESTIFIED AS FOLLOWS:

20 THE COURT REPORTER: Can you spell your last name for me,
21 please, sir?

22 MR. SIMS: You'll have to speak loud, I don't hear out of
23 my right ear.

24 THE COURT REPORTER: Can you spell your last name for me,
25 please?

1 MR. SIMS: S-I-M-S.

2 THE COURT REPORTER: Thank you.

3 THE COURT: And, Mr. Sims, if you could just make sure
4 you speak into the microphone so that everybody can hear you.
5 And thank you for being here.

6 MR. SIMS: Okay.

7 THE COURT: Mr. Grote?

8 DIRECT EXAMINATION OF JOHN SIMS BY MR. GROTE:

9 Q: Good morning, Mr. Sims.

10 A: Good morning.

11 Q: What type of work do you do?

12 A: Remodel work, home repair.

13 Q: Okay. Are you a licensed contractor?

14 A: I am.

15 Q: What kind of contractor's licenses do you have?

16 A: Residential.

17 Q: How long have you been in the construction business?

18 A: Fifteen years. Fifteen years.

19 Q: All right. Are you familiar with 550 Wisteria?

20 A: I am.

21 Q: Did you do some work for Dr. Sarb out there?

22 A: I did.

23 Q: Okay. And we've been at this for a while, so I'm just
24 gonna ask you a few questions on one specific issue. Were you
25 involved in an issue with some cockroaches out at 550

1 Wisteria?

2 A: Yes.

3 Q: Okay. Can you tell me what happened? What was
4 discovered -- how did the, I guess, problem get discovered?

5 A: Repeat that, please.

6 Q: Sure. Tell me what you recall about that.

7 A: Okay. It's been a while, but I think we were working in
8 the back room, left back corner room, and we took a piece of
9 baseboard off to do some -- repair a piece of flooring or
10 something. I cannot remember. But anyway, once I took the
11 baseboard off, we found that there were roaches hidden in the
12 wall.

13 Q: Okay. Had they been coming out before that?

14 A: Not in abundance -- not that I noticed. I didn't -- I
15 don't recall that.

16 Q: Did Dr. Sarb report anything to you?

17 A: Well, she did say that she saw roaches in the house, yes.

18 Q: Okay.

19 A: And, which you know is -- I don't know, but she did.

20 Q: Okay. So, is this the sunroom that we're talking about?

21 A: You could call it that. The back room over the basement.

22 Q: All right. So, what was done after that?

23 A: I took out all the sheet rock, took the walls down to
24 bare, and she called an exterminator, and they came and
25 treated the walls. And then, I put the walls back together.

1 Q: So, what did it look like -- how would you describe it
2 when you took the walls off?

3 A: I don't know. It was just a lot of roaches in the wall,
4 and they were just embedded in there, I guess you could say.

5 Q: Did you have anything else to do with that issue?

6 A: No.

7 Q: All right. No further questions.

8 THE COURT: Mr. Love?

9 MR. LOVE: Thank you, Your Honor.

10 CROSS-EXAMINATION OF JOHN SIMS BY MR. LOVE:

11 Q: Mr. Sims?

12 A: Yes, sir.

13 Q: Name is Ed Love. I don't believe we have ever met. It's
14 nice to meet you.

15 A: We haven't.

16 Q: I do know your daughter, Lindsay. She has taught my boys
17 at Brazen (spelled phonetically). You did a good job with
18 her.

19 A: Well, good. Thank you.

20 Q: Yes, sir.

21 Is it my understanding from your direct testimony that
22 prior to you removing portions of the wall, there wasn't some
23 cockroach -- severe cockroach infestation in that house?

24 A: Well, no, not to me.

25 Q: I mean, you weren't seeing 20 or 30 of them?

1 A: Not to me, no, no.

2 Q: You were hired, I believe -- well, you were hired by Dr.
3 Sarb, but through -- I think she was introduced to you through
4 John Etheridge; is that right?

5 A: Correct.

6 Q: And you've done work with -- I call him Johnny Ray --
7 you've done work with him before, right?

8 A: Yep, plenty of times.

9 Q: As a result of your being retained or hired on 550
10 Wisteria, you prepared this estimate, which is Plaintiff's
11 Exhibit 9. Can you take a look at that?

12 A: Okay.

13 Q: Is that in fact the estimate you prepared?

14 A: It is.

15 Q: And is it your understanding that that estimate consists
16 of the items that were listed on the CL-100 and the inspection
17 report that needed to be repaired?

18 A: Repeat that.

19 Q: I'm sorry. And is it your understanding that the items
20 listed on that estimate are from the CL-100 and the house
21 inspection report that needed to be repaired?

22 A: That's correct. It says CL-100 and the report.

23 Q: And those repairs were made?

24 A: They were made.

25 Q: And you completed that work, I believe, the first week of

1 August and received the payment out of escrow from Walker
2 Wilcox's office?

3 A: That's how it usually works. I don't remember, but that
4 is how it works.

5 Q: Some of those repairs include repair decay at basement
6 level window; is that right?

7 A: What line are we on?

8 Q: Let's see here.

9 A: Yes, I see it.

10 Q: You see it now?

11 A: Yes.

12 Q: All right.

13 A: Repair decay at basement level window, left and right
14 window, near grade. Okay. Yes.

15 Q: Repair decay at basement entry door.

16 A: Yes.

17 Q: Install well vents to reduce water penetration at the
18 front of the house.

19 A: Where is that?

20 Q: That's gonna be down in the inspection portion.

21 A: Well vents to reduce water penetration; yes, we did.

22 Q: All right. We've talked a lot in this trial about those
23 well vents. We've got a lot of evidence -- that's at the
24 front of the crawlspace toward the Wisteria side of the house;
25 is that right?

1 A: Yes.

2 Q: Okay. Let me show you this just to ---

3 (To Court Reporter) will you please mark this as
4 Defendant's 3?

5 Do you recognize that photo?

6 A: It looks like somebody put the wind in very nice.

7 Q: That's that basement window that you replaced?

8 A: Yeah.

9 Q: And I think that Dr. Sarb testified that it was moved up
10 off of grade level so that that wood at the bottom, the wood
11 trim ---

12 A: We did move it up, yes, yes.

13 MR. LOVE: All right. Your Honor, I would tender
14 Defendant's Exhibit 3.

15 THE COURT: All right. Is there any objection?

16 MR. GROTE: No objection.

17 THE COURT: All right. Defense 3 is in.

18 DEFENDANT'S EXHIBIT NUMBER 3

19 ADMITTED INTO EVIDENCE

20 BY MR. LOVE:

21 Q: Now, though it's our first time meeting, Mr. Sims, you
22 are familiar with the Phillips, right?

23 A: Phillips, yes, yes.

24 Q: They good people, aren't they?

25 A: They are very good.

1 Q: They're the kind of people that are gonna raise their
2 kids in the house that's full of squander and roaches and
3 sewage?

4 A: Not to my knowledge.

5 Q: All right. Thank you. No further questions.

6 THE COURT: Is there any redirect?

7 MR. GROTE: No, Your Honor.

8 THE COURT: Mr. Sims, thank you for coming. You're free
9 to step down, and I would assume -- I'm not sure if you're
10 under subpoena or not.

11 MR. GROTE: Yes, Your Honor. We'll release him.

12 THE COURT: All right. And you're free to go.

13 MR. SIMS: Okay. Thank you.

14 THE COURT: Thank you, sir.

15 MR. LOVE: Have a good day, sir. Nice to meet you.

16 THE COURT: All right. Mr. Grote?

17 MR. GROTE: The plaintiff next calls Daniel Williams.

18 THE COURT: All right.

19 DANIEL WILLIAMS, HAVING BEEN SWORN,

20 TESTIFIED AS FOLLOWS:

21 THE COURT: If you'll have a seat, please, sir.

22 All right. Mr. Grote?

23 DIRECT EXAMINATION OF DANIEL WILLIAMS BY MR. GROTE:

24 Q: Good morning, Mr. Williams. How are you?

25 A: Pretty good, sir. How are you?

1 Q: Pretty good.

2 A: All right.

3 Q: What's your trade or profession?

4 A: I'm a plumbing contractor.

5 Q: How long have you been a plumbing contractor?

6 A: Forty-three years.

7 Q: How did you get into the plumbing business?

8 A: I went to school for -- way back in the days for auto
9 mechanic and diesel, which I didn't like. So, my cousin
10 introduced me and got me connected with the company doing some
11 plumbing. And ever since then, I was -- I went in and out a
12 little bit, but since that time, I really loved plumbing, and
13 I got into it, got with some real mechanics, and learn the
14 trade. They made me learn it the old-fashioned way. And now,
15 I am a plumbing contractor, master.

16 Q: Okay. So, do you have a plumbing license?

17 A: Yes, sir.

18 Q: Okay. What kind of plumbing license do you have?

19 A: Just a regular plumbing license that allows you to do
20 plumbing in the Pee Dee and the surrounding area, from here to
21 Columbia.

22 Q: How long have you been a licensed plumber?

23 A: Forty -- 35 to 40 years.

24 Q: All right.

25 MR. GROTE: Your Honor, at this time I would move to

1 qualify Mr. Williams as an expert in the area of plumbing.

2 THE COURT: Is there any objection to that?

3 MR. LOVE: No objection.

4 THE COURT: All right. I will find that Mr. Williams is
5 an expert in plumbing.

6 BY MR. GROTE:

7 Q: Do you recall Dr. Sarb hiring you to perform some work
8 out at 550 Wisteria Drive in Florence?

9 A: Yes, sir.

10 Q: Did you replace the sump pump for her in December 2019?

11 A: Yes, sir. She had one that was -- an old one that was
12 burnt out, and the line was -- the drain line was too small.

13 Q: Did you go over to her house and repair it?

14 A: I replaced it.

15 Q: Was there water in the basement when you went over there
16 to replace it?

17 A: At that time, I think it was some water at that time.

18 Q: So, was it just burnt out? Is that why it needed to be
19 replaced?

20 A: Yes, sir. It was an old pump, and you had a lot of
21 water, so it was getting overworked.

22 Q: Okay.

23 A: Uh-huh, (affirmative response).

24 Q: So, you said the pipe was too small. What do you mean by
25 that?

1 A: Well, it was like an inch-and-a-half line for the drain.

2 And the -- I put a two-inch in there with another new pump.

3 Q: Was the sump pump you put in the same size or capacity or
4 was it bigger?

5 A: I went with -- I think it might've been a bigger, because
6 I usually half to a three-quarter or one horse, three-quarter
7 one horse. That's if -- if you got a water pump or a three-
8 eight or a half horse, if I go there and your pump burnt out,
9 I usually go up to like a three-quarter or a one horsepower.
10 Okay. Inch and a half.

11 Q: Mr. Williams, I'm going to hand you what's been marked as
12 Plaintiff's Exhibit Number 22. If you'll take a look at that
13 for me, please.

14 A: Yeah. Yes, sir.

15 Q: Okay. Can you -- does that refresh your memory of the
16 work that you did out there at 550 Wisteria Drive to replace
17 the sump pump?

18 A: Yes, sir. Replace the pump and line.

19 Q: Okay. And how much did you charge for that work?

20 A: It says here 1475.

21 Q: And did Dr. Sarb pay you for that work?

22 A: Yes, sir.

23 Q: All right. Did you also do some additional work for Dr.
24 Sarb with respect to her sewer line?

25 A: Yes, sir. They had a line that was cast iron, and it was

1 messed up where it come out, come through the wall, reduced
2 down to like a three from a four and go back up to four, and I
3 think I had a back fall on it, back pitch. If you doing
4 plumbing and running line, your line have to come out and have
5 a fall downward in order for the water to get out of there.

6 Q: And if a -- you're saying the pipe went from a bigger
7 pipe to a smaller pipe, you're talking about going from the
8 house to the street?

9 A: Right at the house. When you come through the wall, you
10 can't come out through the wall with a four-inch and go down
11 to a three-inch and then go back up to a four, because you are
12 producing a clog. It's gonna stop up right there.

13 Q: And is that a condition that you found?

14 A: I found that. And it was cast iron too, and the rust --
15 once the iron rusts, it begin to -- it produce a clog. It's
16 gonna stop up.

17 Q: I mean, is that a situation that's pretty much guaranteed
18 to cause backups?

19 A: Yeah. Yes, sir.

20 Q: How long -- could you tell how long that had been in that
21 condition?

22 A: How long ago that was?

23 Q: Well, how long that pipe had been reduced down to three
24 inches? Is it something that looked like it had been just
25 done, or it had been there a long time?

1 A: No. They been there a long time like that.

2 Q: Okay.

3 A: That produces a problem automatic.

4 Q: All right. So, you also talked about this back slope,
5 right? What does that mean?

6 A: That means if you running out and you're running the
7 line, it's running backwards instead of sloping out and down,
8 your sloping up.

9 Q: So, from the house to the street, should it slope
10 downward?

11 A: Just some -- a certain part of it.

12 Q: Okay. And why is that?

13 A: When they came out and went down with the right grade,
14 and then they went up, back pitch.

15 Q: All right.

16 A: You can't -- you can't run a sewer line like that.

17 Q: Okay. So, why should a plumbing line slope from the
18 house downward out to the street?

19 A: To allow your water to go down, because water always go
20 down the hill. You don't want it to go up the hill to get out
21 of there.

22 Q: Okay.

23 A: Plumbing automatically works like that. You can't back
24 ---

25 Q: Okay. Is a sewer line pressurized?

1 A: Sir?

2 Q: Is the sewer line pressurized?

3 A: No, it wasn't pressurized, but they had it backwards.

4 Q: Right. So, does the flow of sewage rely on gravity to
5 flow downhill?

6 A: Yeah; yes, sir. Down through the years, plumbing works
7 like that.

8 Q: And so, when you say back slope instead of sloping down
9 from the house out to the street, it was sloped ---

10 A: Backwards.

11 Q: --- up towards the street?

12 A: Yes, sir.

13 Q: And what would that cause to happen?

14 A: A clog or stoppage, going back up.

15 Q: Go ahead.

16 A: Oh. Yeah, you're gonna have an automatic clog; it's
17 gonna back up.

18 Q: Is that a situation that guaranteed to cause sewage
19 backups?

20 A: Yes, sir.

21 Q: And taking that in combination with the reduction in the
22 price, reduction in the pipe, is that pretty much a double
23 whammy guaranteed to cause some backups?

24 A: Yes, sir. Double whammy; definitely is.

25 Q: Okay. That reverse slope that you found, did that look

1 like something that had just happened recently or ---

2 A: No, no. I think when they put the line down, they
3 probably did it like that.

4 Q: So, that then, based on what you observed and in your
5 opinion, is that something that looked like it had been there
6 for quite some time?

7 A: Yes, sir.

8 Q: Or been like that for quite some time?

9 A: Yeah.

10 Q: Did you also, I guess, find a condition where there may
11 have been holes cut in the sewer line?

12 A: Yes, sir. Yeah.

13 Q: Tell us about that.

14 A: If you have a sewer line and it stop up and you don't
15 have a clean out, a lot of them, they'll find the line, dig it
16 up, find the line and cut a hole in, because you got to get in
17 the line to get the clog out to get it stopped. So, they'll
18 cut a hole or bust a hole in it, and you should fix that if
19 you trying to get the line on stopped. But a lot of them will
20 cut -- they'll cut a hole in it and leave it.

21 Q: Is that an indication to you that there had been some
22 prior, I guess, attempts to unclog that line?

23 A: I didn't hear you.

24 Q: Sorry. Does that indicate to you that there had been
25 some prior attempts to unclog that line?

1 A: Yeah; yes, sir.

2 MR. GROTE: I don't think I have any further questions.

3 THE COURT: All right.

4 Mr. Love?

5 CROSS-EXAMINATION OF DANIEL WILLIAMS BY MR. LOVE:

6 Q: Mr. Williams, are we talking about a pipe that runs under
7 the ground?

8 A: Yes, sir.

9 Q: And the street line, the one on Wisteria, how far under
10 Wisteria is that?

11 A: How far under the ground?

12 Q: Yeah. How far under the ground?

13 A: Well, it starts at the house, about two foot.

14 Q: Two foot under the house. What about at the street?

15 A: No, ain't -- not under the house, cause I'm talking about
16 coming through the wall to the outside to the road.

17 Q: Right, but it's -- I'm talking about the underground
18 pipe, like the sewer line that the city puts in.

19 A: Sewer line down -- start out about two foot, possibly,
20 but when you get to the road it's going to be about five, six,
21 or eight foot down.

22 Q: That's what I'm talking about. That's what I'm talking
23 about. So, you're talking going from two feet under the --
24 two to six to eight foot under ---

25 A: Yeah.

1 Q: --- under the ground?

2 A: Uh-huh, (affirmative response).

3 Q: Mr. Williams, I don't know if you remember me, you did
4 some work on my house as well. Do you remember you put in my
5 hot water heater?

6 A: Water heater?

7 Q: Do you remember that? We had to go by fixtures and
8 stuff. Mr. Billy McBride sent you to the house.

9 A: Uh-huh, (affirmative response).

10 Q: You do good work.

11 A: Thank you.

12 Q: In fact, my clients, when they look at that invoice, they
13 just popped up, they said that's a pretty good price right
14 there.

15 A: Thank you.

16 Q: Anyway, they showed you the invoice that you put up for
17 the sump pump, right?

18 A: Yes, sir.

19 Q: Where you had to run the -- I think you said you went for
20 one-and-a-half to, what, two inches?

21 A: Two inch, uh-huh, (affirmative response).

22 Q: To run it out to the feed that goes to the street that we
23 just talked about.

24 A: No, no, no. It was run to the sewer line under the
25 house.

1 Q: Okay. Gotcha. Thank you. Now, you didn't get -- you
2 were not sure on the invoice for running that sewer line. Did
3 they show you that a minute ago?

4 A: No, not the sewer line to the road.

5 Q: Okay. Let's see here -- I don't know. It might be
6 quicker for me to go over there. One second; hold on one
7 second, Mr. Williams.

8 Is this your invoice for running the line to the road?

9 A: Yes, sir; I think it is.

10 Q: All right. And you charged how much for that one?

11 A: It says 1800.

12 Q: And it was dated what?

13 A: December 6th of '19.

14 Q: Okay. And it says you went down to -- oh, it talks about
15 the three-inch and the four-inch. That's what you was talking
16 about on direct?

17 A: Uh-huh, (affirmative response).

18 Q: The different size of the pipe.

19 A: I don't ever do that. It's not -- you shouldn't do that
20 in plumping.

21 Q: All right.

22 MR. LOVE: No further questions, Your Honor.

23 THE COURT: All right.

24 Anything further, Mr. Grote?

25 MR. GROTE: Just very briefly.

1 REDIRECT EXAMINATION OF DANIEL WILLIAMS BY MR. GROTE:

2 Q: Mr. Williams, do you still have Exhibit 178 in front of
3 you? I'm showing you Exhibit 178.

4 A: Uh-huh, (affirmative response); okay.

5 Q: Which is the invoice I think Mr. Love has just
6 referenced. Okay?

7 A: Uh-huh, (affirmative response).

8 Q: Does that refresh your memory of the work that you did
9 out there to replace the sewer line?

10 A: Yes, sir; uh-huh, (affirmative response).

11 Q: Okay. Is that consistent with what you testified to
12 previously about the line being reduced down to -- or the pre-
13 existing line had been reduced?

14 A: Yes, sir.

15 Q: So, three inches to four inches?

16 A: Uh-huh, (affirmative response).

17 Q: What did you replace it with?

18 A: Four-inch, four-inch PVC to the road.

19 Q: And we're saying -- the existing line that you took out
20 that was causing a problem, we're saying went bigger to
21 smaller like a bottleneck?

22 A: It was big in certain areas, but when it come from the
23 big part and come down to a three then back up to a four.

