THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the Court of Common Pleas
For Charleston County
Honorable Roger M. Young, Circuit Judge
Civil Action No.: 2009-CP-10-267

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3 Chisolm Street Homeowners Association, Inc., Plaintiff-Appellant,

v.

Chisolm Street Partners, LLC, Murray School Partners, LLC, Genoa Construction Services, Inc., Masterpiece Millwork, Inc., Allen Roper, Jr. d/b/a Masonry Brickwork and Stucco, John Doe #1, John Doe #2, and Brock Green Architects and Planners, LLC, Defendants

Of whom Genoa Construction Services, Inc., Masterpiece Millwork, Inc., and Brock Green Architects and Planners, LLC, are the Respondents.

Genoa Construction Services, Inc., Third-Party Plaintiff,

v.

The Fox Steel Company, Carolina Services, Inc., Lesco Restoration, Inc., Ferst Plastering, Inc., Charleston Glass & Mirror Company, 3d Renovations, Williams Mechanical, Mastercraft Interior & Exterior, Coastal Glass and Block, Adams Davis & Partners, and Troy Pardee Heating and Air Conditioning (d/b/a Pardee Heating and Air), CT Windows Limited, and Architectural Materials & Systems,

Third-Party Defendants,

Lesco Restoration, Inc., Fourth-Party Plaintiff,

v.

Coastal Waterproofing, Inc. n/d/b/a Wards Waterproofing, Inc.,

Fourth-Party Defendants.

RECORD ON APPEAL
VOLUME II

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
2009-CP-10-267

3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC.,

Plaintiff,

v.

CHISOLM STREET PARTNERS, LLC, MURRAY SCHOOL PARTNERS, LLC, GENOA CONSTRUCTION SERVICES, INC., MASTERPIECE MILLWORK, INC., ALLEN ROPER, JR. d/b/a R. MASONRY BRICKWORK, CAROLINA ROOFING SYSTEMS, INC., and LACY PAINTING,

Defendants.

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GEONA CONSTRUCTION SERVICES, INC.,
Third Party
Plaintiff,

v.

THE FOX STEEL COMPANY, CAROLINA SERVICES, INC., LESCO RESTORATION, INC., FERST PLASTERING, INC., CHARLESTON GLASS & MIRROR COMPANY, 3D RENOVATIONS, WILLIAMS MECHANICAL, MASTERCRAFT INTERIOR & EXTERIOR, COASTAL GLASS AND BLOCK, ADAMS DAVIS & PARTNERS, TROY PARDEE HEATING AND AIR CONDITIONING (d/b/a PARDEE HEATING AND AIR), METRO WATER-PROOFING, INC., CT WINDOWS LIMITED, and ARCHITECTURAL MATERIALS & SYSTEMS,

Third-Party
Defendants.

March 28, 2011

Charleston, SC

Before: The Honorable Roger M. Young, Judge.

Reported by:

Amanda K. Haffenden, RPR, CRR

THE COURT: Okay. What are we calling this thing? 3 Chisholm Street. We have a summary judgment

motion that I gather somebody is going to make and everybody else will kind of see what I rule on that and go, Me too, or at least something along those lines, right? Who's doing the argument for them.

Mr. Parrish, is this going to be your motion?

MR. PARRISH: No, sir. I'm defending this motion.

THE COURT: All right.

MR. TURNER: Yes, sir, Your Honor. I'm Trey Turner for Genoa, the general contractor on this project. This is a matter of housekeeping. I would note that what he handed up, what Mr. Parrish just handed up to you, I got the affidavits this morning. There were some assignments that I understand went out last Thursday that I got this morning as well. I don't know that I got this deposition testimony of Mr. Huddleston or the deposition testimony of Mr. Parades. I didn't see it.

Josh may have sent it. I saw an e-mail from him this morning, but I have not seen those two things at all, so as to my motion, Genoa's motion, I would ask that the affidavits be excluded, as I have not had a chance to look at those.

THE COURT: Well, I haven't either, so we'll

see how they play in before I make that decision.

MR. PARRISH: Your Honor, might I just clarify, we e-mailed these affidavits on Thursday and Mr. Harvey's affidavit on Friday. I saw the e-mail go out to every counsel in this case. The reason they were filed this morning is one of them had to get faxed up from Florida, so we served the fax copy but had to wait

until this morning to get the original blue ink signatures, so that's why they were clocked today. But they were e-mailed to all counsel in this case on Thursday afternoon and on Friday morning, and I'm assuming the other counsel in here received these.

I got served with memos in this case Thursday, Friday, Saturday, and Sunday, via e-mail, and we timely served these on Thursday, except for Mr. Harvey. He was in North Carolina. We served his affidavit Friday morning, and if I need to go back and present those e-mail changes to the Court, I'll be happy to do so.

MR. TURNER: Yes, sir, Your Honor. It's my understanding we were not on that e-mail chain that, was the problem. I didn't get it. Maybe my paralegal did. I looked on the e-mail for any RTT dot com address and didn't see it. I thought I had printed it out to bring with me -- here it is.

THE COURT: All right.

MR. TURNER: I may have missed it, but can you look and see if there is an RTT address? But I didn't see it.

Your Honor, this is a condo conversion case at 3 Chisholm street that was brought by the homeowners' association. There are three buildings on the property that were converted, the main building, which was the main school building and cottage, and a gym building. There are two issues before us now. One is standing, and one is the statute of limitations issue.

On the standing issue, our position has been that they lack, the homeowners' association, lacks standing to have brought this claim because they don't own it, that the unit owners themselves are the ones who own it. That is backed up by the master deed language which states that all windows, windowpanes, interior doors, are for the unit owners to repair and maintain.

That is also backed up by the fact that in 2002, Sandra Burnett, who was the wife of Jack Burnett, who was the homeowners' association president at the time, brought a counterclaim against a developer related to window leaks and condensation issues, among other things, in her own individual capacity.

Mike Parades, who was the community

association manager for 3 Chisholm Street at that time, said the homeowners' association looked at the Burnett case as a test case and kept that in mind.

That was in 2002, late 2002. In 2003, in April, the homeowners' association went out and hired Miles Glick, a forensic architect, to look at problems with the builder, and then they also asked Tom Carlson from Calibogue Construction to come out and look at issues with the building, along with Joe Dapore, who was their lawyer at the time.

They went out in April of 2003 and produced a report that came to a number of issues, or came to a number of conclusions, but those included that they noted water straining, water on the windowsills, water penetration of the windows, condensation issues, stucco cracks, stucco cracks in particular where a steel

subframe wall met a mass wall.

Those issues were all backed up by ABS as well, and you can see in my memo where ABS, who was the expert ultimately hired by the plaintiffs in this case, ultimately came out with conclusions in 2009 and 2010 which pretty much mirrored the conclusions that Miles Glick reached in 2003. Those conclusions from the April 2003 report were presented to the board in May of 2003, and the board decided to send some demand letters to the

developer, and those letters went out in 2004 and they were ignored by the developer.

The homeowners' association decided at that point to not do anything else. Mr. Glick had recommended in his conclusions that the homeowners' association hire legal counsel. It noted that there were extensive and pervasive issues with the building, in the areas which I've just talked about. They also said that they always do destructive testing, and they should do a forensic report that was put together to document what the problems were and how to best address them.

At the end of that report, Mr. Glick also said that this was just based on a quick one time site visit that was visual in nature, and there may well be a lot of other problems with the buildings that weren't noted.

In May, when it was presented to the board, Mr. Parades, again, the community association manager for the board, said that what should happen in the normal course then was the gym and cottage building be inspected

and the destructive testing take place in the main building.

Again, the homeowners' association decided not to act on that. According to Jack Burnett, who is the homeowners' association president, no destructive

testing was undertaken in accordance with the Glick report at all, and then he went on to say that no destructive testing was ever undertaken until this present litigation.

ABS, as I mentioned, is now plaintiff's expert in this case, and they've offered opinions regarding the stucco, regarding wood windows, regarding separation walls, and, to a limited extent, regarding condensation as to the windows in the main building. That is pretty much the limit of what they discussed. Those reports again came out in 2009 and 2010, which again is, you know, six, seven years after the initial Glick report.

I should also mention that in 2006, in February of 2006, Jack Burnett, again, who was the president of the homeowners' association, talked with Joe Dapore, the lawyer, who informed him that the board had until April of 2006 to bring claims for the actions with the school building, and, again, that is significant from the standpoint that the April 2006 date is significant from the standpoint that Miles Glick's report came out in April of 2003.

The homeowners' association ultimately filed in January of 2009, but from what we're told from Mr. Parades, the homeowners' association kept the Glick

report's findings in mind throughout that time. Whenever any issues came up, whenever any testing was done, they all related back and kept the original issues from the Glick report in mind and compared them to that.

It's probably also worth noting that Mr. Glick in his deposition said that in his career only four times had he recommended that somebody pursue testing and that they decided not to do it, that 99 percent of the time they decided to do it, this was one of the cases that they didn't. He was not asked to pursue anything else by them. There is some indication in 2006 he was contacted regarding some tie-downs on the roof, but knowing in regards to the rest of the building.

The ultimate part of this, Your Honor, is that the homeowners' association has known about these claims, or reasonably should have known about these claims, since about 2003, at least since May of 2003 when the Glick report was presented to the board, but you could also say that they knew they might have a claim, but they knew they should do some testing to see if they did have a claim back in 2002 when Sandra Burnett brought the counterclaims against the developer for many of the same issues that we see as the basis of the complaint in 2009.

That is basically the statute of limitation

argument, Your Honor. The standing issue, as I noticed, related back to the master deed and bylaws. That's in my

brief. I'll be happy to direct you to the exact language if you need it, but basically what it says is in the unit that's the owner's responsibility, and that includes specifically windows, windowpanes, window frames, and interior doors, so we would say any claims brought in relation to that the homeowners' association lacks standing to bring, and in regards to the assignments, which I just saw this morning, I would note that those assignments are dated in May and June of 2010.

Our motion on standing was filed August 24th, 2010, and then today is the first day that I have heard of the assignments or seen the assignments. Part of our initial discovery would have asked for any documents relevant to this case. I don't know if it specifically asks for assignments or not. I haven't had a chance to go back and look. I would also note that many of the depositions that we have had, all which were subsequent to the date of the assignments, the individual deponents were specifically asked whether or not they had assigned any claim.

I don't know if all of them were asked that or most. Again, I just got these about two hours before I left, but at least several of those deponents said that

they had never heard of an assignment and didn't know anything about an assignment, so I would ask for, at the very least, time to go back and compare that with the deposition testimony as well as time to respond on how these assignments may impact the standing issue.

I would also ask that we be allowed to reopen any deposition that we had previously taken in order to

explore the issue of the assignment and further detail. Again, I'm not exactly sure why we haven't had it since the plaintiff has had it for ten months, but the fact of the matter is all the depositions that we took, and there must have been 20 or so, this was an issue in all of those depositions, and it was one that we weren't able to fully explore because we didn't have the document in hand. We would, as I would say, be severely prejudiced by that fact and would ask for time, not only to reply, but time to reopen any deposition or ask questions about that.

THE COURT: Okay. Mr. Parrish?

MR. PARRISH: Thank you, Your Honor. I'm David Parrish for the plaintiff and homeowners' association and this is Josh Ellis who is in my office.

Your Honor, this is 3 Chisholm Street. This is the old Murray Vocational School, and there are actually three buildings over there. This is an old

gymnasium building, there is a caretaker's cottage, and there's a big building. They were never converted because these were never condominiums before. It was an abandoned school, and around the 2000-2001 time frame, the developers, which is the Murray Street Partners and the Chisholm Street Partners on the caption, divided the buildings up into condos, high-end condos, and then sold them out to the public.

The gym building has wooden windows. It's the one over the corner, and the cottage has wooden windows which I don't think are part of this motion here

today. The other building has metal windows, so you have metal windows in the main building, the wood windows in caretaker's cottage and in the gym building.

Miles Glick did go out there in 2003, in April. I think you've seen the report that got e-mailed about 10,000 times over the last couple days. By the time he came out there in April of 2003, the developer had just allowed the owners to elect a board. The developer had been controlling the project up to that point in time as Murray Street Partners and Chisholm, collectively called the developer. Mr. Turner's client is Genoa, out of Atlanta, the general contractor.

At the time Mr. Glick came out there, there was some concern that building apparently sounded like it

was leaking like a sieve. Water was coming from busted sprinkler pipes through the windows, through the roof, HVAC units were having issues, so Glick came out and gave that report and said there are problems.

What is reflected in the affidavits and the deposition transcripts, I tried to keep this a short stack for our purposes, is when the HOA got that report, they gave it to the developer, the Chisholm Street Partners and Murray Street Partners and Genoa, and those entities spent the next year or two, if not longer, going out and repairing all of the items.

THE COURT: Who was on the board at the time? Did the developer control the board?

MR. PARRISH: He was still on the board, but there were only about 30 condos. The developer still had 12 unsold units out there.

THE COURT: My notes, I wrote down, they did a report in April and presented it to the board in May.

MR. PARRISH: That's correct.

THE COURT: And so who was on the board?

MR. PARRISH: The owners controlled the board at that point in time. I don't know if the developer still had a representative on there or not.

THE COURT: Okay. Well, you said Glick gave the report to the developer who did some work and stuff,

but --

MR. PARRISH: If I said that, I misspoke.

THE COURT: Is it contested that the board, the homeowners' board, got it in May of '03?

MR. PARRISH: Oh, no, sir. What -- if I didn't say it, what I meant to say is when the Glick report was given to the board, the HOA board, they then went back to the developer, who still had unsold units and was still selling units there and went back to Genoa, the GC, and said here is this report. Go fix this stuff, and I'm going to walk through in just a minute. I'm kind of giving you the 10,000 foot view, is that Genoa, the contractor and developer, then spent the next year or two going out there and repairing and addressing the problems in the report.

After that work was completed, and it took about a year and a half, maybe two years for them to do that, everything went quiet out there. The complaints and the issues stopped up until around 2000. This is on the main building only, metal window building. In 2007,

the HOA went to go paint the wood windows in the gym building, different building, and Jerry Huddleston, I'm going to show you his transcript in a second, went out and told them, he said, These wooden windows are rotten in the frame. I cannot paint them.

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This is in 2007. Repairs have been made by the developer and by the GC, which I'll show you in just a second. Then we skip a couple years, everything goes quiet, and the wood windows are rotting in the frames, which is the first time the wooden window issue came up at any point in time. It wasn't addressed in the Miles Glick report. He didn't look at that building.

The HOA then hired Applied Building Sciences, who went out there and started investigating the wood windows in the main building and ultimately determined because of issues with the construction and installation of the wood windows, they have failed and have to be replaced.

While ABS was on site in 2009, because I was out there with Mr. Harvey, we were looking rotting wood windows in the main building, and we wandered over to look at the main building. And Mr. Harvey -- and I've got his affidavit here and I'll show it to you in just a second -- expressed some concern that there might be some water in the walls of this building. He recommended they open a wall and see out what is going on. He did a test cut and found some water in the wall under the windows of the main building, which he had to cut the wall open to determine if there was any issue.

The big picture is that the report came out.

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It was given to the developer and to Genoa, who then went out and made repairs, addressed the items, and then those issues went away, and for the most part, they're all gone.

The only issue left over is the resurface, so to speak, would be the issue with the metal window. A lot of stuff in the Glick report, like HVAC unit, leaking roof parapets and other issues, those have been repaired by the developer and are no longer an issue at this point in time. So if I could maybe just take a quick look at the affidavits that have been submitted and filed in this case, and they were -- they went out Thursday of last week. I'm sorry Mr. Turner didn't get a copy. I know his paralegal did.

Mr. Burnett is the HOA president, who is the one to whom the Miles Glick report was addressed, and he says in his affidavit, The developer just turned control over to us, and this is the first affidavit on top of the stack. Developer just turned over control. We had Miles Glick perform it, and then he goes on to say in paragraphs 8, 9, and 10 that the developer and Genoa went out and made repairs to repair these buildings, and when it completed the repair work and performed its last work on the project, the HOA was informed and believed that the water issues and other issues referenced by Mr. Glick

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had been repaired by the developer and by Genoa, and then he goes on to say when the wooden windows started to fail

in 2008 on the other building, Mr. Glick looked at that when they realized they might have an issue.

Mike Parades, who Mr. Turner mentioned was the HOA property manager back when it was turned over from the developer, he's the second affidavit, and I'm not going to read these. They're kind of short, but he again says that the when the Glick report came in, it was turned over to the developer and to Genoa, and they went out and made repairs to correct and address the problems.

Mr. Siesenheim, Wally Siesenheim, bought a unit in there after 2005 after all the repair work had been completed, and he says in his affidavit, I wasn't aware and never knew there were any problems, and I never knew there were any problems until after the wood windows on the other building popped up, and then they came over and did the test cut of the wall, but I had no knowledge and there were no indications there were any problems of any kind with this unit. In fact, he said, I don't really have any problem with my unit except for the fact it may have water in its walls.

Mr. Harvey, which is ABS's witness on the liability side, he has an affidavit that says, When I was out there in 2008, 2009, looking at the wood windows on

the other building, I walked over and looked at the main building and realized there may be a problem, and I recommended that we do some test cuts and open the walls up and found some water in the walls, which was a hidden, latent condition at that time.

I've only given just a couple of pages of the deposition of Michael Parades, and I've highlighted it,

and the copy I gave opposing counsel is highlighted in the same manner in which it's been submitted to the Court. Mr. Parades, which was the property manager for the HOA -- and I'm looking at the highlighted text that's on -- pages 18 to 21 and page 6, and, once again, I'm going to paraphrase to avoid reading to the Court that when this Glick report came in, we gave it to the developer, and the developer turned around and went out there and made repairs to the units.

It also reimbursed the HOA for having some of its people do some of the repairs; for example, the HVAC units were loose on the roof and could have blown off during a hurricane. If you look lower left-hand corner on outline 12, Mr. Parades says Genoa came back out and they did a bunch of work on the windows, The steel windows in the main building, caulking and trying to seal, those kinds of things, and there may have been a couple other items in there to try to address some of the

items raised in the Glick report.

At the bottom it says the HOA worked with the develop to address problems in the report, and the affidavit says they were operating under the impression that those repairs had been properly performed.

There is an exhibit to the back of the Parades transcript that I've given to you. It's actually a December 2003 e-mail. Keep in mind, Mr. Glick came out there in April of 2003. In December of 2010, Mr. Parades e-mailed David Perdue, P-e-r-d-u-e, who is the developer's representative, saying there is some leaks

reported to us, and Mr. Perdue says, We'll fix them. We'll address them.

And then the last exhibit to Mr. Parades' deposition is some e-mails back and forth, a January 2004 e-mail from Clay, and that is Clay at Genoa Construction, the general contractor, and as you see in the highlighted portion, Genoa sent out Lesco Restorations to go over there and repair stucco cracks on the buildings, to stop the water intrusion. So after the Glick report came out, what they show is the developer and Genoa came out repeatedly, sealed, caulked, repaired, did work to address the problems, and the other affidavits we've gone through, it says at some point in time those conditions ended, and the HOA never raised the issue again until the

problem with the wood windows popped up in the other building, which was never raised before.

And the last item is the deposition of Jerry Huddleston, who was the maintenance person in this. It wasn't just for the HOA, he was also working for the developer, and as I've highlighted Mr. Huddleston's deposition is that when the windows were having some water intrusion issues back in 2003, it's not clear if that's before or after the Glick report, the developer sent him out there to take care of the problem. He would caulk, paint, take off mildew, and address the problem, and what he says in the highlighted text here is the units were empty. They're sitting there empty. They're real hot and cold. The temperature differential, water was condensing on the windows and getting into the unit, so the developer hired him to go out there and put

dehumidifiers in these units and run them.

These are developer owned, unoccupied units. He ran these dehumidifiers in here, and Mr. Huddleston says once he sold these units and they were occupied, the issues went away because the owners started running the air conditioner in the units. I've highlighted this in multiple places throughout here, but back at the time when they were preparing the Glick report, some of the units that were leaking were the ones that were still

owned by the developer, and Mr. Huddleston said, The developer paid me to fix those. I fixed them, and then they were sold, did not get the same complaints anymore after that point in time.

And, like I said, I highlighted through the course of several pages in transcript, but at the end of the day, the problems that were raised by Mr. Glick were promptly reported to the developer and Genoa, and Genoa and the developer and their subcontractors presumably -- I don't have claims against any of these people -- came back and fixed the problems, and then the sworn testimony in the affidavit is after those repairs were done, the HOA was satisfied and the problems were not reported again, and like I say, the problems still aren't being reported to this day.

The only issue we got is wood windows on the main building, and we got some water coming down in the walls on the other building, possibly because of condensation. So, in a nutshell, Mr. Glick did do the report, the items were repaired, and we're led to believe

they were repaired, and the HOA filed this lawsuit when the wood windows in the main building starting to rot out, which was in the 2007 or 2008 time frame.

THE COURT: You're saying that is when the statute of limitations started to run?

MR. PARRISH: Yes, sir. When the painter came up and said, you know, you've got wood rot in the windows and I can't paint them. Actually, not even then is when ABS came out there and had them take the window out of the frame and send it off to a testing service, and one of the main issues with the windows is that they weren't properly preservation treated, almost kind of rotting from the inside out.

His testimony is when he treated the wood, they dipped it, then cut it, and they cut through the preservation, and those windows just started to rot in the frame. So ABS came out there and said, You got a problem with the wood windows. They cannot be repaired. They are going to have to be replaced, and they developed the problems, yes, that is our contention when the statute of limitations began to run.

THE COURT: Okay.

MR. PARRISH: At the very least, there is more than a scintilla of evidence that when the developer and the GC came out and make repairs, I highlighted this and put it in the record, they came out and did these repairs and the testimony is after they did that, the problem was solved. If the problems had kept on going and never ended, that might be a different issue, but this thing went quiet for several years up, until the

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time the windows in the building that we're not even talking about today for the first time started to exhibit some failures.

Actually, what turned them on to that is they thought the windows were foggy and originally I believe it was one of the drain lines on the roof of that building, the condensation on the HVAC line, and they were looking at that and said we don't have a roof problem, but we've got a window problem.

The main focus of this lawsuit is the wood windows on the gym building. The main window, we kind of realize there is a hidden problem in the wall that is picked up as part of this lawsuit. This lawsuit is filed on wooden windows. There is probably 400 exhibits in this case. I've tried to pick out the ones that clearly indicate to the Court, without making a massive filing and are highlighted in the affidavit testimony in the record.

THE COURT: So it's your position that the board didn't just do nothing?

MR. PARRISH: No, sir. As I've seen in the affidavits and in this deposition transcripts, the board gave this to the developer and Genoa, and those two entities came out and repaired the problems raised by Mr. Glick.

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THE COURT: And you're saying that they didn't do the repairs well?

MR. PARRISH: No. Some of repairs they did are -- they're not even the issue in the case.

THE COURT: But I guess I'm misphrased that. The ones that they didn't do well or didn't fix the problem, that is what you're suing over?

MR. PARRISH: No, sir.

THE COURT: It wasn't any of the problems that got brought out in the report that nothing got done on?

MR. PARRISH: No, sir. Everything that has been in litigation is stuff that they repaired and was informed and believed to have been prepared properly and taken care of.

The repairs are starting to fail at this point in time. For example, Mr. Huddleston says around the windows in the main building that they came back up and caulked and patched and sealed. The caulking and patching and sealing are not holding very well. They're starting to fall back off again.

There were some issues with brick lentils on the building that Mr. Glick never even mentioned, but they've already looked at those, and there is rust on the lentils so, so they are not the same issues, or they are

failed repairs, might be the best way to summarize the issue, failed repairs or improper repairs, or maybe, going back through some of this, conscious attempts to hide some of this, when we're paying somebody to go up there and paint over mold on units and run dehumidifiers up until the time you sell them to the owners. I haven't seen any disclosure of that condition.

Actually, there is an indication in the record that there was a conscious attempt to hide some of this. The failed repair would probably be the best summation I can have on there.

THE COURT: All right. What about the standing argument?

MR. PARRISH: I'm sorry, Your Honor. Your Honor, once again, these went out Thursday, and I am assuming the other counsel in the case got them. I again apologized if Mr. Turner did not, but if you want, I will submit these to the Court. The owners have assigned, if I may approach, assignments --

THE COURT: How come they just went out Thursday and he's been asking for them for months?

MR. PARRISH: We mentioned them in the last set of discovery that went out several weeks ago. I put in there that we have the assignments, and any other HOA documents are available for inspection and copying, and

that was about three weeks ago. We also had the HOA documents over in my office available for inspection and copying. The box has been sitting over there with them, and I think almost every attorney in this case has come through those documents, and they're still up in my office available for inspection. That's where they found the Miles Glick report in there.

So they went out, we've identified them a while back and I've even discussed with several counsel in the case that we've got owners' assignments, so I apologize that Mr. Turner was surprised, but, like I

said, that discovery put these on the street several weeks ago. And the reason we're doing this is the windowpanes by the HOA deed recorded by the developer puts the window frame as a unit owner item while the surrounding wall and the interface is owned by the HOA, and to do some repairs, you got to pull more windows out of the wall. So we got these assignments in abundance of caution to avoid this issue because you can't repair one without repairing the other window and wall system. They're interfaced, and you have to repair both of them, and the owners, which have been discussed in their deposition testimony, had meetings two years ago and voted to proceed with these repairs. In fact, the owners are paying out of pocket.