24 When I learned plumbing, they would not let me do that. And
25 if I done that, that would be a problem.

1 Q: And is this invoice also consistent with your
2 recollection that you found that holes had been cut into that
3 pipe?

4 A: Yes, sir. A cast-iron pipe, if you don't have a
5 cleanout, they usually cut a hole in it and so you can get
6 your sewer cable into the line to get the clog out.

7 Q: Is this also consistent with your prior testimony that
8 you did find a back pitch on the existing line?

9 A: Yes, sir; uh-huh, (affirmative response).

10 Q: And when you ran the new line, did you put the correct
11 slope on it?

12 A: Yes, sir. That's how I learned to do it down through the
13 years, for 40-something years, you have to do it like that.

14 Q: All right. And this invoice is, what, \$1800?

15 A: Yes, sir.

16 Q: Did Dr. Sarb pay you for that work? Did Dr. Sarb pay you
17 for that work?

18 A: Yes, yes; they did.

19 MR. GROTE: No further questions.

20 THE COURT: Anything further?

21 MR. LOVE: No, Your Honor; I'm good. Thank you.

22 THE COURT: All right. Mr. Williams, thank you, sir, for
23 being here. I appreciate it.

24 MR. WILLIAMS: Thank y'all.

25 THE COURT: Have good day, sir. Thank you.

1 MR. WILLIAMS: Thank you.

2 THE COURT: All right. Mr. Grote?

3 MR. GROTE: Your Honor, at this time, the plaintiff rests
4 their case.

5 THE COURT: All right.

6 All right. Ladies and gentlemen, at this time, there is
7 matters of law that we have to take up outside of your
8 presence. So, if you'll take a break. Please don't discuss
9 this case at this time, and will get right back to you just as
10 soon as possible, and let you know what we're gonna do next.

11 Thank you so much.

12 (REPORTER'S NOTE: Jury exits courtroom @ 10:09 a.m. The
13 following takes place outside the presence of the jury.)

14 THE COURT: All right. Are there any motions that we
15 need to take up at this time?

16 MR. LOVE: May I approach, Your Honor.

17 MOTIONS:

18 MR. LOVE: Your Honor, the defendants would move for
19 directed verdict. I've placed on Your Honor's bench a copy of
20 the motion for directed verdict. The plaintiff had moved for
21 -- or the plaintiff has pled seven different causes of action,
22 Your Honor. All of which were based in reliance on the
23 initial disclosures. The evidence is replete with the fact
24 that the plaintiff relied on the initial disclosures.
25 However, Your Honor, the evidence is also replete that the

1 plaintiff relied on the House Master report and the CL-100 in
2 purchasing 550 Wisteria. The plaintiff was asked for both of
3 those inspections whether she was present. I even asked her
4 if she went in the crawlspace for those inspections. I asked
5 if she read the reports, if she reviewed the reports. She
6 went as far as saying she met with her realtor and went over
7 those reports. I asked her about the notations in the reports
8 if there was decayed wood. Your Honor will remember she
9 testified on direct and discussed the fascia boards and the
10 soffit. And we saw pictures of the fascia boards and the
11 soffits. And her testimony was that is not near the basement.
12 I asked her on cross examination, I said, but wasn't there
13 window that was rotten? She said yes. I asked her about the
14 entry door that was right. She said yes. We talked to --
15 even her expert said that there was this threshold door that
16 was between the two basements. It wasn't actually a door, I
17 think that have been removed, but there was a doorjamb, and he
18 talked about, I guess, the wood strip or whatever is at the
19 bottom was decayed.

20 Your Honor, *McLaughlin v. Williams*, I'm gonna read
21 portions of that for purposes of the record, and the opinion
22 is included in the materials and opposing counsel has one.

23 A disclosure statement was given. Several of the items
24 were left blank, and there were no explanations. So, in that
25 case, we have disclosures they didn't even answer. *McLaughlin*

1 initialed each page of the disclosure signifying he had
2 reviewed it. We have that here. Plaintiff's Exhibit, I
3 believe it's Number 3, is the disclosures. We have initials
4 on all the pages.

5 They entered into an agreement to sell and purchase in
6 June 2003. We've got that here.

7 The inspection, performed a whole house inspection.
8 *McLaughlin* received a written inspection report, indicated
9 moisture damage to the exterior of the subject property. So,
10 *McLaughlin*, we have exterior damage due to moisture.

11 In June 2003, *McLaughlin* closed on the house, took
12 possession of the property. Six weeks later following the
13 closing *MacLaughlin* learned of defects in the structure of the
14 subject property due to prior water intrusion.

15 *McLaughlin* argues that the inspection report does not
16 indicate water damage to locations within the interior
17 portions of the house, and therefore, there is an issue of
18 fact as to whether or not the home inspection report precluded
19 him from relying on the disclosure statement. The Court
20 disagrees. Court says although the disclosure statement
21 indicated *Williams* was not aware of a malfunction or defect
22 due to water seepage, leakage, dampness, or standing water or
23 water intrusion from any source in any area of the structure.
24 The home inspection report clearly informed *McLaughlin* that
25 there was some moisture damage in various locations of the

1 exterior of the subject property.

2 The Court in *McLaughlin* performed the lower court finding
3 that the plaintiff could not rely on the initial disclosures,
4 because the plaintiff had information in the inspection report
5 which showed that there was rotten decay on that house. And
6 so, she knew the truth of the circumstances.

7 Your Honor, ---

8 THE COURT: But isn't that different than this case?

9 MR. LOVE: It is not.

10 THE COURT: Well, in this case, the inspection reports to
11 don't show any of that.

12 MR. LOVE: The inspection reports, yes, they do, Your
13 Honor.

14 THE COURT: All right.

15 MR. LOVE: Your Honor, Plaintiff's Exhibit Number 4 is
16 the CL-100, and Page 3, it states wood decay and damage is
17 evident to the window trim and windowsill at the right side of
18 the basement, water/moisture related. So, that's the CL-100.

19 THE COURT: All right.

20 MR. LOVE: And then the inspection report notes in 2.1
21 Windows, decay noticed at the basement level window and the
22 left end window the grade. Recommend repair to any damaged --
23 wood. And then there were other spots of decayed wood, and I
24 know one is in 8.1 of the report. That's what I had her look
25 at on cross-examination. Water intrusion to the front section

1 of the crawlspace. So, and there is -- and there are other
2 decayed and rotten wood, like the soffit in the fascia that
3 she testified about. Those are in the initial report; in this
4 one, I believe it is.

5 THE COURT: You know, I mean, but at issue is groundwater
6 coming into the basement, right?

7 MR. LOVE: That is the issue, yes. But, the Court
8 doesn't differentiate because that's what happened -- that's
9 what happened in *McLaughlin* that the Court was like, well, you
10 knew there had been water in there because you had decay and
11 rot. And in *McLaughlin*, water came in and flooded. That's
12 why they used the word flooded in the opinion, standing water.
13 They had standing water.

14 THE COURT: Okay.

15 MR. LOVE: It doesn't say, well, the report said standing
16 water; you should've known there was standing water. What the
17 Court said was the report tells you there's decayed wood. You
18 should've known there was water.

19 THE COURT: I mean, the trouble I have with that is that
20 there is testimony in this record that that window that was
21 decayed was making contact with the ground. I just feel like
22 there is a question of fact as to the source of whatever
23 moisture might've created in that condition.

24 MR. LOVE: Okay. Let's take it one step further, Your
25 Honor.

1 THE COURT: All right.

2 MR. LOVE: In July of 2023, the Court of Appeals in *Isaac*
3 *v. Onions*, reaffirmed their standing in *McLaughlin*. This is a
4 month and a half ago. Our jurisprudence has at times
5 suggested it is difficult for a purchaser to prove a right to
6 rely on misstatements by real estate agents and owners because
7 of the right to have a home inspection. They further outline
8 a buyer cannot justifiably rely upon any representation of the
9 seller when the purchase is contingent on an inspection.

10 Your Honor, for that reason ---

11 THE COURT: So, I mean, are you saying that they're just
12 not putting any credit at all into a disclosure statement?

13 MR. LOVE: Not once you have inspections done. When you
14 inspect the property, then you can't rely on statements or
15 misstatements when you have the truth that's sitting in that
16 inspection report. So, that is the first ground that would --
17 that the defendants would move for a directed verdict, Your
18 Honor.

19 Second, I provided Your Honor with cases concerning the
20 economic loss rule. Plaintiff has failed to prove by a
21 preponderance of the evidence that her tort claim should
22 survive for the jury to consider, pursuant to the economic
23 loss rule and/or any exception thereto. A breach of a duty,
24 which arises under the provisions of a contract between the
25 parties must be redressed under the contract, and a tort

1 action will not lie.

2 I have sent -- submitted the *Griffin Plumbing & Heating*
3 case to you, as well as *Carroll v. Isle of Palms Pest Control*.
4 Your Honor, here, we have tort-based claims that are alleged
5 that stem from those initial disclosures and the contracts,
6 and those aren't appropriate. You can't go under both
7 theories.

8 THE COURT: So, you're saying you can't have causes of
9 action 1 through 5 if you've got 6 and 7? 1 through 5 being
10 fraud, constructive fraud, negligent misrepresentation,
11 negligence in violation of the Uniform Residential Acts. And
12 6 and 7, being breach of contract and breach of contract
13 accompanied by fraudulent act?

14 MR. LOVE: Correct.

15 THE COURT: All right.

16 MR. LOVE: Round 3, Your Honor.

17 The defendants pled and are entitled to the affirmative
18 defense of accord and satisfaction, and/or performance under
19 the contract. The evidence has shown that the defendants
20 fully participated in the contractual process. Signed a
21 contract, inspections were done, repair estimates were made.
22 Once the repair work was done, we escrowed the money with the
23 Wilcox Law Firm, and then paid a subsequent amount in accord
24 and satisfaction for any of the repairs requested.

25 Because of that payment, we're entitled to those

1 affirmative defenses, accord and satisfaction, and/or
2 performance under the contract.

3 Lastly, Your Honor, is a failure to prove elements. So,
4 even if the Court finds that Gound 1 is insufficient, that we
5 don't mirror the facts of *McLaughlin*, the plaintiff has failed
6 to show that detrimentally relied on the disclosures
7 themselves as opposed to anything else that was given to her
8 through the process. Her own inspector, or her own re -- Mr.
9 Sims, Mr. Sims just sat there and testified that he repaired
10 decay and rotten spots, and so to be blind to that, she can't
11 now come back and say, I'm relying on what you said, not what
12 the CL-100 says, the house inspector, my own guy, your guy,
13 even her own expert.

14 And for that reason, we would move that she has not met
15 the elements or any other causes of action that rely upon
16 reliance.

17 THE COURT: And that being which exact causes of action?

18 MR. LOVE: Fraud, constructive fraud, negligent
19 misrepresentation, negligence -- well, the way they're pled,
20 all of them claim that she relied on the initial disclosures.
21 In the complaint, it's consistent throughout.

22 THE COURT: All right.

23 MR. LOVE: That is Defendant's motion, Your Honor.

24 THE COURT: Tell me again your reliance argument; I'm
25 sorry. I just need to ---

1 MR. LOVE: Which part, Your Honor, and ---

2 THE COURT: This last -- this last part you just ---

3 THE COURT: So, reliance is obviously an element of
4 fraud. You have to have the misstatement. You have to have
5 that it was heard. You have to have that it was intentional
6 and intended that it be relied upon. And then that it was
7 actually relied upon. So, that we're at the -- we're talking
8 about the element of actually being relied upon. So, the
9 plaintiff is saying, you know, that -- that one disclosure
10 form, that's what I relied upon in buying this house, but
11 that's not the case. She's admitted that she relied on a CL-
12 100, she admitted that she relied on the home inspection
13 report. Her contractor and Pee Dee Renovating, both did
14 estimates that included items of rotten decay. So, to say I
15 relied on this report to say there was no water in the
16 basement, I'm going to ignore this one, ignore that one, and
17 that one, and that one; you can't do that. Under *McLaughlin*,
18 under any case that deals with reliance, if you know the truth
19 of the matter, you can't be blind to that and go back to
20 something that predates it.

21 THE COURT: All right. I understand.

22 MR. LOVE: Yes, sir.

23 THE COURT: All right.

24 MR. GROTE: Thank you, Your Honor.

25 Obviously, since this was just handed to me, I obviously

1 don't have it -- haven't had an opportunity to review all of
2 this in depth, but this sound eerily similar to a motion
3 hearing that we had not too long ago in this case, which was
4 heard by Your Honor. So, I would defer and crave reference to
5 the motion for summary judgment that Ed Love had filed
6 previously in this case. This exact same issue was already
7 argued and, you know, there's arguments in our -- our
8 affidavit in response to that motion for summary judgment that
9 addresses that. Obviously, I can't prepare you a written
10 response having just received this, but arguments are
11 generally this as follows: As to Item Number 1, I think it's
12 a misreading of the *McLaughlin* case, and this was argued on
13 summary judgment as well. I don't have a chance to look
14 through all of the facts, but my recollection of that case was
15 as it dealt with moisture damage that -- there was an issue
16 that they were claiming there was rotten wood, they needed the
17 rot replaced, something like that. My recollection out of
18 that case, too, was that the CL-100 showed active wood
19 destroying fungi. In this case, the CL-100 didn't show that.
20 It was non-active. Also, the inspection reports didn't show
21 the issues, and I think this argument conflates the issues in
22 this case, and I think Your Honor has already kind of seized
23 upon that. He's saying, okay, if there's a rotten board up
24 by the roof, that somehow gives her notice and precludes her
25 from making a claim that the basement flooded. I mean, that

1 has nothing to do with the basement. That's not notice of a
2 groundwater problem. The -- I mean, Mr. Williams just got on
3 the stand there and said, you know, gravity flows downward,
4 water flows downward, so how is, you know, rotten wood up at a
5 roof evidence that there was a groundwater problem, and that
6 somehow would preclude her from having a claim. You know, it
7 just -- that case just does not stand for that. You know,
8 there's rotten wood on a window, you know, it's touching the
9 ground, that is not an indication that there is a groundwater
10 problem.

11 You've sat here for three days of testimony now. I don't
12 think there's been any claim in this case that she is
13 asserting damages for rotten wood in this case. She's had to
14 have a French drain system installed to stop water from
15 getting into the basement. We've got an expert, of course,
16 who said, you know, he looked at the CL-100, he looked at that
17 House Master report, didn't provide notice of these problems,
18 and that kind of goes to the justifiable reliance. And
19 there's a statement in here that all of our causes of action
20 are based on the -- excuse me -- the initial disclosure, and
21 that's not completely true. There's testimony that she relied
22 on, what was in the MLS listing. She also relied upon this
23 communication from the sellers back to her through the real
24 estate agents. And so, there is ample evidence that she
25 didn't have notice of this issue. I mean, the case is -- I

1 mean, the evidence is replete that her disclosures did not
2 reveal the problems that she's asking for or that she's
3 claiming in this case, and that she got the reports. They
4 didn't, you know, disclose the issues that are in the case.
5 And we've got an expert saying, you know, these things
6 predate. There's just overwhelming evidence and the question
7 of fact as to all the issues in this case, Your Honor.

8 And, you know, I think he cited this *Isaac* case. I'm
9 being told that's not even a published opinion.

10 THE COURT: All right. Anything further?

11 MR. GROTE: Just beg the Court's indulgence, Your Honor.

12 So, moving on to the next item, I guess, just in summary
13 on the justifiable reliance issue again. All the evidence in
14 this case so far has been that she didn't have any notice of
15 these problems. They came up afterward. There were
16 representations that they didn't exist. She had what was
17 prepared that was disclosed to her, and they moved on. It
18 turns out these things were not disclosed. These are not the
19 type of things that would fall under *McLaughlin*. They're
20 separate issues.

21 As far as the economic loss doctrine, Your Honor, I don't
22 think that's applicable. The case law is replete with
23 circumstances where the Court has recognized fraud and
24 negligent misrepresentations in connection with these type of
25 cases. I think even the *McLaughlin v. Williams* case that Mr.

1 Love handed up is a case where they alleged negligent
2 misrepresentation and fraud in connection with a real estate
3 transaction. Just because there are other causes of action
4 does not preclude that. And even -- and there are some
5 representations outside of the disclosure statement as well.
6 Residential -- I think it's cited in our memo in opposition to
7 summary judgment, but I think there's caselaw or -- excuse me
8 -- it's in the act itself that says that this act doesn't
9 necessarily preclude common law causes of action either.

10 THE COURT: All right. Let me ask you this. How -- what
11 evidence is there of a breach of contract?

12 MR. GROTE: There's a contract provision, I believe it's
13 Section 16 that said -- required her to provide a -- required
14 that Dr. Sarb be provided the residential property condition
15 disclosure statement. And also provides that it required that
16 the property condition disclosure statements be corrected if
17 there was an error in it, which they did not do, and that
18 would be a breach of that obligation to provide the truthful
19 disclosure statement and to correct it if it was not correct.

20 THE COURT: All right. I don't know that I totally
21 recognize or -- I mean, there are certainly issues in this
22 case as to the disclosure. But I'm not sure it's breach of
23 contract given what the evidence is in this case, and
24 certainly -- and it could still be question of fact.

25 But this is what I intend to do. I intend to take the

1 Defendant's motion for a directed verdicts under advisement,
2 and continue with this trial. I'm not sure what the defense's
3 position is as far as how many witnesses or what kind of case
4 you're gonna put up. But certainly, if you could enlighten us
5 as to what you're thinking as far as that is concerned. And
6 then, at the close of all evidence, I'll make my rulings on
7 directed verdict.

8 MR. LOVE: Your Honor, if I may, briefly?

9 THE COURT: Sure.

10 MR. LOVE: This was raised on summary judgment. We've
11 got a different standard now that we have all the evidence in
12 the record. We obviously know that that exists. So, arguing
13 your ruling on the summary judgment is not applicable to a
14 directed verdict.

15 THE COURT: Right.

16 MR. LOVE: Second, it's not -- it's not her personal
17 testimony as to her notice. It's that these documents
18 provided to her were correct, because that's the evidence
19 we're relying upon. In *McLaughlin*, I'm not saying that
20 because there was damage at the roof, she should've known the
21 basement leaked. *McLaughlin* says that. That's not what I'm
22 arguing. I'm arguing not only do we have the damaged roof, we
23 got the damage in the basement where we've got a problem that
24 she alleges. And so, that's my argument. It's not that this
25 should lead to that, it's that ---

1 THE COURT: Well, let me ask you this. Mr. Stewart is
2 the only one that ever said anything about some decay in the
3 threshold that's in the basement -- in the floor of the
4 basement; is that right?

5 MR. LOVE: I think so.

6 THE COURT: And Mr. Stewart was never involved until well
7 after the closing of the house; is that what the evidence
8 shows?

9 MR. LOVE: That's right.

10 THE COURT: Okay.

11 MR. LOVE: But, and I understand your point, Your Honor.
12 The inspection reports were before she closed on the house in
13 this instance.

14 THE COURT: I understand.

15 MR. LOVE: And under *McLaughlin*, that's all you need.

16 THE COURT: What you're arguing is -- and I'm gonna take
17 a look at *McLaughlin*.

18 MR. LOVE: That's fine.

19 THE COURT: But what you're arguing is is that the soffit
20 issue, an issue with the very front of the house, this
21 crawlspace, and a window seal that's in contact with the
22 ground level puts them on notice of the water in the basement?

23 MR. LOVE: I'm not. I'm arguing that the window that is
24 that the ground level in the entry door that comes into the
25 basement and the trim around those, having decay, the joists

1 having decay, which is noted in the reports, those are the
2 evidence that there is moisture or water or something in
3 there. That's what put her on notice is those two inspection
4 reports.

5 THE COURT: All right. I understand.

6 MR. LOVE: Yes, sir.

7 MR. GROTE: Your Honor, just -- if I may very briefly.

8 THE COURT: Yes, sir.

9 MR. GROTE: I mean, I think that there's been expert
10 testimony that in the minimum creates a question of fact.
11 Glenn Stewart stood up on the stand and said he's looked at
12 both the CL-100 and the House Master report, and in his expert
13 opinion those didn't reveal the problem that he was talking
14 about.

15 As far as the accord and satisfaction issue, you know,
16 there's ample evidence that she got all the inspection
17 reports, she has every single thing to be fixed that was in
18 the inspection reports, and she did that. But, how in the
19 world is she going to be able to ask for repairs to something
20 that she doesn't know about. And this groundwater problem ---

21 THE COURT: And that lends credit to my thought that this
22 really isn't a breach of contract case. Because everything
23 that was entered into, as far as the contract, was performed
24 by both parties, it seems to me, other than a question of fact
25 as to whether or not the disclosure form was, was misleading.

1 I mean, I think that's where this case -- where the issue is.
2 Is that fair? I mean, do you want to argue against that? Let
3 me know. I mean either side.

4 MR. GROTE: I mean, I think the central -- one of the
5 central issues is the disclosure statement, but they had an
6 obligation by law to provide it. But they also had the
7 obligation by the contract to provide it. So, there are two
8 sources that can ---

9 THE COURT: And then they provided it.

10 MR. GROTE: Right.

11 THE COURT: They provided it. And it's a question of
12 fact as to whether or not ---

13 MR. GROTE: Right. But the contract provision, I don't
14 have a right in front of me, but I believe it says they had an
15 obligation to provide an accurate one and to correct it if
16 it's inaccurate. And that's where the breach ---

17 THE COURT: And there's evidence in this record that says
18 they provided an accurate disclosure form, and so that makes
19 it a question of fact. Right?

20 MR. GROTE: Yes. I believe that makes it a question of
21 fact that goes to the jury.

22 THE COURT: I understand. I mean, that's what -- that's
23 what I believe at this point. But certainly ---

24 Mr. Love, is there anything you want to add to that?

25 MR. LOVE: Your Honor, I believe that, you know, if we're

1 talking about breach of contract claims, then I believe we're
2 talking about on my -- if we look at my directed verdict
3 motion, Your Honor, that would be 1, 6, and 7. And if they're
4 going forward on that, fraud and fraudulent misrepresentation,
5 you lied on this form, then I guess we're -- we would move
6 forward on 2, 3, 4, 5, because all of those other three or
7 what's wrapped up in the contractual merger clause and all
8 that good stuff that we learned about years ago.

9 THE COURT: And that very well may be where we're going,
10 but -- again, I'm going to reserve a ruling and were gonna ---

11 MR. LOVE: I understand, Your Honor.

12 THE COURT: --- complete the trial. Okay? Is that ---

13 MR. LOVE: You -- I'm sorry.

14 THE COURT: Anybody want to place any more on the record?

15 MR. GROTE: No, Your Honor. Other than since I don't
16 have that ability to submit something in writing, I would just
17 refer the Court to our memorandum that was filed in opposition
18 to their motion for summary judgment, because I think it
19 addresses a lot of the legal issues that are being raised in
20 here. Probably not all of them, but there is some caselaw
21 that I guess I can refer to on that, Your Honor.

22 THE COURT: Okay.

23 MR. GROTE: I believe if I recall correctly, Mr. Love
24 submitted his memorandum late, so we didn't address every
25 issue that you raised in there, but he does address the law.

1 MR. LOVE: So mean.

2 MR. GROTE: No, not late. I think it was submitted like

3 ---

4 MR. LOVE: You gotta know a directed verdict motion is
5 coming. I mean, this ain't a surprise. It's not like, whoa.

6 MR. GROTE: Right. I mean, it's not a surprise the
7 motion was coming.

8 MR. LOVE: I had like 30 seconds to look at a document
9 yesterday, and it's like, wait.

10 THE COURT: All right. I understand.

11 MR. LOVE: Judge, you had asked me about timing earlier.
12 If we rock 'n' roll, we might be out of here by 12:30, take
13 lunch, do a closing after lunch.

14 THE COURT: All right.

15 MR. LOVE: I don't -- I can't control their cross. They
16 have all the time they want, whatever it takes. I can't
17 guarantee that, but none of my witnesses are gonna be like
18 long.

19 THE COURT: All right.

20 Anything you want to add to that, anything from the
21 plaintiff?

22 MR. GROTE: As far as the plan? I mean, we're happy to
23 move forward and get this wrapped up whenever we can.

24 THE COURT: I mean, we'll see where we get. I mean,
25 that's all we can do.

1 MR. LOVE: I do need five minutes for a restroom break.

2 THE COURT: Yes, sir. Understand.

3 MR. LOVE: Thank you.

4 THE COURT: We'll take a few minutes, and then we'll
5 resume.

6 MR. LOVE: Thank you, Judge. Appreciate your patience.

7 RECESS @ 10:38 A.M.

8 *****OFF THE RECORD*****

9 ON THE RECORD @ 10:46 A.M.

10 BY THE COURT:

11 THE COURT: All right. Are we ready to go?

12 MR. LOVE: Ready to proceed, Your Honor.

13 THE COURT: All right. If we could have the jury,
14 please?

15 (REPORTER'S NOTE: Jury enters courtroom @ 10:48 a.m.)

16 THE COURT: All right. Thank you so much, ladies and
17 gentlemen, for your attention.

18 We're gonna recognize Mr. love.

19 MR. LOVE: Thank you, Your Honor. Defense would call
20 David Wimberley to the stand.

21 DAVID WIMBERLY, HAVING BEEN SWORN,

22 TESTIFIED AS FOLLOWS:

23 THE COURT: All right. Mr. Love?

24 Go ahead and take a seat.

25 DIRECT EXAMINATION OF DAVID WIMBERLY BY MR. LOVE:

1 Q: Mr. Wimberly, if you would take a seat and please spell
2 your last name for the court reporter.

3 A: W-I-M-B-E-R-L-Y.

4 Q: What is your occupation, Mr. Wimberly?

5 A: I'm a real estate agent.

6 Q: How long have you been a real estate agent?

7 A: Twenty-nine years.

8 Q: Are you familiar with 550 Wisteria Drive?

9 A: I am.

10 Q: How are you familiar with 550 Wisteria Drive?

11 A: I had it listed at one time.

12 Q: When was it listed?

13 A: It was approximately six years ago.

14 MR. LOVE: Your Honor, if I may refresh the recollection
15 of the witness?

16 THE COURT: Sure. And is that a document ---

17 MR. LOVE: This is Plaintiff's Exhibit 185.

18 THE COURT: Absolutely. He can do anything he would like
19 ---

20 BY MR. LOVE:

21 Q: I'm gonna show you Plaintiff's Exhibit 185, which is a
22 disclosure statement signed by the Phillips and you. Would
23 you read the date on that disclosure statement?

24 A: 6/19/17.

25 Q: So, it was six years ago? I was trying to get a little

1 more precision, so -- excuse me -- of 2017.

2 A: Okay. Okay. Yeah.

3 Q: Did you have an opportunity to view 550 Wisteria Drive?

4 A: I did.

5 Q: You went inside the house?

6 A: I did.

7 Q: How many times do you think you are the house?

8 A: I'd say probably at least 10 times.

9 Q: Okay. How long did that listing last?

10 A: Six months.

11 Q: it did not sell during the six months, right?

12 A: It did not.

13 Q: How many times did that house show during that six

14 months?

15 A: That's hard to say. It was numerous times. And I think

16 I had -- I had either two or three open houses in it.

17 Q: Okay. But other -- I mean, there were other showings of

18 the house?

19 A: Oh, yeah, yeah. There was numerous showings.

20 Q: And other agents would've been taking people in there?

21 A: That's correct.

22 Q: All right. At any point in time, when you went into 550

23 Wisteria Drive, did you notice any severe cockroach

24 infestation?

25 A: I did not.

1 Q: Did you ever notice any issues with plumbing or toilets
2 gurgling?

3 A: No.

4 Q: Did you go in the basement?

5 A: I did.

6 Q: Did you notice standing water in the basement?

7 A: There was not.

8 Q: Did you notice flooding?

9 A: No.

10 Q: Were the walls seeping or peeing?

11 A: No.

12 Q: Did you notice any kind of cracks all in the walls of the
13 ceilings?

14 A: No.

15 Q: Was there furniture in the basement?

16 A: There was furniture in the basement, yes.

17 Q: Okay. At any point in time during the six months that it
18 was listed in 2017, did any of the other agents in town,
19 around Florence, reach out to you, or during the open houses,
20 any of them reach out to you and say, listen, you got -- you
21 got problems here. There is roaches everywhere, sewage,
22 flooding, leaking, any of that stuff?

23 A: No. I had no complaints.

24 Q: Okay. During the six-month period, do you ever remember
25 a time that you reached out to the Phillips and like, hey,

1 we've got an open house this Sunday at 2 o'clock. Are y'all
2 ready? And they said we can't do it, we've got to clean stuff
3 up?

4 A: No, sir.

5 Q: Is there any other time that you remember that stands out
6 in your head other than I, I guess, schedule and convenience,
7 where someone wanted to show the house, whether it was another
8 agent or you, and they had to reschedule for any reason?

9 A: No, sir.

10 Q: The house was open and ready for y'all to look at?

11 A: Always.

12 Q: What happens at the end of the listing?

13 A: I pulled it off the mark it and stopped marketing the
14 property. And at that time, I think they -- later on they
15 relisted it with RE/MAX at that time.

16 Q: You didn't make any money off this house, did you?

17 A: Not a dime.

18 Q: No further questions.

19 THE COURT: Mr. Grote?

20 CROSS-EXAMINATION OF DAVID WIMBERLY BY MR. GROTE:

21 Q: So, Mr. Wimberly, this has been six years ago, right?

22 A: That's correct.

23 Q: How many things do you remember from six years ago?

24 A: Quite a few.

25 Q: Quite a few. So, how many times -- how many times do you

1 think the property was actually sold -- excuse me -- actually
2 shown to anybody?

3 A: It was shown quite a few times. I know that I had at
4 least two open houses, which at that time, I probably had at
5 least 10 to 12 people come to my open houses.

6 Q: This house never sold in 2017, did it?

7 A: No, sir. Not by me.

8 Q: And there had to be some reason, right?

9 A: I'm sure there was.

10 Q: It's very possible that this property didn't sell because
11 it had problems, right?

12 A: There was no moisture problems. The only problem that I
13 know of with the house was there was a return in the hallway
14 that needed a little bit of extra work done to it, and that's
15 basically it. There was no moisture problems.

16 Q: Not every person who goes and looks at the houses
17 provides feedback, do they?

18 A: Most of them do, because I usually ask for a
19 questionnaire.

20 Q: But not everyone does, do they?

21 A: No.

22 Q: Okay. Isn't it possible that some people went out there
23 and they were dissatisfied with the condition of the basement,
24 and that's why they chose not to buy it?

25 A: Not to my knowledge.

1 Q: Well, not to your knowledge, but that's certainly
2 possible, isn't it?

3 A: I have no idea.

4 Q: The fact is, you don't know every reason why somebody
5 chose not to buy this property when it was listed, right?

6 A: That's correct.

7 Q: And the fact is, you don't know the condition of the
8 property every time somebody looked at it, right?

9 A: If I wasn't present.

10 Q: That's right. And so, you were present for all those
11 times that other people went in there?

12 A: That's correct.

13 Q: All the people who didn't want to buy the house, right?

14 A: That's correct.

15 Q: You had all these people out there, nobody wanted to buy
16 it, right?

17 A: Not while I had it listed.

18 Q: And are you aware in this case the house listed and sold
19 within one day? Did you know that?

20 A: No.

21 Q: You didn't know that in this case they listed the
22 property or at least they completed a disclosure statement to
23 my recollection on June 13th, 2019. My client put an offer on
24 it June 14, 2019. Did you know that?

25 A: No.

1 Q: Okay. And so, you list for six months, have a bunch of
2 people out there, and then nobody is interested in it, and it
3 sells for one day six years later?

4 A: I suppose so, if that's what you're ---

5 MR. LOVE: Objection, Your Honor. Mischaracterization of
6 testimony. It wasn't six years later when house sold. Thank
7 you.

8 MR. GROTE: I thought he said he listed it six years ago.

9 THE COURT: He said that.

10 MR. GROTE: Okay.

11 MR. LOVE: The house sold ---

12 BY MR. GROTE:

13 Q: 2017. So, do our math, roughly two years later?

14 A: What about it?

15 Q: Okay. So, you're saying you listed it, bunch of people
16 looked at it over the course of, I guess, six months; no
17 takers, right?

18 A: That's correct.

19 Q: There was no problems with it, but all these people out
20 there and no takers?

21 A: That's correct.

22 Q: And it's listed two years later; sells in one day?

23 A: If you say so.

24 Q: Okay. So, maybe these people did see some problems;
25 isn't that possible?

1 A: I have no idea. I can't read people's minds.

2 MR. GROTE: No further questions, Your Honor.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION OF DAVID WIMBERLY BY MR. LOVE:

5 Q: In your 29 years, if someone had seen a severe cockroach
6 infestation in the house, one of your fellow agents here in
7 town, you think they would've let you know that?

8 A: Of course.

9 Q: If in your 29 years of experience, do you think if
10 another realtor here in town noticed there was standing water
11 in the basement thawing and flooding, and the walls were
12 peeing, do you think they would let you know?

13 A: I would think so.

14 Q: If they heard a toilet gurgling or saw shrapnel in the
15 shower or sewage backup, do you think they would call you and
16 say, hey, David, you got a problem and to work on?

17 A: I think they would.

18 Q: In your 29 years, you think that would've happened?

19 A: I think that they would've let me known about problems
20 like that for sure.

21 Q: And you have nothing to do with what happened in 2019,
22 whether the plaintiff saw the house for 30 minutes and put an
23 offer on it like that; that ain't none of your dealings, is
24 it?

25 A: I had no part of that.

1 MR. LOVE: Thank you, Your Honor.

2 THE COURT: All right.

3 Mr. Wimberly, I appreciate your being here. You're
4 welcome to step down.

5 MR. WIMBERLY: Thank you.

6 MR. LOVE: He's released ---

7 THE COURT: Okay.

8 MR. LOVE: --- from my subpoena.

9 THE COURT: Thank you, Mr. Wimberly, you're free to go.

10 MR. LOVE: Your Honor, the defendants would call Adam
11 Crosson to the stand.

12 THE COURT: All right.

13 ADAM CROSSON, HAVING BEEN SWORN,
14 TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION OF ADAM CROSSON BY MR. LOVE:

16 Q: Sit right here, Adam. Thank you, sir.

17 If you would state your name for the record, and spell
18 your last name for the court reporter, please sir?

19 A: Adam Crosson, C-R-O-S-S-O-N.

20 Q: What you do for a living, Adam?

21 A: I am a real estate agent, and I lead a team of agents
22 here in Florence.

23 Q: How long you been real estate agent?

24 A: Let's see. I think I was licensed in 2004.

25 Q: And who do you work for?

1 A: I broker with the company called eXp Realty, and the name
2 of my team is Crosson & Co. Real Estate brokered by them.

3 Q: Are you familiar with 550 Wisteria Dr., Florence, South
4 Carolina?

5 A: Yes, I am.

6 Q: And how are you familiar with 550 Wisteria Drive,
7 Florence, South Carolina?

8 A: I was hired to market and list the property for the
9 Phillips.

10 Q: Where did you work at the time you did that?

11 A: I worked at RE/MAX Professionals.

12 Q: Let me show you what was previously marked as Plaintiff's
13 Exhibit 1 and Defendant's Exhibit 1. Take a look at those two
14 documents, please, sir.

15 Let me know once you've had a chance to look at it.

16 A: I see these all the time, so I think I'm pretty familiar
17 with them, yeah.

18 Q: What is Defendants Exhibit 1? That would be the blue
19 label.

20 A: This would -- this is what we would call like the MLS
21 data sheet. It's typically printed out by a real estate agent
22 when they go to show a property. And it's also what the
23 agency on the MLS information that's provided.

24 Q: So, it would be the MLS listing?

25 A: That's how I would describe it, yeah.

1 Q: Okay. And on that listing, does it include photos?

2 A: Yes, it does.

3 Q: Defendant's Exhibit 1, does it include photographs of 550
4 Wisteria?

5 A: It looks like just the main photograph of the front of
6 the home. This one here?

7 Q: No.

8 A: I'm sorry.

9 Q: The blue label, if you would flip through that.

10 A: Yeah.

11 Q: Does it include photographs of 550 Wisteria?

12 A: It does.

13 Q: Okay. To your knowledge into your memory, do those
14 photographs accurately reflect what 550 Wisteria Drive looked
15 like when the listing was entered?

16 A: Yes.

17 Q: The yellow label, Plaintiff's Exhibit 1, does not include
18 photographs, does it?

19 A: It just includes the main photo of the front of the home.

20 Q: And what is Plaintiff's Exhibit 1?

21 A: This is what is categorized as an agent generated public
22 report. So, it doesn't include or shouldn't include
23 everything that's listed on the Exhibit 1. So, often times,
24 an agent may print this or email at to their client.

25 Q: At the top, it looks like the status is sold, so this was

1 when the house sold this was posted, I guess.

2 A: Yes. It says status sold, yes.

3 Q: In the listing, Defendant's Exhibit 1, with the blue
4 label, or Plaintiff's Exhibit 1 with the yellow label, you've
5 advertised the property, put words in there to describe it.

6 The words include mancave; is that right?

7 A: Yes.

8 Q: And that's on both of them?

9 A: Yes.

10 Q: Okay. Are those words that your office doctors up,
11 pretties up, puts in the listing? Is it words that you get
12 from the client, is it both; what is that?

13 A: I think oftentimes, the property description is done by
14 the agent, you know, based off of what they see. And, yeah,
15 it was basically a little hangout, and so I put it in there,
16 yeah.

17 Q: But there's no dispute that, I mean, presumably Joey hung
18 out down there or whoever hung out down there, there was
19 furniture down there and weight equipment and all that, right;
20 do you remember that?

21 A: Correct; I do.

22 Q: When you listed the property, did you take a tour of the
23 home?

24 A: I did, yes.

25 Q: Okay. Did you take a tour of the basement?

1 A: Somewhat, yeah. I mean, we didn't -- we don't typically
2 go through a crawlspace, which part of that was but, yeah, I
3 mean, I peeked in there. And ---

4 Q: You saw a mancave?

5 A: Yes, I did.

6 Q: Okay. When you were in the house before you decided to
7 list the property, did you notice a severe cockroach
8 infestation?

9 A: I did not.

10 Q: Did you notice any sewage backup in the toilets and the
11 toilets gurgling, you know, that kind of noise?

12 A: I did not.

13 Q: Okay. Did you notice any cracks all in the walls and
14 ceilings?

15 A: I did not.

16 Q: When you were in the basement, however limited it may've
17 been, did you notice any flooding in the basement?

18 A: I did not.

19 Q: Is that the reason for your limited view of the basement
20 cause you couldn't -- there was water or something?

21 A: No. There was not.

22 Q: Were there puddles on the floor?

23 A: No.

24 Q: Was there like wet marks where you could say, well,
25 there's obviously something been going on here?

1 A: No.

2 Q: Were the walls seeping water like a water fountain?

3 A: No.

4 Q: Were they peeing out of the walls like a water fountain?

5 A: No.

6 Q: I believe that the listing went live on June 13th, 2019;
7 is that right?

8 A: I believe that's correct

9 Q: Okay.

10 A: Yeah.

11 Q: I believe -- or the evidence has shown that the
12 plaintiff, with John Etheridge, was also with your office,
13 right?