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They're actively fixing the building today. They've already fixed all of the windows in the gym building, and each of the owners in this case, I think, has paid about $15,000 in this case to contribute toward the cost of the repairing windows over there, so, like I said, this has been on the street for a while.

MR. McCUE: Your Honor, I'm Joey McCue. I'm here on behalf of Metro Waterproofing, who's a third party defendant to the action brought in by Genoa. If you don't mind me taking a minute to fill in some gaps for the Court --

THE COURT: Go ahead.

MR. McCUE: I have not seen the assignments. If you don't mind me approaching, I'll hand up a memo that I filed. One issue I wanted to address is something I heard for the first time from Mr. Parrish, and that is

the notion that the water problems at the condominium complex were -- there were some repairs that fixed the problem. I came into the case late, Your Honor. I believe I was hired in October. There were about 30 depositions that I read, and in reading them, I was shocked, Your Honor, to see that people who had spent this kind of money you had to pay to buy a condominium south of Broad had windows that leaked from the time they moved into their units, either water coming through the

window frame, between the panels, the panes, this is a fixed portion of the window, an operable portion of the window, water is coming in there.

All the problems that are noted in the Glick report, Your Honor, these homeowners were talking about it in their deposition, and when asked, What do they do to solve the problem? Most of them said, We rolled up towels and put them in the windows on the two sides of the building that get the most condensation on them and the most water intrusion. They talk about the water coming in. I didn't cite any of that testimony in my memo, Your Honor, because I didn't think that was a disputed fact.

I thought that was generally accepted by everybody in the case, that the water had been pouring in these buildings from the beginning. Mr. Parades, when I asked him in his deposition, about the repairs made by Genoa and the developer, we had this exchange, Your Honor, and it's on -- I'm sorry. I've got a mini script, I believe it's on page 132 and 133. It says, You

mentioned that part of what took place after Mr. Glick's letter in April of 2003 was that someone, either the developer or general contractor, came out and did some caulking on the windows.

It says, I recall Genoa at the direction of

the developer came over and worked on the windows.

It says, Can you tell me what work they performed?

And he said, I'm pretty sure they did some caulking, and they may have done some other things. I was not privy to the full scope.

Did that work by Genoa on the windows alleviate or eliminate the leaks through the caulking? I think from some of what we looked at, it reduced the frequency of reports of water intrusion from the leaks outside.

It reduced it, but it didn't eliminate the problem?

Answer: There were still other sources of water coming in, I believe. Even after Genoa, the developer, had taken action out here water continued to pour in these windows. I've never seen a case that screams for application for the statute of limitations like this before. Mr. Parades testified they hired Miles Glick because of his experience in forensic construction defect litigation. Mr. Glick comes out and says, You've got problems. Water is coming in, through, and around the windows. It's going to get in the walls. It's going to be bad. We've got mold and mildew out there right now, and that will continue to get worse.

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He says there is a leak that may be occurring from the parapet wall, but we need to check that out because that may or may not be a source. So we've got stucco problems. We've got water coming underneath the thresholds from the patio doors, buckling them, buckling the floor. He lists all these problems, and then he says, These problems are pervasive and significant.

They're so bad, y'all need to hire me to do some destructive testing, to determine the nature and the scope, or the full nature and the scope, of the problems down there. He said, Not only that, they're so bad you better go hire a lawyer. Joe Dapore then in May of 2006, as noted in the HOA board minutes, he's told Mr. Burnett, the president of the HOA, the same man whose wife brought counterclaims in the lawsuit against the developer, back in 2002, 2003, he tells him, You've got until April of '06 to file a lawsuit.

Your Honor, now, this part is just speculation. I was amazed reading these depositions. It was almost as if these people had so much money that they couldn't be bothered with filing a lawsuit.

THE COURT: Well, I'm hearing two different things, because your side is saying they just did nothing. They didn't act on this report at all. Mr. Parrish is saying, Oh, they did work on it, and the work

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wasn't done properly, and that's why we're suing.

And then you seem to answer that by saying,

Well, their work was done so poorly that it never fixed it, and that was readily apparent?

MR. McCUE: I'm saying according to Mr. Parades, it was an ongoing problem. According to depositions I read, it was an ongoing problem. Now, if, in fact, all the leaks they complained of, and this is an issue I would like clarification and a stipulation. If this is true, I would like the plaintiffs to stipulate now. If what they're complaining about now are solely failed repairs, then on behalf of my client, and I assume everybody else's client, because there is a subcontractor to the original project, we would like that stipulation so our motions for summary judgment against Genoa can be dismissed, because we're in as original subcontract defendants.

So to the extent Mr. Parades is willing to stipulate that none of defects his clients are seeking compensation for now relate to original construction, I am ready to shake his hand and tell him to have a good afternoon. But if he's saying anything else, then I like an opportunity to provide cites for the deposition testimony of his clients in rebuttal to his motion that these problems were not significant and pervasive

throughout the entire project.

Thank you.

MR. TURNER: Your Honor --

THE COURT: Wait a minute. What is your response to that, Mr. Parrish?

MR. PARRISH: Your Honor, we've sued Genoa and the developer. I'm not sure who his client is or

what they did or what repaired they made. They were brought in by Genoa, but the issue is, gym building, wooden windows, the building with the metal windows, the only issue is -- and not even the repair, there is an inherent design defect in that building that cannot be fixed the way it's built. They would have to redo and look at redesigning the way its built. We're not suing over failed repairs. Failed repairs may be causing a problem --

THE COURT: Wait a minute. I asked you, and I wrote it down, this lawsuit is over failed repairs or improper repairs, and now you're saying it's not?

MR. PARRISH: Well, the water is coming in -- the reason the water is coming in is the seals that pull around the windows are leaking, and the evidence in the record is the developer and Genoa came back out there, and I don't know if they used his client or not, added caulk and seals around the window, which stopped or

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mitigated the problem. They're now leaking through there again.

THE COURT: The only way you can get past the statute of limitations is pursuing over repairs, not original work.

MR. PARRISH: If that repair -- when those repairs were done is where it was leaking, so yes, that would be a failed repair causation problem. The attempts to repair this made by the developer and Genoa have failed and has allowed blatant water to accumulate in the walls that could only be discovered by opening, so yes,

it's a failed repair case. I said that originally, and I stick with that.

THE COURT: So you're sticking to failed repairs, not original work.

MR. PARRISH: No, sir. They came back, and the difference too, I've submitted five or six affidavits and highlighted transcript deposition testimony that clearly shows that repairs -- after that Glick report came out in 2003, in 2004 the developer is still sending its people and Genoa back out there to make repairs. So it's a failed repair issue. The water is coming around and the repair has not worked and are allowing water to come in the building, so that is a failed repair case, or defective repair, and probably a fraudulent hidden repair

too, but that is not before the Court now.

THE COURT: Failed repairs or defective repairs.

MR. PARRISH: Keep in mind, too, we're just talking about the metal windows on the main building. The wooden windows on the other building are not even part of this motion here today. If it is, Mr. Glick's report doesn't address it, and there's no evidence in the record that anybody went over there and found any problem with those windows until a painter came out there in 2007 and said, I can't paint these. They're rotted.

At that point the HOA, realizing the windows were falling out and had to be replaced, hired ABS to come and look at the problem. It went from a caulking and patching issue to, We're going to have to spend 400,000 to $500,000 on wooden window repairs. Mr.

Parades' deposition testimony was quoted. There were 300 exhibits in this case, and I actually gave you two of them. He talked about what was going on in 2003 and 2004.

I don't even know the context of the deposition transcript that was cited to the Court, but what I put in the record to the Court and filed with the Court, he says in there that they fixed it, they repaired it, and we believe and are informed the repairs are

complete, and the issue didn't come back up again until several years later when the wood windows in other building started to manifest the problems. I open I've answered the Court's inquiry.

THE COURT: Okay.

MR. McCUE: Your Honor, if I could follow up on that, if you would like the deposition of Mr. Parades, all the examination that I've read into the record is contained in my questioning of him.

THE COURT: I don't know if that helps you with your case or not.

MR. McCUE: I would like to make sure I understand. Is this, in fact, a failed repair case --

THE COURT: I don't know how many times he can say that differently, but he started to venture off, and he came back and I wrote down again, failed repairs or defective repairs only.

MR. TURNER: Your Honor, I would just like to point out that ABS and their expert doesn't talk about failed repairs. What they hired ABS to do in regards to

the steel windows is strictly related to condensation. The proposal for Palmetto Craftsman, who is the person that offered to do work, only relates to energy panels, and the testimony in the deposition from both Palmetto and from ABS is that energy panels wouldn't address any

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bulk water intrusion. This is just a condensation issue. Condensation, throughout the testimony, has been an ongoing issue.

That is not a defective repair, from my standpoint. Condensation is something that has always been there. Every single homeowner that I recall in deposition testimony said that condensation was issued when they moved in. Condensation has always been an issue. Condensation remains an issue. I'm not aware of any repair attempt to go after condensation. Scott Harvey of ABS said when they cut into the wall that he has no opinion as to where the water came. The only thing he knows is that there is condensation on the windows.

He's not saying it came from any lack of sealant or lack of caulk or faulty repair. He doesn't have an opinion about it. He was expressly asked whether he had an opinion on that, and he said no. The only opinion he has is those windows have condensation, and I asked him whether or not, given that they're single pane glass and a steel window in Charleston, whether that condition, if those windows had not been changed out, would have fixed itself in any way over the years, and he said, Not to my knowledge.

So on that particular issue, on the steel

windows, the only thing their own expert is talking about is condensation, and I don't think there is any doubt in any of the testimony that that issue has always been there and has never gone away.

On the stucco, again, in the Miles Glick report, if you look at where he's talking about cracks in the stucco which is in the courtyard, and specifically where you can compare them is where the two different types of walls meet, and what he says is you've got falling and you've got cracks, and those could have water penetration in those walls and cracks, and then what ABS says, years later, is that where those two walls meet, you have cracks and you could have water penetration in those cracks.

I would also go on about the wood windows. Our position on the wood windows is that they had a litigation team in place in 2003, which consists of Miles Glick, Tom Carlson and Calibogue Construction, and Joe Dapore, their attorney. At that point in time they said, You need to inspect these buildings.

Mike Parades said, Not only do you need to inspect the main building, you need to inspect the gym and the cottage. Miles Glick said in his deposition that had he been asked -- if he had been hired, he would have said, You need to inspect the gym and the cottage as

well. Given Miles Glick and Tom Carlson's litigation experience, I would expect that any of the claims that

they were now making related to wood windows or separated walls in the gym would have been discovered.

In the case of separation walls, we haven't really talked about those, but there is an issue where they claim there is inadequate insulation to prevent some type of sound level from going through the walls, and some fire stopping issues. Their big point on that, and when it was discovered, is when they saw gaps in the walls.

Those gaps were discovered without any disruptive testing whatsoever, so had Miles Glick and Tom Carlson gone into the gym building, or into the cottage -- well, into the gym. The cottage didn't have that issue, you would think that they would have spotted that as well as ABS did back in 2003. With the wood windows, given their experience, you would think they would have examined those windows thoroughly, and the issues that the plaintiff raises regarding those issues are issues that had they pulled off the trim, they would have noted painting issues and priming issues and flashing issues and they would have noted even more issues.

All of those issues would have been addressed

at that time. Let me bring up one last thing on the wood window issue. The fact that ABS came out and looked at wood windows in 2007 doesn't somehow toll the statute of limitations on the condensation issue on the storm windows. That somehow tolled the statute of limitations on the stucco problem that they had in the courtyard on the main building.

Those issues they knew they had in 2003, and those issues didn't go away, and they just not to do it. Joe Dapore said, You have until April of 2006 to bring a suit in February 2006. That was after talking to Jack Burnett, the homeowners' association president. Obviously, they were thinking in February of 2006 we still have problems. They're not fixed. We need to bring litigation. When do we have to bring litigation? Until April of 2006.

In January of 2009, they finally decide to bring litigation. I would ask for clarification. David says he knows that my paralegal received all the exhibits today on the affidavits and the assignments. Did you look and see when that was?

MR. PARRISH: Your Honor, would you like me to address this?

MR. TURNER: I mean, if I got it or she got it -- she's out because of a death in her family, but I

would like to know if we received it since you were saying that we received it.

THE COURT: As I understand it, he said he gave you notice at some point to say all this stuff is at my office. You can come look at it.

MR. TURNER: But, Your Honor, I didn't see that, so I can't tell you one way or another whether or not that came through in something and I just missed it, that he made some notice that I've got these assignments, but I will say that when we did our memo, in our memo is that there was no assignment ever made, so I don't know

at that time if he saw the standing issue in August 24, 2010 when we filed it, and he didn't send me the assignment at that time saying, look, we got a time limit for this crazy motion.

I didn't get any notice at all until today. Maybe my paralegal got it on Thursday and Friday and somehow other another I wasn't on the that list, I don't know, but I didn't see any of those addresses.

THE COURT: I'll let y'all figure out when you got notice on that other not. All of these things look like they're dated back last summer, May, June of 2010. Assuming these aren't, you know, forged documents or something, and they've been around for a while and, you know, I've had David Parrish in front of me I don't

know how many times over 15 years, and I doubt he's going to start misrepresenting things now that he ever gave notice.

MR. TURNER: I'm not suggesting --

THE COURT: I'm not really that concerned about whether or not you got notice on that. They exist, so the standing argument is not the one that has got me going here today. I guess I'm trying to figure out, or sort through, how you draft an order saying, well, these repairs you can go forward on because they are encompassed in his failed or defective repairs argument versus ones that are original defects, and therefore statute of limitations is taking them out of the lawsuit.

So I don't really know how to do that, other than, I guess, I'll give you an opportunity to draft an order that kind of itemized it. See how that works out.

MR. NORRIS: Patrick Norris. I'm on behalf of Brock Green Architects, and we are in the situation that we were sued 15 months after the lawsuit against Genoa and the developers. We're a separate entity, so I was going to say I can make that a little easy for you with an order in that, in fact, the case of inherent design, the metal windows, and it's the condensation issue that's the problem, they clearly go about that in 2003.

My client, Brock Green Architects, had no involvement in any repair efforts to redesign the windows or anything like that. We were over and done and out and sued seven years after the 2003 report, which shows the condensation which now they say is a major problem with the windows.

So, in fact, if it's an inherent design defect case, surely that is statute of limitations, and if it's a failed repair case, then surely my client should be granted summary judgment on that as we had no involvement in any repairs.

MR. PARRISH: Your Honor, may I respond to that? That is not what the Mr. Glick says in his report. In April 2003, he only says condensation issue and goes on to say this may be an HVAC associated issue, and issues of HVAC were addressed.

Mr. Glick, in his report, the recommendations have nothing to do. He doesn't say this is an inherent design defect. He says these are issues that need to be fixed, cracks in stucco, and if you look at the last

letter of Mr. Pierce's deposition transcript, they went there in 2004, almost a year later, and redid the stucco on the side of the building.

Mr. Glick doesn't say anything about an architect responsibility or issue in this at all.

Mr. Harvey's report from ABS is the first time anybody said this may be an inherent design defect.

In fact, Genoa, the architect in the case originally, I had to bring the architect back into the case when the professional affidavit wasn't timely filed. Now, architects have been in this case since Genoa filed an appearance. It went out under Genoa and came back in around the same time. Mr. Glick doesn't say anything about architect design defects in his report.

MR. NORRIS: If I might respond, Mr. Glick is an architect, and if he had been commissioned to do further tests and do investigations, if he wanted to, he may very well have concluded that it was a design defect.

THE COURT: If you put this in writing, you have to put these people on notice.

MR. NORRIS: They're on notice of the claim in 2003. The complaints are consistent, and it's the same. Condensation on those metal windows, which by all accounts, has not stopped, and nothing was ever done to address the condensation. Whether repairs were made or were attempted, leaks or stuff like that, some accounts say they worked, to an extent. We still have some leaks.

I have citations in my memo for that, but my point is ultimately that this is not a case where we're looking at an isolated -- you know, digging through

mountains of meeting minutes and finding one entry issue that mentions condensation and then hinging a whole argument on that. This is a systematic train of actively considering a forensic architect's findings and saying, what do we do? Do we sue? Do we get further testing done?

They chose not to do it. This is a board. This is not and individual residential homeowner. They have an attorney. They're considering it, and in my opinion, they just dropped the ball, and then they try to come back and resurrect the claims.

If I might address Mr. Parrish's argument as to Brock Green, my client's involvement in this case, we were initially brought in as a third party defendant; however, plaintiffs could have chosen to amend their complaint at any time and bring us in as a direct defendant. They chose not to do so. It's their claim we're fighting. It's their claim to bar the statute of limitations that was filed 15 months after they sued the general contractors and the developers.

THE COURT: Well, I'm missing something here.

MR. TURNER: Okay.

THE COURT: In that report, 2003 report, where does it say there is a design defect?

MR. NORRIS: The report doesn't necessarily

say there is a design defect. The report lists all sorts of moisture intrusion problems, et cetera. It was a

visual survey. So what Mr. Glick was saying is you have potential problems. You have possible moisture intrusion. You have cracks in your stucco. He's not giving a conclusion as to this is only the construction defect or this is only attributable to X, Y, and Z.

He's telling you, you have exposure to these problems. You may want to get them checked out, and you should get them checked out and you have a lawsuit, is essentially what they're telling them, and they chose not to act on it.

MR. PARRISH: They keep saying they chose not to act on it. No, they went back to the developer and the builder and said, Here's the problem that Mr. Glick -- they gave the report to the developer, said fix this, and the evidence and the testimony in the record in front of this Court is that is exactly what happened. If they hadn't done that and just filed a lawsuit, they would say, You didn't give us notice or opportunity to cure.

To say they did not act on, it is just simply not what is before this Court today in the affidavits and testimony. They gave the builder and the developer an opportunity to repair them. Those repairs were made, and

those repairs are now working today. That is what this case about. They went back to the developer, and it's kind of interesting to be on this side of the fence and hear them going, You should have immediately sued our client instead of giving us an opportunity to correct the problems.

That is what the HOA did. They tried to do

the right thing by allowing them an opportunity to fix and address the problems that were out here, and there were repairs and attempts to address and correct the problems made.

MR. KIRCHNER: Jesse Kirchner for Ferst Plastering, and I just want to point out some things with respect to the stucco. First, my client only performed stucco work during the conversion on the main school building so the gym and the cottage have nothing whatsoever to do with my client, but unfortunately, Miles Glick, with respect to his stucco, said you've got cracks in your stucco. Mr. Turner pointed that out.

What Miles also said was the stucco had not been installed in accordance with the ASTM standards. Specifically, he meant that the stucco didn't have weep screeds, it didn't have through wall flashing, and it didn't have expansion joints. Fast forward to 2010 when Applied Building Sciences finally issues its stucco

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reports. It says the exact same thing. It's identical. It says, You've got cracks in the stucco. It lacks weep screeds, it lacks through wall flashing, and it lacks expansion joints, all the things Miles expressly told them in 2003.

And I guess somewhat anticipating this latent defect argument, that there is hidden water in the walls that they couldn't discover so they opened it up, two things about that: One, Miles specifically recommended that they open it up, and they chose to do nothing with respect to destructive testing, but, number two, I

specifically asked Mr. Harvey, Applied Building Sciences engineer, the plaintiff's expert, I said, The only thing you needed to observe these defects was a set of eyes? He didn't need any type of destructive testing to see there was no through wall flashing, there was no weep screed, there was no expansion joints, and the stucco was cracking and he agreed all you needed was a set of eyes and maybe some construction experience.

So with respect to the stucco, Your Honor, the statute of limitations has either run with respect to the construction defects, or if, as Mr. Parrish says now, it's a repair issue, we should be granted summary judgment. First posturing should be granted summary judgment because they had nothing to do with any of the

repairs. In fact, Mr. Parrish sat up here and said Lesco Restoration was the one that sealed and caulked the stucco. Ferst Plastering hasn't been back out to the job site since they performed the original work, so they have not stopped anybody from doing anything or tolled any statute of limitations, and that's all I'll point out.

But, again, the two defect lists are identical between Miles Glick in 2003 and Scott Harvey in 2010 with regard to the stucco.

THE COURT: Let me give Mr. Parrish an opportunity to respond on that opinion.

MR. PARRISH: The deposition transcript of Mike Parades that I handed up to you, the very last page I think Mr. Glick came out 2003, April. In January of 2004, Genoa actually highlighted the pertinent portions of the text. Genoa says, After this inspection, and they

had been working on this building for a while, it's Genoa's belief that the windows, for the most part, are not leaking.

He goes on to say, in the bottom of it, as far as looking at the stucco, we believe the bulk of the problems involve water intrusion through the exterior skin. In the spirit of being a team player, I have taken the liberty of scheduling Lesco this week to get a lift and to gain access to each window in question, to review

each window, and patch the stucco and terra cotta work when they find cracks or other building skin defects that they feel may be where water is entering the building's skin.

This exhibit shows that the developer a year after or about a year after Mr. Harvey gave his report, sent a stucco person back out there and repaired, patched, and cracked stucco, which has now apparently either failed or is cracking in new places again, based on Mr. Harvey's report, but what they're talking about, being out there doesn't agree with this.

It shows that somebody went out there and actively patched and repaired it, and Mr. Huddleston, who in his deposition transcript, he says the same thing. There are places where the stucco was patched and repaired.

THE COURT: Mr. Kirchner is saying his client didn't patch or repair it, somebody else --

MR. PARRISH: The HOA had no notice of the problem with the repairs until after the wood windows

failed and they hired ABS to go out there in 2008 and looked at the other building while they were out there. I have no claim against First Exterior. I have Genoa, and Genoa is sued first on the statute of limitations issue.

With Genoa, they sent somebody to repair, had Lesco do repairs on the first floor, then I guess that statute of limitations would be directed by First to Genoa. I am not suing First in this case. First is the only sole party claim brought by Genoa, but my big picture, my point is that repairs were made after Glick's report was done, and it's in the record showing that, and these repairs are failing or not holding properly is the line in the case.

THE COURT: Here is how I proposed to resolve it, because we can spend been from now until 10:00 with every contractor standing up, saying one thing, and then going through what we've gone through for the last 30 minutes, and anybody that has a motion for summary judgment on these grounds that have been elicited, I'll give you this, I think, you have ten days to submit me a proposed order. Send it to Genoa's counsel and HOA's counsel, and I'll give each of them ten days to respond as to what their positions are as to the particular subs that are the third party defendants that have been brought in, and then I'll kind of sort that out one by one with whatever the responses are to it.

The same thing with Genoa's main claim. I'll give you, you know, ten days to submit your proposed order on this as to what you think you should be granted

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summary judgment because it was an original defect that was not prepared, that they had notice of through the report, and, again, I'll give Mr. Parrish ten days to respond to that, kind of sort it out that way.

MR. ROSS: I represent Lacy Painting in this case. There are direct claims against some subcontractors, and my client is one of them. We were a painter in this original construction. We were not involved in any repairs, and I just want to be clear on the record that there are some direct claims against some defendants, and my client is one of them.

THE COURT: Just give me an order in ten days. Okay? Everybody get that? Apparently not. A lot of people popping up and down.

MR. McCUE: I apologize, Your Honor, and I may be -- I'm a little slow on the uptake this afternoon, but as I understood Mr. Parrish, he has no claims for anything that was an original construction, and there is a pretty clear delineation as to a time frame from which the repairs these clients are claiming under would begin, and that would be after the Glick report.

After April of 2003, the action that they took to remedy, they or Genoa or the developer, to remedy these problems, so it may assist the subcontractors who fall in the category of we did original work, my client's

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last work was in 2002, well before the Glick report, and if that's the case, it would seem to me based on

Mr. Parrish's statement and stipulation, that they're only looking for repair claims, faulty repair claims, that anybody who was in that group of people who worked from the beginning of time up until April 10th -- it's either the 8th or the 11th, but April of '03, all of those claims should be dismissed without burdening the court with having to reach our motions and our proposed orders.

THE COURT: I would just as soon be burdened with them, okay?

MR. TURNER: If I could bring up one last thing, one part of our motion and in our memo, and I know in both's motion, was accordance satisfaction relating to two units owned by Jack and Sandra Burnett. They're the ones that we had talked about before who sued the developers then. They counterclaimed against the developer in 2002. There was a settlement of that case, where all claims related to design or construction of those two units were released.

I just wanted to be sure we are on the record as saying we think that summary judgment is appropriate as to those two units and they should be carved out of any other claim one way or another because they've

already collected whatever money they're going to collect relating to that. So accordance in satisfaction and statute of limitations, obviously, they knew they had the claims when they brought them in 2008.

MR. PARRISH: I'll say on the record we're not doing any individual unit owner repairs unless it's being done in the unit to keep water from getting into

the common elements; for example, the window unit -- he's talking about the metal windows on the main building. We have to go back in there and reseal around the seals of those metal windows where the seal and caulking is failing. If we have to go recaulk that to keep it from getting down in the common wall, then that would be the only thing.

What I'm trying to explain is, every owner has been deposed. They've asked about their interior wood trim. We're not doing individual repairs. The only issue on Mr. Burnett's window is we may have to do something around that window to keep water from getting into the wall that the HOA owns. Other than that, we're not addressing this unit, have no intention to do so. Owners would go nuts if we started making repairs to individual units on a number of items.

I hope that makes sense. Does that clarify the question that was presented to the Court?