14 A: Correct.

15 Q: The plaintiff with John Etheridge went into that house
16 the following day, June the 14th of 2019?

17 A: I honestly can't remember, but I think that's correct.

18 Q: I can represent that to you based on the evidence in the
19 file -- in the case.

20 A: Yeah.

21 Q: That is the day they went.

22 A: Okay.

23 Q: On June the 14th, 2019, do you remember -- do you
24 remember John Etheridge or Dr. Sarb contacting you or saying,
25 hey, there's flooding in the basement, there's water

1 everywhere?

2 A: No.

3 Q: Is there -- there's roaches everywhere?

4 A: No.

5 Q: There are cracks everywhere?

6 A: No.

7 Q: It smells like sewage, toilets bubbling?

8 A: No.

9 Q: None of that happened?

10 A: Uh-huh, (affirmative response); no.

11 Q: Okay. Now, I don't know if anybody else got the
12 opportunity to view the house before she viewed it and
13 purchased it. But my understanding was there was a competing
14 bid; do you know whether they viewed the house?

15 A: Pretty sure that they did, yeah. Back in those days, we
16 weren't doing a lot of sight unseen stuff. Yeah. I'm almost
17 certain they did view it.

18 Q: Okay. All right. Did you get any complaints out of that
19 party who viewed the house and was competing in this bid?

20 A: No. And that's when we had the multiple offers between
21 the two.

22 Q: All right. Do you remember after Dr. Sarb put in her, I
23 guess it's an offer, right?

24 A: Uh-huh, (affirmative response).

25 Q: That's when she signs a contract, she's making an offer

1 to purchase?

2 A: Uh-huh, (affirmative response).

3 Q: Do you remember the next morning that Chris Wegman showed
4 up at the Phillips' door?

5 A: I do.

6 Q: What do you remember about that?

7 A: Showed up without any of us knowing. What I can remember
8 is that Joey called and said, Adam, I don't know what to do.
9 He said, from what I remember, I think he said the wife sent
10 him over there because she was upset they didn't get the --
11 secure the contract. And knocked on the door and offered them
12 \$10,000 over what they had submitted in their highest and best
13 offer. And Joey said, you know, I don't -- you know, you're
14 my agent, what do I do here? And I said, well, you know, you
15 haven't signed any documents yet. You have a verbal
16 agreement. You know, technically in this state, it's got to
17 be writing. And Joey said, well, you know, I want to do the
18 right thing. And I agreed to sell it to her, and I'm gonna
19 honor my word, and so that's what he did, proceeded with her
20 offer, and signed the contract.

21 Q: Do you ever remember a time -- it was very short-lived.
22 I know we're talking about one or two days here, but the
23 Phillips made the house available to your office or whoever
24 needed to see the house, right? They weren't trying to hide
25 anything, they weren't keeping you out?

1 A: No.

2 Q: And you know the Phillips?

3 A: I do.

4 Q: Do they seem like the kind of people that would raise
5 their children in a home that was infested with cockroaches or
6 had sewer spills everywhere and toilets gurgling and all that
7 nonsense?

8 A: Absolutely not. To my knowledge, what I remember, when
9 they were considering moving, I believe it was because they
10 wanted to get in a different school zone. It had nothing to
11 do with -- I think they loved that house and loved the
12 neighborhood as well.

13 Q: I think that's all I have. Thanks, Adam.

14 A: Thank you.

15 THE COURT: Mr. Grote?

16 CROSS-EXAMINATION OF ADAM CROSSON BY MR. GROTE:

17 Q: Good morning, Mr. Crosson.

18 A: Good morning.

19 Q: I'm going to show you what's been marked as Plaintiff's
20 Exhibit 183.

21 All right. Have you taken a look at that?

22 A: Yeah, sure.

23 Q: What is Exhibit 183?

24 A: This is the listing agreement, what we refer to as a
25 listing agreement between me, my brokerage, and the Phillips.

1 Q: When does that brokerage agreement begin?

2 A: June the 12th, 2019 until December the 12th of the same
3 year.

4 Q: And Dr. Sarb put the offer out there on June 14th,
5 correct?

6 A: To the best of my memory, yes.

7 Q: Okay. When were you first engaged by the Phillips?

8 A: I don't know. Usually when someone calls me to list a
9 property, I usually go out and meet the folks and take a look
10 at the home, so I can do an evaluation, come up with a market
11 -- you know, it's hard to get a value on a house until you put
12 your eyes on it. So, I usually go out, usually, I'm gonna say
13 a week before. It could've been a few days before. And then
14 we come up with a strategy and a price point, and then we go
15 do the paperwork and the pictures, and then enter it on the
16 market.

17 Q: So, your knowledge of 550 Wisteria begins roughly a week
18 before June 12, 2019; is that fair?

19 A: I guess so. It's honestly really hard to remember that.
20 I mean, I don't know exactly when I went and looked at the
21 property. It could've been two weeks before. It's been four
22 years ago, so...

23 Q: Well, it was very shortly before the listing agreement,
24 right?

25 A: As far as I can remember.

1 Q: Okay. And then you get an offer a couple of days later,
2 right, or a couple days after the listing goes live?

3 A: Yes.

4 Q: And then the closing, I believe, was July 26th, 2019;
5 does that sound right to you?

6 A: It seems like it might be in line. It's usually a 35 to
7 40-day closing.

8 Q: Okay. And so that's the realm of the world of your
9 experience with 550 Wisteria, isn't it?

10 A: I guess so, yeah.

11 Q: You didn't have any other experience with 550 Wisteria
12 outside of that timeframe, did you?

13 A: I hadn't really thought about that, but I don't believe
14 so.

15 Q: So, your knowledge is limited to that limited window
16 there, right, as far as going into the house, having any
17 knowledge about it?

18 A: As far as I can remember, yes.

19 Q: Okay. And I want to back up to this phone conversation
20 that you had with Joey Phillips. Do you recall that?

21 A: What phone conversation are you referring to?

22 Q: The conversation you had with Mr. Phillips, was it a
23 phone conversation or how did that take place?

24 A: Are you talking about when they called me to list the
25 home?

1 Q: Yes.

2 A: I honestly don't ---

3 Q: About the other offer; how did that take place?

4 A: When -- so, okay, so you're asking how did my
5 conversation with him take place the day after we had multiple
6 offers or ---

7 Q: Yes.

8 A: From what I remember, he called me Saturday morning. I
9 was in my kitchen. I want to say it was around 9 o'clock.

10 Q: Okay. Now, this conversation about when Chris Wegman
11 showed up at the door, that's what I'm referring to.

12 A: Okay.

13 Q: Are we on the same page?

14 A: Yeah, yeah.

15 Q: And so, did I understand you correctly to say that Joey
16 called you and he didn't know what to do, right?

17 A: Correct.

18 Q: All right. And you had to tell him what the right thing
19 to do was, right?

20 A: Well, in that situation, you know, he had choices. It
21 was my job to inform him, you know, that it was basically up
22 to him to decide what he wanted, how he wanted to proceed.
23 And he ultimately made the decision that he was gonna honor
24 his word, which was what was given the night before.

25 Q: Wasn't it true that that's what you told him he ought to

1 do?

2 A: That's hard for me to say that at this point; it's been
3 four years ago. I don't remember verbatim what I said.

4 Q: Well, me and you have talked before, haven't we?

5 A: Yeah. It was a year -- I don't even remember -- two
6 years ago.

7 Q: Is that not what you told me that Joey Phillips called
8 you and wanted to know what to do, and you told him needed his
9 obligation, right?

10 A: I don't -- I don't believe that to be true.

11 MR. LOVE: Objection. That's the third time the question
12 been asked.

13 THE COURT: All right. You need to ask another question.
14 Thank you. It's been asked and answered.

15 MR. GROTE: I don't have any further questions, Your
16 Honor.

17 REDIRECT EXAMINATION OF ADAM CROSSON BY MR. LOVE:

18 Q: Mr. Grote reminded me. It wasn't just one or two days.
19 At any point during the time from June the 12th till the date
20 of that exhibit he showed you until July 26, 2019, did anybody
21 contact you saying there was flooding in the basement, water
22 in the basement, walls peeing, seeping, toilets, any of that
23 stuff, cockroaches?

24 A: Not for a second.

25 Q: Thank you.

1 MR. LOVE: No further questions, Your Honor.

2 THE COURT: All right.

3 Anything further, Mr. Grote?

4 MR. GROTE: No, Your Honor.

5 THE COURT: All right.

6 Thank you, sir, Mr. Crosson, for being here. You're free
7 to step down.

8 Is Mr. Crosson under any subpoena?

9 MR. LOVE: He was. He's released.

10 THE COURT: All right. You're free to go.

11 Thank you, sir.

12 MR. CROSSON: Thank you.

13 MR. LOVE: Sorry, Your Honor.

14 THE COURT: No problem.

15 MR. LOVE: The defendants would call Joey Phillips.

16 THE COURT: All right.

17 JOSEPH M. PHILLIPS, HAVING BEEN

18 SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION OF JOSEPH M. PHILLIPS BY MR. LOVE:

20 Q: Joey, take a seat. If you would state your full name for
21 the record and spell your last name for the court reporter?

22 A: Yes, sir. My full name is Joseph Manuel Phillips, P-H-I-
23 L-L-I-P-S.

24 Q: All right. Tell the jury just a little bit about
25 yourself. We'll roll through it. Just a little bit.

1 A: Sure. Yeah. My name is Joey Phillips, obviously. I'm
2 from Darlington, South Carolina, born and raised. I met my
3 wife, Julie, 1998, November of 1998 at a Pee Dee Pride hockey
4 game. Love at first sight for me -- for me. But from there
5 we dated for five years, maybe a little over. Got married in
6 2004. Had our first child, Brody, in 2012 -- I mean, 2008,
7 I'm sorry. And then our daughter, Abbigail Grace, came a few
8 years later. She is eight now. She'll be nine in October.
9 But that's us.

10 Q: You and Julie at some point purchased 550 Wisteria Drive;
11 is that right?

12 A: We did, yes.

13 Q: And do you remember when that was?

14 A: I don't remember the exact date. I've heard so many
15 dates passed around today that it's kind of foggy, but ---

16 Q: Do you remember the year?

17 A: Yes. We purchased that in 2010, I believe, 2010.

18 Q: All right. And y'all lived in that home for how many
19 years?

20 A: We owned the home, I think, for 10 years. I think we
21 actually lived in it for somewhere over nine, north of nine
22 years.

23 Q: Okay. You raised your children in that home?

24 A: We did; yes, sir.

25 Q: All right. Now, yesterday, obviously you were in the

1 courtroom ---

2 A: Right.

3 Q: --- when July testified, at the end of yesterday. You
4 were here for that?

5 A: Sure.

6 Q: She testified about the flooding issues y'all had had in
7 the house.

8 A: Right.

9 Q: With the hurricane, I guess it was, the thousand-year
10 flood, those two instances, correct?

11 A: Yes, sir.

12 Q: She testified about the plumbing issues in the house. I
13 think Brody had flushed a toy, she had flushed a washcloth or
14 some feminine products, two or three -- I think she said,
15 actually, three, maybe four episodes of the toilet clogging
16 up, right?

17 A: That could be right; yes, sir.

18 Q: Okay. She was asked about cockroaches, and you remember
19 whether she had ever seen any cockroaches. And she said,
20 well, never say never, you know, and it is Florence, and we do
21 have a creek, right?

22 A: Right; yes, sir.

23 Q: Is there anything you would change about those stories as
24 far as is there any extra flooding said that she left out? Is
25 there any extra toilet issues that she left out, or is there

1 any other -- do you remember seeing one day where a thousand
2 cockroaches came running across the floor?

3 A: No, sir.

4 Q: Is there anything you would want to change?

5 A: No, sir.

6 Q: All right. Now, knowing how Julie described those and
7 your testimony just now, were any of those in your mind
8 problems or defects with the house?

9 A: No, sir.

10 Q: Were they malfunctions or structural issues with the
11 house?

12 A: No, sir.

13 Q: That's your opinion today?

14 A: That is my opinion today; yes, sir.

15 Q: What about on June the 13th, 2019, was that your opinion
16 then?

17 A: Yes, sir.

18 Q: Did you ever lie to Dr. Sarb?

19 A: No, sir.

20 Q: Did you ever tell anybody else a lie Dr. Sarb?

21 A: No, sir.

22 Q: Did you ever direct your agent to communicate across the
23 table any kind of like?

24 A: Absolutely not; no, sir.

25 Q: Did you ever tell her you had never seen any water in

1 that basement even during a hurricane?

2 A: No, sir.

3 Q: Did you ever tell anybody else that who would've
4 communicated that to her?

5 A: No, sir.

6 Q: I know you and I kind of have -- we have similar
7 personalities. I get that and I can appreciate that. I want
8 you to take a minute and want you to explain to this jury the
9 effect this has had on your family, and most particularly your
10 wife.

11 A: Absolutely. Yeah, so this -- I was thinking about this
12 the other day, and we've been married right at 20 years. This
13 lawsuit has existed about 20 percent of our marriage. It has
14 been under the umbrella of this lawsuit. So, it's had quite
15 an effect on us. So much that we don't even realize. But my
16 wife, I think alluded to yesterday -- some of the, you know,
17 lack of sleep stress -- you know, I think there's a deeper,
18 kind of a deeper thing for me where anything that affects her;
19 obviously, we're partners it affects me as well. But there is
20 a deeper thing that I don't think she's quite willing to talk
21 about that maybe I will. I am a construction worker. I get
22 up at 7:00 in the morning or I go to work at 7:00 in the
23 morning or I go to work at 7:00 in the morning. I work
24 sometimes until 7:00 in the evening. I am able to
25 compartmentalize this pretty good through keeping busy. But

1 this has been a question of our character, of whether or not
2 we will raise our kids in this home. I can tell you that
3 there's a gap between my son and daughter of six years; that's
4 not intentional. We would've loved for them to have been much
5 closer. But, after four miscarriages, we were blessed with
6 that Abby Grace six years later. After that, my life was baby
7 proofed. I had no choice in the matter wife baby proofed my
8 life. I think she had been conditioned to think that we would
9 never have this baby, and then we were blessed with that. So,
10 my life was baby-proofed. I had the best car seat that you
11 could imagine, and I couldn't cough, and if I did it couldn't
12 be in the direction of the baby because she was so worried.
13 But now, there's this insinuation that we brought this baby
14 home to a home that flooded. You couldn't flush the commode
15 and that was feces backed up in the bottom of this -- water
16 seeping from the walls, the basements flooded. We brought --I
17 could not cough on this baby, and we brought this baby home to
18 this. It is not true. It is not true. And that's the effect
19 it's had on us. It's an effect of her sleeping, sure; it's an
20 effect of her stress levels for sure. It is an attack on our
21 character, absolutely. And it is not true. That's it.

22 Q: Joey ---

23 A: Yes.

24 Q: For the last few days you've been sitting over here at
25 the table on the opposite side of Julie, obviously. I can

1 watch her, it's kind of hard to see you, but ---

2 A: Sure.

3 Q: I assume you see all the evidence that's put off all of
4 those pictures and videos of Wisteria once Dr. Sarb had owned
5 it for a little while and then started photographing stuff,
6 right? You've seen all that?

7 A: Absolutely; yes, sir.

8 Q: And there's no doubt, that can't be easy, right? We
9 understand that?

10 A: Absolutely.

11 Q: Is that the home that you and your family lived in?

12 A: Absolutely not.

13 Q: It's the address.

14 A: It is the address, and it is the structure, I guess, it's
15 the address. But that's not what we went through. But not
16 only is that not what we went through, none of that resembles
17 anything that we went through. We were happy for 10 years.

18 Q: Thank you.

19 CROSS-EXAMINATION OF JOSEPH M. PHILLIPS BY MS. GIOVANOLI:

20 Q: You called Adam Crosson to see if you could accept an
21 offer from Mr. Wegman after you had already verbally accepted
22 Dr. Sarb's offer; isn't that correct?

23 A: That's not true.

24 Q: And he told you that you should honor your verbal
25 agreement; isn't that correct?

1 A: That's not true.

2 Q: Why did you call him then?

3 A: I called -- so, I have all only ever sold one house in my
4 life up to this point. I have no idea what I'm doing, none.
5 I get an offer, two offers, highest and best comes through.
6 The next morning, I have a gentleman at my house offering me a
7 substantial amount more money. I called Adam. I said, Adam,
8 what is going on? I've never sold a house before. Is this
9 even legal? He said, Joey, you have two offers. You have not
10 accepted an offer contractually. You have a choice to make.
11 Take the \$10,000 extra or you can take this initial offer.
12 That's it.

13 Q: That's not true. He told you what the right thing to do
14 was.

15 A: Absolutely not.

16 Q: That you didn't have a written contract, and ---

17 MR. LOVE: Objection, Your Honor. Asked and answered.

18 MS. GIOVANOLI: No, I'm not finished even asking my
19 question, so how do you know if it's been asked and answered.

20 MR. LOVE: Objection, compound question ---

21 THE COURT: All right. Before you answer ---

22 MR. LOVE: --- because the first part of the question she
23 has asked.

24 THE COURT: All right. We're gonna allow her to ask the
25 question, and then I'll make a ruling on your objection.

1 Okay?

2 MR. LOVE: Okay.

3 BY MS. GIOVANOLI:

4 Q: So, Adam Crosson told you what the right thing to do was.
5 You called him because you didn't know what the right thing to
6 do was. Isn't that correct?

7 A: That's not correct.

8 THE COURT: All right.

9 MS. GIOVANOLI: You gonna object?

10 MR. LOVE: I did object. He said he wanted to hear your
11 question before he ruled on it. And then you didn't give him
12 a chance to rule.

13 THE COURT: All right. I'm gonna overrule the objection.
14 We're gonna continue the questions.

15 If there's an objection, Mr. Phillips, please wait for a
16 ruling. Okay?

17 A: Yes, sir. No problem.

18 THE COURT: Thank you.

19 BY MS. GIOVANOLI:

20 Q: If you knew what the right thing to do was, and you
21 thought it was the right thing, there would be no need to call
22 Adam Crosson to ask him if you could accept this offer; isn't
23 that correct?

24 A: That's not correct.

25 Q: Your attorney talked to your witnesses before they

1 testified here today, correct?

2 A: I'm not sure.

3 Q: But Adam Crosson talked to us before; isn't that correct?

4 A: I have no idea.

5 Q: And Adam Crosson didn't mention to us that you wanted to
6 do the right thing; isn't that correct?

7 A: I have no idea ---

8 MR. LOVE: Objection.

9 THE COURT: Sustained.

10 MS. GIOVANOLI: All right. I'll move on.

11 THE COURT: Ms. Giovanoli, you need to move on. Thank
12 you.

13 BY MS. GIOVANOLI:

14 Q: So, let's talk about the basement flooding. You
15 previously testified in this case in the deposition that your
16 basement only had standing water if the sump pump went out;
17 isn't that correct?

18 A: Twice.

19 Q: Yeah, two times. But your testimony was that it only
20 happened when the sump pump went out, correct?

21 A: That's correct, yes.

22 Q: And that's not true, is it?

23 A: That is true, yes, ma'am.

24 Q: You heard Ms. Robin Hatchell testify here today, correct?

25 A: Yesterday, I did.

1 Q: And you saw Robin Hatchell hug your wife before she left
2 the courtroom; isn't that correct?

3 A: I did; yes, ma'am.

4 Q: She has no reason to lie in this courtroom?

5 A: Absolutely. I wouldn't think under oath that she had any
6 reason to lie.

7 Q: Yeah. And you and her were in the basement together when
8 the sump pump was running and there was water in the basement;
9 isn't that correct?