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MR. TURNER: One of the things that is confusing to me on this whole issue is that they keep talking about seals and caulking, and they've not -- there is no opinion. The date for their final expert opinion has passed. We've got their reports, we've got all the proposals from the person who's doing the work, and none of that talks about sealants or caulking.

There is nothing there, and, again, when ABS was asked a question, they said they saw what they were hired to do and they didn't form an opinion about that. The only thing they had an opinion about was

condensation, so I'm not sure that when we are talking about the Burnettes, I guess, why the sealant would be an issue.

Really, what they've been proposing is putting energy panels into all of the units, which is like an interior storm window, and so my position would be to the extent they're going to spend money to go in and install these energy panels, to stop condensation and that's the way ABS thought this water was getting in, that that is already settled, that they've already got their money for that.

THE COURT: Well, I guess those two people are out then.

MR. TURNER: Thank you, Your Honor.

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MR. ROWE: I'm here on behalf of Pardee. My client was brought in by Genoa, but there is also a cross-claim by the developer against Pardee and some of the other contractors. I don't know if anybody else is here for Chisholm Partners. They're not asking to participate in this case, so as to their claims again Pardee and these other contractors, we ask they be dismissed today for failure to show up and argue on their behalf, and then we can address the orders with Genoa and the orders by you.

THE COURT: Does anybody have a problem with what he's suggesting on his defendant?

MR. McCUE: No, Your Honor.

THE COURT: All right. Give me an order then.

MR. McCUE: One final thought. I would like

to mention the deposition where I asked him a question about sealants and metal windows in the main building. He testifies that the source of water that they identified and that we put forth in the repair for is condensation, and then I asked him about sealants. I said, are there any other sealant areas on the main school building that you have identified as source of water intrusion or leading to any damage?

No, I don't believe we've identified any

sealant locations on the building that may be contributing to water intrusion. All he did was the condensation issues, and so with the Court's permission, I'll hand up volume two of his deposition.

These are not originals, Your Honor. These were taken within the last week and a half, and I'm not sure who has possession of original documents, if you would like them, Your Honor, we can obtain them from the court reporter. Thank you.

THE COURT: Okay. Well, everybody, you got ten days to get your initial proposed orders in, and then you got ten days to respond and we'll try to sort it out.

All right. Thank you.

- - -

(Whereupon, the proceedings were concluded.)

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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 28th day of March 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 6, 2011

_____

Circuit Court Reporter

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AMANDA K. HAFFENDEN, RPR, CRR
Circuit Court Reporter
P.O. Box 424
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April 6, 2011

TO: Tarsha Green
Rogers Townsend & Thomas, PC
220 Executive Center Drive
Columbia, SC 29210

IN RE: Three Chisholm Street vs. Chisholm Partners, et al.
DATE: March 28, 2011
TRANSCRIPT OF PROCEEDINGS
BEFORE: Honorable Roger M. Young

56 pages at $4.25 per page:	$238
LESS DEPOSIT:	$221
TOTAL DUE:	$17

THANK YOU!

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 Chisolm Street Homeowners Association, Inc.,

Plaintiff,

vs.

Chisolm Street Partners, LLC, Murray School Partners, LLC, Genoa Construction Services, Inc., Masterpiece Millwork, Inc., Allen Roper, Jr. d/b/a R. Masonry Brickwork, Carolina Roofing Systems, Inc. and Lacy Painting,

Defendants.

Genoa Construction Services, Inc.,

Third Party Plaintiff,

vs.

The Fox Steel Company, Carolina Services, Inc., Lesco Restoration, Inc., Ferst Plastering, Inc., Charleston Glass & Mirror Company, 3D Renovations, Williams Mechanical Mastercraft Interior & Exterior, Coastal Glass and Block, Adams Davis & Partners, Troy Pardee Heating and Air Conditioning (d/b/a Pardee Heating and Air), Metro Water-proofing, Inc., CT Windows, Limited, and Architectural Materials & Systems,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-00267

MASTERPIECE MILLWORK, INC.'S ANSWER TO SECOND AMENDED COMPLAINT

FILED
2011 MAY 25 PM 4:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Defendant Masterpiece Millwork, Inc., (hereinafter referred to as "Masterpiece Millwork"), through its below-signed attorneys, answering the Second Amended Complaint of the Plaintiff, alleges and says:

1. Masterpiece Millwork is without information sufficient to form a belief as to the allegations of Paragraphs 1 and 2 and therefore denies the same and demands strict proof thereof.

2. Masterpiece Millwork admits, upon information and belief, the allegations of Paragraphs 3 and 4.

3. Masterpiece Millwork is without information sufficient to form a belief as to the allegations of Paragraphs 5 through 15 and therefore denies the same and demands strict proof thereof.

4. Masterpiece Millwork denies the allegations of Paragraph 16.

5. Masterpiece Millwork denies the allegations of Paragraph 17 as stated, but admits that it supplied some windows for use on the project.

6. Masterpiece Millwork is without information sufficient to form a belief as to the allegations of Paragraphs 18 through 23 and therefore denies the same and demands strict proof thereof.

7. The allegations of Paragraph 24 state legal conclusions which require no responsive pleading from Masterpiece Millwork.

8. Masterpiece Millwork denies the allegations of Paragraphs 25 through 30

AS TO THE FIRST AND SECOND CAUSES OF ACTION

9. The allegations of the First and Second Causes of Action (Paragraphs 31 through 43) relate to Defendants other than this Defendant, and therefore require no responsive pleading from this Defendant. To the extent, however, that any of those allegations allege any errors, omissions, negligence, recklessness or wrongful acts on behalf of this Defendant, they are denied.

AS TO THE THIRD CAUSE OF ACTION

10. Answering the allegations of Paragraph 44, Masterpiece Millwork realleges its responses to Paragraphs 1 through 43 as if repeated herein verbatim.

11. Masterpiece Millwork denies the allegations of Paragraphs 45 through 51 as relate to it.

AS TO THE FOURTH CAUSE OF ACTION

12. Answering the allegations of Paragraph 52, Masterpiece Millwork realleges its responses to Paragraphs 1 through 51 as if repeated herein verbatim.

13. Masterpiece Millwork denies the allegations of Paragraphs 53 through 59 as relate to it.

AS TO THE FIFTH CAUSE OF ACTION

14. Answering the allegations of Paragraph 60, Masterpiece Millwork realleges its responses to Paragraphs 1 through 59 as if repeated herein verbatim.

15. Masterpiece Millwork denies the allegations of Paragraphs 61 through 65 as relate to it.

AS TO THE SIXTH CAUSE OF ACTION

16. Answering the allegations of Paragraph 66, Masterpiece Millwork realleges its responses to Paragraphs 1 through 65 as if repeated herein verbatim.

17. Masterpiece Millwork denies the allegations of Paragraphs 67 through 72 as relate to it.

AS TO THE SEVENTH CAUSE OF ACTION

18. Answering the allegations of Paragraph 73, Masterpiece Millwork realleges its responses to Paragraphs 1 through 72 as if repeated herein verbatim.

19. Masterpiece Millwork denies the allegations of Paragraphs 74 through 79 as relate to it.

AS TO THE EIGHTH CAUSE OF ACTION

20. Answering the allegations of Paragraph 80, Masterpiece Millwork realleges its responses to Paragraphs 1 through 79 as if repeated herein verbatim.

21. Masterpiece Millwork denies the allegations of Paragraphs 81 through 88 as relate to it.

AS TO THE NINTH CAUSE OF ACTION

22. Answering the allegations of Paragraph 89, Masterpiece Millwork realleges its responses to Paragraphs 1 through 88 as if repeated herein verbatim.

23. Masterpiece Millwork denies the allegations of Paragraphs 90 through 99 as relate to it.

AS TO THE TENTH CAUSE OF ACTION

24. Answering the allegations of Paragraph 100, Masterpiece Millwork realleges its responses to Paragraphs 1 through 99 as if repeated herein verbatim.

25. Masterpiece Millwork denies the allegations of Paragraphs 101 through 107 as relate to it.

AS TO THE ELEVENTH, TWELFTH AND THIRTEENTH CAUSE OF ACTION

26. The allegations of the Eleventh Cause of Action (Paragraphs 108 through 127) relate to Defendants other than this Defendant, and therefore require no responsive pleading from this Defendant. To the extent, however, that any of those allegations allege any errors, omissions, negligence, recklessness or wrongful acts on

behalf of this Defendant, they are denied, being all the remaining allegations of the Plaintiff's Second Amended Complaint.

27. Masterpiece Millwork denies each and every allegation in the Plaintiff's Second Amended Complaint not specifically admitted above.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

28. Plaintiff lacks standing to make the claims asserted against Masterpiece Millwork in this action.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

29. That all claims asserted against Masterpiece Millwork are barred by the applicable statute of limitations and/or the applicable statute of repose.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

30. Plaintiff's claims, if any, are barred, or should be reduced, by Plaintiff's own comparative negligence and recklessness by Plaintiff's failure to properly maintain the property and to mitigate their damages.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

31. Plaintiff's claims, if any, are the result of acts and omissions of other entities over whom Masterpiece Millwork has no control, barring Plaintiff's claims against Masterpiece Millwork.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

32. That all claims are barred by the doctrine of Laches.

FURTHER ANSWERING AND AS AN ADDITIONAL

AND AFFIRMATIVE DEFENSE

33. That the final completion and acceptance of the work undertaken by Masterpiece Millwork pursuant to the original contract and all modifications thereto constitutes a complete defense to all claims asserted by Plaintiff.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

34. Plaintiff's claims are, upon information and belief, barred as it has failed to make a claim against Masterpiece Millwork within any applicable warranty period.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

35. That all claims asserted by Plaintiff are barred by the doctrine of unclean hands.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

36. That Plaintiff failed to give Masterpiece Millwork reasonable notice of the existence of any alleged defects due to faulty workmanship and/or materials and failed to provide Masterpiece Millwork a reasonable opportunity to correct any such alleged defects.

37. That Plaintiff's failure to give Masterpiece Millwork notice of and an opportunity to correct any alleged defects due to faulty workmanship and/or materials constitutes a complete defense to all claims of breach of warranty.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

38. Upon information and belief, any express or implied warrantles were limited in duration from the date of completion and acceptance of the project by the Owner.

39. That the failure of Plaintiff within the warranty period from the date of the completion and acceptance of the project by the Plaintiff, to give notice of or make any claim for alleged deficiencies in the workmanship and/or materials provided by Masterpiece Millwork constitutes a complete defense to all claims asserted by Plaintiff.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

40. Plaintiff's Second Amended Complaint is barred by payment and/or release.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

41. Plaintiff has waived and/or are estopped from asserting the claims set forth in their Second Amended Complaint.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

42. If Plaintiff sustained injuries and damages in the manner alleged in the Second Amended Complaint, which injuries and damages are specifically denied by Masterpiece Millwork, then the alleged injuries and damages were sustained not as the result of any fault, neglect, breach of warranty (express or implied) or want of due care on the part of Masterpiece Millwork nor of anyone for whose conduct Masterpiece Millwork are anyway responsible, but solely through the fault, neglect, breach of warranty (express or implied) and want of due care on the part of Plaintiff, all of which will be shown at the trial of this case, and for which Plaintiff can have no recovery

against Masterpiece Millwork or, in the alternative, for which Plaintiff's recovery should be appropriately reduced. Plaintiff's comparative negligence includes, but is not limited to failure to exercise reasonable care in maintaining the structure.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

43. Plaintiff's claims are barred as the court lacks jurisdiction over the subject matter of the case.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

44. Plaintiff's claims fail to state facts sufficient to constitute causes of action against Masterpiece Millwork.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

45. Masterpiece Millwork has contractually limited its warranty and non-warranty obligations and exposure to the Plaintiff, excluding liability for many claims the Plaintiff are making, barring Plaintiff's claims and/or Plaintiff's claimed damages, including Plaintiff's claim for consequential damages, in whole or in part, against Masterpiece Millwork.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

46. Plaintiff's claims are barred, or should be stayed, pending arbitration as there exists a valid arbitration provision in the contract between the Plaintiff and Masterpiece Millwork.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

47. Plaintiff's claims are barred by their own comparative negligence in failing to provide an adequate design for the structure.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

48. That by furnishing plans, specifications and drawings to Masterpiece Millwork, Plaintiff impliedly warranted that those plans, specifications and drawings were suitable and fit for use by Masterpiece Millwork in performing its work as called for in the contract documents.

49. That to the extent that the plans, specifications and drawings were defective, insufficient, conflicting and incomplete, Plaintiff has breached its implied warranty and all claims asserted by Plaintiff against Masterpiece Millwork are therefore barred.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

50. Plaintiff's claims for the unfair trade practices act should be dismissed as the alleged actions of this Masterpiece Millwork do not have an impact on the public interest.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

51. Plaintiff's claims for breach of South Carolina's unfair trade practices act are barred pursuant to South Carolina Code §39-5-40.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

52. Venue in this action is improper.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

53. Plaintiff's claims should be dismissed as the Plaintiff failed to effect proper service of process on Masterpiece Millwork.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

54. Plaintiff's claims should be dismissed as there is a lack of appropriate personal jurisdiction against this Masterpiece Millwork in this action.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

55. Plaintiff's claim for liquidated damages is invalid as a penalty and a forfeiture.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

56. Plaintiff's claim are barred by the doctrine of corporate immunity.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

57. Plaintiff's claim are barred or would be reduced as Masterpiece Millwork provided a limited warranty to Plaintiff which was in lieu of all other warranties or obligations, express or implied, including the warranty of habitability, warranty of suitability for residential purposes, any warranties of marketability or fitness for particular purposes. Plaintiff's claims and remedies are limited to claims and remedies under the limited warranty that was provided, and any other claims are barred.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

58. The Plaintiff's claims are barred or should be dismissed by virtue of the doctrine of spoliation of evidence, as the Plaintiff spoiled evidence and repaired alleged

deficiencies without notice to Masterpiece Millwork and without giving Masterpiece Millwork opportunity to observe the alleged deficiencies.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

59. Plaintiff's claims are barred and/or should be stayed or dismissed by virtue of Plaintiff's failure to comply with the South Carolina Notice and Opportunity to Cure Non-Residential Construction Defects Act, South Carolina Code §40-11-510, et. seq.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

60. Plaintiff's claims are barred and/or should be stayed or dismissed by virtue of the Plaintiffs' failure to comply with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, South Carolina Code §40-59-810-860 (1976 as amended).

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

61. Plaintiff's claims are barred as they and their contractor failed to notify Defendant of any discrepancies with the goods within the time period specified in the contract.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

62. Plaintiff's claims are barred as the Defendant provided only a limited express warranty, warranting the goods to be free from defects in material and workmanship for a period of time from the date of the delivery, and such warranty has expired.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

63. Plaintiff's claims are barred as Plaintiff and their contractor failed to notify Defendant within the contractually and/or statutorily required time of the discovery of any alleged defects with the windows.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

64. Plaintiff's claims are barred as the contract disclaims warranties and limits warranties, which disclaimers and limitations are incorporated herein by reference.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

65. Plaintiff's claims are barred as they and/or their contractor accepted any and all work performed and goods supplied by Defendant.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

66. Plaintiff's claims are, upon information and belief, barred as they and/or their contractor failed to make a claim against the Defendant within the applicable warranty period.

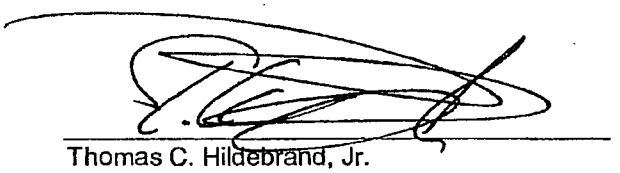
FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

67. All implied warranties which may have existed, which are denied, have been excluded pursuant to the provisions of South Carolina Code §36-2-316(3)(b) in that Plaintiff and/or the Third Party Plaintiff examined the goods or the sample or model supplied by the Defendant as fully as they desired or refused to examine the goods.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

68. That any implied warranties arising out of the sale, which is denied, have been excluded by the course of dealing, by course of performance and by usage of trade.

WHEREFORE, having fully answered the Plaintiffs' Second Amended Complaint, Masterpiece Millwork prays that it be dismissed with costs.



May 25, 2011

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Attorneys for Defendant
Masterpiece Millwork, Inc.

CERTIFICATE OF SERVICE 09-CP-10-207

This is to certify that a copy of the foregoing Masterpiece Millwork, Inc.'s Answer to Second Amended Complaint has been served upon the following counsel of record via US mail and/or electronic mail as shown below this 25th day of May, 2011.

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 Chisolm Street Homeowners Association, Inc.,

Plaintiff,

vs.

Chisolm Street Partners, LLC, Murray School Partners, LLC, Genoa Construction Services, Inc., Masterpiece Millwork, Inc., Allen Roper, Jr. d/b/a R. Masonry Brickwork, Carolina Roofing Systems, Inc. and Lacy Painting,

Defendants.

Genoa Construction Services, Inc.,

Third Party Plaintiff,

vs.

The Fox Steel Company, Carolina Services, Inc., Lesco Restoration, Inc., Ferst Platering, Inc., Charleston Glass & Mirror Company, 3D Renovations, Williams Mechanical Mastercraft Interior & Exterior, Coastal Glass and Block, Adams Davis & Partners, Troy Pardee Heating and Air Conditioning (d/b/a Pardee Heating and Air), Metro Water-proofing, Inc., CT Windows, Limited, and Architectural Materials & Systems,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-00267

MASTERPIECE MILLWORK, INC.'S ANSWER TO GENOA CONSTRUCTION SERVICE'S CROSSCLAIM

FILED
2011 MAY 25 PM 4:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Defendant Masterpiece Millwork, Inc., (hereinafter referred to as "Masterpiece Millwork"), through its below-signed attorneys, answering the Crossclaim of Co-Defendant Genoa Construction Services (hereinafter referred to as "Genoa"),

alleges and says:

1. The allegations of Paragraph 45 incorporate Genoa's responses to the Plaintiffs' Second Amended Complaint, which require no responsive pleading from this Defendant. To the extent, however, that Genoa's responses allege any errors, omissions, negligence, breaches, violations or wrongful acts on behalf of Masterpiece, they are denied.

2. Masterpiece Millwork denies the allegations of Paragraphs 46 and 47 as stated and craves reference to its written contract, as amended, for its exact terms and contents and denies any allegations inconsistent therewith.

3. Masterpiece Millwork denies the allegations of Paragraphs 48 and 49.

AS TO THE NINETEENTH DEFENSE AND CROSSCLAIM

4. Answering the allegations of Paragraph 50, Masterpiece Millwork reincorporates its prior responses as if repeated herein verbatim.

5. Masterpiece Millwork denies the allegations of Paragraph 51 as stated and craves reference to its written contract, as amended, for its exact terms and contents and denies any allegations inconsistent therewith.

6. Masterpiece Millwork denies the allegations of Paragraphs 52 and 53.

AS TO THE TWENTIETH DEFENSE AND CROSSCLAIM

7. Answering the allegations of Paragraph 54, Masterpiece Millwork reincorporates its prior responses as if repeated herein verbatim.

8. Masterpiece Millwork denies the allegations of Paragraphs 55 and 56 as stated and craves reference to its written contract, as amended, for its exact terms and contents and denies any allegations inconsistent therewith.

9. Masterpiece Millwork denies the allegations of Paragraphs 57 and 58.

AS TO THE TWENTY-FIRST DEFENSE AND CROSSCLAIM

10. Answering the allegations of Paragraph 59, Masterpiece Millwork reincorporates its prior responses as if repeated herein verbatim.

11. Masterpiece Millwork denies the allegations of Paragraph 60 as stated and craves reference to its written contract, as amended, for its exact terms and contents and denies any allegations inconsistent therewith.

12. Masterpiece Millwork denies the allegations of Paragraphs 61.

AS TO THE TWENTY-SECOND DEFENSE AND CROSSCLAIM

13. Answering the allegations of Paragraph 62, Masterpiece Millwork reincorporates its prior responses as if repeated herein verbatim.

14. Masterpiece Millwork denies the allegations of Paragraph 63 as stated and craves reference to its written contract, as amended, for its exact terms and contents and denies any allegations inconsistent therewith.

15. Masterpiece Millwork denies the allegations of Paragraphs 64 and 65.

AS TO THE TWENTY-THIRD DEFENSE AND CROSSCLAIM

16. Answering the allegations of Paragraph 66, Masterpiece Millwork reincorporates its prior responses as if repeated herein verbatim.

17. Masterpiece Millwork denies the allegations of Paragraphs 67 through 69.

AS TO THE TWENTY-FOURTH DEFENSE AND CROSSCLAIM

18. Answering the allegations of Paragraph 70, Masterpiece Millwork reincorporates its prior responses as if repeated herein verbatim.

19. Masterpiece Millwork denies the allegations of Paragraph 71 as stated and craves reference to its written contract, as amended, for its exact terms and contents and denies any allegations inconsistent therewith.

20. Masterpiece Millwork denies the allegations of Paragraphs 72 and 73

AS TO THE TWENTY-FOURTH (sic) DEFENSE THROUGH NINTH CAUSES OF ACTION

21. The allegations of the Twenty-Fourth Defense and Crossclaim through the Ninth Cause of Action (Paragraphs 74 through 154), relate to defendants other than Masterpiece Millwork and require no responsive pleading from Masterpiece Millwork. To the extent, however, that any of those allegations allege any errors, omissions, breaches, or wrongdoing on the part of Masterpiece Millwork, they are denied.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

22. Plaintiff lacks standing to make the claims asserted against Masterpiece Millwork in this action.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

23. That all claims asserted against Masterpiece Millwork are barred by the applicable statute of limitations and/or the applicable statute of repose.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

24. Plaintiff's claims, if any, are barred, or should be reduced, by Plaintiff's own comparative negligence and recklessness by Plaintiff's failure to properly maintain the property and to mitigate their damages.

FURTHER ANSWERING AND AS AN ADDITIONAL

AND AFFIRMATIVE DEFENSE

25. Plaintiff's claims, if any, are the result of acts and omissions of other entities over whom Masterpiece Millwork has no control, barring Plaintiff's claims against Masterpiece Millwork.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

26. That all claims are barred by the doctrine of Laches.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

27. That the final completion and acceptance of the work undertaken by Masterpiece Millwork pursuant to the original contract and all modifications thereto constitutes a complete defense to all claims asserted by Plaintiff.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

28. Plaintiff's claims are, upon information and belief, barred as it has failed to make a claim against Masterpiece Millwork within any applicable warranty period.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

29. That all claims asserted by Plaintiff are barred by the doctrine of unclean hands.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

30. That Plaintiff failed to give Masterpiece Millwork reasonable notice of the existence of any alleged defects due to faulty workmanship and/or materials and failed to provide Masterpiece Millwork a reasonable opportunity to correct any such alleged defects.

31. That Plaintiff's failure to give Masterpiece Millwork notice of and an opportunity to correct any alleged defects due to faulty workmanship and/or materials constitutes a complete defense to all claims of breach of warranty.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

32. Upon information and belief, any express or implied warranties were limited in duration from the date of completion and acceptance of the project by the Owner.

33. That the failure of Plaintiff within the warranty period from the date of the completion and acceptance of the project by the Plaintiff, to give notice of or make any claim for alleged deficiencies in the workmanship and/or materials provided by Masterpiece Millwork constitutes a complete defense to all claims asserted by Plaintiff.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

34. Plaintiff's Second Amended Complaint is barred by payment and/or release.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

35. Plaintiff has waived and/or are estopped from asserting the claims set forth in their Second Amended Complaint.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

36. If Plaintiff sustained injuries and damages in the manner alleged in the Second Amended Complaint, which injuries and damages are specifically denied by Masterpiece Millwork, then the alleged injuries and damages were sustained not as the

result of any fault, neglect, breach of warranty (express or implied) or want of due care on the part of Masterpiece Millwork nor of anyone for whose conduct Masterpiece Millwork are anyway responsible, but solely through the fault, neglect, breach of warranty (express or implied) and want of due care on the part of Plaintiff, all of which will be shown at the trial of this case, and for which Plaintiff can have no recovery against Masterpiece Millwork or, in the alternative, for which Plaintiff's recovery should be appropriately reduced. Plaintiff's comparative negligence includes, but is not limited to failure to exercise reasonable care in maintaining the structure.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

37. Plaintiff's claims are barred as the court lacks jurisdiction over the subject matter of the case.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

38. Plaintiff's claims fail to state facts sufficient to constitute causes of action against Masterpiece Millwork.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

39. Masterpiece Millwork has contractually limited its warranty and non-warranty obligations and exposure to the Plaintiff, excluding liability for many claims the Plaintiff are making, barring Plaintiff's claims and/or Plaintiff's claimed damages, including Plaintiff's claim for consequential damages, in whole or in part, against Masterpiece Millwork.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

40. Plaintiff's claims are barred, or should be stayed, pending arbitration as there exists a valid arbitration provision in the contract between the Plaintiff and Masterpiece Millwork.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

41. Plaintiff's claims are barred by their own comparative negligence in failing to provide an adequate design for the structure.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

42. That by furnishing plans, specifications and drawings to Masterpiece Millwork, Plaintiff impliedly warranted that those plans, specifications and drawings were suitable and fit for use by Masterpiece Millwork in performing its work as called for in the contract documents.

43. That to the extent that the plans, specifications and drawings were defective, insufficient, conflicting and incomplete, Plaintiff has breached its implied warranty and all claims asserted by Plaintiff against Masterpiece Millwork are therefore barred.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

44. Plaintiff's claims for the unfair trade practices act should be dismissed as the alleged actions of this Masterpiece Millwork do not have an impact on the public interest.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

45. Plaintiff's claims for breach of South Carolina's unfair trade practices act are barred pursuant to South Carolina Code §39-5-40.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

46. Venue in this action is improper.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

47. Plaintiff's claims should be dismissed as the Plaintiff failed to effect proper service of process on Masterpiece Millwork.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

48. Plaintiff's claims should be dismissed as there is a lack of appropriate personal jurisdiction against this Masterpiece Millwork in this action.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

49. Plaintiff's claim for liquidated damages is invalid as a penalty and a forfeiture.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

50. Plaintiff's claim are barred by the doctrine of corporate immunity.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

51. Plaintiff's claim are barred or would be reduced as Masterpiece Millwork provided a limited warranty to Plaintiff which was in lieu of all other warranties or obligations, express or implied, including the warranty of habitability, warranty of suitability for residential purposes, any warranties of marketability or fitness for

particular purposes. Plaintiff's claims and remedies are limited to claims and remedies under the limited warranty that was provided, and any other claims are barred.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

52. The Plaintiff's claims are barred or should be dismissed by virtue of the doctrine of spoliation of evidence, as the Plaintiff spoiled evidence and repaired alleged deficiencies without notice to Masterpiece Millwork and without giving Masterpiece Millwork opportunity to observe the alleged deficiencies.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

53. Plaintiff's claims are barred and/or should be stayed or dismissed by virtue of Plaintiff's failure to comply with the South Carolina Notice and Opportunity to Cure Non-Residential Construction Defects Act, South Carolina Code §40-11-510, et. seq.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

54. Plaintiff's claims are barred and/or should be stayed or dismissed by virtue of the Plaintiffs' failure to comply with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, South Carolina Code §40-59-810-860 (1976 as amended).

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

55. Plaintiff's claims are barred as they and their contractor failed to notify Defendant of any discrepancies with the goods within the time period specified in the contract.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

56. Plaintiff's claims are barred as the Defendant provided only a limited express warranty, warranting the goods to be free from defects in material and workmanship for a period of time from the date of the delivery, and such warranty has expired.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

57. Plaintiff's claims are barred as Plaintiff and their contractor failed to notify Defendant within the contractually and/or statutorily required time of the discovery of any alleged defects with the windows.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

58. Plaintiff's claims are barred as the contract disclaims warranties and limits warranties, which disclaimers and limitations are incorporated herein by reference.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

59. Plaintiff's claims are barred as they and/or their contractor accepted any and all work performed and goods supplied by Defendant.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

60. Plaintiff's claims are, upon information and belief, barred as they and/or their contractor failed to make a claim against the Defendant within the applicable warranty period.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

61. All implied warranties which may have existed, which are denied, have been excluded pursuant to the provisions of South Carolina Code §36-2-316(3)(b) in

that Plaintiff and/or the Third Party Plaintiff examined the goods or the sample or model supplied by the Defendant as fully as they desired or refused to examine the goods.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

62. That any implied warranties arising out of the sale, which is denied, have been excluded by the course of dealing, by course of performance and by usage of trade.

WHEREFORE, having fully answered Genoa's Crossclaim, Masterpiece Millwork prays that it be dismissed with costs.

May 25, 2011

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Attorneys for Defendant
Masterpiece Millwork, Inc.

CERTIFICATE OF SERVICE 09-CP-10-267

This is to certify that a copy of the foregoing Masterpiece Millwork, Inc.'s Answer to Genoa Construction Service's Crossclaim has been served upon the following counsel of record via US mail and/or electronic mail as shown below this 25th day of May, 2011.

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2011 MAY 25 PM 4:17
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May 25, 2011

VIA HAND DELIVERY

The Honorable Julie Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: 3 Chisolm Street Homeowners Association, Inc. v. Chisolm Street Partners, LLC, Genoa Construction Services, Inc., Masterpiece Millwork, Inc., et al. and Genoa Construction Services, Inc. v. The Fox Steel Co., et al. ,
Case No.: 2009-CP-10-267

Dear Ms. Armstrong:

Enclosed for filing please find the original and one copy of Masterpiece Millwork, Inc.'s Answer to the Crossclaim of Genoa Construction Services, Inc. in the above-referenced matter. I would appreciate it very much if you would file the pleading with the Court and then return a clocked copy to me.

With best regards,

Yours very truly,

Thomas C. Hildebrand, Jr.

TCHJr/lah
Enclosure

cc: D. Ryan McCabe, Esquire *(via email and US Mail)*
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Joshua L. Ellis, Esquire *(via email only*
David J. Parrish, Esquire *(via email only)*
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E. Glenn Elliott, Esquire *(via email only)*
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THE STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) CASE NO.: 2009-CP-10-267
3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC.,	)
Plaintiff,	) **DEFENDANT BROCK GREEN ARCHITECTS AND PLANNERS, LLC'S MOTION TO RECONSIDER, ALTER, AND/OR AMEND AND MEMORANDUM IN SUPPORT**
vs.	)
CHISOLM STREET PARTNERS, LLC, MURRAY SCHOOL PARTNERS, LLC, GENOA CONSTRUCTION SERVICES, INC., MASTERPIECE MILLWORK, INC., ALLEN ROPER, JR. d/b/a MASONRY-BRICKWORK AND STUCCO, CAROLINA ROOFING SYSTEMS, INC., LACY PAINTING, AND BROCK GREEN ARCHITECTS AND PLANNERS, LLC,	)
Defendants.	)
GENOA CONSTRUCTION SERVICES, INC.,	)
Third-Party Plaintiff,	)
vs.	)
THE FOX STEEL COMPANY, CAROLINA SERVICES, INC., LESCO RESTORATION, INC., FERST PLASTERING, INC., CHARLESTON GLASS & MIRROR COMPANY, 3D RENOVATIONS, WILLIAMS MECHANICAL, MASTERCRAFT INTERIOR & EXTERIOR, BONIFAY MASONRY, COASTAL GLASS AND BLOCK, ADAMS DAVIS & PARTNERS, TROY PARDEE HEATING AND AIR CONDITIONING (d/b/a PARDEE HEATING AND AIR),	)
Third-Party Defendants.	)

FILED
2011 JUN 23 PM 3:51
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

CHISOLM STREET PARTNERS, LLC, Third-Party Plaintiff, vs. THE FOX STEEL COMPANY, CAROLINA SERVICES, INC., LESCO RESTORATION, INC., FERST PLASTERING, INC., CHARLESTON GLASS & MIRROR COMPANY, 3D RENOVATIONS, WILLIAMS MECHANICAL, MASTERCRAFT INTERIOR & EXTERIOR, BONIFAY MASONRY, COASTAL GLASS AND BLOCK, ADAMS DAVIS & PARTNERS, and TROY PARDEE HEATING AND AIR CONDITIONING (d/b/a PARDEE HEATING AND AIR), Third-Party Defendants.	)
LESCO RESTORATION, INC., Fourth-Party Plaintiff, vs. COASTAL WATERPROOFING, INC., N/D/B/A WARDS WATERPROOFING, INC., Fourth-Party Defendants.	)

PLEASE TAKE NOTICE that Defendant Brock Green Architects and Planners, LLC (hereinafter "Brock Green") will move before this Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court and counsel, for an Order granting Brock Green's Motion to Reconsider, Alter, and/or Amend the Order denying Brock Green's Motion for Summary Judgment.

LEGAL AUTHORITY

A motion to reconsider, alter, and/or amend may be brought pursuant to Rule 59(e), SCRCP. A denial of a motion for summary judgment does not establish the law of the case, and the issues can be considered later in the case by a motion to reconsider the summary judgment motion. Brown v. Pearson, 326 S.C. 409, 416-17, 483 S.E.2d 477, 481 (Ct. App. 1997)(citations omitted). "It is not error for the trial court to change its mind and reconsider a motion for summary judgment." Abu-Shawareb v. S.C. State Univ., 364 S.C. 358, 363, 613 S.E.2d 757, 760 (Ct. App. 2005)(citations omitted).

GROUNDS FOR RECONSIDERATION

This Court held a hearing on Brock Green's motion for summary judgment, as well as other Defendants' and Third Party Defendants' motions for summary judgment, on March 28, 2011. All of the motions were based upon the same grounds—the disclosure of a 2003 report by forensic architect Myles Glick, AIA to the Plaintiff, which put the Plaintiff on notice of "substantial and pervasive" deficiencies at the property.[1]

The movants contended that the statute of limitations was triggered with the Plaintiff's receipt and discussion of the Glick Report, and that the Plaintiff's claims brought after three years from that point were barred. This Court granted—at least in part—all of the motions before it (except for Brock Green's) based on the expiration of the statute of limitations. Although Brock Green was not sued until nearly seven years after the Plaintiff's receipt and discussion of the Glick Report, the Court held that the Glick Report did not put the Plaintiff on notice of "design defects applicable to the architect," and therefore did not trigger the statute of

limitations. Brock Green contends that this ruling is contrary to established law and inconsistent with this Court's other rulings in this case and, therefore, respectfully requests that this Court reconsider, alter, and/or amend its ruling as to Brock Green.

A. The Glick Report put Plaintiff on notice in 2003 of the very issues it is suing over in this lawsuit; it is irrelevant whether Plaintiff attributed the issues to design, construction, or manufacture at the time.

The Court should reconsider the denial of Brock Green's motion for summary judgment because the ruling is contrary to South Carolina law and inconsistent with this Court's other rulings in this case. With regard to the statute of limitations, our courts have consistently held that "the focus is upon the date of discovery of the **injury**, not the date of discovery of the wrongdoer." Wiggins v. Edwards 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994)(emphasis added). On discovery of an injury, "the statute of limitations begins to run for **all claims** based on that injury." Id. (citing Tollison v. B & J Machinery Co., Inc., 812 F. Supp. 618, 620 (D.S.C. 1993))(emphasis added).

In Wiggins, the plaintiff argued that the statute of limitations began to run "at the time she was actually able to investigate her case, discover a cause of action existed, and determine who or what caused her injury." Id. at 128, 442 S.E.2d at 170. The court disagreed, holding that such a test would be "subjective," rather than objective. Id. The court granted summary judgment to the defendant, holding that the statute started to run as to all possible claims related to plaintiff's injury at the time she knew she was injured. Id. at 128-29, 442 S.E.2d at 170; see also Cline v. J.E. Faulkner Homes, Inc., 359 S.C. 367, 371, 597 S.E.2d 27, 28 (Ct. App. 2004);

[1] Order Denying Brock Green's Motion for Summary Judgment at 3. (This Order, as well as the other Orders cited herein, are collectively included as "Exhibit A" to this Motion and Memorandum.)

Gillman v. City of Beaufort, 368 S.C. 24, 28, 627 S.E.2d 746, 748 (Ct. App. 2006)(holding that the date when a plaintiff learns of a potential new defendant has absolutely no bearing on the timing of the statute of limitations).

Indeed, as this Court stated in its Order denying Brock Green's motion, a plaintiff need not develop a "full blown theory of recovery" before the statute of limitations is triggered. Further, this Court has held that "[i]t is immaterial that the injured party may not comprehend the full extent of damage or the **exact nature of the wrong.**"[2]

Clearly, the fact that Brock Green was the architect on this conversion project, rather than a manufacturer, installer, or builder, is a distinction without a difference for purposes of the running of the statute of limitations. To deny Brock Green summary judgment, while granting summary judgment to the other parties based on the same evidence (Glick Report), is contrary to South Carolina's black letter law and this Court's other rulings in this case. If, as this Court has held, the Glick Report put the Plaintiff on notice of specific injuries (i.e., moisture intrusion, condensation, stucco cracks, etc.) and triggered the statute of limitations, then pursuant to Wiggins, the statute was triggered as to **all claims** based on those injuries, whether those injuries were related to design, construction, installation, or manufacture.

Furthermore, to the extent the Plaintiff had not developed a "full blown theory of recovery" at the time of the Glick Report, it unquestionably could have developed its theory of recovery by the exercise of reasonable diligence in pursuing further investigations and

[2] Order Granting Ferst Plastering's Motion for Summary Judgment at 5 (emphasis added); see also Order Granting Lacy Painting's Motion for Summary Judgment at 5; Order Granting Pardee's Motion for Summary Judgment at 5; Order Granting Williams Mechanical's Motion for Summary Judgment at 4 ("The fact that the injured party may not comprehend the full extent of damage or appreciate the exact nature of the wrong is immaterial to the discovery rule analysis.").

destructive testing as specifically recommended in the Glick Report. As this Court has found, the evidence shows that the Plaintiff discussed undertaking further investigations of all three buildings, but decided not to do so.[3] There is no legal basis to suggest that the Plaintiff's failure to exercise reasonable diligence in undertaking the further investigations recommended by Glick somehow "blocked" the application of the statute of limitations as to select parties.

In the end, the "design defect vs. other types of defects" issue is a distinction without a difference for purposes of triggering the statute of limitations. Additionally, this Court's denial of Brock Green's motion is inconsistent with its other rulings in this case. For example, the Glick Report does not definitively attribute the water intrusion and condensation issues with the windows to construction, design, installation, or manufacturing defects. No definitive cause is stated in the Report. However, this Court has granted summary judgment to constructors (i.e., Genoa) and manufacturers (i.e., Fox Steel). Given those rulings, it is clearly inconsistent and illogical to deny Brock Green's motion based on the Court's conclusion that the Glick Report did not attribute the issues to design defects.

B. The Glick Report does in fact cite possible design defects as to the project.

Notwithstanding the erroneous application of law and inconsistencies with this Court's other rulings as explained above, to the extent this Court has denied Brock Green's motion on the basis that the Glick Report did not put Plaintiff on notice of "design defects," that conclusion is factually inaccurate. This Court has found that the Glick Report did state that the moisture intrusion and condensation issues could be related to the **design** of the mechanical systems.[4]

[3] Order Granting Lacy Painting's Motion for Summary Judgment at 3-4.

[4] Order Granting Pardee's Motion for Summary Judgment at 2.

Further, the "Mechanical Systems" section of the Glick Report specifically cites possible issues with unit sizes and orientation (i.e., **design** of the systems). Furthermore, from a practical standpoint, the author of the Glick Report, Myles Glick, AIA, is an architect by trade. The fact that Glick—a trained and licensed architect—noted the issues he did should have been a further indication to Plaintiff that the issues could have been design-related.

Although Brock Green contends that the "design defect vs. other types of defects" issue is a distinction without a difference for purposes of triggering the statute of limitations, the above analysis is significant because it clearly illustrates that the Glick Report did in fact put Plaintiff on notice of potential design issues with the property. Clearly, if the Plaintiff had exercised reasonable diligence and undertaken Glick's recommended further investigations and destructive testing, the Plaintiff would have been able to further explore the causes of and responsible parties for the issues raised in the Glick Report. However, as explained above, the Plaintiff's failure to determine in 2003 who or what caused the issues is irrelevant for purposes of triggering the statute of limitations.

C. Even if claims for defective design are not barred as a result of the Glick Report, any claims against Brock Green relating to construction-phase observations and/or contract administration activities are time barred.

Even if the Glick Report did not put Plaintiff on notice of "design defects applicable to the architect" (which is denied), this Court has already held that the Glick Report put Plaintiff on notice of claims as to "construction work on the conversion project."[5] Therefore, it is axiomatic that Plaintiff cannot recover from Brock Green for any claims related to deficient or defective construction. It would be illogical and inconsistent to allow the Plaintiff to maintain claims

against Brock Green for construction issues that the Plaintiff cannot maintain against those who performed the construction. Accordingly—at the very least—Brock Green is entitled to summary judgment as to any and all claims premised upon Brock Green's alleged contract administration activities and/or construction observation work (i.e., non-design activities) during the project.

D. This Court has found that Plaintiff's claims as to the main/school building are limited to alleged deficient repairs after the Glick Report; Brock Green had no involvement in those repairs and is thus entitled to summary judgment on those claims.

This Court has held that "the issues raised in [Plaintiff's] Complaint concerning the School Building relate solely to alleged deficient repairs performed by or on behalf of Genoa and/or the developer after the publication of the Glick report."[6] Further, this Court has ruled that "based on stipulations of Plaintiff, Plaintiff is not claiming any damages associated with the manufacturing, **design, drawings,** warranties, . . . representations, or consultation **regarding the original . . . work** associated with the steel windows and doors **prior to April 2003.**"[7] This Court has denied summary judgment to Genoa and Lesco in relation to repair work performed

[5] Order Granting Genoa's Motion for Summary Judgment at 8.

[6] Order Granting Ferst Plastering's Motion for Summary Judgment at 5. This Court has consistently held that the issues in the main building for which Plaintiff seeks recovery arise solely as a result of alleged faulty repair work performed by or on behalf of Genoa and/or the developer after Plaintiff's receipt of the Glick Report. See Order Granting Summary Judgment to Charleston Glass, Metro Water-Proofing, and Fox Steel at 5; Order Granting Pardee's Motion for Summary Judgment at 4; Order Granting Williams Mechanical's Motion for Summary Judgment at 4; Order Granting in Part Lesco's Motion for Summary Judgment at 5.

[7] Order Granting Fox Steel's Motion for Summary Judgment at 6 (emphasis added).

Therefore, given this Court's rulings that Plaintiff's claims regarding the main/school building are limited to the alleged deficient repairs performed after the issuance of the Glick Report (which Brock Green had nothing to do with) and that Plaintiff is not claiming damages associated with the design or drawings regarding the original work associated with the steel windows and doors in that building, Brock Green is entitled to summary judgment as to as to any and all claims related to the main/school building.

E. Brock Green is entitled to summary judgment as to any claims involving the Burnetts' unit because this Court has held that the Burnetts were on notice of design and construction defects in 2002.

To the extent Plaintiff's claims include claims related to Unit 305/306 (a double unit) owned by Jack and Sandra Burnett, those claims are barred by the statute of limitations as to Brock Green. This Court has held that "[t]he Burnetts were on notice of potential claims arising out of the design and construction of their unit . . . when they asserted counterclaims in their lawsuit" in 2002, and that any claims arising out of those defects are time barred.[9] Accordingly, because this is now the law of the case, Brock Green is entitled to summary judgment as to Plaintiff's claims to the extent Plaintiff seeks damages related to or arising out of defects in Unit 305/306.

CONCLUSION

For the reasons presented herein, Brock Green respectfully requests that this Court reconsider, alter, and/or amend its denial of Brock Green's motion for summary judgment.

[9] Order Granting in Part Genoa's Motion for Summary Judgment at 7.

Brock Green incorporates by reference all memoranda of law, evidence, and oral arguments previously presented to the Court in this case.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: _____

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON 3 CHISOLM STREET, HOMEOWNERS ASSOCIATION, INC., ☐ Plaintiffs vs. BROCK GREEN ARCHITECTS AND PLANNERS, LLC, ET AL X Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2009-CP-10-267 MOTION INFORMATION & COVER SHEET

(check box above indicating submitting party)

Name, S.C. Bar no. and address of Plaintiff's attorney	Name, S.C. Bar no. and address of Defendant's attorney
Paul A. Dominick, Esq. David J. Parrish, Esq. Nexsen Pruet, LLC P.O. Box 486 Charleston, SC 29402 T: 843-577-9440 F: 843-720-1777	J. Patrick Norris, Esq. (SC Bar No.: 78270) Carlock Copeland & Stair, LLP 40 Calhoun Street, Suite 400 Charleston, SC 29401 T: 843-727-0307 F: 843-727-2995

✖ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider
Estimated Time Needed: 30 min. Court Reporter Needed: Yes

SECTION II: Motion Type

☐ Written motion attached
☐ Form Motion
I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ _____
Signature of Attorney for Defendant Brock Green Architects and Planners, LLC Date submitted

SECTION III: Motion Fee

✖ PAID - AMOUNT: $25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions: Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	_____ JUDGE CODE: _____ Date: _____

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

2781960v.1

FILED

2011 JUN 24 PM 4:32

JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2009-CP-10-267
3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC., Plaintiff, vs. CHISOLM STREET PARTNERS, LLC, et al., Defendants.	**PLAINTIFF'S MOTION TO RECONSIDER, ALTER, OR AMEND ORDER GRANTING PARTIAL SUMMARY JUDGMENT AS TO GENOA CONSTRUCTION SERVICES**

Plaintiff 3 Chisolm Street Homeowners Association, Inc. (the "HOA") moves the Court, pursuant to Rules 52(b) and 59(e), SCRCP, and all other applicable rules, to reconsider, alter, and amend its Order Granting in Part and Denying in Part Defendant Genoa Construction Services, Inc.'s Motion for Summary Judgment (the "Order") dated June 9, 2011. The grounds for this motion are as follows:

1. Genoa Construction Services, Inc.'s ("Genoa) summary judgment motion is based on its contention that the HOA filed this lawsuit more than three years from the date of architect Miles Glick's report dated April 8, 2003 (the "Glick report"), which identified some construction defects in one of the HOA's three buildings.

2. The Order states in pertinent part the following:

- "The HOA condominium project consists of three separate buildings, the "main building," which has metal frame windows, and the 'gym building' and 'caretaker cottage,' which have wood windows. Mr. Glick only examined the main building, and his report states that the comments in the report 'are specific to the main . . . building' and '[t]he other two buildings were not reviewed.'" (Order at p.3) (*emphasis added*)

- "When Genoa and the Developer completed the repair work, the HOA was informed and believed that the water intrusion issues and other issues referenced in the Glick report had been repaired." (Order at p.4)
- "Contrary to the Defendants' assertion that the HOA took no action to address the issues raised in the Glick report, the HOA took affirmative action by forwarding the report to the Developer and Genoa to repair the problems. The Developer and Genoa responded by repairing the problems and indicated that the problems had been fixed." (Order at p.5)
- "[T]he HOA did not learn that repairs performed by the Developer and Genoa to address the items in the Glick report were not properly and completely performed until ABS examined the main building in 2009 while it was onsite examining problems with the wood windows on the other two buildings." (Order at p.5)
- "[T]his Court finds that South Carolina's three-year statute of limitations on any claims Plaintiff could have brought relating to Genoa Construction Services' original stucco work on the conversion project has tolled. However, this Court finds there is a genuine issue of material fact regarding the repair work Genoa Construction Services was contracted to complete in response to the Glick report. When viewed in the light most favorable to the HOA, as the Court must for purposes of a summary judgment motion, the facts indicate that the HOA did not learn that repairs performed by the Developer and Genoa to address the items in the Glick report were not properly and completely performed until ABS examined the main building in 2009 while it was onsite examining problems with the wood windows on the other two buildings." (Order at p. 6) (*emphasis added*)

- "ORDERED, ADJUDGED AND DECREED that:

    1. Genoa's Motion for Summary Judgment is GRANTED as [sic] claims relating to the original construction work on the conversion project;

    2. Genoa's Motion for Summary Judgment is DENIED as [sic] claims relating to the repair work conducted in 2003;

    3. Genoa's for Summary Judgment is GRANTED as to all claims at that pertain to units 305 and 306."

3. The Court's Order finds that Mr. Glick only examined the main building and that the Glick report states that the other two buildings (i.e., the gym building and caretaker cottage) were not reviewed. However, paragraph 1 at the very end of the Order grants summary judgment as to claims "relating to the original construction work on the conversion project." Paragraph 2 at the end of the Order denies Genoa's motion as to claims relating to the "repair work conducted in 2003." The "conversion project" as referenced in the Order consists of all three buildings (main building, gym, and cottage). The term "conversion project" as used at the conclusion of the Order could be construed to include all three buildings. Genoa contends that the Order's use of the term "conversion "project" in the conclusion applies to dismiss the HOA's claims pertaining to all three buildings, despite the fact that Mr. Glick never looked at the other two buildings. In other words, Genoa contends that the Order as written grants summary judgment as to any claims related to the conversion work on the main building, gym, and cottage building.

Contrary to Genoa's contention, the body of the Order states that the Glick report was only applicable to the main building and, furthermore, the Order states that the Glick report specifically notes that the "[t]he other two buildings (i.e., the gym and cottage) were not reviewed." Moreover, the stucco repairs referenced in the Order apply only to the main building and not to the cottage or gym. Therefore, to the extent the Order is intended to apply to any of the HOA's claims pertaining

to the gym or cottage, the Order is internally inconsistent and contrary to the material facts presented. Accordingly, the Court should vacate, modify, amend, or clarify the Order to reflect that no portion of the Order applies to the gym or cottage.

4. As to the main building, which was the focus of the summary judgment hearing, the body of the Order states that the HOA's claims relating to Genoa' original stucco work on the conversion project "has tolled," but the Order then grants summary judgment to Genoa on "claims relating to the original construction work on the conversion project." The Order is internally inconsistent in that it holds the statute of limitations was tolled on the original stucco work, but then grants summary judgment as to "the original construction work," which includes the original stucco work.

5. As to the main building, the Order is also internally inconsistent and in error because it finds that "the HOA was informed and believed that the water intrusion issues and other issues referenced in the Glick report had been repaired" and "the HOA did not learn that repairs . . . were not properly and completely performed until ABS examined the main building in 2009, but the Order then concludes by granting summary judgment on the HOA's claims against Genoa for the original work that the HOA was led by Genoa to believe had been properly repaired.