10 A: No, ma'am. We were in the basement with no power.

11 Q: Last thing, on the pest infestation, y'all never had a
12 pest infestation; isn't that correct?

13 A: That is correct.

14 Q: In fact, you never even had pest extermination services,
15 right?

16 A: That's correct.

17 Q: No further questions. Thank you.

18 A: Thank you.

19 REDIRECT EXAMINATION OF JOSEPH M. PHILLIPS BY MR. LOVE:

20 Q: They asked Adam three times, and I think she ask you two
21 or three times. This was in the situation where you called
22 because you needed somebody to advise you as to what you ought
23 to do. This was a situation where you called confused as to
24 what was happening?

25 A: Absolutely.

1 MR. LOVE: No further questions, Your Honor.

2 THE COURT: All right.

3 Thank you, Mr. Phillips. You can step down.

4 MR. PHILLIPS: Thank you, Judge.

5 MR. LOVE: Your Honor, the defendants would call Leigh
6 Dodd to the stand.

7 Go right over there.

8 LEIGH DODD, HAVING BEEN SWORN,
9 TESTIFIED AS FOLLOWS:

10 THE COURT: All right, ma'am. If you'll take a seat.

11 DIRECT EXAMINATION OF LEIGH DODD BY MR. LOVE:

12 Q: Hey, Ms. Dodd.

13 A: Hey.

14 Q: If you would please state your full name for the record
15 and spell your last name for the court reporter.

16 A: Leigh Dodd, D-O-D-D.

17 Q: Okay.

18 THE COURT REPORTER: Is it L-E-E?

19 A: L-E-I-G-H.

20 Q: I forgot about that part.

21 Are you familiar with my clients, Julie and Joey
22 Phillips?

23 A: Yes.

24 Q: How are you familiar with them?

25 A: We've known them for about 11 years. Our sons went to

1 Highland Park kindergarten together, starting in 4K.

2 Q: Are you familiar with the house they used to live in at

3 550 Wisteria Drive?

4 A: Yes.

5 Q: How many times would you say that you and your husband or

6 your family have been in 550 Wisteria Drive?

7 A: Probably anywhere from every week or a couple of times a

8 month, or every other month, several, several times, many,

9 many times.

10 Q: A bunch?

11 A: Yes, a bunch.

12 Q: So, you're married to Paul, right?

13 A: Yes.

14 Q: And how many children?

15 A: One.

16 Q: One?

17 A: Uh-huh, (affirmative response).

18 Q: His name?

19 A: Wyatt.

20 Q: How old is Wyatt?

21 A: Fourteen.

22 Q: Wyatt buddies with Brody?

23 A: Yes.

24 Q: When you go over there, Wyatt would go with you?

25 A: He did.

1 Q: Paul go with us?

2 A: Paul would go with us. Wyatt would spend the night lots
3 of times.

4 Q: Out of any of those visits, did you go in the basement?

5 A: Yes.

6 Q: The kids go in the basement?

7 A: Yes.

8 Q: Any of those visits, did y'all notice any flooding in the
9 basement?

10 A: No.

11 Q: Standing water?

12 A: No.

13 Q: That the walls were seeping water or like peeing like a
14 water fountain in the basement?

15 A: No.

16 Q: Was there furniture in the basement?

17 A: Yes.

18 Q: What was in the basement?

19 A: There was a couch, a refrigerator or a freezer, because
20 the kids would get popsicles out of it, a TV, a cat pan.
21 Their cat stayed in there a good bit. And a bas -- like a
22 basketball, arcade basketball kind of goal thing.

23 Q: Was there a weight bench?

24 A: Yes, yes. Yeah, they did weights in there.

25 Q: Okay. At any point in time during any of those visits,

1 you never noticed any sewage backing up in the toilets, did
2 you?

3 A: No.

4 Q: Did you have a chance to use the bathroom at their house?

5 A: Yes.

6 Q: Okay. I should've asked that first. Any of the toilets
7 gurgling or making funny noises?

8 A: Not that I remember.

9 Q: All right. On your way to the toilet, did you see
10 roaches running everywhere in the house?

11 A: No.

12 Q: Did you see any roaches anywhere in that house?

13 A: No.

14 Q: I mean, we all have roaches, right? I mean, let's be
15 honest here.

16 A: Yes.

17 Q: But there weren't like 20 or 30 roaches running around or
18 thousands of roaches?

19 A: No.

20 Q: In your opinion, there wouldn't have been a severe
21 cockroach infestation?

22 A: No. We never saw that.

23 Q: You never saw any sewage backup?

24 A: No.

25 Q: And you never saw any flooding?

1 A: No.

2 Q: Did your husband report to you that he saw any sewage or
3 anything like that?

4 A: No.

5 Q: Flooding?

6 A: No.

7 Q: Did your boy report to you any of that?

8 A: No. He wouldn't have been able to stay there if there
9 had been roaches all over the place.

10 Q: Let me ask you this, was there ever a time that you said
11 no, you can't stay over there or was there ever a time that
12 the Phillips told you, no, y'all can't come over, we got
13 stuff?

14 A: No. And we are very picky about where he spends the
15 night, and if we had seen roaches or he had told us about
16 unclean conditions, he wouldn't have been able to spend the
17 night there.

18 Q: Wyatt ever spent the night at my house?

19 A: No.

20 Q: I'm sorry. I thought I'd ask.

21 No further questions, Your Honor.

22 CROSS-EXAMINATION OF LEIGH DODD BY MS. GIOVANOLI:

23 Q: You're good friends with the Phillips; isn't that
24 correct?

25 A: That's correct.

1 Q: Thank you. No further questions.

2 THE COURT: All right, Ms. Dodd. Thank you so much for
3 coming today. You're free to go.

4 MR. LOVE: Your Honor, the defendants would call Paul
5 Dodd.

6 WILLIAM PAUL DODD, HAVING BEEN SWORN,
7 TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION OF WILLIAM PAUL DODD BY MR. LOVE:

9 Q: Mr. Dodd, if you'll have a seat right there. If you'll
10 state your full name for the record and spell your last name.

11 A: William Paul Dodd, D-O-D-D.

12 Q: That was your wife, Leigh, who was just in here, right?

13 A: Yes.

14 Q: Do you know the Phillips?

15 A: Yes.

16 Q: How long you known them?

17 A: Approximately, 10 years, maybe.

18 Q: How long you been -- have you ever been in 550 Wisteria
19 Drive?

20 A: Absolutely.

21 Q: Is that where they used to live?

22 A: Yes.

23 Q: How many times you think you've been in the house?

24 A: Many.

25 Q: Okay. I mean, I guess many is good. How often?

1 A: Sometimes weekly, several times a month.

2 Q: Okay. You have noticed any kind of flooding in the
3 basement?

4 A: No.

5 Q: Let me ask you this, have you ever been in the basement?

6 A: I have.

7 Q: Been down there frequently?

8 A: Yeah, several times.

9 Q: All right. Wyatt play in the basement?

10 A: Say that again.

11 Q: Wyatt, did he go in the basement?

12 A: Yes.

13 Q: Okay. During your visits at 550 Wisteria, did you ever
14 notice any flooding in the basement?

15 A: I did not.

16 Q: Did you notice any seeping or peeing of the walls?

17 A: No.

18 Q: Did you notice any cockroaches crawling around
19 everywhere?

20 A: Absolutely not.

21 Q: Did you notice any toilets backing up or gurgling noises
22 or anything with the sewage?

23 A: No.

24 Q: Did you notice cracks all over the walls or all over the
25 ceiling?

1 A: I did not.

2 Q: You think those things would have stood out in your mind
3 if you were over there and they were going on?

4 A: Absolutely.

5 Q: Thank you, Paul.

6 MS. GIOVANOLI: No questions for this witness.

7 THE COURT: All right.

8 Mr. Dodd, thank you so much for coming today. You're
9 free to step down.

10 MR. DODD: Thank you.

11 MR. LOVE: The defense rests.

12 THE COURT: All right.

13 All right. Ladies and gentlemen, that's the -- well, let
14 me first ask. Is there any witnesses in reply from the
15 plaintiff?

16 MR. GROTE: No, Your Honor.

17 BY THE COURT:

18 THE COURT: All right.

19 All right. Ladies and gentlemen, that's the finality of
20 the evidence that you're going to be presented in this case.
21 There are some matters of law that need to be taken up outside
22 of your presence. I'll give you an idea as to what I'm
23 thinking about doing. It's gonna take some time to prepare
24 for closing arguments and the charge on the law in this
25 matter. And, what I anticipate doing is bringing you back

1 after the lunch hour and completing that step.

2 And so, if you will, retire to your jury room, don't
3 discuss this case, and I will send you a message as to what
4 time to be back here. It's extremely important that you come
5 back at this stage in the event. I know that it has been
6 important the whole entire week, but we've come this far, and
7 we don't need you so, if you want to stay, that's fine, too.

8 But what I would ask you to do, since you've spent some
9 time in the jury room together this week and you may have
10 gotten to know each other somewhat. It's at the point in the
11 trial where we are gonna need what's called a foreperson for
12 the jury. What that person does is basically would preside
13 over the deliberations of the jury. That person doesn't have
14 any more power than any other juror. Simply, you will preside
15 over the deliberations in this case, and if there's any
16 messages or contacts with the Court that need to be made
17 during that process, then you would initiate that through the
18 bailiff. And so, what I'd ask you to do, since you know each
19 other somewhat, certainly more than the Court knows you
20 individually through this process, I would ask that you elect
21 amongst yourselves who the best person to be the foreperson of
22 the jury would be. And just let us know when you come back.
23 Okay?

24 But, again, don't begin discussing this case. We'll have
25 you a little bit more direction here in just a few minutes.

1 I appreciate your time, your service, your attention, and your
2 patience.

3 Thank you so much.

4 (REPORTER'S NOTE: Jury exits courtroom @ 11:39 a.m. The
5 following takes place outside the presence of the jury.)

6 THE COURT: All right. First of all, is there anything
7 that we need to take up at this juncture from any party?

8 MOTIONS:

9 MR. GROTE: Yes, Your Honor. At this time, Plaintiff
10 will move for a directed verdict as to the counterclaims in
11 this case.

12 THE COURT: All right. Hang on one second.

13 All right. I'll be happy to hear from you.

14 MR. GROTE: Your Honor, there's essentially three
15 counterclaims that are outstanding. The frivolous proceeding
16 claim is bifurcated, so it's not part of this.

17 The first is for breach of contract, indemnification, and
18 hold harmless. And so, under the contract. They are
19 referring to a provision ---

20 THE COURT: Hang on one second for me.

21 All right. Thank you.

22 Go ahead.

23 MR. GROTE: I beg the Court's indulgence?

24 Section 9, if it would help, we'll get them to put it on
25 the screen for you.

1 THE COURT: All right. And I'll tell you what. Let me
2 -- I apologize for interrupting you, but let's go ahead and
3 deal -- let's talk about this jury situation. I don't like
4 for them to be sitting back there. What I'm thinking is --
5 it's a quarter till 12:00. Ask them to be back here at 2
6 o'clock, was that too late?

7 MS. GIOVANOLI: That would be great.

8 MR. LOVE: I think 2 o'clock is good. That'll give us
9 time to get our ducks in a row or somewhat a row.

10 THE COURT: Madame Clerk, will you go tell the bailiff to
11 tell them to be back here at 1:55. We're gonna start at 2
12 o'clock.

13 THE CLERK: Yes, sir.

14 MR. GROTE: Your Honor, the provision I'm referring to
15 has been pulled up on the screen for everybody's benefit.

16 So, what they've alleged in their counterclaim is that
17 this provision requires us to indemnify them arising out of
18 the inspection process, and I think in particular they are
19 relying on the underlying provision there. It says, buyer
20 will hold harmless, indemnify damages and attorney's fees to
21 seller and brokers for all claims, injuries, damages arising
22 out of exercise of these inspection rights so, hold harmless
23 and indemnify any damage, et cetera. And so, our position on
24 this is, one, that is really a matter of law. It's not a
25 question of fact. In our pretrial brief we submitted caselaw

1 on this. The caselaw is simply this. When a contract is
2 clear and unambiguous then it is a matter of law for the Court
3 to decide the meaning of that provision. And it's not a
4 matter of the jury interpreting it, because it's not a
5 question of fact. Now, whether a provision has been breached
6 isn't an error -- and so, we contend that as a matter of law
7 this is clear and unambiguous that it does not apply to the
8 situation and claims in this case. Essentially, that because
9 inspections occurred and we sued them because of inspections
10 have incurred, we now have to indemnify them because we
11 inspected the property, and we sued them. I mean, really,
12 that's what the counterclaim says.

13 And, Judge, we are asking you as a matter of law to
14 determine that that's not what the contract provision means.
15 And thus, it's not a question for the jury.

16 Number two, that's essentially there is -- I'll hand up a
17 case, Your Honor, and I've provided to Mr. Love as well. It's
18 called *Dorn's Emergency Medical Services*. I think it's one of
19 several cases that says this. But it deals with what
20 indemnity means, and what types of indemnity you can get.

21 Under a general indemnity provision, the default from
22 standard rule is that if you have to have a third-party claim,
23 there is no default second party indemnity claim. That means
24 the parties to the agreement can't sue each other for
25 indemnity, because of a breach by the other party. What it

1 means is if something happens out there or if there's an
2 injury, like an inspector gets hurt, when they're expecting
3 the property or, if the inspector damages the property, then
4 whoever is at fault, the other party is going to indemnify the
5 other side. It doesn't mean that each party is gonna
6 indemnify each other for breaching the agreement. It's an
7 indemnity provision for third-party claims. And that's a
8 standard indemnity provision, and that's what the caselaw
9 provides on that. So, the matter of law should fail for that
10 reason as well.

11 The third reason is there has just been simply no
12 evidence in this case that they have breached this provision.
13 It deals with inspection rights and that kind of ties into
14 Item -- their other counterclaims. They have counterclaims
15 for breach of contract, failing to inspect. I think it's
16 based on this provision as well. Your Honor, if you look at
17 that section, you can clearly see that the title of the
18 provision is inspection rights.

19 What that contract provision gives is a right for Dr.
20 Sarb to inspect the property if she wants. It doesn't give a
21 duty to inspect the property. She could have chosen not to
22 inspect the property at all, and that would not be violation
23 of the contract. It is a right, not a duty. Just because she
24 had the property inspected, and they say maybe she didn't do
25 it in a good manner. I think that's the allegations that the

1 inspections were deficit or insufficient. That does not give
2 a rise to a breach of contract claim, because she exercised
3 those rights. It does not, again, impart a duty that she
4 inspect. She doesn't have to inspect at all. There is just
5 -- there's under any interpretation that provision does not
6 apply.

7 Second, the evidence is clear in this case. That she had
8 the property inspected. There's no question of fact for a
9 jury to decide that. She had Dodson perform the CL-100, she
10 had the House Master report, she had John Sims out there, she
11 personally went out there several times, her real estate agent
12 went out there. Her real estate agent, John Etheridge
13 testified that that's standard and customary. He's never had
14 any other inspections done in this type of scenario. And so,
15 again, there's just no basis in fact for that counterclaim
16 either.

17 The third counterclaim, that's for a breach of contract
18 and quiet covenant and good faith and fair dealing. It's the
19 same argument. They're alleging the same thing if they have
20 -- Dr. Sarb has breached the contract and hasn't acted fairly,
21 because she didn't have the property adequately inspected.
22 The same thing is clear to everyone, we know this is not a
23 question of fact, no reason the jury could find that she
24 didn't have these inspections performed, that she met due
25 diligence on that. And there's no duty to inspect. You know,

1 there has to be distinguished between a duty to inspect, and
2 whether an inadequate inspection, you know, precludes her
3 claims. You know, there's -- if she arguably didn't, you
4 know, assume that she didn't adequately inspect the property,
5 maybe, you know, she didn't do her due diligence then. You
6 know, arguably that's a defense to her claims, but it's not an
7 affirmative duty that they owe to them. It's a defense not a
8 duty.

9 THE COURT: Mr. Love? What's your -- well, I'll hear
10 your position. First of all, are you going forward on this
11 cause of action?

12 MR. LOVE: Which one, Your Honor?

13 THE COURT: The breach of contract, indemnification, hold
14 harmless?

15 MR. LOVE: Yes.

16 THE COURT: All right. Let me hear your argument.

17 MR. LOVE: All right. Your Honor, there is evidence in
18 the record that a reasonable jury could find that the
19 plaintiff failed to adequately inspect the home. Based on her
20 complaints that arose through her testimony, based on my
21 cross-examination of the various tests and inspections that
22 were mentioned in those exhibits that the jury will have. As
23 you may recall on cross-examination, I pulled out the House
24 Master report, mentioned the follow-up inspection that House
25 Master does that she didn't do, a jury could find, yeah, she

1 didn't adequately inspect, especially if she's looking for
2 stuff like what we're talking about here. She didn't
3 adequately inspect. I mean, if they will concede, if they
4 will concede that the House Master report showed that there
5 was flooding in the basement and there was groundwater
6 intrusion, by all means, let's move forward. I'll drop the
7 counterclaims. But they're not. That means if that report
8 was void of it, it wasn't adequately inspected to find
9 whatever issues it is that she'd trying to complain of in
10 front of this jury. And so that contract provides in very
11 clear language that the buyer will hold harmless, indemnify
12 and pay damages and attorney fees to sellers and brokers for
13 all claims, injuries, and damages arising out the exercise of
14 these inspection rights.

15 If she's claiming damages, as a result of her exercising
16 inspection rights and not having follow-up inspections ---

17 THE COURT: That's not what she's doing, is it?

18 I mean, that's -- that's what I'm having trouble
19 reasoning here. By and large, my understanding of the
20 evidence is that the inspections didn't reveal this issue.
21 Question of fact, as to whether this issue even exists. You
22 know, and the -- moreover, whether it existed at the time or
23 before the plaintiff -- I mean, the plaintiff bought this
24 house. Right? I mean, I'm having trouble making the stretch
25 that the inspection reports indicate that, that they should've

1 been aware of the alleged water issue in the basement. So, I
2 mean, does that make sense?

3 MR. LOVE: So, we're talking about the indemnity claim,
4 the hold harmless claims, that breach of contract?

5 THE COURT: All right. So, when you're arguing that the
6 inspection reports ---

7 MR. LOVE: Yes, sir.

8 THE COURT: I mean, you're arguing that that put her on
9 notice of these issues in the basement, and therefore she
10 should be liable or hold harmless the defendants because she
11 knew about them?

12 MR. LOVE: Because she knew about them and didn't do
13 anything else about them. And then it ultimately bought the
14 house without doing anything else about it. Yes, sir.

15 THE COURT: See, I think there's a question of fact -- at
16 least there is a question of fact, as to whether or not those
17 inspections reveal this issue.

18 MR. LOVE: Right.

19 THE COURT: So, how does that -- how does that affect
20 your argument?

21 MR. LOVE: Well, washes back to the jury, right? I mean
22 that ---

23 THE COURT: Yeah, yeah, it does. I mean, I don't know --
24 if Mr. Grote, if you understand what I'm trying to wrestle
25 with as far as -- I mean, I'm inclined to believe that this

1 case is not contractual in nature. I mean, I think it's much
2 clearer -- much more clear an issue for the jury to decide as
3 to whether or not the Phillips knew they had an issue and
4 didn't tell the Plaintiffs, and that's kind of where we are.
5 I mean, because on my interpretation and understanding of the
6 evidence is that the inspections that were obtained by and
7 large didn't indicate this -- the issues that are before the
8 Court? Am I right or wrong, just please ---

9 MR. LOVE: That would be our position, that the
10 inspection reports were -- they showed that there had been
11 either moisture or water penetration in the house. They did
12 show that. I mean, it's their words in the report. It did
13 not show the issue that she had with the house. So that part
14 is true, but -- and I get what you're saying, especially on
15 Plaintiff's claims as far as a breach of contract. You know
16 like earlier when we argued, that emotion, that -- I think
17 you're right. I think it's not the breach of contract, it's
18 the misrepresentation type thing that's going on. But on the
19 reverse, on the counterclaims, we're not -- our claim isn't
20 based in a representation, our claim is based in you didn't
21 inspect the way you should have. If you'd had this stuff
22 available to you, and then you can't come back against us,
23 because you didn't do it. If you do, we get damages.