6. As to the main building, the Order is internally inconsistent and in error because it addresses only original work and repair work related to "stucco," but then concludes with a broad reference to "original construction work" and "repair work" that is not limited only to stucco work. Genoa is improperly attempting to broadly construe these phrases in the Order to include the HOA's other claims related to the main building, namely the water problems associated with metal windows in that building. Moreover, the Order is also in error to the extent it is intended to grant summary judgment as to the HOA's claims for the costs to correct water the problems associated with the metal windows. The Order is in error because it correctly notes that Genoa led the HOA to believe

the windows had been repaired and the HOA was not aware that the repairs had not been properly performed until ABS examined the main building in 2009. In the concluding paragraph of the Order, however, it then appears to grant summary judgment as to the original work that was repaired.

7. As to the main building, the Order is in error and contrary to material issues of fact to the extent the Order attempts to distinguish between "original work" and "repair work" performed by Genoa on the main building. It is contrary to the facts, law, and logic for the Order to find that Genoa repaired problems with the original work but then attempt to exclude claims related to defectively repaired original work that the HOA was not aware had not been properly performed until ABS inspect that work in 2009.

WHEREFORE, for the above reasons, Genoa is not entitled to summary judgment as to any of the HOA's claims as to work (original or repair work) performed or provided by Genoa, and the HOA respectfully requests that the Court reconsider, alter, or amend its Order to the extent it grants summary judgment as to any of the HOA's claims against Genoa.

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June 24, 2011

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2009-CP-10-267
3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC., Plaintiff, vs. CHISOLM STREET PARTNERS, LLC, et al., Defendants.	**CERTIFICATE OF SERVICE**

This is to certify that copies of the foregoing **Plaintiff's Motion to Reconsider, Alter, or Amend Order Partial Summary Judgment to Genoa Construction Services, Inc.** has been served upon the following counsel of record either by facsimile, e-mail, and/or by U. S. Mail, postage paid, to the following addresses as shown below this 24th day of June, 2011.

FILED
2011 JUN 24 PM 4:32
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NEXSEN|PRUET

David J. Parrish
Member
Admitted in SC

June 24, 2011

VIA HAND DELIVERY

The Honorable Julie Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

Re: 3 Chisolm Street Homeowners Association, Inc. v. Chisolm Street Partners, LLC, et al
Case No: 2009-CP-10-267

Dear Ms. Armstrong:

Enclosed for filing, please find the original and one copy of Plaintiff's Motion to Reconsider, Alter, or Amend Order Granting Partial Summary Judgment to Genoa Construction Services, Inc. regarding the above-referenced case, along with this firm's check in the amount of $25.00 for the filing fee. I would appreciate you filing the original and returning the filed-stamped copy to our courier.

By copy of this letter, I am serving all counsel of record and Judge Roger M. Young.

With kind regards,

David J. Parrish

DJP/keh
Enclosures

cc: The Honorable Roger M. Young, Sr. (via hand delivery w/enclosure)
All Counsel of Record (w/enclosure)

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OR COMMON PLEAS
2009-CP-10-00267

3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC,

Plaintiff,

V.

CHISOLM STREET PARTNERS, LLC, et al.,

Defendant.

TRANSCRIPT OF RECORD

August 12, 2011
Charleston, South Carolina

B E F O R E:

THE HONORABLE ROGER M. YOUNG, JUDGE

A P P E A R A N C E S:

Mr. David J. Parrish, Esquire
Representing the Plaintiff

Mr. Franklin H. Turner, III, Esquire
Representing the Defendant Genoa Construction Services

Mr. Paul E. Sperry, Esquire
Representing the Defendant Brock Green Architects and Planners, LLC

Anne Bouley Meyer, RPR
Circuit Court Reporter

THE COURT: We are on 3 Chisolm Street Homeowners Association versus Chisolm Street Partners LLC, and others, 2009-CP-10-267.

I have got a plaintiff's motion to reconsider an order granting partial summary judgment to Genoa Construction. And then I've got Defendant Brock Green Architects and Planners LLC's motion to reconsider, alter or amend my judgment from my order.

So I don't suppose it matters in any particular order in which these go, but why don't we deal with the plaintiff's motion to reconsider first. Mr. Parrish.

MR. PARRISH: Yes, sir, thank you. I'm David Parrish here for the plaintiff, which is the Homeowners Association.

I don't know if you remember this when we argued these hearings I believe in late May or early June, and it was kind of a free-for-all at the time. There were a number of parties here. In fact, all the parties just about that filed a case. And we were here for probably two-and-a-half hours. It was a fairly lengthy hearing that afternoon.

I guess what I want to make clear is I can see where some of the confusion could have come up during the hearing. There are two parts to this case; there is the plaintiff's case against the general contractor,

and then there is the general contractor's third party claims against its various subcontractors.

The motion, or where we got started when the general contractor, Genoa, filed a motion for summary judgment based on the statute of limitations arising from a Myles Glick report that was issued back in 2003.

Subsequently, all the Genoa subcontractors kind of piled on behind that and made two motions. So Genoa was seeking to get rid of plaintiff's claims. And then the others below, the third-party claims, were also doing the same thing.

I think it's probably important for purposes today to realize that this is just between the Homeowners Association and Genoa is the only thing I am talking about here today. We are not talking about claims against subcontractors.

Another little thing that may have caused some confusion is that somehow on some of the things that were filed, some of the pleadings and notices and even orders, the case caption is reflecting some subcontractors that are direct defendants that have never been served in the case.

The amended complaint named some John Doe defendants, but I never served them. Genoa filed third-party complaints against them, and somehow it

apparently got picked up in a deposition notice or something. So the subs appeared up in the top part of the case when I didn't in fact ever sue them, never served any of them.

So just today is simply the issue is the plaintiff homeowners versus the general contractor and the architect. Those are the only two direct claims here. The plaintiffs have no claims against any other subcontractors in the case at this point in time.

So when we came over here, and I have a copy if you need it of the Myles Glick report. Mr. Glick, an architect, came out there in 2003. And this is right when the units had been finished, but they were still being sold by the developer. I think there were still like 26 empty units.

The project was brand new. It was an old building that was used at the Old Murray School down on Chisolm Street, and they converted it to condos, divvied it up and sold off the units.

The project has three buildings. There is the main building, which is really what we are talking about today; and then there is a cottage building, one condo in that; and then the gym building that got cut up into units. So three separate buildings.

And after the conversion was complete, but while

the developer was still on the scene, and Genoa was still on the scene, Mr. Glick came out there to look at some water intrusion issues, and he issued his now infamous April 8, 2003 report.

I guess as a threshold matter, Mr. Glick's report specifically says he only looked at one building, the main building. His report, right on its face says, the other two buildings that are listed were not reviewed, and his report does not address those buildings in any way whatsoever.

In fact, the order you issued granting partial summary judgment to Genoa, and in fact of the eight pages on the order, or however many pages there are, seven of them are my proposed order, but the conclusion changed a little bit.

That order issued by the Court, the one we're here about today, specifically notes that the Glick report didn't even look at the other two buildings, so therefore this would not trigger any type of statute of limitations as to the other two buildings. It's silent as to that.

Part of the confusion comes up is that at the end of the order it grants summary judgment as to all claims relating to the original construction work on the conversion project.

And as worded, and as Genoa is apparently attempting to interpret, they're interpreting that to mean the entire project, all three buildings, even though the order internally says he didn't even look at the other two buildings, he didn't opine as to those, therefore no statute of limitations could be triggered as to those buildings.

So as a threshold matter, the Glick report only dealt with the main building, but the conclusion in the order -- I have this in the motion to reconsider -- is kind of so broadly worded as to cause some potential confusion. At the very minimum it should only address the statute of limitations issues arising as to the main building, because Glick didn't look at the other two.

I think at the hearing a couple of people tried to advance the arguments that the HOA had some duty to go out and start investigation other buildings on the potential there may be problems there. And if I recall correctly, you quickly shut that down as there being no such duty in South Carolina.

So to be very specific, on page eight of the order, the conclusion section, paragraph one it says, summary judgment is granted as to claims related to the original construction work on the project. The

language there is being perceived to encompass the other two buildings that weren't addressed in the report, and therefore that's the first issue we're asking for some clarification or correction as to that issue.

And then that takes care of the cottage building and the gym building. And then the focus of the Glick report is the main building. And there are two aspects of this building that are at issue.

There are some metal windows on the building that the water leaks at, around, and through those windows. And there are some issues related to the stucco work on the building. Those are the two focuses of the case.

And this kind of goes to paragraphs one and two of the order. The order, as issued by the Court correctly in my opinion, cites the facts that the HOA got the Glick report, saw some problems, they gave it back to the developer, who then gave it back to Genoa. And then Genoa, and its subcontractors, went out there and made some repairs on the buildings.

And just so we are very clear on the record that at the hearing we submitted affidavits of Mike Parades, Jack Burnett, Scott Harvey, and Mike Parades. And we also submitted an Exhibit 245 to the Parades'

affidavit. And we referenced testimony from Mr. Parades' deposition of Jerry Huddleston. And that stuff is picked up in your order.

It says the HOA got the report, gave it to the developer, developer gave it to Genoa, and then Genoa made repairs, or caused people to make repairs, and then the HOA believed the problems were fixed. And your order then says based on that, finds the statute of limitations was tolled, you know, in the belief that the problems had been addressed.

In other words the HOA gave the developer Genoa an opportunity to repair it, thought the repairs had been made, and were not aware that there was a problem until Mr. Harvey of ABS, who was at this point in time dealing with the other two buildings -- and I was out there with him -- we walked over and looked at the main building and saw some problems over there. So this lawsuit was increased to include that building.

But the affidavits and the testimony, and with deference to the scintilla of evidence standard for summary judgment, the order correctly says, HOA thought the problems had been repaired, and therefore the statute of limitations was tolled and stoped.

The order says that. But the conclusion, the last -- just the last two sentences in the order it

grants summary judgment to Genoa relating to the original construction work.

And, you know, to the extent that's focusing on the main building, which was the only issue, there appears to be an internal inconsistency that the HOA can believe the problems were repaired and the statute is tolled, but then to try to make a difference between the repair work versus the construction work.

That order might is written to be applicable in Genoa's eyes as to its third-party subcontractors, but keep in mind at this point in time there is no evidence of any kind whatsoever that the HOA knew what Genoa was doing. They knew that Genoa was fixing it, but they don't know what subcontractors Genoa was using, or what the original subcontractors were.

So from the mind-set or the eye-set of the HOA as to Genoa, we've had the report, gave it to you and the developer, you all told us it was fixed, and therefore we didn't do anything else until 2009 we found the problem.

But this paragraph in here is almost viewed more like from the subcontractor's eyes looking to Genoa going, okay, you found out there were leaks on the building associated with our work. That's -- there could be a difference in statute of limitations between

the plaintiff and Genoa, versus Genoa and its original subcontractors and its repair subcontracts.

And I don't know if that's where the confusion got in because the Court got hit with, gosh, seemed like there were 20 memos. There must have been 3,000 page of paper got put in, 15 proposed orders. And I'm not sure that some cutting and pasting maybe some of the orders got transposed.

THE COURT: I don't know. I only had like 50 other things going on.

MR. PARRISH: I know. It's mind numbing to try to keep up with it. And my hats off to the Court for even trying to keep a handle on it. It's very confusing.

But at the end of the day, the body of the order correctly cites the facts in the view most favorable to the plaintiff, as the Court does. But the conclusions in there are almost geared more toward addressing claims between Genoa and its subcontractors. And I was over here saying, I'm not weighing in on those, I don't have direct claims against them, I will let them fight that fight.

But to the order, the extent it has in there, turned over the report, it was repaired, believed it was repaired, and that the statute was tolled based in

reliance, it's an equitable tolling issue, that order says all that there, but then the conclusion contradicts those findings. There are some internal inconsistencies in the order.

Like I say, the first one is the gym building and the cottage -- excuse me, the cottage building and the gym building weren't addressed in the Glick report at all, and should not be encompassed in any way whatsoever.

And then to the extent that the Court's trying to address the main building, the repair versus the original stucco of work. From the HOA's standpoint looking at Genoa, and Genoa is down below with its subs dealing with that problem, from the HOA's standpoint does it matter whether it was the original contractor, stucco contractor or the repair contractor that made the repairs.

In the HOA's mind the repairs were fixed. There was nothing to sue on because the problems had been fixed and therefore there was a tolling. But then at the end the order talks about the repair work versus original work.

And the order specifically is dealing with the stucco. And the other unanswered question is the metal windows are also at issue, and the order is kind of

silent throughout the body of the order. It doesn't mention any kind of statute of limitations claims as to the metal windows.

But then it uses the term repair work and original work, which is broad enough to actually encompass the metal windows. So it's not real clear whether these conclusions at the end are limited just to the stucco, which is the only thing that's really addressed in the order, or if it's wider than that.

THE COURT: So what is your proposed solution to this?

MR. PARRISH: The proposed solution is, number one, at the very minimum there is actually nothing in the record of any kind whatsoever that says the Glick report applied to the other buildings. So the cottage building and the gym building should not be in the mix. Your order specifically has a finding of that up front.

The second part of it is is the repair work and the conversion work on the main building. I'm not quite sure what the Court intended to do, was it just limited it to the stucco? Because like I said, the windows are at issue, the metal windows. There are leaks at and around those windows. Was it intended to encompass that?

And then the question is from the HOA

standpoint, the plaintiff's standpoint, the tolling -- the order can't say that the HOA's statute of limitations was tolled because they thought the developer and Genoa had fixed the problems, but then say the original work is out on the statute of limitations, the repair work is in. It seems like it has to be all or both.

I can't in my mind understand the distinction from the HOA standpoint. I can see where the Court might have a different view of that from Genoa's standpoint looking downstream. But how can if the HOA thought the work was fixed, and therefore the statute was tolled, was stopped, how can it say, the claim is valid as to the original work but not the repair work.

And keep in mind, Genoa is responsible for both. That's what the HOA is suing Genoa about, the work that was done.

So in due respect, given the fact that once again with great deference to the scintilla of evidence standard for summary judgment, we have got four or five affidavits and the deposition testimony referenced all said that they thought the work had been repaired and therefore did not file suit.

The order as issued cites that, it has a tolling on it, and it seems like if the repair work is tolled,

then the original work needs to be tolled also. In other words as to Genoa, there's a tolling issue as to whatever Genoa did on that building.

Now once you go below that, when Genoa is fighting with its subs, is the statute tolled as to Genoa coming back to the original work subs saying, hey, you didn't fix it, versus the repair sub, I don't know the answer to that. And like I say, I don't have a dog in that fight.

I am just looking at this strictly from the HOA's standpoint as to Genoa. Genoa did both the original and the repair work. And the HOA thought it was fixed, because the order says it was, then they both need to be fixed, or they're both tolled as to that. I can't sit here and make a distinction between the two.

The last thing is the architect, Brock Green, has filed a motion to reconsider, you denied the summary judgment. And I do remember this from the hearing, and the order -- I think the way you issued -- cites this. The Myles Glick report -- which is the only reason we were over here, that's the statute was based on that, that was all this hearing was about. We were here two-and-a-half hours, had every single sub in here arguing that issue.

The Myles Glick report does not say a word about architecture, it doesn't say a word about design fix and the architect is not mentioned. In fact you pretty quickly jumped on that and said, this report is totally silent as to architect.

Therefore the architect, as a design professional, can't come in here and say the statute ran based on the Glick report. The Glick report doesn't say there is an architect issue at all.

You properly, based on that, denied summary judgment as to the statute of limitations for Brock Green, and Brock Green is now asking you to reconsider that. And I would just suggest that your ruling on that is correct.

The Glick report on its face didn't mention it, and therefore they have no duty to go out and try to discover what defect they didn't know existed and had not been reported to them.

So just suffice it to say your order correctly denied Brock Green's motion for summary judgment. I do have a direct claim against them. And once again, this is from the HOA's eyes looking at the architect.

The motion for consideration, I kind of lay this out in a little bit more detail and I hit the high points. But as far as the order, to make the

conclusion paragraphs consistent with the text of the order it, number one, should carve out the cottage building and the gym building as not even being encompassed within the scope of the issue of the statute of limitation argument.

The only argument they had is, because you all knew that there were problems and Genoa was fixing this building, you ought to go out and sniff around for something over here. And that's not the law, and you quickly rejected that. It just was a little broad in the conclusions.

So carve out the gym building, carve out the cottage building. And then at the end I respectfully suggest that if it's tolled from the HOA's standpoint because the repairs were made, then it's tolled as to Genoa, as to both Genoa's original work and repair work. I can't distinguish the two.

So in a nutshell, that's my argument. And I'm happy to answer any questions that you have.

THE COURT: All right. Who's the responder?

MR. TURNER: I am, Your Honor. Trey Turner for Genoa Services.

May I approach, Your Honor?

THE COURT: Sure.

MR. PARRISH: Your Honor, I don't want to

interrupt Mr. Turner. The third paragraph in your order found against Jack Burnett as to his unit, and that's not even part of the motion to reconsider.

There are three paragraphs in the conclusion, I'm only addressing one and two. As to the extent you granted summary judgment as to Mr. Burnett and his unit, that's not an issue.

THE COURT: All right.

MR. TURNER: Your Honor, I'm here on behalf of Genoa Services. First I guess we need to talk about Lacy Painting. Plaintiff wants to say that we have to consider the Genoa order in isolation from all other orders in this case. I don't know that you can do that.

The Lacy Painting order is something that needs to be considered, and it is an issue. Lacy Painting was the painting contractor for the gym and the cottage building. All it did was the wood windows on the gym and the cottage building.

They moved for summary judgment against plaintiff upon plaintiff's direct claims against them, as well as on Genoa's cross-claims against them. The Court granted that summary judgment in full for work that they did on the gym and the cottage building. That's actually in the order saying that they had done

work on the painting of the gym.

The Court went on to say that the plaintiffs were on notice in May or June of 2003, when the Myles Glick report was presented to the board, and the board was told by Mike Parades as property manager that they needed to have the other two, the cottage and the gym buildings inspected, and then plaintiff chose not to do that.

But the order in Lacy Painting says that as of that time, the statute began to run on all three buildings.

So Genoa's position is Genoa is being sued for the exact same work that Lacy Painting has now been dismissed for. Were you to charge and reconsider the Genoa motion to bring those two buildings back in and allow plaintiff to pursue claims against them, you'd have two directly contradictory orders in this case.

You'd have one saying that for the painting work on the windows the statute of limitations had run as to Lacy. And one saying, as for that same exact work performed by the same people under the same facts and circumstances, applying the same law with the same notice to plaintiff, that it did not run for some reason as to Genoa.

So Genoa's position is if Lacy Painting is out

on their original work for those two buildings, then Genoa should be out.

It's very similar also for the main building. If the original work subcontractors are out for that original work, then Genoa should be out for that original work. It doesn't make sense that the statute ran as to the original work performed by those subcontractors, and then yet plaintiff is allowed to pursue claims on that exact same work against Genoa. It in essence makes Genoa an insurer of the project.

As for the Glick report, plaintiff's argument is that because Myles Glick and the litigation team that was in place at the time, their lawyer, general contractor, everybody who investigated that building, did not investigate the other two buildings, then plaintiff had no duty or obligation and the statute didn't run.

Outside of the Lacy Painting order, the Court heard testimony that Mike Parades said, and informed them, that they needed to inspect those two buildings and that they chose not to. The argument is, was that you heard at oral arguments and in briefs, that they would have discovered that they had claims had they inspected at that time. Had they sent their general contractor, their forensic architect, their lawyer over

at that time they would have done it.

Now plaintiff says they didn't have a duty to do that, there is no reason to do that. But plaintiff also says that when its expert now looked at the gym and the cottage building, they wandered over to look at the main building. Which is the -- they had some obligation to see if there were problems in the main building, given that it was built by the same people, at the same time, under the same conditions.

So we believe that your order as it stands now is correct on the facts and on the application of the law as it applies to those two buildings.

We also would point out that as the orders stand now in total, they are consistent. The Court has let out or dismissed claims for original work as to all of the subcontractors who did work on the main building; as to subcontractors who did work on the main building, and the cottage and the gym building; and on the subcontractors who only did work on the cottage and the gym building. And then for Genoa, on the original work related to all three buildings. Those are consistent.

What plaintiff is asking you to do is to make those orders inconsistent. We would object and say that that would be a misapplication of the law.

All right, on the metal windows our argument

still remains basically that if there is a work subcontractor out, we should be out. I want to point out a little bit, though, there is a little bit of a disagreement that wasn't raised because you found in favor of Genoa on the underlying order.

The metal windows issue was raised at the oral arguments in this case from the standpoint that plaintiff brought up these claims on defective repairs for the first time at the hering on March 20th. At that time we learned, for the first time, that sealant and caulking, defective repairs of sealant and caulking plaintiff thought were the issue, not condensation.

Condensation was discussed before. It's the only thing that has ever been brought to our attention from the standpoint of this case. Plaintiff's expert said he was only retained to look at condensation issues. This is all cited in the brief. You can look at the deposition transcript pages.

He said all he was asked to do was look at condensation issues. The only opinion that he had as to water damage or moisture intrusion was as it related to condensation issues. That he had done no tests on sealant and caulking. That he had no opinion about sealant and caulking. That the repairs proposed by Palmetto Craftsman, who is plaintiff's repair

contractor, would not address any water intrusion issues related to anything other than condensation.

Yet plaintiff now wants to say, or urges the Court to allow it to seek damages related to steel windows that by all appearances come from condensation. And condensation was an original condition.

Also cited in my memorandum, with the deposition transcript pages, every single unit owner that we deposed from the main building, I think there were eight or nine, testified that condensation was an issue when they moved in, and condensation remained a problem until today. That has always been the issue.

So we are kind of caught a little bit flatfooted with the sealant and caulking issue. But we would point it out because we don't believe that this argument now on sealant and caulking, that there is some defective repair to sealant and caulking somehow or another hid from the plaintiff that their condensation issue had been fixed. Because by plaintiff's own testimony it had been fixed, and they knew it had been fixed.

On the stucco issue, it's very similar. All the plaintiff did at the hearing was to show an invoice -- he did this with the windows too -- show invoices that repairs were done. There is no testimony or evidence

that those repairs were done defectively. None.

So what he did was show that there was some patching work done on the stucco. Now what he wants to do is to say, well, the patching work should allow me to recover for any installation work on the stucco, even though the stucco contractor has been dismissed because the statute of limitations ran on the original install work.

Plaintiff claims that the patching work somehow or another hid from him, or led it to believe that the installation issues had been resolved. But he doesn't provide, or the plaintiff doesn't provide any information showing that that is actually the case.

There is no evidence that Genoa or anybody else ever misled the plaintiff into thinking that the install issues -- and those install issues, Your Honor, were noted by Myles Glick in his report. He said there are ASCM installation issues.

Plaintiff's expert said the installation issues, which are ASCM installation issues, include lack of weep holes, lack of expansion joints, lack of flashing. So those issues were known.

Those issues -- the plaintiff's expert also said those issues are readily apparent with the naked eye. There is nothing that -- there is no way to think that

weep holes had been somehow or another corrected if you walk out and look and see there are no weep holes there.

So, Your Honor, really that is the basis of our motion, or our response. I would say that typically on a motion to reconsider, obviously it's to correct misunderstandings of fact or misapplication of the law or newly discovered evidence. There is no newly discovered evidence. There hasn't been anything done since the last hearing on the discovery standpoint.

Again we believe that the law was correctly applied. And we believe that you understood the facts, and that the Court under the facts from the simple standpoint that the facts are consistent throughout the orders as it relates to knowledge that there were three buildings involved, and what the issues were on the three buildings.

So then you have the plaintiff, or you have Lacy Painting's order again expressly stating that work was done in the gym. And under -- and that the statute ran as to the gym. And under the discovery rule, obviously that would apply to all the claims in the gym.

That at that point in time the statute began to run on all the claims. And so it would make sense that Genoa -- that that would include Genoa's original work.

I think that's it, Your Honor. Do you have any questions?

THE COURT: I have some, but I will just keep them to myself.

All right. Anybody else want to chime in?

MR. SPERRY: Your Honor, I'm here for Brock Green to argue my motion. If you are still considering the first motion, I can wait. If you're ready for my motion, I can go.

THE COURT: Why don't you go ahead and let's hear from you and then I will let Mr. Parrish respond to you. And if he wants to respond and all that to the previous motion as well he can.

MR. SPERRY: Thank you, Your Honor. I'm Paul Sperry. I'm here for Brock Green.

First of all, I appreciate you hearing from me today. I know it's somewhat unusual to be heard on a motion to reconsider, and I do appreciate you bearing with us today and listening to us on these various arguments.

Brock Green was the architect. You did deny our motion for summary judgment on the statute of limitations. And I'm here today to ask you to reconsider that, primarily based on some inconsistencies in the orders that were done for others

as compared to the order for Brock Green.

And one thing that I was concerned about is that for the statute of limitations, the key part as to when the statute begins to run is not when the plaintiff discovers who is at fault, it's when the plaintiff first is damaged, when they're first injured.

And the orders granting summary judgment for Genoa, and granting summary judgment for the subcontractors make it clear that the plaintiff was on notice of damages, and on notice of injuries at the time of the 2003 Myles Glick report.

Those damages and injuries don't change. That's why you have a three year statute of limitations. The plaintiff, during that three year time period, gets to go out, investigate further, and figure out who's responsible.

And there are several cases, including the Wiggins case, the Tollison case and the Cline cases that I have cited in my brief that stand for that. That if you go sue somebody, you can't make the argument that, gee, I've now discovered something else, and I wish I had sued somebody else for this injury.

Unless you do it within three years. If you do it after three years of the injury or the damage, you are out of luck. The statute of limitations has run.