24 THE COURT: Mr. Grate, could y'all put on the screen the
25 ---

1 MS. GIOVANOLI: You don't have it?

2 THE COURT: I do, but I didn't think that's what we were
3 looking at earlier.

4 MS. GIOVANOLI: Do you want ---

5 MR. LOVE: The underlying one, I think.

6 MS. GIOVANOLI: Okay. That's the indemnification three
7 him, that's ---

8 THE COURT: And that's what we talking about here; here
9 it is. Section 9?

10 MR. LOVE: That's where -- the first counterclaim was
11 that indemnity.

12 Okay. Well, let's hear the next one.

13 MR. LOVE: The second one

14 MR. GROTE: Your Honor, I think we've covered it in large
15 part, as far as the indemnification issue again. It's --
16 really what he's asking for is second-party indemnity, and
17 that's just not really recognized by South Carolina law under
18 a provision like this.

19 It's clear when reading that provision as a whole and the
20 Court has since declared an unambiguous position, has the
21 ability and it is the Court's job rather than the jury's job
22 to interpret the meaning of that provision. It's clear that
23 what that this provision is dealing with, is things that may
24 have come up as the inspections are occurring.

25 Okay, so House Master goes out there and they go under

1 the house, and they break a water line and it's leaking
2 everywhere. And so what that says is, you know, her
3 contractor who went out there and caused that damage, she's
4 got to indemnify them or vice versa if -- excuse me -- if her
5 contractor damaged the property, then you know she's gonna be
6 responsible for repairing it. But also, if you know, so for
7 example, if a contractor falls off the roof, and that
8 contractor then sues the Phillips and says, you know, your
9 roof had a problem, I fell through it, now I'm hurt. You
10 know, I'm gonna sue you Phillips. And what that provision
11 says is, okay, if that happens, Dr. Sarb has to be indemnified
12 for that. Okay? This is not a version that says, okay, you
13 don't have an obligation to inspect, but if you do ---

14 MR. LOVE: Let me stop you there. I think you might be
15 right on that. I think on that counterclaim you might be
16 right on that one.

17 THE COURT: I appreciate that, Mr. Love.

18 MR. LOVE: Yes, sir.

19 THE COURT: I think he might be right, too.

20 MR. LOVE: That makes the most sense. I don't -- that's
21 not how I read it in that provision. I think it's probably
22 horribly drafted, but I'm going to concede that I think that
23 that's probably -- that makes the most sense.

24 THE COURT: As I read it, I think that -- I think that's
25 what it means. So, if we're in agreement with that, then

1 we'll move on to the next one.

2 MR. GROTE: Your Honor, as far as the other two, they
3 arise out of the same thing. Again, it's just this implied
4 covenant of good faith and fair dealing, or the contractual
5 provision that gives a right to inspect. But again, there's
6 no duty under this contract for Dr. Sarb to inspect. She
7 could have chosen to, one, not even get a disclosure
8 statement. She could have chosen to buy the property as is,
9 she could have chosen to just not exercise that right. There
10 has to be a distinguishment between exercising the right to
11 inspect versus a duty to inspect. And there is a difference
12 between whether she had an affirmative duty giving rise to a
13 cause of action versus a defense that Mr. love may have. He's
14 saying that because these inspections may have revealed the
15 problems that is a defense to the claim. And therefore, she
16 had notice; therefore, she can't win on her claims t. That's
17 completely different from saying that, oh, she had a duty to
18 inspect. She was obligated under this contract to go out
19 there and have a contract to do it and she -- and her
20 contractor either didn't go out there or didn't do it right.
21 Therefore, they get a right to sue her over that. That's just
22 not what this provision means. And I think -- It's kind of
23 the same with the indemnity thing. It's just -- it's an
24 attempt to bring a counterclaim, I get it, but it just doesn't
25 fit the contract provision. You have to have -- it has to

1 have created some duty on her and this is not creating duty on
2 her to inspect.

3 THE COURT: All right.

4 Mr. Love?

5 MR. GROTE: It gives rise to a defense ---

6 MR. LOVE: Disagree on that on, Your Honor.

7 On that one, there is a right to inspect. Once you
8 invoke that right to inspect, then you must follow the process
9 and adequately inspect the property. There is evidence that
10 she did not adequately inspect the property. There's evidence
11 that the inspection she did revealed certain things, and I
12 asked her, there's -- in those reports it says you may want to
13 consult an engineer on this. You may want to -- I can't
14 remember what that was, but I mean, I can find it in the
15 inspection report. Anyway, that's not important. The
16 important part is that I asked her inspection after
17 inspection, you know, did you get an environmental assessment?
18 You're gonna claim that you can't breathe and that you got
19 breathing problems as result of this. Did you do that
20 beforehand? If breathing problems were an issue before,
21 shouldn't we have that done before you go the house? And she
22 testified that she didn't have that done along with a host or
23 other inspections. So, a counterclaim based on her exercising
24 her right to inspect but not doing it adequately, and then
25 suing us for it and causing damages is absolutely appropriate.

1 THE COURT: And what contract provision are you referring
2 to?

3 MR. LOVE: For what, the ---

4 THE COURT: I mean, it's a breach of contract failure to
5 inspect.

6 MR. LOVE: Failure to adequately inspect; it would be
7 under the inspection provision, Your Honor.

8 THE COURT: The same Number 9?

9 MR. LOVE: I'm reading through it, Your Honor.

10 THE COURT: I mean, it seems to me that, I mean, what I'm
11 struggling with is that these are absolutely issues in this
12 case, but -- and they seem to me like they go towards an empty
13 chair defense certainly, but I don't understand how that
14 arises to a cause of action.

15 MR. LOVE: Your Honor, it would be under Paragraph 8, the
16 repair procedure -- it's coming back to me where I got the
17 pleadings from. Paragraph 8, under the repair procedures, it
18 talks about a buyer has the privilege and responsibility to
19 inspect constructions where -- for environmental concerns,
20 including but not limited to mold, radon gas, lead based
21 paint, da, da, da, da, all that stuff, plumbing systems, all
22 of that. It's found in Paragraph 8. The buyer has a right to
23 do that. So, the buyer invoked the inspection procedure but
24 did not adequately inspect to find the issues that she was
25 suffering in that house.

1 Your Honor, and also -- well, I don't know that it --
2 yeah, there we go. Thank you. Plumbing systems, water supply
3 systems, waterway systems ---

4 MS. GIOVANOLI: Can you tell us where you're looking
5 right here, where the mouse is?

6 MR. LOVE: Yes.

7 THE COURT: All right. Is there another one? Is there
8 another directed verdict motion or is that the only two?

9 MR. GROTE: I think that's it. Those are all of his
10 counterclaims. I don't think there's any other -- there's no
11 other counterclaims besides those.

12 MR. LOVE: Your Honor, before get off the record, I do
13 want to -- although we haven't ruled on the directed verdict
14 motion, which I get, no problem. I think this point in the
15 trial I've got to renew it if I need to. So, to the extent I
16 need to renew my motion for directed verdict as a judgment as
17 a matter of law, I am doing so.

18 THE COURT: I understand.

19 MR. LOVE: Thank you.

20 THE COURT: All right. If we go back to the defendants'
21 motions for summary -- for directed verdict, the Uniform
22 Residential Disclosure Act, is that purely contractual?

23 MR. GROTE: The disclosure act? The disclosure act,
24 there's a duty that arises by law that -- the act itself
25 requires a disclosure statement in all transactions except the

1 accepted ones. You have a right to opt out of that right
2 under the statute. And you know, this contract, Section 16,
3 that's on the screen, gives that option as to whether you want
4 to exercise your rights under that statute, or whether you
5 want to waive your rights essentially by not getting the
6 disclosure statement. She didn't waive those rights in this
7 case. But it also does create an independent -- I think
8 there's two sources of the duty. One, there's a statute that
9 requires it, and the statute creates liability, but this
10 contract also says that it's required and when they have to
11 correct it. And so, I think the duty right -- you have two
12 independent duties that I think gives rise to the independent
13 causes of action.

14 THE COURT: Okay.

15 MR. GROTE: At the end of the day, do you -- you know, or
16 strike that.

17 THE COURT: I understand.

18 Mr. Love, is there anything you wanted to add to that?

19 MR. LOVE: Yes, Your Honor. I believe that -- I believe
20 that the disclosures are merged into the contract, and
21 therefore it would be a contractual action under the merger
22 clause, and I believe they played it that way but haven't had
23 a chance to pull out the complaint. I think that's how that
24 works.

25 THE COURT: All right.

1 All right. What I'm inclined to do is to grant directed
2 verdict motions as they relate to the Defendant's motion for
3 breach of contract, breach of contract accompanied with a
4 fraudulent act. And allow the other causes of action to go to
5 the jury.

6 And, as far as Plaintiff's motions for the directed
7 verdict, I think those are rooted in the contract, which I
8 don't think is the issue that needs to go to this jury.
9 Certainly, everything that's been argued is arguable in
10 defense of whether or not knowledge and notice and other
11 elements of the causes of action that are going to the jury
12 are present or not. And so, I think that -- I think that the
13 evidence in this matter suggests that those are the causes of
14 action that should go to the jury for consideration. And I'll
15 give each side an opportunity just to place on the record what
16 they think about that, and we'll go from there.

17 MR. GROTE: Am I going first?

18 THE COURT: Yes.

19 MR. GROTE: Yes, Your Honor. I would just renew our
20 prior position; I won't reargue the point. Our position
21 simply would be that under Section 16 of the contract there is
22 a mandatory duty -- it says seller shall do this, and we
23 believe that would be sufficient to give rise to a cause of
24 action. It says they shall provide it, and they shall correct
25 it giving it an affirmative duty under the contract.

1 THE COURT: Well, I understand the only way they could
2 find under this -- under your argument, that they are liable
3 for breach of contract is if they find they are liable for a
4 number of these other causes of action. So, in the event the
5 jury was to return a, you know, a verdict form that indicates
6 there liable for breach of contract and not some of the other
7 ones, then we got a problem is what I'm thinking. Do you
8 understand that?

9 MR. GROTE: I understand what you're saying, Your Honor.

10 THE COURT: Mr. Love, what's your position?

11 MR. LOVE: I would renew the arguments made previously
12 for the directed verdict motion.

13 Is it the Court's ruling that the disclosure act is not
14 contractual in nature?

15 THE COURT: Well, now you're talking about merging that
16 document in with the contract?

17 MR. LOVE: Yes, sir.

18 THE COURT: Well, I mean, I think the evidence is that
19 it's undisputed evidence that we have a disclosure document,
20 correct?

21 MR. LOVE: Correct.

22 THE COURT: And the ultimate issue in this case is
23 whether or not the defendants filled that out in any
24 misrepresenting way, right? I mean, am I right or wrong?
25 Tell me. I mean ---

1 MR. LOVE: You are absolutely correct. That is the
2 issue.

3 THE COURT: And there's evidence in the record that could
4 suggest that maybe they did and that maybe they didn't.

5 MR. LOVE: Correct.

6 THE COURT: And that's a question of fact for the jury to
7 decide.

8 MR. LOVE: Correct. That's the root of the -- all the
9 other claims that are surviving. That's what you -- all of
10 those things you've described, the fraud, the
11 misrepresentation, whatever those claims are. My question is
12 whether the cause of action under the act itself, are you
13 ruling that that is contractual in nature or it is not
14 contractual in nature? My argument is that that is
15 contractual in nature, because it -- the disclosures are
16 merged into the contract itself. I'm not saying we don't have
17 the fraud, the representation evidence and move forward; what
18 I'm saying is the disclosure act claim is contractual, based
19 in contractual in nature off of the contract. And the
20 document is merged into the contract. So, if there is a
21 violation of the act due to that disclosure, it falls under
22 the merger contract of the contract -- merger clause of the
23 contract.

24 MR. GROTE: Your Honor, I would disagree with that. I'm
25 not really following that argument. There's a -- it's a

1 statutory duty. They could bring this claim under the statute
2 regardless of whether the contract exists. It's not -- the
3 act is not nullified or her cause of action under the act is
4 not merged into this contract. It's because the standard LLR
5 form refers to statutory obligations. And, you know, she has
6 that independent right. They're just independent causes of
7 action that the result is that there could be different
8 damages under different claims, because under the contract, if
9 they found under the breach of contract that there are
10 recovery of certain costs and things like that. It does also
11 provide for attorney fees, but the statute does, too. But
12 there is significance to both ones.

13 But, no, I don't think because the contracts refers to
14 the disclosure agreement that that then eliminates the
15 statutory duty and becomes part of the contract, and it just
16 nullifies that.

17 MS. GIOVANOLI: And if I may interject, I've been hearing
18 part of this case -- and so I'm sorry, I'm not stepping on co-
19 counsel's toes, but under the contract there is no requirement
20 that it be a knowing nondisclosure under the act there is.
21 So, the elements are slightly different. There's a duty that
22 arises under the statute, there's a duty that arises under
23 this particular contract provision. The elements are
24 different for proving both as well as defense of damages for
25 proving both. I think it's really important that we -- at

1 least on the plaintiff's behalf, we think that we have
2 presented ample evidence that there are -- there's evidence to
3 prove the elements of both of those causes of action, and that
4 the duty arises under each, two bases for liability.

5 MR. LOVE: In response, Your Honor, the contract doesn't
6 just refer to the disclosures; it adopts them and merges them
7 into the contract.

8 THE COURT: All right. Well, has each side submitted all
9 of your jury charge proposals?

10 MS. GIOVANOLI: Yes, Your Honor. We did that this
11 morning, then I also emailed two additional ones to your law
12 clerk.

13 THE COURT: All right.

14 MS. GIOVANOLI: And counsel, of course.

15 MR. LOVE: Did you email them to me?

16 MS. GIOVANOLI: Yes, sir. And I don't have them in
17 print. They're on my cell, so I just did them. So, you want
18 my handwritten notes?

19 MR. LOVE: I'm gonna do what you did to me earlier.

20 Your Honor, I haven't even seen these things. I just got
21 handed this.

22 THE COURT: All right.

23 MS. GIOVANOLI: Here you are.

24 MR. LOVE: I was just kidding. I don't mind. I -- Your
25 Honor, I ---

1 MR. GROTE: I wasn't trying to -- and for the Court, I
2 wasn't trying to pick on him, I was just saying, I hadn't -- I
3 was unable to read the case in the amount of time that I had,
4 not that he did anything improper.

5 MR. LOVE: Your Honor, when would you like us to, if we
6 have any objections to the charge?

7 THE COURT: We're gonna have a charge conference. You
8 know, what my intent here has been to do was to try to
9 streamline the -- these causes of action, not to cut any out
10 that should be in there. But that would try to prevent any
11 confusion on behalf of the jury, but I'm not succeeding in
12 that. And so, you know, we'll just go ahead and will include
13 the contract issues, and I don't have any idea how that's
14 going to fall out as far as what the jury is gonna think about
15 that. I mean, do you have a charge on the failure to
16 adequately inspect?

17 MR. LOVE: No, sir.

18 THE COURT: All right. We're gonna take about a 10-
19 minute recess, and I'll come back out and we'll have a charge
20 conference, and you will know exactly how we're gonna move
21 forward, so you know how to prepare. Okay?

22 MS. GIOVANOLI: Thank you, Your Honor.

23 **RECESS - 12:15 P.M.**

24 *****OFF THE RECORD*****

25 **ON THE RECORD - 12:42 P.M.**

1 (REPORTER'S NOTE: The following takes place outside the
2 presence of the jury.)

3 CHARGE CONFERENCE:

4 THE COURT: What we'll do now is go through my proposed
5 charge. And I didn't bring out my sheet, but we're gonna deny
6 all directed verdict motions as there's questions of fact or
7 at least the existence of evidence in the record as to the
8 Plaintiff's causes of action. And also, I'm gonna allow in
9 the counterclaim of the failure to adequately inspect by the
10 defense.

11 So, the only cause of action that's not gonna go to the
12 jury would be the indemnification matter that was consented
13 to; is that right?

14 MR. LOVE: That is my understanding, Your Honor.

15 THE COURT: All right. So, the charge would be duties of
16 judge and jury, which is just in each and every trial; the
17 preponderance of the evidence standard, also clear and
18 convincing, which is required by at least the fraud; direct
19 and circumstantial evidence; credibility of witnesses; expert
20 witness; then the Residential Property Condition Disclosure
21 Act. And have you -- I'll just read the statute. Basically,
22 it just says an owner who knowingly violates or fails to
23 perform any duty prescribed by any provision of this article
24 or who discloses any material information on the disclosure
25 statement that he knows to be false, incomplete, misleading is

1 liable for actual damages proximately caused to the purchaser.
2 And then it has the actual and constructive knowledge portion
3 of that.

4 MR. LOVE: I would object to that portion, Your Honor.

5 THE COURT: The actual and constructive knowledge
6 portion?

7 MR. LOVE: Yes, sir.

8 THE COURT: All right. So, that portion reads that the
9 South Carolina Residential Disclosure Act requires the
10 defendants to have provided information on the disclosure
11 statement that they knew to be false, incomplete, or
12 misleading. Knowledge can be actual or constructive.
13 Constructive knowledge generally means that the person should
14 have known of the condition through the exercise of reasonable
15 care and diligence. Constructive knowledge is sufficient to
16 establish liability under the act. What's your objection to
17 that?

18 MR. LOVE: My objection is the form itself says you have
19 to have actual knowledge. I mean, you're asking when they
20 filled this out and what they knew, but the evidence, the
21 piece of evidence says actual knowledge.

22 MS. GIOVANOLI: My opposition would be that's a factual
23 defense for them, but that the law requires, and it's cited in
24 *Winters v. Fiddie*, as well as *Wimberley v. Winn-Dixie*
25 *Greenville and Lando Carpets*, that actual or constructive

1 knowledge is the standard. So, I think the legal authority
2 supports the Court's instruction to the jury that that is the
3 law in the state. The form, if they want to raise that as a
4 defense as to why they didn't disclose it, they don't believe
5 they had actual knowledge, then they can ---

6 MR. LOVE: I don't know what form they used in those
7 cases, Your Honor. I don't have the form before me that they
8 had in the *Little* case when they signed. Perhaps the language
9 was different in the LLR form, but in this particular form
10 that we hear talking about today, it says actual knowledge.
11 You want to talk about misleading the jury ---

12 THE COURT: No, no, I'm not ---

13 MR. LOVE: I'm not talking about you, Your Honor.

14 THE COURT: I understand. I think that this is fairly
15 straightforward. I think it says that any person who
16 discloses any material information on the disclosure
17 statement, that he or she knows to be false, incomplete, or
18 misleading is liable for actual damages proximately caused by
19 purchaser. Actual and constructive knowledge is required by
20 this act, and in order for the defendants to have provided the
21 information on the disclosure statement that they knew to be
22 false, incomplete, or misleading. I mean, I don't think
23 that's -- I just think that provides further clarity to the
24 jury as to what this is and what it means. Certainly, all of
25 your defenses are still in place and ---

1 MR. LOVE: Your Honor, I can't -- how am I gonna -- how
2 can I argue the defense that, hey, this disclosure statement
3 requires proof of actual knowledge on behalf of the
4 defendants. Like it says, apply this question below and then
5 answer choices numbered 1 through 14 below. As owner, do you
6 have any actual knowledge of any problems concerning... How
7 am I -- I can't look at a jury and be like they have to show
8 that they had actual knowledge of something, and then you're
9 gonna tell them they don't have to have actual knowledge,
10 constructive knowledge is good. That doesn't make sense.

11 MS. GIOVANOLI: The Judge's job is on the law. If the
12 form -- if they thought that they were confused by the form, I
13 think that's a factual defense that you can raise.