The key part is the injury and the damage, rather than who the plaintiff thinks is responsible for those injuries and damage.

I cited these cases in my brief, but I have the Wiggins case, the Tollison case and the Cline case if I may approach.

THE COURT: Sure.

MR. SPERRY: So same injuries, same damage and what I'm asking you to do is apply the law equally to all the parties involved in the case; and that would be the architect and the contractor. And to make things consistent by granting summary judgment to Brock Green as to what was done to the contractor and the subcontractors.

Secondly, I also want to point out that the Myles Glick report, in section D of that report, did discuss design issues. And that section it discussed mechanical design issues, which could be related to condensation.

What has been alleged in this case is that damages are condensation, the water intrusion, issues with the stucco. The HVAC, the air conditioning, often has a lot to do with condensation. So that is a design issue that is specifically in the Glick report, and noted in the Glick report. That if it was a

requirement for the Glick report to specifically discuss design issues, it was discussed.

Damages, they're on notice of that, they're on notice of injury, and they are on notice of a design, specific design issue in 2003. For that reason as well, Brock Green is entitled to summary judgment.

I also wanted to address the other buildings. Because you have the main building, then you have the cottage, and then you have the gym. As was already noted, and in your prior orders for the contractor and subcontractor, you granted summary judgment as to all three buildings.

And in the order for Lacy Painting, on page five of that order it was stated, in this instance the board of the HOA had actual knowledge of the leaking windows and sealant failures identified in the Myles Glick report, but also in May and June 2003. Acknowledged a need to investigate all three buildings to determine the full extent of the damage. This acknowledgment starts the statute running.

So not only does the Myles Glick report put them on notice of problems with the main building, he told them, guys, I need to go out and take a look at all these buildings, which is important for two reasons.

One, it puts them on notice that there could be

problems with all the buildings, not just the main one. And, two, Myles Glick is an architect. Myles Glick, if he had gone out and looked at the three buildings and if he thought there were architectural issues, he would have put them on notice specifically of those issues at the time.

You got the damages. You got the injury. You got the ability to have your architectural expert determine if there were architectural issues back in 2003, not wait until 2008, 2009 or so like the plaintiff waited.

There was some suggestion that there was a tolling of the statute of limitations as to the repairs that were done. Brock Green had no involvement in the repairs. There's no evidence that they had any involvement in the repairs. No allegation of that.

The orders that were signed or consistent were saying that the repairs were done by the developer and by the contractor, Genoa. There has been no reference to Brock Green being involved in them at all.

So to the extend that tolling applies to Genoa or to the developer, it does not apply to Brock Green.

May I approach? Your Honor, what I'm handing to you is an exhibit that I put together that has excerpts from various orders that were signed granting summary

judgment for Charleston Glass, Metro Water Proofing, Fox Steel, granting summary judgment to Pardee and granting summary judgment to Lesco Restoration.

And the important part of these excerpts is that they note that any allegations that the plaintiff is alleging for the main building deals with the repairs to the main building. And Brock Green had nothing to do with those repairs.

So what I'm asking is to make Brock Green's order consistent with these orders. And if that's all that the plaintiff is alleging, as was noted in these orders as to the main building, then Brock Green should be granted summary judgment as to the main building because it had no involvement in the repairs that the plaintiff seeks recovery for damages.

Then one other area I wanted to address as to Brock Green is that if summary judgment has been granted to the contractors and to the subcontractors, then Brock Green cannot be liable for any contract administration, any site observations that it did during construction.

Because at that point it's being held liable for things that have already been dismissed. It can only be liable to the extent that the contractor did something wrong.

And if the plaintiffs were already on notice that a contractor did something wrong in 2003, Brock Green cannot therefore be liable for any observations of bad work. That clearly is a construction issue. And based on your prior ruling, that -- on the prior ruling, that now would be an issue that was granted summary judgment.

So to the extent that Brock Green remains in the case on design, it cannot remain in the case as to observations of construction defects, or anything to do with the actual construction being wrong.

And then as to the Burnett's units, that's units 305 and 306. In the Genoa order that was signed you held that the Burnetts regard, because they were on notice of design and construction defects. So again, trying to make the orders consistent.

If they are on notice of design defects, as was stated in the Genoa order, then Brock Green is entitled to summary judgment as to the Burnett's units, which would be 305 and 306.

To summarize, Your Honor, what I'm asking is that under the Wiggins cases that the key part is when the damages happened, and the clock starts to tick then. If you have a plaintiff in their complaint alleging damages association with condensation, damages

association with stucco, damages associated with water intrusion. That all started to tick in 2003. I agree with the orders that say that. What I'm asking is that Brock Green be granted summary judgment, be consistent with those orders.

If that is not done, I'm asking some modification of the order to make it clear that Brock Green is not liable for any of the construction. And that Brock Green is not liable for anything on the main building. Because the main building, in the orders that have already been executed, only -- the allegations on that main building only applies to the repair work that was done.

THE COURT: Okay.

MR. SPERRY: Thank you, Your Honor.

MR. PARRISH: Your Honor, I promise this will be brief. I guess at the root the issue or problem we are having is the Court is trying to delve through a bunch of disputed facts. That's the main issue that is the cause of the problem. That aside --

THE COURT: Which is where I always regret having ever granted the summary judgment motion. And I keep saying to myself, just deny them all, that's the easiest way to do this.

And then I occasionally think, well, that's not

really how to do the job. Someone shouldn't have to stay in to the end if they deserve to get out. But especially in these construction cases, it's a nightmare.

MR. PARRISH: This is a messy set of facts in this case, especially the procedural posture we are here in today

THE COURT: A flowchart would be really nice.

MR. PARRISH: And I'd be happy to send one.

THE COURT: That would be great. Because it's impossible to keep up with this just, you know, in a word fashion. A flowchart with, you know, a picture or a visual learner like me often finds it very helpful.

So if you want to do it, take a stab at it, that would be good.

MR. PARRISH: I'd be happy to, Your Honor.

If I may approach, I'm just going to make it easy. Because following this thing, just the orders and the memos, I have a banker's box just for these proceedings. If I may just hand up to your clerk, it's a copy of an email, Exhibit 245 of the Parades' deposition, and the three affidavits. And counsel has this. It was submitted at the last hearing.

I'm just going to, for the benefit of that, because it addresses, this little memo addresses the

developer on the back on making repairs on the windows.

If I may approach. Just a quick peruse of this, it kind of puts in factual issues that are contrary to Genoa's arguments to some of the issues. Those are in the file, but I'll just hand it to you so that you don't have to go looking for it.

I do agree with Mr. Turner that the Lacy Painting order is inconsistent with the Genoa order that I'm here about. And what really makes it confusing is in that order it says, Lacy Painting is granted summary judgement as to the plaintiff's, my client's, claims.

And this goes back to the Lacy order. Lacy is showing up as a direct defendant being sued by the plaintiff. I filed John Doe claims. I have never served Lacy Painting. There is nowhere anybody can bring in there showing a certificate of service that Lacy Painting was ever sued by me.

Lacy Painting was brought in by Genoa on a third-party complaint. But the order says plaintiff's claims probably because of some confusion over the caption.

This is at the hearing. I went to some pains to try to impress that that's an issue between Genoa and Lacy. I haven't sued Lacy. So it would be kind of

weird for me in here trying to oppose Lacy's summary judgment motion on something I hadn't sued them on. That was between Genoa and Lacy.

But there is an inconsistency in this. And I think Genoa filed a notice of appeal of it, and then maybe it got dismissed. I'm not quite sure what that is. But that's a fight, in my mind, between Genoa and Lacy. But it does create some inconsistencies in there.

And even another factual issue is, the main building is steel-frame windows; metal frame with glass in it. The gym building is wood windows. And the lawsuit started when the wood windows started to rot, in the 2007 issue, 2008 time frame.

Lacy did the paining on the wood windows. To my knowledge, and like I said, we didn't hire Lacy Genoa did, they didn't do anything on the main building. The Glick report is the main building. And Lacy is out on something -- on a building that Glick didn't even look at.

But once again I let Genoa address that because I have never sued Lacy Painting and it doesn't seem appropriate for me to be in here opining on that. But I do agree there are some internal inconsistency on that, and I think it's because the caption got mucked

up here.

But at the end of the day there are different windows on two buildings; wood windows, metal windows. Glick didn't even look at the other windows. And there is evidence in the record, I've given you copies of the deposition transcripts -- I didn't submit that again because they're kind of thick documents.

There is evidence in the record that they got the Glick report, gave it to Genoa, Genoa fixed it up, and they thought it was finished until 2009 when they were dealing with rotting windows on a building that had never been looked at, and wandered over and they found water had been migrating into the wall cavity of the main building after repairs were made to that.

That little memo or email from the developer and Genoa it says, we believe the windows for the most part are not leaking. They had been out there doing caulking, patching, working on the stucco.

So for those reasons I believe the order as to Genoa, the order correctly says it was tolled. The order, it seems to breakdown internally or inconsistently is when it tries to make distinctions between repair and original work, as to the plaintiff's claims against Genoa; and to the extent the broad terms of the order would encompass two buildings that

everybody in this rooms agrees that Mr. Glick did not look at.

So that's my response in a nutshell unless you have any questions.

THE COURT: No.

MR. PARRISH: Your Honor, just one other thing that dawned on me. Not every single subcontractor sued by Genoa filed their motions. I think some saw the order that came out in this and filed the remainder.

If I understand the calander correctly, Judge Jefferson is scheduled to hear those the week of October -- August 23rd, two weeks.

What you do with this might affect that. And it seems like it's going to create more confusion if we get two different judges trying to address the same issue. I don't know how to fix that.

But I would point that out that it would seem like it would be the appropriate place to leave those here because we're going to even have -- I don't know how you want to do that. And I'm just pointing that out because that train is coming down the track two weeks from now

THE COURT: One thing I know I'm not going to do is to volunteer to have this case assigned to me. And I know I'm not going to have a ruling for you by the

end of next week.

While it is chambers week, I have an entire day on construction class action suit on Tuesday hearing. Keep having hearings piled in on Monday right now, and Wednesday, Thursday, Friday is the judicial conference.

So I'm not going to rule on it next week. And if she is holding court on the 23rd, well then take your best shot at it, what she wants to do. I don't know.

I'm not chief administrative judge. I'm not volunteering to take on anymore than what I got because I've got way too much. And if Judge Jefferson is comfortable ruling on it, by all means.

MR. PARRISH: I wasn't suggesting you take the case. In fact, depending on how you rule, I might not want you to take the case.

THE COURT: You might have a better shot with her. I really don't know. But I'm not going to have a ruling that reconciles all this by the time you guys have hearings set in front of her.

MR. PARRISH: As a courtesy to all counsel, in my mind it seems like it might behoove to ask Judge Jefferson, might behoove her to delay hearing a couple of those until this part of it gets sorted out.

I will address that with them. You don't need

to worry about doing that. And thank you for accommodating us over here today. We have a scheduling order that we are getting outside of, and we appreciate you taking a look at this stuff. Thank you.

MR. TURNER: Can I have one brief?

THE COURT: Sure.

MR. TURNER: I'd like to respond to Brock Green, and then I have got one more thing about plaintiff's motion.

On the Brock Green motion, all I would say is that to the extent that you allow original work to go forward, then you would then -- and allow Brock Green to get out, Genoa then would be the only person really on the hook for all original work. And obviously Genoa would strongly object to that.

I believe that it's hugely prejudicial for them. They would be, again, the insurer of all the original work done by all the subs, and the architect, and everybody else on the building, but the only person that it really came down to is Genoa.

On this Lacy Painting thing. Plaintiff keeps saying that Genoa served Lacy Painting as a third-party defendant, and that's just not how it happened. We have cross-claims against Lacy painting. We cross-claimed against a named defendant.

My understanding is, and I wasn't in the case at the time, but my understanding is that originally John Doe defendant was named for doing the painting on the cottage building. And that somehow or another Lacy Painting's name came out.

We served them. Genoa served them and served them with cross-claims which they answered. Those are basically pass-thru claims from the standpoint of Genoa saying, to the extent that there is anything wrong with the windows, we think that it was Lacy Painting's fault.

Again the exact same kind of facts and circumstances. But I will point out, Lacy Painting thought that they were a direct defendant. And they stood in court in oral arguments on two different occasions -- and again the transcript, I have cited to this in our memo -- but on two occasions said, Your Honor, for the record we are Lacy Painting and plaintiff has direct claims against us.

The plaintiff didn't object at that time. Lacy Painting served discovery on plaintiff and on us. And in all those discovery responses they named themselves as defendant. They appeared in all the motions. They moved for summary judgment on plaintiff's direct claims against them, as well as to Genoa's cross-claims.

So from Genoa's standpoint, I'm not sure that it makes a whole lot of difference from this standpoint. But this is the thing that I've forgotten to say, and it may be one of the more important things. And I apologize I walked out of the office without picking up the case, but the case is Ulmer versus Ulmer, and I have got a cite to it in my memorandum.

But what that case says is an unchallenged ruling, right or wrong, is the law of the case. And in this situation we have an unchallenged ruling as to Lacy Painting. Plaintiff didn't move to reconsider the Lacy Painting order, nor did Genoa. It's not appealed.

So we have an unchallenged, uncontested ruling. And I don't know that it matters whether or not it was a ruling as to a direct defendant or a third-party defendant or a cross-claimant or however you want to define them, the fact just remains that the law of the case is that the statute of limitations began running on all three buildings in May or June of 2003. So I don't know that it really matters one way or the other.

I will just make one last comment, and I won't kind of go through the hearing transcript again, my memorandum is cited to this. But I will just point out again that at the oral arguments in the original

motions for summary judgment, I think you'll remember that we went over extensively whether or not this was a defect case, a failed repair case, or an original work case.

I think that you'll remember that plaintiff repeatedly said that the only thing in litigation were things that had been repaired. And the situation of condensation, for example, that wouldn't be the case.

But again we asked for a stipulation that this was only a failed repair case. I think your reply at the time was, I don't know how many different ways plaintiff can say it, this is a failed repair or defective repair case only.

And we believe, based on that, you've let out the subcontractors and Genoa for original work. And we believe that that comports to both the facts as well as to the correct application of the law.

Thank you, Your Honor

THE COURT: Okay. Well unless somebody else has something they want to say, we will take it under advisement, see if I can sort it out.

If you all want to get together and come up with a flowchart as to who is what on this, and how I have ruled on various things. I hope you all certainly can appreciate, I mean I know it's difficult, and you all

are spending a lot of time on this.

And I try to give it the most attention I can, but as a practical matter every week we are doing something. And one week it's this, and next week it's that, and next week it's that.

So when I can focus on it, it's usually just for a couple hours at a time and then you rule and you move on. And you hope you don't screw it up too bad. Sounds like some people think I did, and some people think, you did good, it all depends on how you rule.

But I do want to try to get it right. So I just happen to be one of those people that on really complicated factual things, and when there are so many different parties and how they all play.

I try to remember when I am talking to jurors that there are different types of learners in this world, and I happen to be more of a visual learner. And I have to see things sometimes in order to get it to click.

And I have had my cases where sometimes I just have to draw out a little diagram. So it's helpful for me. But it also takes a little bit of time to do that. So time is a little bit precious, and you all are billing people by the hour anyway.

See if you can get somebody -- if you all can't

come up with something that you can agree on, if not then everybody submit one. But I do find it helpful on a complicated case to have a little flowchart. So if you all can come up with that, do that.

As I said, I'm not going to get this next week. I would love to, but it's not going to happen. So I am not going to promise you something I can't do.

And if you want to get to Judge Jefferson and say look, you know, Young ruled on some of this stuff, we have asked him to reconsider, it's going to be a little bit more time before he gets it sorted out, and it might not make any sense to hear some of these, well I can't imagine why she wouldn't agree to go along and not get in the middle of this. As to whether or not then what happens after that, well we will just see.

MR. PARRISH: Thank you for your time, Your Honor.

THE COURT: Thank you.

(Whereupon, the proceedings in this matter before the Court were adjourned.)

* * * * *

C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record, and of all the proceedings had and evidence introduced in the above captioned case, relative to appeal, in the Circuit Court for South Carolina, on the indicated date.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Anne Bouley Meyer

Anne Bouley Meyer, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 Chisolm Street Homeowners Association, Inc.,

Plaintiff,

vs.

Chisolm Street Partners, LLC, Murray School Partners, LLC, Genoa Construction Services, Inc., Masterpiece Millwork, Inc., Allen Roper, Jr. d/b/a R. Masonry Brickwork, Carolina Roofing Systems, Inc. and Lacy Painting,

Defendants.

Genoa Construction Services, Inc.,

Third Party Plaintiff,

vs.

The Fox Steel Company, Carolina Services, Inc., Lesco Restoration, Inc., Ferst Plastering, Inc., Charleston Glass & Mirror Company, 3D Renovations, Williams Mechanical Mastercraft Interior & Exterior, Coastal Glass and Block, Adams Davis & Partners, Troy Pardee Heating and Air Conditioning (d/b/a Pardee Heating and Air), Metro Water-proofing, Inc., CT Windows, Limited, and Architectural Materials & Systems,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-00267

MASTERPIECE MILLWORK, INC.'S MOTION FOR SUMMARY JUDGMENT

FILED
2011 SEP -1 PM 4:31
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

YOU WILL PLEASE TAKE NOTICE that the Defendant Masterpiece Millwork, Inc. ["Masterpiece"], by and through its undersigned attorneys, will move before this Honorable Court at a date and time to be arranged by the Court for an Order pursuant

to Rule 56, S.C. R. Civ. P. granting Summary Judgment in favor of Masterpiece on all of the causes of action filed against it in this matter.

The ground for this motion is that the statute of limitations had expired prior to the these claims being filed against Masterpiece. Masterpiece incorporates by reference the facts and arguments set forth in Lacy Painting's Memorandum in Support of Motion for Summary Judgment and the subsequent Order granting Lacy Painting's Motion for Summary Judgment.

This motion is supported by the orders and other pleadings filed in this action, the arguments of counsel, and any other material the Court may receive.

Respectfully Submitted,

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September 1, 2011

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This is to certify that a copy of the foregoing Masterpiece Millwork, Inc.'s Motion for Summary Judgment has been served upon the following counsel of record via US mail and/or electronic mail as shown below this 1 day of September, 2011.

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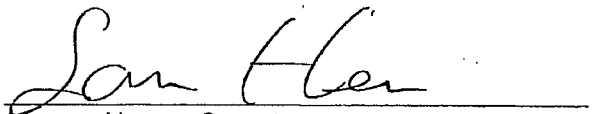
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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON 3 Chisolm Street Homeowners Association, Inc., Plaintiff, vs. Chisolm Street Partners, LLC, Murray School Partners, LLC, Genoa Construction Services, Inc. Masterpiece Millwork, Inc., Ferst Plastering, Inc. Carolina Roofing Systems, Inc. and Lacy Painting, Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2009-CP-10-267 **DEFENDANT LACY PAINTING'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

FILED
2011 MAR 21 AM 11:51
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Genoa Construction Services, Inc.,

Third-Party Plaintiff,

vs.

The Fox Steel Company, Carolina Services, Inc., Lesco Restoration, Inc., Ferst Plastering, Inc., Charleston Glass & Mirror Company, 3D Renovations, Williams Mechanical, Mastercraft Interior & Exterior, Bonifay Masonry, Coastal Glass and Block, Adams Davis & Partners, Troy Pardee Heating and Air Conditioning (d/b/a Pardee Heating and Air) and Brock Green Architects and Planners,

Third-Party Defendants.

PLEASE TAKE NOTICE that the Defendant Lacy Painting, by and through its undersigned attorney, shall, and hereby does, move this Honorable Court for an Order granting summary judgment in favor of the Defendant Lacy Painting in the above-captioned matter upon the statute of limitations, that there are no genuine issues as to any material

fact and that the Defendant Lacy Painting is entitled to judgment as a matter of law in its favor.

This Motion is based upon the pleadings in the within action, memorandum in support of this motion and attachments thereto, upon Rule 56 of the South Carolina Rules of Civil Procedure, and upon such additional law and argument as shall be appropriate.

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Charleston, SC
March 18, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing and/or electronically forwarding a copy properly addressed and with sufficient postage affixed thereto on this 18th_day of March, 2011.

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2011 MAR 21 AM 11:51
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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON 3 Chisolm Street Homeowners Association, Inc., Plaintiff, vs. Chisolm Street Partners, LLC, Murray School Partners, LLC, Genoa Construction Services, Inc. Masterpiece Millwork, Inc., Ferst Plastering, Inc. Carolina Roofing Systems, Inc. and Lacy Painting, Defendants. Genoa Construction Services, Inc., Third-Party Plaintiff, vs. The Fox Steel Company, Carolina Services, Inc., Lesco Restoration, Inc., Ferst Plastering, Inc., Charleston Glass & Mirror Company, 3D Renovations, Williams Mechanical, Mastercraft Interior & Exterior, Bonifay Masonry, Coastal Glass and Block, Adams Davis & Partners, Troy Pardee Heating and Air Conditioning (d/b/a Pardee Heating and Air) and Brock Green Architects and Planners, Third-Party Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2009-CP-10-267 **DEFENDANT LACY PAINTING'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE PARTIAL SUMMARY JUDGMENT**

FILED
2011 MAR 28 PM 2:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY_____

Defendant Lacy Painting, identified in Plaintiff's Second Amended Complaint as John Doe #1, hereby submits its memorandum in support of its Motion for Summary Judgment, and in so doing, pursuant to SCRCP 10(c) incorporates by reference the arguments presented by Charleston Glass and Mirror Company and Genoa Construction

Services, Inc. Lacy Painting reserves and does not waive the right to adopt other arguments as may be presented.

As an additional fact specifically related to Lacy Painting, Lacy Painting acted as a painter on this project. Plaintiffs have alleged that improper painting has led to water intrusion and damage. As is well documented and argued in other memorandums, not only is the "should have known" standard met, in this case it is clear the Plaintiffs had actual knowledge of problems with water intrusion more than three years prior to the filing of the lawsuit.

Base on the above, Lacy Painting respectfully requests this Court grant its Motion for Summary Judgment or, in the alternative, Partial Summary Judgment.

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March 28, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing and/or electronically forwarding a copy properly addressed and with sufficient postage affixed thereto on this 28th day of March, 2011.

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2011 MAR 28 PM 2:01
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CLAWSON & STAUBES, LLC

Kathryn Mixson

By: Kathryn Mixson, Legal Assistant

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON 3 Chisolm Street Homeowners Association, Inc., Plaintiff, vs. Chisolm Street Partners, LLC, Murray School Partners, LLC, Genoa Construction Services, Inc. Masterpiece Millwork, Inc., Ferst Plastering, Inc. Carolina Roofing Systems, Inc. and Lacy Painting, Defendants. --- Genoa Construction Services, Inc., Third-Party Plaintiff, vs. The Fox Steel Company, Carolina Services, Inc., Lesco Restoration, Inc., Ferst Plastering, Inc., Charleston Glass & Mirror Company, 3D Renovations, Williams Mechanical, Mastercraft Interior & Exterior, Bonifay Masonry, Coastal Glass and Block, Adams Davis & Partners, Troy Pardee Heating and Air Conditioning (d/b/a Pardee Heating and Air) and Brock Green Architects and Planners, Metro Waterproofing, Inc., CT Windows Limited, and Architectural Materials and Systems, Third-Party Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2009-CP-10-267 **ORDER GRANTING LACY PAINTING'S MOTION FOR SUMMARY JUDGMENT**

FILED
2011 JUN -9 AM 11:58
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

1

This matter comes before the Court pursuant to numerous Motions for Summary Judgment filed by various Defendants and Third Party Defendants in the above referenced case.

Findings of Fact

The case involves alleged construction deficiencies at 3 Chisolm Street arising out of the conversion of a vocational school to luxury condominiums which took place between 2000 and 2002. Three buildings were included in the conversion: the main building, the gym, and the cottage. The three buildings are in close proximity to each other and are all adjacent to a small common parking area. Genoa Construction Services, Inc. (Genoa) acted as the general contractor for the project. Genoa contracted with Lacy Painting on or about January 24, 2001, for Lacy Painting to provide painting services including, but not limited to, the painting of the windows on the Gym. Lacy Painting last worked on the project during June, 2002. The Certificate of Occupancy was issued in approximately July, 2002.

After construction was completed, the Plaintiff, 3 Chisolm Street Homeowners Association, Inc., began experiencing water intrusion and other problems with the buildings. They hired Myles Glick, a forensic architect, to investigate the problems. On January 30, 2003, Mr. Glick conducted a visual inspection of the property while accompanied by Joe Dapore, Esquire, the HOA's attorney, and Tom and Brett Carlson, who were representatives of a local contractor, Calibogue Construction.

Mr. Glick issued a report dated April 8, 2003, which cited numerous, significant and pervasive deficiencies at the property, including water intrusion and sealant failures

at the windows, condensation on the inside of the glass window panes, problems with the roof, and cracks in the stucco in the courtyard area. It also cited that there was an extensive amount of mold and mildew in the units and that the mold and mildew presented a clear and present danger in terms of health for the individuals that occupy the units. He went on to say, "The removal of mold and mildew within the wall cavities is extremely important, because without the removal of mold and mildew, the problem will persist and grow." He recommended that a full investigation be made, which included destructive testing.

He concluded:

> All of the above issues are significant and were persuasive throughout the entire building. I would recommend that these concerns be confirmed and documented through a program of destructive testing so that decisions can be made for corrections. Without correction, the issue of sales of unsold units and resales will come into play. **I recommend that the board seek legal counsel relative to the impacts of the above issues as well as, pursuing a forensic report documenting and recording the above issues.** This report only represents observations during a limited site visit and other construction deficiencies may exist. [Emphasis added]

A copy of the Glick report was sent to Jack Burnett, the President of the HOA. The report was discussed on at least two different occasions by the Board of Directors for the HOA as reflected by the meeting minutes on May 6, 2003 and June 10, 2003. In those meetings, the Board discussed the steps that they needed to take for additional investigation and destructive testing in all three buildings. Nevertheless, no additional investigation was performed and no legal action was taken.

Water intrusion problems continued and the possibility of legal action was again addressed as reflected in the meeting minutes of February 6, 2006. At that time, Joe



Dapore, the HOA's lawyer, advised the HOA that they had until April, 2006, to file suit over the water intrusion and other possible construction related issues. Notwithstanding multiple Board meetings in which the Board discussed known construction issues, the need for additional investigation, advice from Joe Dapore, their lawyer, and Myles Glick, their forensic architect, the Board did not take legal action until January, 2009. This is nearly six years after the Board of the HOA was put on notice of the problems by Myles Glick. It is also nearly six years after the Board discussed the need to further investigate all three buildings renovated by Genoa, including the gym and the cottage, to determine the full extent of the damage.

On April 8, 2010, Plaintiff filed a Second Amended Complaint alleging negligence, negligence per se, breach of implied and express warranties and violation of the South Carolina Unfair Trade Practices Act as to Genoa, Chisolm Street Partners (CSP), Lacy Painting, and others not relevant here. Genoa answered and filed Cross Claims against several parties, including Lacy Painting, for contractual and equitable indemnity, negligence, negligent misrepresentation, breach of contract and contribution. CSP also answered and filed Cross Claims against several parties, including Lacy Painting, for contractual and equitable indemnity, negligence, and breach of contract.

Conclusions of Law

South Carolina law imposes a three-year statute of limitations on actions concerning damage to real property, general negligence claims, and claims arising out of "a contract, obligation, or liability, express or implied." S.C. Code § 15-3-530 (2010). In each of those instances, Plaintiff benefits from the "discovery

rule" of S.C. Code § 15-3-535 that tolls the limitations period until such time that a plaintiff reasonably ought to have known that it had a cause of action against another party. *Barr v. City of Rock Hill*, 330 S.C. 640, 644 (Ct. App. 1998). Under the discovery rule, the Statute of Limitations runs from the date the injured party either knew or should have known by the exercise of reasonable diligence that a cause of action had arisen from the wrongful conduct of the tortfeasor. *True v. Monteith*, 327 S.C. 116, 119, 489 S.E.2d 615, 616 (1997). The fact that the injured party may not comprehend the full extent of damage or appreciate the exact nature of the wrong is immaterial to the discovery rule analysis. *Christensen v. Mikell*, 324 S.C. 70, 73, 476 S.E.2d 692, 694 (1996). *See also Dean v. Ruscon Corp.*, 321 S.C. 360, 365 (1996). In this instance, the Board of the HOA had actual knowledge of leaking windows and sealant failures identified in the Myles Glick report, but also, in May and June of 2003, acknowledged the need to investigate all three buildings to determine the full extent of the damage. This acknowledgment starts the statute running.

Plaintiff maintains that repairs performed by Genoa and/or the Developer following the Glick Report temporarily "fixed" the problems until they resurfaced some years later. Thus, Plaintiff argues that its claims are not barred by the statute of limitations because its claims are for "defective repairs" rather than original work. This argument does not apply to Lacy Painting, as Lacy Painting did not participate in any of those repairs and did not perform any work on the project at any time after January, 2003, the time when Myles Glick, Tom Carlson, and Joe Dapore inspected the property.

Accordingly, the Court hereby finds that South Carolina's three year statute of

limitations on any claims Plaintiff could have brought against Lacy Painting began to run in 2003 when Myles Glick placed Plaintiff on notice of potential issues with Lacy Painting's scope of work on the project, and the Plaintiff acknowledged the need to investigate further to determine the full extent of the damage. Because Plaintiff did not file a lawsuit until January 16, 2009, the statute of limitations bars Plaintiff's action as it concerns Lacy Painting's scope of work. This Court concludes that there is no genuine issue as to any material fact and Lacy Painting is entitled to judgment as a matter of law.

In addition, Genoa and CSP have filed cross claims against Lacy Painting. The Court hereby finds that Genoa and CSP are entitled to Summary Judgment as it concerns Lacy Painting's scope of work on the project because Plaintiff is barred by the three year statute of limitations under SC Code § 15-3-530. As a result, Genoa and CSP do not have indemnification actions against Lacy Painting, and Lacy Painting is likewise entitled to Summary Judgment in full.

WHEREFORE, this Court hereby grants Lacy Painting's Motion for Summary Judgment in full for all claims brought against Lacy Painting by Plaintiff, Genoa, and CSP.

IT IS SO ORDERED.

The Honorable Roger M. Young
Presiding Judge of the Ninth Judicial Circuit

Charleston, South Carolina
April 27, 2011

Haynsworth
Sinkler Boyd, P.A.

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September 1, 2011

VIA HAND DELIVERY

The Honorable Julie Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: 3 Chisolm Street Homeowners Association, Inc. v. Chisolm Street Partners, LLC, Genoa Construction Services, Inc., Masterpiece Millwork, Inc., et al. and Genoa Construction Services, Inc. v. The Fox Steel Co., et al.
Case No.: 2009-CP-10-267

Dear Ms. Armstrong:

Enclosed for filing please find the original and one copy of Masterpiece Millwork's Motion for Summary Judgment in the above-referenced matter. I also enclose our firm's check in the amount of $25 for the filing fee. I would appreciate it very much if you would file the pleading with the Court and then return a clocked copy to me.

With best regards,

Yours very truly

Jenny Costa Honeycutt

JCH/lah
Enclosure

cc: David J. Parrish, Esquire *(via email only)*
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Ryan McCabe, Esquire *(via email only)*
Franklin H. Turner, III, Esquire *(via email only)*

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

Appeal from the Court of Common Pleas
For Charleston County
Honorable Young M. Young, Circuit Judge
Civil Action No.: 2009-CP-10-267

---

3 Chisolm Street Homeowners Association, Inc., Plaintiff-Appellant,

v.

Chisolm Street Partners, LLC, Murray School Partners, LLC, Genoa Construction Services, Inc., Masterpiece Millwork, Inc., Allen Roper, Jr. d/b/a Masonry Brickwork and Stucco, John Doe #1, John Doe #2, and Brock Green Architects and Planners, LLC, Defendants,

Genoa Construction Services, Inc., Third-Party Plaintiff,

v.

The Fox Steel Company, Carolina Services, Inc., Lesco Restoration, Inc., Ferst Plastering, Inc., Charleston Glass & Mirror Company, 3d Renovations, Williams Mechanical, Mastercraft Interior & Exterior, Coastal Glass and Block, Adams Davis & Partners, and Troy Pardee Heating and Air Conditioning (d/b/a Pardee Heating and Air), Ct Windows Limited, and Architectural Materials & Systems, Third-Party Defendants,

Lesco Restoration, Inc., Fourth-Party Plaintiff,

v.

Coastal Waterproofing, Inc. n/d/b/a Wards Waterproofing, Inc., Fourth-Party Defendants.

OF WHOM Genoa Construction Services, Inc. and Brock Green Architects and Planners, LLC are the Respondents.

2009-CP-10-267

NOTICE OF APPEAL

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Attorney for Appellant 3 Chisolm Street Homeowners Association, Inc.

FILED
2012 FEB 13 PM 5:06
JULIE L. ARMSTRONG
CLERK OF COURT
BY

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

COMES NOW counsel for the Appellant, 3 Chisolm Street Homeowners Association, Inc., pursuant to Rule 203 of the *South Carolina Appellate Court Rules*, and respectfully hereby serves its Notice of Appeal showing it is appealing the below-listed orders in this matter:

a. Order of the Honorable Rodger M. Young Granting Brock Green Architects and Planner, LLC's Motion to Reconsider and Motion for Summary Judgment; and

b. (revised) Order of the Honorable Rodger M. Young Granting Defendant Genoa Construction

Services, Inc.'s Motion for Summary Judgment; and

Copies of the Circuit Court orders appealed from are collectively attached hereto as Exhibit "A" and incorporated herein by reference. Counsel for Appellant notice received notice on January 17, 2012, that the orders had been filed with the Court.

Respectfully submitted,

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February 9, 2012
Charleston, South Carolina

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Mr. Allen Roper, Jr. **R. Masonry-Brickwork and Stucco** 1321 Stone Post Road Charleston, SC 29412 ***Pro Se Defendant R. Masonry-Brickwork and Stucco***		

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CHARLESTON, SC 29401-2258
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CHARLESTON COUNTY
SOUTH CAROLINA

www3.charlestoncounty.org

David Jay Parrish
Nexsen Pruet, Llc
P.O. Box 486
Charleston, SC 29402

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

Order/granting Brock Green mot to reconsider/sum judg

CASE NO: 2009CP1000267
3 Chisolm Street Homeowners Association Inc VS Chisolm Street Partners Llc Etc , defendant, et a

This judgment was entered on the 10th day of January, 2012, and a copy mailed first class on Wednesday, January 11, 2012, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

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EXHIBIT
A

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THE STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO.: 2009-CP-10-267
)
3 CHISOLM STREET HOMEOWNERS)
ASSOCIATION, INC.,)
)
Plaintiff,)
)
vs.)
)
CHISOLM STREET PARTNERS, LLC,)
MURRAY SCHOOL PARTNERS, LLC,)
GENOA CONSTRUCTION SERVICES, INC.,)
MASTERPIECE MILLWORK, INC., ALLEN) **ORDER GRANTING BROCK GREEN**
ROPER, JR. d/b/a MASONRY-BRICKWORK) **ARCHITECTS AND PLANNERS, LLC'S**
AND STUCCO, JOHN DOE #1, JOHN DOE) **MOTION TO RECONSIDER AND MOTION**
#2, AND BROCK GREEN ARCHITECTS) **FOR SUMMARY JUDGMENT**
AND PLANNERS, LLC,)
)
Defendants.)
)
GENOA CONSTRUCTION SERVICES, INC.,)
)
Third-Party Plaintiff,)
)
vs.)
)
THE FOX STEEL COMPANY, CAROLINA)
SERVICES, INC., LESCO RESTORATION,)
INC., FERST PLASTERING, INC.,)
CHARLESTON GLASS & MIRROR)
COMPANY, 3D RENOVATIONS,)
WILLIAMS MECHANICAL,)
MASTERCRAFT INTERIOR & EXTERIOR,)
COASTAL GLASS AND BLOCK, ADAMS)
DAVIS & PARTNERS, TROY PARDEE)
HEATING AND AIR CONDITIONING (d/b/a)
PARDEE HEATING AND AIR), METRO)
WATER-PROOFING, INC., CT WINDOWS)
LIMITED, AND ARCHITECTURAL)
MATERIALS & SYSTEMS,)
)
Third-Party Defendants.)

FILED
2012 JAN 10 AM 11:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

CHISOLM STREET PARTNERS, LLC,

Third-Party Plaintiff,

vs.

THE FOX STEEL COMPANY, CAROLINA SERVICES, INC., LESCO RESTORATION, INC., FERST PLASTERING, INC., CHARLESTON GLASS & MIRROR COMPANY, 3D RENOVATIONS, WILLIAMS MECHANICAL, MASTERCRAFT INTERIOR & EXTERIOR, BONIFAY MASONRY, COASTAL GLASS AND BLOCK, ADAMS DAVIS & PARTNERS, and TROY PARDEE HEATING AND AIR CONDITIONING (d/b/a PARDEE HEATING AND AIR),

Third-Party Defendants.

LESCO RESTORATION, INC.,

Fourth-Party Plaintiff,

vs.

COASTAL WATERPROOFING, INC., n/d/b/a WARDS WATERPROOFING, INC.,

Fourth-Party Defendants.

On August 12, 2011, this Court heard oral arguments from counsel for Genoa Construction Services, Inc. ("Genoa"), Brock Green Architects and Planners, LLC ("Brock Green"), and Plaintiff regarding Brock Green's Motion to Reconsider, Alter, and/or Amend the Order denying its Motion for Summary Judgment (originally filed on June 23, 2011). Based on the reasons set forth below, this Court hereby grants Brock Green's Motion and hereby grants Brock Green's Motion for Summary Judgment.

Findings of Fact

This lawsuit involves a condominium complex located at 3 Chisolm Street in the Historic District of Charleston, South Carolina. The property was originally opened in 1923 as the Andrew B. Murray Vocational School. A renovation project was undertaken in the 2000-2001 time period to transform the school facility into luxury condominiums. The 3 Chisolm Street property consists of three separate buildings: the former three-story classroom facility ("Main Building"), the former gymnasium ("Gym Building"), and the former caretaker's cottage ("Cottage"). The developers for the renovation were Chisolm Street Partners, LLC and Murray School Partners, LLC (hereinafter collectively "Developers"). Genoa served as the general contractor and Brock Green provided architectural services for the renovation project. Construction was completed and the Certificate of Occupancy was issued in approximately July 2002.

Evidence has been presented to the Court that unit owners began experiencing water intrusion issues and condensation on the windows in their units around the time of completion of construction.[1] In response to these issues, in late 2002 or early 2003, the 3 Chisolm Street Homeowners Association, Inc. ("HOA" or "Plaintiff") commissioned a forensic architect, Myles Glick, AIA of Glick/Boehm & Associates, Inc., to investigate possible building failures. Mr. Glick conducted an inspection of the property on January 30, 2003 and issued a written report dated April 11, 2003 to the HOA detailing his findings and recommendations ("Glick Report"). The Glick Report cited numerous significant and pervasive deficiencies at the property, including water intrusion at the windows, condensation on the inside of the glass window panes,

[1] The owner of Unit 305/306 (a double unit) filed counterclaims against the Developer Chisolm Street Partners, LLC on or about September 2002 arising out of alleged deficiencies with the unit, including leaking windows. The claims were ultimately settled.

problems with the roof, and cracks in the stucco in the courtyard area. The Glick Report recommended that the HOA undertake further forensic examinations, including destructive testing, to further investigate the issues in the report, as well as other potential issues at the property. The Glick Report also recommended that the HOA retain legal counsel. The HOA elected not to pursue additional investigations or institute legal action at that time.

Instead, as stated by Plaintiff's counsel at the hearing on Genoa's and Brock Green's motions for summary judgment on March 28, 2011, the HOA sought assistance from the Developers and Genoa in repairing the issues, which included caulking and sealing efforts related to the windows. Plaintiff's counsel explained at the hearing that the repair efforts alleviated some of the window leaks temporarily. Brock Green did not participate in those repair efforts. Evidence has been presented that the repair efforts never eliminated the condensation issues with the windows.

Plaintiff filed a lawsuit on January 16, 2009 against the Developers, Genoa, and several construction subcontractors. Plaintiff did not name Brock Green as a Defendant until its Second Amended Complaint filed on April 8, 2010, nearly seven years after Plaintiff's receipt and discussion of the Glick Report.

Standard for Motion to Reconsider

A motion to reconsider, alter, and/or amend may be brought pursuant to Rule 59(e), SCRCP. A denial of a motion for summary judgment does not establish the law of the case, and the issues can be considered later in the case by a motion to reconsider the summary judgment motion. Brown v. Pearson, 326 S.C. 409, 416-17, 483 S.E.2d 477, 481 (Ct. App. 1997)(citations omitted). "It is not error for the trial court to change its mind and reconsider a motion for

summary judgment." Abu-Shawareb v. S.C. State Univ., 364 S.C. 358, 363, 613 S.E.2d 757, 760 (Ct. App. 2005)(citations omitted).

Standard for Summary Judgment

"A grant of summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Town of Summerville v. City of N. Charleston, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008) (citing Rule 56(c), SCRCP). "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Hansson v. Scalise Builders of S.C., 374 S.C. 352, 355, 650 S.E.2d 68, 70 (2007) (citation omitted).

When a properly supported motion for summary judgment is presented, the nonmoving party must establish specific facts showing that there is a genuine issue of material fact for trial, or the court must grant summary judgment. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). "'[S]ummary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.'" Guinan v. Tenet Healthsystems of Hilton Head, 383 S.C. 48, 53, 677 S.E.2d 32, 35 (Ct. App. 2009)(quoting David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006)).

Legal Authority

The statute of limitations is designed "'to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights'" and "'to protect potential defendants from protracted fear of litigation.'" Logan v. Cherokee Landscaping and Grading Co., 389 S.C. 611,

618, 698 S.E.2d 879, 883 (Ct. App. 2010)(quoting Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996)). In South Carolina, the statute of limitations provides a three year window from the date of accrual for the filing of a civil action such as the instant action against Brock Green. See S.C. CODE ANN. § 15-3-530 (2010). The "discovery rule" applies to professional negligence causes of action. See, e.g., Republic Contracting Corp. v. S.C. Dep't of Highways and Pub. Transp., 332 S.C. 197, 207, 503 S.E.2d 761, 766 (Ct. App. 1998)(citing Mills v. Killian, 273 S.C. 66, 254 S.E.2d 556 (1979)); see also S.C. CODE ANN. § 15-3-535 (2010). Under the discovery rule, "the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996)(citation omitted).

The exercise of reasonable diligence means that the injured party "must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on *notice* that a claim against another party might exist." Id. at 363-64, 468 S.E.2d at 647 (citing Snell v. Columbia Gun Exch., 276 S.C. 301, 278 S.E.2d 333 (1981)). The statute of limitations is triggered at that point, not when the plaintiff develops a "full blown theory of recovery." Berry v. McLeod, 328 S.C. 435, 445, 492 S.E.2d 794, 799 (Ct. App. 1997) (citations omitted). "[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial." Dean, 321 S.C. at 364, 468 S.E.2d at 647 (citation omitted). Indeed, "South Carolina's statute of limitations requires 'very little to start the clock.'" Maher v. Tietex Corp., 331 S.C. 371, 380, 500 S.E.2d 204, 208 (Ct. App. 1998) (quoting Roe v. Doe, 28 F.3d 404, 407 (4th Cir. 1994)).

In South Carolina, "the focus is upon the date of discovery of the **injury**, not the date of discovery of the wrongdoer." Wiggins v. Edwards 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994)(emphasis added). On discovery of an injury, "the statute of limitations begins to run for **all claims** based on that injury." Id. (citing Tollison v. B & J Machinery Co., Inc., 812 F. Supp. 618, 620 (D.S.C. 1993))(emphasis added). In Wiggins, the plaintiff argued that the statute of limitations began to run "at the time she was actually able to investigate her case, discover a cause of action existed, and determine who or what caused her injury." Id. at 128, 442 S.E.2d at 170. The court disagreed, holding that such a test would be "subjective," rather than objective. Id. The court granted summary judgment to the defendant, holding that the statute started to run as to all possible claims related to plaintiff's injury at the time she knew she was injured. Id. at 128-29, 442 S.E.2d at 170; see also Cline v. J.E. Faulkner Homes, Inc., 359 S.C. 367, 371, 597 S.E.2d 27, 28 (Ct. App. 2004); Gillman v. City of Beaufort, 368 S.C. 24, 28, 627 S.E.2d 746, 748 (Ct. App. 2006)(holding that the date when a plaintiff learns of a potential new defendant has absolutely no bearing on the timing of the statute of limitations).

Conclusions of Law

Here, Plaintiff filed its action against Brock Green on April 8, 2010—nearly seven years after receiving and discussing the Glick Report. Taking the evidence in the light most favorable to the Plaintiff, this Court finds that the Plaintiff clearly knew—or in the exercise of reasonable diligence should have known—of a potential cause of action against Brock Green at the latest in 2003 when the Glick Report and its recommendations for additional forensic testing were discussed by the HOA. This Court finds that the Glick Report put Plaintiff on notice of deficiencies at the property in 2003. The statute of limitations was triggered at that point, regardless of whether Plaintiff comprehended the full extent of the damage or had developed a

full blown theory of recovery, as Plaintiff either knew or should have known by the exercise of reasonable diligence that it had a potential cause of action against Brock Green.

As noted above, it is immaterial that the injured party may not comprehend the full extent of damage or the exact nature of the wrong. This Court finds that the Glick Report put the Plaintiff on notice of specific injuries (i.e., moisture intrusion, condensation, stucco cracks, etc.) and triggered the statute of limitations. Thus, pursuant to Wiggins, the statute was triggered as to **all claims** based on those injuries, whether those injuries were related to design, construction, or installation. Furthermore, to the extent the Plaintiff had not developed a "full blown theory of recovery" at the time of the Glick Report, it unquestionably could have developed its theory of recovery by the exercise of reasonable diligence in pursuing further investigations and destructive testing as specifically recommended in the Glick Report. The evidence shows that the Plaintiff discussed undertaking further investigations of all three buildings, but decided not to do so.

Plaintiff maintains that repairs performed by the Developer and Genoa following the Glick Report temporarily "fixed" the problems until they resurfaced some years later. Thus, Plaintiff argues that its claims are not barred by the statute of limitations because its claims are for "defective repairs" rather than original work. This argument does not apply to Brock Green, as the evidence shows that Brock Green did not participate in any of those repairs.

Finally, this Court further finds that Plaintiff's claims against Brock Green are barred by the statute of limitations to the extent said claims include claims related to Unit 305/306 (a double unit) owned by Jack and/or Sandra Burnett. This Court finds that the Burnetts were on notice of potential claims arising out of the design and construction of their unit when they

asserted counterclaims in their lawsuit against the Developer in 2002. Thus, any of Plaintiff's claims in this action arising out of the design and construction of Unit 305/306 are barred by the statute of limitations.

Conclusion

This Court finds that Plaintiff is barred from pursuing its claims against Brock Green pursuant to the applicable statute of limitations. This Court concludes that there is no genuine issue as to any material fact and Brock Green is entitled to judgment as a matter of law.

WHEREFORE, this Court hereby grants Brock Green's Motion to Motion to Reconsider, Alter, and/or Amend and hereby grants Brock Green's Motion for Summary Judgment.

IT IS SO ORDERED.

The Honorable Roger M. Young
Presiding Judge of the Ninth Judicial Circuit

Dated: 1/4/12

Charleston, South Carolina

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED

CHARLESTON COUNTY
SOUTH CAROLINA

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P.O. Box 486
Charleston, SC 29402

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

Order/granting defnt Genoa mot for sum judgment

CASE NO: 2009CP1000267
3 Chisolm Street Homeowners Association Inc VS Chisolm Street Partners Llc Etc , defendant, et a

This judgment was entered on the 10th day of January, 2012, and a copy mailed first class on Wednesday, January 11, 2012, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC.,

Plaintiff,

v.

CHISOLM STREET PARTNERS, LLC, MURRAY SCHOOL PARTNERS, LLC, GENOA CONSTRUCTION SERVICES, INC., MASTERPIECE MILLWORK, INC., ALLEN ROPER, JR. D/B/A R MASONRY BRICKWORK, CAROLINA ROOFING SYSTEMS, INC., AND LACY PAINTING,

Defendants.

GENOA CONSTRUCTION SERVICES, INC.,

Third Party Plaintiff,

v.

THE FOX STEEL COMPANY, CAROLINA SERVICES, INC., LESCO RESTORATION, INC., FERST PLASTERING, INC., CHARLESTON GLASS & MIRROR COMPANY, 3D RENOVATIONS, WILLIAMS MECHANICAL, MASTERCRAFT INTERIOR & EXTERIOR, COASTAL GLASS AND BLOCK, ADAMS DAVIS & PARTNERS, TROY PARDEE HEATING AND AIR CONDITIONING (d/b/a PARDEE HEATING AND AIR), METRO WATER-PROOFING, INC., CT WINDOWS LIMITED, AND ARCHITECTURAL MATERIALS & SYSTEMS,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

ORDER GRANTING DEFENDANT GENOA CONSTRUCTION SERVICES, INC.'S MOTION FOR SUMMARY JUDGMENT

FILED
2012 JAN 10 AM 11:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This matter came before the Court upon Plaintiff 3 Chisolm Street Homeowners Association, Inc.'s ("Plaintiff") Motion to Reconsider, Alter or Amend this Court's Order Granting Genoa Construction Services, Inc.'s Partial Summary Judgment pursuant to Rule 59(e), SCRCP. A hearing was conducted on August 12, 2011. Franklin H. Turner III appeared on behalf of Genoa Construction Services, Inc. ("Genoa"). David J. Parrish appeared on behalf of Plaintiff.

Upon careful consideration of the pleadings, deposition testimony, additional documentation provided by counsel, oral arguments advanced and the law of South Carolina, this Court denies Plaintiff's Motion to Reconsider, Alter, or Amend its Judgment Granting Genoa Partial Summary Judgment ("Motion to Reconsider"), filed June 24, 2011.

BACKGROUND

I. Procedural History

Genoa, the general contractor on the Project, filed its Motion for Summary Judgment on February 1, 2011, on the grounds that the Statute of Limitations had run on all of Plaintiff's claims relating to the conversion into condominiums of three buildings (Main, Gymnasium, and Cottage) located in the Historic District of Charleston (hereinafter collectively the "Project"). Various subcontractors filed motions on the same grounds. The subcontractors included those that performed work on only the Main Building, on all three buildings, and on only the Cottage and Gymnasium Buildings.