14 MR. LOVE: It's not an issue of being confused. It's an
15 issue of actual knowledge, what they actually knew.

16 MS. GIOVANOLI: The jury charge is on the law.

17 MR. LOVE: They weren't like do we have actual or
18 constructive knowledge of this? I mean, this ---

19 MS. GIOVANOLI: I'd refer Your Honor to ---

20 THE COURT: It says actual and constructive knowledge.

21 MS. GIOVANOLI: It does. And it also says on that same
22 form that the -- the very first case, that if owner fails to
23 check yes or make a disclosure, and owner knows there is a
24 problem, owner may be liable for making an intentional or
25 negligent misrepresentation, and may owe the purchaser

1 damages.

2 MR. LOVE: What are you talking about it says and?

3 MS. GIOVANOLI: That same form.

4 THE COURT: I don't have -- if you'll hand me what you're
5 looking at.

6 MS. GIOVANOLI: I'm gonna have to display that exhibit.
7 It's an old and little form, but I'll blow it up for you.
8 Right in this paragraph, beginning, if owner.

9 MR. LOVE: And then the very last sentence of that says,
10 the owner is stating that owner has no actual knowledge of any
11 problem. I'm good with that language.

12 THE COURT: This language or this language? Take a look
13 at what I have here.

14 MR. LOVE: What she was pulling up; yes, sir.

15 THE COURT: I can't read from that.

16 MR. LOVE: I understand. I'm sorry.

17 MS. GIOVANOLI: You can't read it?

18 THE COURT: What I'm saying is I'm trying to craft a jury
19 charge, so I certainly can't charge off of that document.

20 MS. GIOVANOLI: It's section -- the section to which Your
21 Honor is referring, I believe, is 27-50-40(c), rights of the
22 parties to a real estate contract in connection with the
23 conditions of the property of which the owner has no actual or
24 constructive knowledge are not affected by this article.

25 MR. LOVE: See, what this charge is saying is that you

1 could -- constructive knowledge is all you need, but that's
2 not what the evidence and form says, and that's not what was
3 in their head in 2019.

4 THE COURT: All right. So, are y'all in disagreement?

5 MR. LOVE: We are.

6 THE COURT: All right.

7 MS. GIOVANOLI: Plaintiff's position is that it's
8 imperative for this jury to understand the difference between
9 actual and constructive, and that both are part of the act.

10 MR. LOVE: And the defendants think is imperative for the
11 jury to know that this form, all they were required to have is
12 actual knowledge. The constructive knowledge is insufficient,
13 because this form on Page 1, which they displayed to you in
14 support of their position, but actually supports mine as well
15 as the actual questions at issue require actual knowledge.

16 THE COURT: Where is that on this form?

17 MR. LOVE: What you're looking at, there's a paragraph
18 that starts, if a question is answered yes.

19 THE COURT: Yeah.

20 MR. LOVE: The end of that paragraph says, the owner is
21 stating -- if the owner puts no, the owner is stating that
22 owner has no actual knowledge of any problem.

23 Scroll down, please, if you don't mind. Keep going to
24 the actual questions, please. Thank you. There we go.
25 Stop.

1 As owner -- I'm at the very top in the box, second line
2 -- As owner, do you have any actual knowledge of any problems
3 concerning...

4 THE COURT: Okay. So, what you're saying is the form
5 that was used in this matter does not follow what the statute
6 says?

7 MS. GIOVANOLI: I think what he's saying is the form
8 confused his clients, and I think that's a factual argument
9 that he can make.

10 MR. LOVE: I believe the language comes from a case, the
11 *Little* case, I think is what they've cited. Is that the
12 constructive language comes from the case, which we don't know
13 what form of the form they had in the *Little* case.

14 THE COURT: All right. In this matter we're going with
15 the actual knowledge because that's what is contained on the
16 form that is the subject matter of this lawsuit. Okay? I
17 think that's the only way that this can be fair under the
18 situation. So, constructive knowledge will not be charged as
19 a requirement or as a way to find him liable under this act.
20 Okay?

21 MR. LOVE: Thank you, Your Honor.

22 THE COURT: All right. So, the charge would essentially
23 read is this, Residential Property Condition Disclosure Act
24 provides that an owner who knowingly violates or fails to
25 perform any duty prescribed by any provision of this article

1 who discloses any material information on the disclosure
2 statement that he or she knows to be false, incomplete, or
3 misleading, is liable for any actual damages proximately
4 caused to the purchaser.

5 Is that sufficient? Is there any objection to that?

6 MR. LOVE: Pursuant to the Court's ruling, that would be
7 my understanding, but I understand she probably ---

8 MS. GIOVANOLI: Plaintiff's objection noted for the
9 record that it does not inform the jury as to the actual law,
10 that actual or constructive knowledge is the standard based on
11 the statute as well as the case law that we have cited in our
12 request for charges.

13 THE COURT: All right. I don't mind -- I don't mind
14 adding a provision or a section that defines actual knowledge,
15 but as I have stated the, it's clear in this case that the
16 actual disclosure form that was used in this case plainly
17 states that actual notice is the requirement. And I don't
18 think it's fair because that's the form we are talking about
19 for the misrepresentation, if there was one. And it only --
20 it requires actual knowledge. So, that's my ruling. Okay?

21 All right. I think I'm gonna stay with that.

22 Cause of action, I have fraud. It's the charge from our
23 charge book, and you are more than welcome to take a look at
24 it. And then constructive fraud ---

25 MR. LOVE: Your Honor, when you say charge book, is that

1 Anderson?

2 THE COURT: Most likely, but it's provided to us by Court
3 Administration. You're welcome to take a look at it.

4 MR. LOVE: No, I don't need to. That's probably the
5 same; you're right.

6 THE COURT: Constructive fraud, negligent
7 misrepresentation, negligence, breach of contract, breach of
8 contract accompanied by fraudulent act. And then I have
9 damages, actual damages, mental suffering, pain-and-suffering,
10 pre-existing injury, and damages to the building.

11 And then as a final charge, have the defendants have
12 alleged a counterclaim of failure of the duty to inspect
13 adequately, and it simply is that in that counterclaim the
14 defendants allege that the plaintiff has failed to adequately
15 inspect the property at issue. And as a result, they're
16 entitled to damages.

17 Is there any objection to that?

18 MS. GIOVANOLI: No objection to that one, Your Honor.

19 THE COURT: All right. So, I understand as a result of
20 hearing your arguments, that we probably need a verdict form
21 that's gonna delineate liability based on each and every one
22 of these causes of action. So, as to know whether or not they
23 might trigger some other attorney's fees or some other section
24 of law. Is that right or wrong, or what do you think?

25 MR. LOVE: I mean, I ---

1 THE COURT: I mean, the defense says, I don't know if
2 y'all have seen it. Did you show them the verdict form you
3 provided?

4 MR. LOVE: It was on the -- I don't know if I did or not,
5 actually.

6 MS. GIOVANOLI: I haven't seen it.

7 MR. LOVE: I understand. We were standing right here
8 beside each other. I assumed you looked at it.

9 I tend -- I've always created forms that I try not to
10 confuse the jury with.

11 THE COURT: Well, I agree.

12 MR. LOVE: Your Honor, while they're looking at that, are
13 you gonna charge on the -- on reliance and the right to rely
14 or -- I think I had submitted a charge, language from that
15 *McLaughlin* case.

16 THE COURT: All right. First of all, let's talk about
17 this verdict form real quick.

18 MR. LOVE: Yes, sir.

19 THE COURT: Are y'all satisfied with that verdict form?

20 MS. GIOVANOLI: I'm okay with the verdict form.

21 THE COURT: Well, I'm just gonna tell you, when we get to
22 the -- when this is returned, we're not gonna know ---

23 MR. GROTE: That's my concern with it. I mean, I guess I
24 could take a moment to confer with my counsel, but my concern
25 is that some of these causes of action allow for different

1 damages, and it would be dependent on what they find under
2 what can be awarded. For example, if they find under the act
3 you're entitled to actual damages, and you're entitled to a
4 potential award of attorney fees. The breach of contract
5 claims, you can get your damages, but there's an award of
6 costs and attorney fees under that provision as well. Of
7 course, the tort claims would allow for punitive damages. And
8 if they're not separated out, then we don't know whether
9 there's any -- a breach of contract claim, you know, could
10 have punitive damages, so we don't know whether this
11 bifurcated trial needs to go forward or not.

12 THE COURT: All right.

13 MR. GROTE: So, I guess, I'm a little bit concerned about
14 that.

15 THE COURT: And that's why I brought that up, and I've
16 already instructed my law clerk to be working on a verdict
17 form. I will tell you this, what I would envision that
18 verdict form to look like is a list of the plaintiff's causes
19 of action and a list of the defendant's cause of action, and a
20 damages line, one damages line for each. And then they will
21 just check whether or not they were liable under the specific
22 cause of action or not. If they weren't liable under any
23 specific causes of action, then the damages would be zero. If
24 they were on one of any of them or multiple ones, then it
25 would be whatever it is. And then the same for the defendant.

1 And I'll go ahead and place on the record that I find
2 that there's no circumstances or facts that I've heard in this
3 record that would -- that would lead me to allow the -- this
4 jury to consider any punitive damages in this case. All
5 right?

6 MR. LOVE: May I ask you a question, Your Honor?

7 THE COURT: Yes, sir.

8 MR. LOVE: When you were talking about your verdict form,
9 are you putting a damages line by all seven causes of action
10 or one at the top and listing them and then like check which
11 apply?

12 THE COURT: It would be at the bottom, and it'd be one

13 ---

14 MR. LOVE: Okay. One line, right, because that sounds
15 like a criminal ---

16 THE COURT: No, no.

17 MR. LOVE: --- charge coming back, all these lesser
18 included offenses, and I don't want to give them -- okay. I
19 think I'm okay with that. My other suggestion would be go
20 with something simpler like I had and then poll them
21 afterwards, but if yours works the same way, I guess. I think
22 that'd probably accomplish the same thing.

23 MR. GROTE: I have no desire to confuse the jury. I just
24 think at the end of the day, you know, whatever happens with
25 the jury, it will be confusing as to what they actually found

1 other than what cause of action and what, you know, the end
2 result of that is, you know, if it goes to appeal or whatever
3 happens.

4 THE COURT: So -- and I think the reason that I would
5 like to go with the form as I described is because if they
6 find the defendants liable for any cause of action, then there
7 has to be some damage. There has to be. Whether it be \$1 or
8 whatever it might be. And so, when we know whether or not
9 they found them liable for any or all of the causes of action,
10 then you will know whether or not that triggers any other
11 possible damages or fees or anything like that. You
12 understand that?

13 MR. GROTE: Yes, Your Honor. I'm in agreement with --
14 I'm in agreement with that proposal and I think that addresses
15 that. The simplified form I think would be confusing. So,
16 I'm agreeing with what you're saying. If it's simplified,
17 then, you know, just say they find for the plaintiff, we don't
18 know what they found it under, so we don't know. If it's
19 negligence, they're might be attorney fees, but if it's --
20 there's no way to tell that.

21 THE COURT: Yeah, I understand. That's why we're gonna
22 do it this way.

23 MS. GIOVANOLI: And I just respectfully have a question
24 with regard to bifurcation and the need for punitive damages.
25 It's my understanding that plaintiff has a right to a trial on

1 the punitive damages if that was bifurcated, if a jury finds
2 in our favor, and so I think that we just note for the record
3 that we are seeking to go forward with that bifurcated trial
4 if the jury does find in the plaintiff's favor.

5 THE COURT: All right. Well, certainly, it's in the
6 Court's discretion as to whether or not punitives go to the
7 jury. And I'll place that on the record further at the
8 appropriate time and my findings with that. But I'm -- I'm
9 just telling you now that I don't think that the evidence
10 rises to that level. Okay?

11 MS. GIOVANOLI: And one final point, I think Ed was just
12 bringing up some his proposed jury charges. I didn't know if
13 Your Honor had an opportunity to review those or if we could
14 clarify whether or not any of those -- because we submitted
15 some and so did Mr. Love.

16 THE COURT: Sure.

17 MS. GIOVANOLI: I think for Plaintiffs -- I marked off
18 what Your Honor said that you would read. I just wanted to
19 clarify was gross negligence, recklessness, willfulness, and
20 wantonness part of your negligence charge? Those are claims
21 that we have made, so we would just request ---

22 THE COURT: Those are claims as they relate to punitive
23 damages. And so, that's why they wouldn't be in this portion
24 of the trial, regardless. Now, I have tried cases where we
25 just put a question on the verdict form which -- but I don't -

1 - but I'm not -- we're not going to do that in this trial.

2 MS. GIOVANOLI: Okay. And our other one was breach of
3 contract of third-party beneficiary. There is an instruction,
4 which has been the law in a couple of different cases that we
5 cite with regard to third-party beneficiary. I think that may
6 be a confusing issue for the jury, and so an instruction on
7 that law is appropriate.

8 THE COURT: Can you hand it to me, please?

9 MS. GIOVANOLI: Yeah, absolutely. This was what I
10 provided this morning.

11 THE COURT: Have you seen this, Mr. Love?

12 MR. LOVE: Yes. Yes. She gave that to me this morning.

13 Yeah. I'm not sure we have third-party breach of
14 contract. I know she -- she presented Adam with the listing
15 agreement, but she didn't ask anything about whether they
16 breached that agreement or anything. And I understand it, you
17 know, it deals with the real estate transaction, and she's the
18 buyer in the transaction, but I don't know anything about
19 that.

20 MS. GIOVANOLI: Are we going to a directed verdict
21 motion now?

22 THE COURT: No. What you're asking is for an additional
23 charge to accompany the breach of contract charge; is that
24 right?

25 MS. GIOVANOLI: That's right.

1 THE COURT: All right. And for the record, this request
2 says that Plaintiff claims damages from defendants for breach
3 of contract, as third-party beneficiary of a contract between
4 the defendants and a real estate broker RE/MAX. And I don't
5 think that's what we're here for.

6 MR. GROTE: There is just a provision in that listing
7 agreement that gives -- states that they have a duty to
8 disclose and that they are warranting that they're disclosing
9 the property in a good condition. We've alleged in this case
10 is that Dr. Sarb is a third-party beneficiary of that
11 provision.

12 THE COURT: Not against RE/MAX.

13 MR. GROTE: I think it's RE/MAX.

14 THE COURT: Not in this case. I mean, in the case that's
15 before the Court today. I mean, I think this brings in a
16 great deal of confusion. All right?

17 MR. GROTE: Yes, Your Honor.

18 MR. LOVE: And it's basically the same thing. It's
19 saying that the disclosures were a problem, and under that
20 agreement we had to do disclosures. I mean, so I think it's
21 just duplicative.

22 MR. GROTE: Your Honor, I think it's probably cumulative;
23 we'll agree to that.

24 THE COURT: Okay. All right. Thank you.

25 MS. GIOVANOLI: And just two final ones, and those are

1 the ones that I emailed earlier this morning. And that's the
2 reference to *Slack v. James*, the general merger and non-
3 reliance clauses and agreements do not preclude claims for
4 fraud and/or misrepresentation. Can you give me your position
5 on that?

6 MR. LOVE: Hold on one second. I'm looking at ---

7 THE COURT: If I can see that, please. I'm sorry.

8 MS. GIOVANOLI: I emailed it to Your Honor, and I'm sorry
9 I had handwritten it this morning. There's a typed version.
10 I don't have a printer.

11 THE COURT: All right.

12 MS. GIOVANOLI: I could email it again if I can -- or I
13 can put it on the screen.

14 THE COURT: Yeah, that'd be good.

15 MS. GIOVANOLI: Okay.

16 THE COURT: And where -- just to let y'all know, I'm
17 gonna give you enough time to -- we'll just have to ask the
18 jury to wait a little longer. I didn't anticipate this to
19 take that long, but -- and it's nobody's fault, but ---

20 MS. GIOVANOLI: These are the only last two that
21 plaintiff has requested on the screen. The second one being
22 expert testimony not required to prove proximate cause for
23 injury where it's common knowledge, common sense. We're
24 claiming medical bills, physical injury in this case. And it
25 was based on exposure to moisture and mold, related to

1 symptoms for Dr. Sarb. That is something that a doctor
2 doesn't necessarily need to testify to. It's pretty much
3 common knowledge that moisture and mold can cause respiratory
4 issues.

5 MR. LOVE: Well, I think we had doctor testified to it
6 anyway, right. So, I mean, I don't object to that second
7 charge. I'm trying to think on the -- I think the second is
8 all right. I don't know. I don't mind that under ---

9 THE COURT: I don't. I don't have a copy of the second
10 one. We're gonna have to get it.

11 MR. LOVE: It's -- they're right there together, Your
12 Honor.

13 MS. GIOVANOLI: It's right here.

14 THE COURT: Oh, that's all in here.

15 MR. GROTE: They're on the screen.

16 MR. LOVE: Yes, sir. The first one is like one sentence,
17 like two lines. And the second paragraph on the second.

18 Yeah. He's got it highlighted.

19 THE COURT: Okay. I'm sorry.

20 I don't have any issue with charging each of those. I'll
21 just insert them in my charge at the appropriate places, if
22 that's okay.

23 MS. GIOVANOLI: Thank you, Your Honor.

24 MR. LOVE: On the first one, you said that, too?

25 THE COURT: Yeah.

1 MR. LOVE: Is that accurate?

2 THE COURT: General merger.

3 MR. LOVE: A merger clause does not preclude plans for
4 fraud and/or misrepresentation. So, that representations,
5 oral representations before a contract is entered into the
6 merger clause that says that everything is in this contract,
7 that doesn't include those?

8 THE COURT: You know, I've tried to tell you that I don't
9 think this is a contract case.

10 MR. LOVE: It goes to the heart of it, I know. I know it
11 does. I know. That goes to the heart of what you've been
12 saying.

13 THE COURT: Are you objecting to this charge?

14 MR. LOVE: We're gonna let everything go forward; we'll
15 let it go forward.

16 THE COURT: Well, that's up to you. I mean, I'll
17 certainly hear your objection, I mean -- all right. I'll
18 charge it within the contract charge. Okay?

19 MR. LOVE: Yeah, I had prepared a charge based on the
20 *McLaughlin* case about reliance. I only have one copy of that.
21 I think it's ---

22 THE COURT: I've got a copy of it right here.

23 MR. LOVE: Okay. I would ask that that be charged under
24 the reliance, right to rely. Damages must be proven to a
25 reasonable certainty.

1 THE COURT: All right. Give me one second. I'm gonna
2 read to you my reliance charge.

3 All right. So, my fraud charge includes the plaintiff
4 must also prove that she relied upon the truth of the
5 defendants' representation. In addition, the plaintiff must
6 prove that she had the right to rely on the truth of the
7 defendants' representation. And the plaintiff must use
8 reasonable care and diligence to protect herself. If you find
9 that that the plaintiff relied on the defendants'
10 representation, you must then decide whether the plaintiff
11 should've done so. In making this decision, you may consider
12 all of the circumstances involved including the form and
13 materiality of the representation, respective intelligence,
14 experience, age, and mental and physical conditions of the
15 parties, the relation and respective knowledge and means or
16 knowledge of the parties, and the other factors which have
17 been shown during the trial which you feel are relevant.

18 So, I don't -- constructive fraud is a much shorter, but
19 I would not oppose your right to rely charge to be inserted
20 after the negligent misrepresentation charge because all of
21 those, I think, have something to do with reliance. Is that
22 okay?

23 MR. LOVE: Yes, Your Honor. The right to rely charge, I
24 think that's straight from Anderson.

25 THE COURT: Yeah.

1 MR. LOVE: The one that I was referencing was -- is this
2 copy, Your Honor, from the *McLaughlin* case.

3 THE COURT: So, you don't want this one?

4 MR. LOVE: I like all of them.

5 THE COURT: I understand.

6 MR. LOVE: Yes, sir.

7 MS. GIOVANOLI: If I could see which one you're
8 referencing?

9 MR. LOVE: That was my last copy.

10 MS. GIOVANOLI: Well, I have -- you gave me all of them;
11 I just don't know which one.

12 MR. LOVE: Okay. That's right to rely.

13 MS. GIOVANOLI: Uh-huh, (affirmative response). You like
14 that one, I bet.

15 MR. LOVE: This one. I do like that one.

16 MS. GIOVANOLI: Yeah, that one's not the law.

17 THE COURT: The short on suffices?

18 MS. GIOVANOLI: Are we talking about the right to rely?

19 THE COURT: Yes, ma'am.

20 MS. GIOVANOLI: That one is okay. That was the first
21 one.

22 The request to charge with no number that Ed just showed
23 me, it says if the evidence shows the parties asserting
24 reliance has knowledge of the truth of the matter, she cannot
25 and is not entitled to disclosure of the seller. There can be

1 no reasonable reliance on this statement if the plaintiff
2 knows the truth of the matter. I think that part is fine.
3 That is -- *McLaughin* does say that. The last sentence however
4 in *McLaughin* or any of the other cases say a buyer in a real
5 estate contract cannot justifiably rely upon any
6 representations of the seller when the purchase is contingent
7 upon an inspection. I don't -- I think that's a misstatement
8 of the law.

9 MR. LOVE: The *Isaac* (spelled phonetically) case says
10 that. Yeah, it's unpublished. It doesn't make it any less of
11 a law.

12 MS. GIOVANOLI: Unpublished opinions don't have any
13 authority.

14 MR. LOVE: The opinions they cite do, unfortunately.

15 THE COURT: All right. I -- I'm gonna read the longer
16 one.

17 MR. LOVE: Okay.

18 THE COURT: And leave out the shorter one.

19 MR. LOVE: All right. Objection noted on the record.
20 We'll move on.

21 THE COURT: All right. Was there any other ---

22 MR. LOVE: Anderson's charge on must prove damages to a
23 reasonable certainty. Do you have that under your general
24 damages?

25 THE COURT: I don't think it's included in this charge,

1 but it certainly -- yeah, we'll include this. I've got it
2 here.

3 MR. LOVE: Yes, sir.

4 MS. GIOVANOLI: No objection to that.

5 MR. LOVE: And the last one was, I believe this is also
6 Anderson. The caprice, passion, prejudice or sympathy charge,
7 letting the jury know that they can't base their decision on
8 that.

9 MS. GIOVANOLI: No objection from the plaintiff on that.

10 THE COURT: Okay. We'll add that in.

11 And then the counterclaim is short and to the point.

12 MR. LOVE: It's as objective as I can make it ---

13 MS. GIOVANOLI: Yeah. And that's fine. Just for
14 clarification of the record, because there's a lot of charges
15 floating around. Mr. Love submitted a request to charge with
16 regard to negligence. And I know Your Honor said, but you
17 have negligence? You're using the one out of the Cort's
18 benchbook?

19 THE COURT: Yes, ma'am.

20 MS. GIOVANOLI: And not this one.

21 THE COURT: All right. And I'll tell you, if y'all want
22 to come up here and look at this.

23 MS. GIOVANOLI: Maybe just the negligence one.

24 THE COURT: All right.

25 MR. LOVE: I don't remember turning that one in. If I --

1 I don't think I gave him a negligence. If I included it in
2 the one I gave you, I didn't give him any causes of action
3 charges. I pulled all those out.

4 MS. GIOVANOLI: Okay.

5 MR. LOVE: But you can check it out and make sure.

6 MS. GIOVANOLI: No. I see. I'm satisfied.

7 THE COURT: You're sure?

8 MS. GIOVANOLI: Yes, Your Honor.

9 THE COURT: All right. Okay.

10 All right. So, it's 1:20 now. Y'all tell me how much
11 time you need, cause I don't want anybody to fall out on me or
12 anything like that.

13 MR. GROTE: I had to start eating something. I don't to
14 have another episode. I apologize for doing that.

15 THE COURT: No, no, no. I apologize, I hope that -- I'm
16 glad you're okay. How about that?

17 MS. GIOVANOLI: If we could have till 2:30?

18 THE COURT: Yeah, sir.

19 MS. GIOVANOLI: An additional 30 minutes.

20 THE COURT: That's fine.

21 Is that fine with you?

22 MR. LOVE: Yes, that's fine, Your Honor.

23 THE COURT: All right. We'll reconvene at 2:30. And as
24 soon as I get this verdict form -- and Mr. Love, I'm not sure
25 -- this is my new law clerk's first trial. Do you think you

1 can send this verdict form in Word format so if in case he's
2 having trouble with the caption or whatnot.

3 MR. LOVE: Yes.

4 THE COURT: We can go ahead and make it the way we need
5 to.

6 MR. LOVE: I can.

7 THE COURT: Thank you. Thank you.

8 MR. GROTE: Thanks, Your Honor.

9 THE COURT: All right. Thank y'all.

10 **RECESS - 1:19 P.M.**

11 *****OFF THE RECORD*****

12 **ON THE RECORD - 2:34 P.M.**

13 **BY THE COURT:**

14 THE COURT: All right. If we could have the jury,
15 please.

16 (REPORTER'S NOTE: Jury enters courtroom @ 2:35 p.m.)

17 THE COURT: All right. Ladies and gentlemen, thank you
18 for returning back here on time. I apologize for having you
19 back a little early. I just miscalculated how long it would
20 take for us to prepare and be ready for this phase of the
21 trial.

22 Y'all can be seated.

23 Mr. Lee, I guess congratulations are in order. You won
24 the election; is that right?

25 JUROR 84: Yes, sir.

1 THE COURT: Well, congratulations. And I appreciate your
2 service.

3 All right. Ladies and gentlemen, as you may know, you've
4 heard all the evidence that's gonna be presented during this
5 trial. And at this time, it's time to recognize the attorneys
6 for their closing arguments.

7 So, at this time, we'd recognize the plaintiff's
8 attorney, Ms. Giovanoli. And please give her your attention.

9 MS. GIOVANOLI: Thank you, Your Honor. May it please the
10 Court.

11 THE COURT: Yes, ma'am.

12 CLOSING BY MS. GIOVANOLI:

13 MS. GIOVANOLI: Ladies and gentlemen, I told you guys at
14 the start of this trial that this case is about telling the
15 truth. Now, caveat emptor, that's a Latin term. Many people
16 don't really know what that means, but essentially it means
17 let the buyer beware. It's really a relic of the past. South
18 Carolina, that used to be the law in South Carolina. If I
19 sell you a house, I don't have to disclose anything. It's the
20 buyer's job to find out any problems that may be with the
21 property that I'm selling you. It's a relic of the past
22 because our state decided that's a bad policy. Our state
23 enacted the South Carolina Residential Property Disclosure
24 Act. And basically, the act has a lot of words, but what it
25 says is do the right thing. Tell the truth. It's really

1 important, especially in residential sale because buying on
2 this one of the biggest purchase that point make. It's one of
3 the biggest purchase that Dr. Sarb ever made. It's a really
4 important point in your life when you buy a home. You don't
5 want to buy a home riddled with problems.

6 So, we have the South Carolina Residential Property
7 Disclosure Act, that's what this case is primarily about. You
8 know, it's pretty sad that the legislature actually has to
9 enact laws that say do the right thing. And even with that
10 law, sometimes people don't do the right thing. In fact, my
11 office gets tons of calls about these cases. Unfortunately,
12 we can't take them all. You know, legal fees are expensive,
13 court is expensive, litigation is expensive. My clients had
14 to suffer those repercussions in this case.

15 I'm not gonna call the defendants liars. In fact, I
16 believe their attorney did that for me in his opening
17 statement. But what I am going to submit is that they're
18 lying this week, today, just like they lied in 2019. Just
19 like they lied to Dr. Sarb, they're lying to you, this jury.

20 In opening statement, Mr. Love actually told you guys
21 that we wouldn't talk about the problems that existed prior to
22 closing. That we wouldn't talk about all the problems that
23 Dr. Sarb knew about or that their clients paid for repairs.
24 There was a repair addendum, the things that were disclosed in
25 the inspection, the things that we knew. But we did talk

1 about that. We told you all about that. In fact, we told you
2 everything, we gave you everything we had. It took a long
3 time, I know. And I know a lot of you folks were probably
4 frustrated with him. This is taking too long, what's the
5 point of this? In South Carolina, the burden is on the
6 plaintiff. We've got to give you the evidence. And not only
7 is it because we have the burden of proving our case to you
8 all, we want you to know everything because we want you to
9 know the truth. They didn't do that. They tried to keep
10 evidence out. They don't want you to know the truth because
11 they're lying today just like they lied in 2019.

12 So, why is it really hard to prove? Someone lies to you,
13 unless they admit it, you gotta go when you got a dig up a lot
14 of evidence. And a lot of times, that's circumstantial
15 evidence. You don't have a video of them, you don't have
16 documented proof, you've got to prove it using circumstantial
17 evidence. And we have a good bit of that in our case. it's
18 especially hard to prove when someone's lying about the
19 condition of home, a private sacred place that not many people
20 come in. Of course, the Dodds will tell you that they went to
21 the Phillips's house. Their other friends will tell you they
22 went to the Phillips' house, but they're friends. We don't
23 expect them to tell us all of the bad things are that their
24 friends lied to my client; we don't expect that. It is very
25 difficult for us in this case to prove things that existed in

1 that home when only the Phillips lived there. But I submit to
2 you all, we've met our burden of proof, we exceeded our burden
3 of proof.

4 Let's talk about those lies. What lies? I'm talking
5 about lies -- I guess we need to start the basement, the
6 basement water problems. We have established -- we've put up
7 plenty of evidence that there are problems with water
8 intruding into the basement caused by groundwater that was
9 from rainwater that went into the ground and then intruded
10 through the basement walls and floors.

11 So, it starts with, first lie, written statement,
12 disclosure statement. We've put that into evidence. I'm not
13 gonna waive it around in front of you. It's there, it's gonna
14 go back with you all in the jury room. That disclosure
15 statement said no problems with the basement, no problems with
16 water, 57-year-old house, no problems.

17 Not only that, Dr. Sarb actually asked them, has there
18 ever been in water in the house? Verbal affirmative
19 statement, no water ever went into the house. Even in
20 hurricanes, it only came up to the tree line. Dr. Sarb
21 testified to that. And I understand you guys may not believe
22 everything Dr. Sarb testifies to, because this is her case.
23 But we put up our real estate agent, Mr. Etheridge -- excuse
24 me, he's not a doctor. Mr. Etheridge, he remembers, too. We
25 asked him that and the answer was no. The defendants, though,

1 they put up their real estate agent, did they ask him? That
2 communication went from Dr. Sarb, John Etheridge, Adam
3 Crosson, the Phillips, back to Adam Crosson, back to John
4 Etheridge, back to my client. We asked our witnesses. Why
5 didn't they ask Adam Crosson? Did John Etheridge ever ask you
6 can you please ask the Phillips if water comes into this
7 basement? They didn't ask that question because they didn't
8 want you to know the answer. The Phillips told you, we never
9 got that question. We never gave that answer. Because
10 they're lying.

11 Also, we've got written statement, the disclosure
12 statement that's in evidence. Dr. Sarb relies on it. We've
13 got an additional question. The Phillips affirmatively state
14 no water in our house, not this house. But now today, two
15 water events in their basement. Story changed. That story
16 changed because Robin Hatchell knew about one of those
17 incidents. And when we filed this lawsuit, Robin Hatchell is
18 a witness in our case. And she's gonna get up here and she
19 did get up here and she told you all, not only did I grow up
20 right next-door, and I grew up with the McLean boys, and I
21 went in that basement back in the 60s-70s, that basement was
22 damp then. I also was in the basement with Joey Phillips
23 while there was water in the floor and the sump pump running.
24 So, conveniently the defendants now today want to tell you
25 all, just two hurricanes, that's it, two storm events.

1 Joe McLean, who's a respected attorney here in Florence,
2 60s through the 80s living in that house, it flooded, every
3 heavy rain it flooded, there with the sump pump, the basement
4 flooded.

5 We also know -- well, let's go, after Joe owns the
6 property, then it goes to the Sirmons. We can't put the
7 Sirmons up, unfortunately, because they're deceased. But what
8 we do know is that in 2010 when the defendants purchased the
9 house, there was water in the basement. We put in that
10 appraisal report. It noted water in the basement, and that
11 will go back with you in the jury room. In three different
12 locations they note water in the basement. And not only that,
13 there is a photo of it. Showed that to you during the trial.

14 So, we know all the way leading up, we've got evidence
15 that there is water intruding into this basement. There's a
16 water problem in this basement. We know right at the time in
17 2010 when the defendants purchased the property, they're on
18 notice that there's water in the basement because it's their
19 appraisal report. Ms. Phillips testified she got that
20 appraisal report and reviewed it. And then Dr. Sarb purchases
21 the property 2019, and almost immediately upon purchasing the
22 property, she's got flooding. Magically, within the 10 years
23 that the Phillips owned the property, no water issues. Oh,
24 wait, two water issues today, changed story.

25 Let's take a look at that precip data. Bear with me

1 while I work the electronics. All right. So, I've marked
2 this up, and I'm gonna start with 2010, starting after the
3 Phillips purchased the property, the 24th of September. I've
4 gone through last night and highlighted every incident where
5 there was a period of rain that exceeded one inch. So, I'm
6 not even counting the three-quarters, a quarter, any less than
7 one inch. We've got 2010 one instance where that happens.
8 It's in blue, 1.12 inches. Going to 2021, four instances,
9 here, here, here, and here. Let's look at 2012, 10 instances.
10 All of these indicate when the rainfall exceeded one inch.
11 You can see there is various other amounts of rain as well,
12 giving all benefit of the doubt to the defendants. We're only
13 talking about one inch. Okay. 2013, 16 incidences, exceeding
14 one inch, rainfall that was comparable to the rainfall that my
15 client was experiencing when the basement flooded. Look at
16 all these blue highlighted numbers. 2014, I'm not going to
17 bore you. I fly through this, flood through this. There's 13
18 incidences. 2015, 15 incidences. 2016, 15 incidences. 2017,
19 12 incidences. 2018, 19 incidences. Between 2010 and 2018,
20 there's 105 incidences where rain exceeded one inch. My
21 clients -- when my client owned the property, the basement
22 flooded with less than one inch. You believe these folks that
23 that basement had water in it from 1950s, when it was
24 constructed through to when my client had it fixed. Based on
25 this precipitation data, totally unbelievable. The defendants

1 are lying.

2 Now, one additional point I want to make here is they
3 changed their story. They're gonna tell you folks it only
4 happened in two extreme rain events, hurricanes. Okay, two.
5 But we had three extreme rain events. Everybody remembers the
6 thousand-year flood, October 1st through the 5th, 2015. Look
7 at that rainfall data. That's almost 10 inches of rain within
8 five days. October 16, we have Hurricane Matthew, over 12
9 inches of rain. Hurricane Florence, that's even more recent,
10 2018, another significant amount of rainfall. September 14th
11 through 15th, I believe is when Hurricane Matthew came
12 through. So, they -- oops, they forgot. There were actually
13 three big rain events whenever they owned the property. They
14 thought there were two. Evidence that they're lying.

15 The defendants testified that, okay, well we only had
16 water issues because the sump pump went out. The hurricanes
17 caused the electricity to go out, the sump pumps went out.
18 Ms. Robin Hatchell, who has no dog in this fight, who likes
19 both the defendants and the plaintiff, who actually hugged
20 Defendant Julie Phillips on her way out of the courtroom, said
21 I was standing in that basement, there was water, and the sump
22 pump was running, another lie of the defendants.

23 We were able to provide you guys testimony from our
24 expert, an engineer who has tons of experience. And he said
25 -- he told you guys what the cause of the problem was. And he

1 also said this was a pre-existing problem. This didn't just
2 start in July of 2019. No evidence whatsoever that Dr. Sarb
3 purchased the property and then all of a sudden groundwater
4 became a problem.

5 Now, defendants may argue, well, the house was dry when
6 she looked at it. She went over there five or six times. It
7 was always dry. All of the inspections it was dry. Everybody
8 that walked into that house while it was listed, it was dry.
9 Nobody saw any water, not even the inspectors, not even the
10 CL-100 inspector. It was a dry summer, folks. Look at this.
11 2019, oh, I'm sorry, not just that summer. It was dry summer
12 and spring. That ground was dry as a bone. So, when it
13 rained, the ground absorbed it. It went downhill to Jeffries
14 Creek. That water -- that ground has to be saturated for it
15 to ultimately push itself through a basement wall.

16 It's ironic that the plaintiffs -- the defendants, excuse
17 me, listed their property two times, 550 Wisteria, both in the
18 summer, both in June. You've got their 2017 disclosure
19 statement. It was a good time to list property that has a
20 problem with flooding in the basement in dry summer. You've
21 got the precipitation data. You're going to be able to take
22 this back with you in the jury room, and you can review that,
23 and I think that will help you determine that the defendants
24 are lying. The basement flooded while they owned the
25 property. They didn't disclose it to my client. They

1 stripped her of her right to make an informed decision on one
2 of the biggest decisions of her life. A huge purchase like
3 the purchase of the house. They just wanted to sell the house
4 and make the money. Now, they'll make you think, no, no, no,
5 we wanted to do the right thing. In fact, we had an offer for
6 way more money than we wanted to take, but we wanted to do the
7 right thing. In fact, Joey we called Adam Crosson just to
8 tell him, hey, guess what, I got an offer, but I want to do
9 the right thing. That's not -- that -- Joey didn't call Adam
10 Crosson so that he could tell him he wanted to do the right
11 thing. He wanted to know if he could accept the other offer.

12 Had they just been honest to Dr. Sarb when she asked
13 about water in the basement, she could've made an informed
14 decision. She would've said I don't want this property; it's
15 not for me. And they could've taken the \$10,000 more offer.
16 That's all they had to do, and we wouldn't be here today, and
17 I wouldn't have -- we wouldn't have had to take all of your
18 time this week.

19 Basement flooding was not the only lie that the Phillips
20 told. Plumbing, again no disclosure, none whatsoever. The
21 disclosure statement has a whole section with regard to
22 plumbing, and there was no disclosure of any sewage backups,
23 but here we are today, again, a changed story. At least three
24 to four, of course, three to four, because that's reasonable;
25 that's gonna sound reasonable to a jury. Almost immediately

1 after Dr. Sarb moved in, she began experiencing plumbing
2 issues, backups. She's one person; they had a family of four
3 living in that house, four people using the plumbing. Not
4 only that, Daniel Williams, trusted plumber, 40 years. He
5 even done work on their attorney's house. He says this was
6 reverse slope. Pipe went from bigger to smaller to bigger;
7 you can't do that. If you're gonna do that, you're guaranteed
8 to have damages. But yet, the defendants want you to believe
9 the plumbing problems just started when Dr. Sarb started
10 flushing the toilet.

11 Pest infestation. So, Dr. Sarb testified that she
12 immediately started noticing roaches, a lot of roaches. No
13 other witness got up there and said they saw the amount of
14 riches she saw. We all heard it. They didn't live there. I
15 don't know about y'all, but I see roaches at night and in the
16 mornings. Yes, I have roaches in my house. I don't think
17 it's a dirty house, in fact, I keep it well clean. But we
18 live in South Carolina, and Florence, South Carolina, I don't
19 know any house that doesn't have roaches. But Ms. Phillips
20 told you she's never had a roach, no pests, that was her
21 testimony. In fact, her husband actually testified they never
22 even had pest exterminating services. They're on Jeffries
23 Creek in Florence County and never needed pest-exterminating
24 service. And even without that exterminating service, you've
25 never had anything sprayed, and you've never had any pests.