This Court heard oral arguments on the various motions for summary judgment on March 28, 2011. By Order filed June 9, 2011, this Court granted Genoa's Motion for Summary Judgment as to original work performed at the Project, but denied it as to any defective repair work in which Genoa was involved. Likewise, the Court granted the motions of the

subcontractors as to any original work they had performed on the Project, but denied them as to any repair work in which they were involved.

Plaintiff filed a Motion to Reconsider on June 24, 2011. The Court heard oral arguments on the Motion to Reconsider on August 12, 2011.

II. Previous Grants of Summary Judgment and Statements

To fully consider Plaintiff's Motion for Reconsideration as to Genoa, the Court must look to the rulings it made on the various subcontractors' motions for summary judgment, which were largely made on the same grounds as that of Genoa's, and which involved the same facts and circumstances. Of particular note is the Order granting Lacy Painting's Motion for Summary Judgment.

Lacy Painting was a subcontractor that performed original painting work on only the gym and cottage buildings. In granting Lacy's Motion for Summary Judgment this Court found that the statute of limitations began running on all three buildings in June of 2003 at the latest. No motion was made to reconsider that decision and the decision was not appealed. Consequently, as will be discussed below, the Order Granting Lacy Painting's Motion for Summary Judgment on the grounds that the statute of limitations began running on Plaintiff's claims in June of 2003 is the law of the case.

The Court also notes that Plaintiff asserted at oral arguments on March 28, 2011, that it was making no claim related to original work, and that its claims related only to defective repairs made after the Glick Report was produced to the Board of the Homeowner's Association ("HOA") on May 6, 2003.

FINDING OF FACTS

A certificate of occupancy was issued for the Project on June 28, 2002. Complaints

regarding the Project began by at least 2002 and continued into 2003 and beyond. As a result of these issues, which included complaints about condensation on the windows and moisture intrusion, one unit owner, the Burnets, filed a counterclaim against the Developer on September 18, 2002. Jack Burnet was the first president of Plaintiff, and served as its President from 2002 to 2008. In March of 2003, the developer turned over control of the HOA to the unit owners. In late 2002 or early 2003, the HOA hired a forensic architect (Myles Glick), a general contractor (Thomas Carlson of Calibogue Construction), and an attorney (Joe Dapore) to investigate alleged construction defects at the Project. That inspection was performed on January 30, 2003.

On April 8, 2003, Myles Glick issued a report (the "Glick Report") on the results of his investigation. The Glick Report noted, among other things, significant and pervasive construction deficiencies at the property, including condensation on the windows, moisture intrusion at the windows, and stucco cracks in the courtyard, and it recommended documenting the issues through destructive testing and obtaining a more complete forensic report. It also suggested that Plaintiff seek legal counsel regarding the issues. On April 10, 2003, Williamson & Associates produced a report finding stucco cracks, condensation, and caulking and sealant issues.

On May 6, 2003, the Glick Report was presented to Plaintiff. At that time Plaintiff's Property Manager, Mike Parades, informed the Board that it should inspect all three buildings and perform further testing. Genoa left the Project in February of 2004.

Almost three years later, on February 6, 2006, Plaintiff inquired of counsel as to its deadline for filing litigation relating to the Project and was told that the deadline was in April of 2006. After almost another full three years, on January 16, 2009, Plaintiff filed this suit to recover for alleged construction deficiencies at the Project. Contrary to the recommendations of

its own forensic architect, which was informed by input from a general contractor, and its property manager, Plaintiff waited over four years to have any of the buildings inspected. It waited six and a half years to have the Main Building re-inspected (almost a year after it filed its Complaint), and it waited over seven years to have the stucco issues visually re-examined (almost two years after filing its Complaint). In October of 2010, George Davidson, President of the HOA, testified that the current complaints made by the unit owners in the main building were consistent with those noted in the 2003 Glick Report.

On March 28, 2011, at oral arguments on the subject motion, Plaintiff asserted on numerous occasions that it was not seeking damages for original work, but was merely seeking to recover damages related to defective repairs.

CONCLUSIONS OF LAW

On the basis of the foregoing, the Court makes the following Conclusions of Law:

I. Standard for Motions to Reconsider

The South Carolina Rules of Civil Procedure dealing with motions to reconsider are based upon the Federal Rules of Civil Procedure. *See* Notes to Rule 59, SCRCP ("This Rule 59 is substantially the Federal Rule"). Under federal case law, a motion to reconsider is limited to correcting errors of law or fact or to present newly discovered evidence. *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3rd Cir. 1985).

Plaintiff presented no newly discovered evidence in support of its Motion to Reconsider. The factual situation has not changed since the Court heard oral arguments on March 28, 2011. Likewise, the Court is aware of no substantive error of fact or law requiring reconsideration. Genoa moved for summary judgment as to all causes of action brought by Plaintiff, which necessarily included Plaintiff's claims relating to the Gymnasium and Cottage

Buildings as well as to the Main Building. Subcontractors performing work on all three buildings on the Project moved likewise. These issues were fully briefed and argued. Consequently, Plaintiff's Motion to Reconsider must be denied.

II. Standard for Summary Judgment

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citing *Bankers Trust of South Carolina v. Benson*, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976)). "[S]ummary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

III. Statute of Limitations

Section 15-3-530 of the South Carolina Code sets forth a three-year statute of limitations for actions based in negligence and contract. See S.C. CODE ANN. § 15-3-530(1) (providing for a three-year statute of limitations for "an action upon a contract"); § 15-3-530(5) (providing for a three-year statute of limitations for "any injury to the person or rights of another, not arising on contract and not enumerated by law").

"A statute of limitations reduces the interval between the accrual and commencement of a right of action to a fixed period, thereby putting to rest claims after the passage of time." *City of N. Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 230, 599 S.E.2d 462, 464 (Ct. App. 2004).

Statutes of limitations "are not simply technicalities," but instead "have long been respected as fundamental to a well-ordered judicial system." Id. at 231, 599 S.E.2d at 465. "Unless an action is commenced before expiration of the limitations period, the plaintiff's claim is normally barred." Id. at 231, 599 S.E.2d at 464.

The courts of South Carolina have adopted the "discovery rule" in determining when a cause of action accrues. *Dillon County School Dist. v. Lewis Sheet Metal Works*, 286 S.C. 207, 215, 332 S.E.2d 555, 559 (Ct. App. 1985) (overruled on other grounds). Under the discovery rule, the statutory period begins to run from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence. *Cline v. J.E. Faulkner Homes, Inc.*, 359 S.C. 367, 371–72, 597 S.E.2d 27, 29 (Ct. App. 2004). Under this objective test, one is charged with discovery when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim might exist. Cline, at 372, 597 S.E.2d at 29 (citing *Austin v. Conway Hosp., Inc.*, 292 S.C. 334, 339, 356 S.E.2d 153, 156 (Ct. App. 1987)) (emphasis added.).

Regarding the discovery rule and construction defect cases, an owner can be put on notice that some claim might exist when the owner observes a construction defect and retains a consultant who warns that the defect may continue to worsen. See *Dean v. Ruscon Corp.*, 321 S.C. 360, 366, 468 S.E.2d 645,647 (1996) (holding that there was no question of fact for the jury to decide and the claim was barred by the statute of limitations because the cause of action arose when the owner first observed a building crack and retained a consultant). Further, a party's actual ignorance of a defect is irrelevant if a person exercising reasonable care under similar circumstances would have been aware of the injury. See *Christensen v. Mikell*, 324 S.C. 70, 73, 476 S.E.2d 692, 694 (1996) (stating that "[t]he statutory limitations period begins to run when a

person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor."). Likewise, the statute is triggered when a reasonable person is placed on notice that it might have a claim against another party, and not when they develop a fill blown theory of recovery. *Berry v. McLeod,* 328 S.C. 435, 445, 492 S.E.2d 794, 799 (Ct. App. 1997). In South Carolina, very little is required to start the statute of limitations running. *Maher v. Tietex Corp.*, 331 S.C. 371, 380, 500 S.E.2d 204, 208 (Ct. App. 1998) (quoting *Roe v. Doe*, 28 F.3d 404, 407 (4th Cir. 1994)).

IV. Law of the Case

As a general rule, an unchallenged ruling, right or wrong, is the law of the case. *Ulmer v. Ulmer*, 369 S.C. 486, 490, 632 S.E.2d 858, 861 (2006) ("A portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case." (citing *Austin v. Specialty Transp. Servs.*, 358 S.C. 298, 320, 594 S.E.2d 867, 878 (Ct. App. 2004))); *Robinson v. Estate of Harris*, 391 S.C. 114, 127, 705 S.E.2d 41, 48 (2011) ("an unchallenged ruling, right or wrong, is the law of the case" (citing *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 489 S.E.2d 470 (1997))); see also *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 355-356, n 9 (S.C. Ct. App. 2006) (noting that the Court's ruling on a previous grant of summary judgment represents the law of the case.)

Lacy Painting was a subcontractor that performed original painting work on only the gym and cottage buildings. In granting Lacy's Motion for Summary Judgment this Court stated that: "the Board of the HOA . . . in May and June of 2003, acknowledged the need to investigate all three buildings to determine the full extent of the damage. This acknowledgement starts the statute running." And:



> Accordingly, the Court hereby finds that the South Carolina three year statute of limitations on any claims Plaintiffs could have brought against Lacy Painting began to run in 2003 when Myles Glick placed Plaintiff on notice of potential issues with Lacy Painting's scope of work on the project, and the Plaintiff acknowledged the need to investigate further to determine the full extent of the damage. Because Plaintiff did not file a lawsuit until January 16, 2009, the statute of limitations bars Plaintiff's action as it concerns Lacy Painting's scope of work.

Plaintiff in effect requests that this Court ignore its previous unchallenged ruling on when the statute of limitations began to run on all three buildings. The Court declines to do so. To hold otherwise would result in a procedural quandary. Indeed, the Court would be faced with the untenable situation whereby identical claims relating to identical work performed at identical times were dismissed and held to be untimely filed as to certain parties but found to be timely filed as to other parties.

The Court further notes that, while it has no impact on the decision reached in this matter, granting Plaintiff's motion would result in further confusion and delay as additional motions for reconsideration would be required to determine the status of parties previously released as well as to determine what, if any, issues would be precluded as a result of subcontractors' scopes of work being dismissed.

V. Statute of Limitations as to All Three Buildings

Having determined the law of the case as to the statute of limitations question, this Court need not consider further grounds for denying Plaintiff's Motion to Reconsider. However, the Court restates its finding that Plaintiff was on notice that it might have claims relating to the Main Building in May of 2003 when it was presented with the Glick Report. Plaintiff had three years from that date to further investigate its potential construction defect claims, which would necessarily include those areas allegedly repaired by Genoa prior to its leaving the Project in February 2004, and file suit. However, instead of investigating the Project further, as both its

forensic architect and Property Manager suggested, Plaintiff took no action and waited for almost six years to file suit and six and half years to have the building inspected. Because Plaintiff failed to file suit within three years of learning that its forensic architect believed there to be significant and pervasive construction defect problems with the Main Building, this Court denies Plaintiffs Motion to Reconsider its grant of summary judgment to Genoa as to original work on that building.

This Court also restates its original finding that Plaintiff was on notice that it might have claims relating to the Gym and Cottage Buildings as of June of 2003 at the latest. By that time, Plaintiff was on notice that its forensic architect and general contractor believed there were significant and pervasive construction defects associated with the Project and Plaintiff was urged to have all the buildings associated with the Project inspected to determine the scope of the alleged problems. The Court notes that all three buildings were built at the same time, were managed by the same general contractor, and were built according to plans and specifications developed by the same architect.

A person of common knowledge and experience, much less one entrusted with preserving the value of three condominium buildings, would have been on notice at that time that some claim might exist. Further, there is no evidence suggesting that the construction defects alleged to be present in the gym and cottage buildings were either not present in 2003-2006 or would not have been discovered by the exercise of reasonable diligence, such as having a forensic architect, general contractor, and attorney inspect the buildings in question. Instead of acting in a reasonably diligent manner, however, Plaintiff ignored recommendations that the buildings be inspected for almost four years. Plaintiff's decision to avoid any attempt to discover defects and claims did not toll the statute of limitations. Consequently, the statute of limitations on

Plaintiff's claims for original work relating to the gym and cottage buildings began to run by June of 2003. Because Plaintiff did not file its Complaint until January of 2009, this Court denies Plaintiffs Motion to Reconsider.

VI. Original Work

This Court restates the decision set forth in the subject Order that Plaintiff is not entitled to seek damages for original work. Plaintiff may only seek damages for defective repairs that are directly related to the defective repair work and not to the time-barred claims relating to original work. See *Bramlette v. Charter Medical-Columbia*, 302 S.C. 68, 72, 393 S.E.2d 914, 916 (1990) (stating the requirements of proximate causation). At oral arguments Plaintiff stated clearly and expressly that "everything in litigation is stuff they repaired . . . ." and that "[f]ailed repair is probably the best summation that I have." This Court noted at the hearing that: "The only way [the Plaintiff] can get past the statute of limitation is pursuing over repairs, not original work." When Plaintiff was asked to stipulate that it was only seeking damages related to defective repairs this Court stated: "I don't know how many times [Plaintiff] can say that differently, but he started to venture off, but he came back and I wrote it down again, failed repairs or defective repairs only."

Relying in part on Plaintiff's own assertions this Court granted the motions for summary judgment of Genoa and the subcontractors that performed original work on the Project. Consequently, this Court declines to revisit its decision dismissing Plaintiff's claims for original work performed on the Project.

CONCLUSION

For the foregoing reasons, this Court denies Plaintiff's Motion to Reconsider, Alter or Amend Order Granting Partial Summary Judgment as to Genoa Construction Services.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Plaintiff's Motion to Reconsider, Alter, or Amend Order Granting Partial Summary Judgment as to Genoa Construction Services is denied.

AND IT IS SO ORDERED.

Judge Roger M. Young
Presiding Circuit Court Judge

1/4, 2017
Charleston, South Carolina

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

Appeal from the Court of Common Pleas
For Charleston County
Honorable Deadra L. Jefferson, Circuit Judge
Civil Action No.: 2008-CP-10-1377
2009-CP-10-267

FILED
2012 FEB 13 PM 5:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY

3 Chisolm Street Homeowners Association, Inc., Plaintiff-Appellant,

v.

Chisolm Street Partners, LLC, Murray School Partners, LLC, Genoa Construction Services, Inc., Masterpiece Millwork, Inc., Allen Roper, Jr. d/b/a Masonry Brickwork and Stucco, John Doe #1, John Doe #2, and Brock Green Architects and Planners, LLC, Defendants,

Genoa Construction Services, Inc., Third-Party Plaintiff,

v.

The Fox Steel Company, Carolina Services, Inc., Lesco Restoration, Inc., Ferst Plastering, Inc., Charleston Glass & Mirror Company, 3d Renovations, Williams Mechanical, Mastercraft Interior & Exterior, Coastal Glass and Block, Adams Davis & Partners, and Troy Pardee Heating and Air Conditioning (d/b/a Pardee Heating and Air), Ct Windows Limited, and Architectural Materials & Systems, Third-Party Defendants,

Lesco Restoration, Inc., Fourth-Party Plaintiff,

v.

Coastal Waterproofing, Inc. n/d/b/a Wards Waterproofing, Inc., Fourth-Party Defendants

Defendants

OF WHOM Genoa Construction Services, Inc. and Brock Green Architects and Planners, LLC are the Respondents.

PROOF OF SERVICE OF THE NOTICE OF APPEAL

I, David J. Parrish, hereby certify that on February 9, 2012, I served a copy of the ***Notice of Appeal*** submitted by the Appellant, 3 Chisolm Street Homeowners Association, Inc., on the Charleston County Clerk of Court and on counsel for the parties of record in this case via United States Mail, postage pre-paid, as addressed shown below.

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Mr. Allen Roper, Jr. **R. Masonry-Brickwork and Stucco** 1321 Stone Post Road Charleston, SC 29412 ***Pro Se Defendant R. Masonry-Brickwork and Stucco***	The Honorable Julie Armstrong Charleston County Clerk of Court 100 Broad Street Charleston, SC 29401	

NEXSEN|PRUET

David J. Parrish
Member
Admitted in SC

February 9, 2012

HAND DELIVERED
The Honorable Tanya Gee
South Carolina Court of Appeals Clerk of Court
P.O. Box 11629
Columbia, SC 29211

Re: 3 Chisolm Street Homeowners Association, Inc. v. Chisolm Street Partners, LLC, et al., Case No.: 2009-CP-10-267

Dear Ms. Gee:

Enclosed are an original and one copy of Appellant, 3 Chisolm Street Homeowners Association, Inc.'s Notice of Appeal and Proof of Service regarding same and our firm's check for the $100.00 filing fee. A copy of this Notice is being filed with the Charleston County Clerk of Court and served on all counsel of record by copy of this letter.

Thank you for your assistance and please let me know if you have any questions or need anything else from me.

With kind regards,

David J. Parrish
DJP/meh
Enclosure

cc: Charleston Clerk of Court and all counsel of record as shown on attached mailing list

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC.,

Plaintiff,

vs.

CHISOLM STREET PARTNERS, LLC, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2009-CP-10-267

FILED
2012 JUN 18 PM 4:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY

PLAINTIFF'S MOTION TO RECONSIDER, ALTER, OR AMEND ORDER GRANTING SUMMARY JUDGMENT TO MASTERPIECE MILLWORK, INC.

Plaintiff 3 Chisolm Street Homeowners Association, Inc. (the "HOA") moves the Court, pursuant to Rules 52(b) and 59(e), SCRCP, and all other applicable rules, to reconsider, alter, and amend its Order Granting Masterpiece Millwork, Inc.'s Motion for Summary Judgment" (the "Order"). The grounds for this motion are as follows:

1. The HOA condominium project consists of three separate buildings, the "main building," which has metal frame windows, and the "gym building" and "caretaker cottage," which have wood windows.

2. Masterpiece Millwork, Inc.'s summary judgment motion is based on its contention that the HOA filed this lawsuit more than three years from the date of architect Miles Glick's report dated April 8, 2003 (the "Glick report"), which identified some construction defects in one of the HOA's three buildings.

3. Mr. Glick only examined the main building, and his report states that the comments in the report "are specific to the main . . . building" and "[t]he other two buildings were not reviewed."

4. The wood windows supplied by Masterpiece Millwork, Inc. are located only in the gym building and caretaker cottage.

5. Mr. Glick did not examine the wood windows in the gym building and the caretaker cottage, and the wood windows are not mentioned in his report.

6. At the time of the Glick report the problems with the wood windows were not visible, had not started to manifest themselves, and were not known to or discoverable by the HOA.

7. No repairs were required or made to the wood windows as a result of the Glick report because the wood windows did not begin to fail (rot) until years after the Glick report was issued. The HOA was not and could not have been on notice of problems with the windows that had not occurred at the time of the Glick report and for which no repairs were required or made.

8. The Order granting summary judgment to Masterpiece Millwork, Inc. in effect deems the HOA was on notice of a problem that was not observed or reported by anyone and that had not yet manifested itself

9. Accordingly, there is a genuine issue of material fact regarding whether the three-year statute of limitations applies to the HOA's claims related to the failure of the wood windows in the gym building and caretaker cottage.

WHEREFORE, for the above reasons, Masterpiece Millwork, Inc. was not entitled to summary judgment on the HOA's claims related to the wood windows, and the HOA respectfully requests that the Court reconsider, alter, amend its Order to the extent it grants summary judgment to Masterpiece Millwork, Inc.

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June 18, 2012

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing Plaintiff's Motion to Reconsider, Alter, or Amend Order Granting Summary Judgment to Masterpiece Millwork, Inc. has been served upon the following counsel of record either by facsimile, e-mail, and/or by U. S. Mail, postage paid, to the following addresses as shown below this 18th day of June, 2011.

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FILED
2012 JUN 18 PM 4:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from the Charleston County Court of Common Pleas
Honorable Roger M. Young, Circuit Judge
Civil Action No.: 2009-CP-10-267

---

3 Chisolm Street Homeowners Association, Inc., Plaintiff-Appellant,

v.

Chisolm Street Partners, LLC, Murray School Partners, LLC, Genoa Construction Services, Inc., Masterpiece Millwork, Inc., Allen Roper, Jr. d/b/a Masonry Brickwork and Stucco, John Doe #1, John Doe #2, and Brock Green Architects and Planners, LLC, Defendants,

RECEIVED
AUG 14 2012
SC Court of Appeals

Genoa Construction Services, Inc., Third-Party Plaintiff,

v.

The Fox Steel Company, Carolina Services, Inc., Lesco Restoration, Inc., Ferst Plastering, Inc., Charleston Glass & Mirror Company, 3d Renovations, Williams Mechanical, Mastercraft Interior & Exterior, Coastal Glass and Block, Adams Davis & Partners, and Troy Pardee Heating and Air Conditioning (d/b/a Pardee Heating and Air), CT Windows Limited, and Architectural Materials & Systems, Third-Party Defendants,

Lesco Restoration, Inc., Fourth-Party Plaintiff,

v.

Coastal Waterproofing, Inc. n/d/b/a Wards Waterproofing, Inc., Fourth-Party Defendants.

OF WHOM Masterpiece Millwork, Inc. is the Respondent.

NOTICE OF APPEAL

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Attorney for Appellant 3 Chisolm Street Homeowners Association, Inc.

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

COMES NOW counsel for the Appellant, 3 Chisolm Street Homeowners Association, Inc., pursuant to Rule 203 of the *South Carolina Appellate Court Rules*, and respectfully hereby serves its Notice of Appeal showing it is appealing the below-listed orders in this matter:

a. Order of the Honorable Rodger M. Young Granting Masterpiece Millwork, Inc.'s Motion for Summary Judgment;

b. Order of the Honorable Roger M. Young Denying Plaintiff's Motion to Reconsider, Alter, or Amend Order Granting Summary Judgment to Masterpiece Millwork, Inc.

Copies of the Circuit Court orders appealed from are collectively attached hereto as Exhibit "A" and incorporated herein by reference.

Respectfully submitted,

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Attorney for 3 Chisolm Street Homeowners Association, Inc.

August 14, 2012

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 Chisolm Street Homeowners Association, Inc.,

Plaintiff,

vs.

Chisolm Street Partners, LLC, Murray School Partners, LLC, Genoa Construction Services, Inc., Masterpiece Millwork, Inc., Allen Roper, Jr. d/b/a R. Masonry Brickwork, Carolina Roofing Systems, Inc. and Lacy Painting,

Defendants.

Genoa Construction Services, Inc.,

Third Party Plaintiff,

vs.

The Fox Steel Company, Carolina Services, Inc., Lesco Restoration, Inc., Ferst Plastering, Inc., Charleston Glass & Mirror Company, 3D Renovations, Williams Mechanical, Mastercraft Interior & Exterior, Coastal Glass and Block, Adams Davis & Partners, Troy Pardee Heating and Air Conditioning (d/b/a Pardee Heating and Air), Metro Water-proofing, Inc., CT Windows, Limited, and Architectural Materials & Systems,

Third-Party Defendants.

Lesco Restoration, Inc.,

Fourth- Party Plaintiff,

vs.

Coastal Waterproofing, Inc. n/d/b/a Wards Waterproofing, Inc.

Fourth-Party Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-00267

FILED
2012 MAY 25 PM 2:43
JULIE J. ARMSTRONG
CLERK OF COURT
BY_____

ORDER GRANTING MASTERPIECE MILLWORK, INC.'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT
A

This matter comes before the Court pursuant to Masterpiece Millwork, Inc.'s [hereinafter "Masterpiece"] Motion for Summary Judgment filed on September 1, 2011.[1]

FINDINGS OF FACT

This case involves alleged construction deficiencies at 3 Chisolm Street arising out of the conversion of a vocational school to luxury condominiums which took place between 2000 and 2002. Three buildings were included in the conversion: the main building, the gym, and the cottage. The three buildings are in close proximity to each other and are all adjacent to a small common parking area. Genoa Construction Services, Inc. [hereinafter "Genoa"] acted as the general contractor for the project. Genoa purchased wood window units from Masterpiece in 2000-2001 for the gym and cottage buildings. Masterpiece has had no involvement with the project since construction was completed. The Certificate of Occupancy was issued in approximately July, 2002.

After construction was completed, the Plaintiff, 3 Chisolm Street Homeowners Association, Inc., began experiencing water intrusion and other problems with the buildings. They hired Myles Glick, a forensic architect, to investigate the problems. On January 30, 2003, Mr. Glick conducted a visual inspection of the property while accompanied by Joe Dapore, Esquire, the HOA's attorney, and Tom and Brett Carlson, who were representatives of a local contractor, Calibogue Construction.

Mr. Glick issued a report dated April 8, 2003, which cited numerous, significant

[1] In June 2011, this court previously granted various motions for summary judgment based upon the applicable statute of limitations. The Plaintiff filed a Motion to Reconsider which was denied by Order dated January 4, 2012. The Plaintiff has appealed. During the April 25, 2012 telephonic status conference, Judge Young requested from Counsel for Masterpiece a proposed order consistent with those previously granted granting Masterpiece Millwork, Inc.'s Motion for Summary Judgment absent a hearing so that this order could be added to the pending appeal. This Order is based upon the Order Granting Lacy Painting's Motion for Summary Judgment filed June 9, 2011.

and pervasive deficiencies at the property, including water intrusion and sealant failures at the windows, condensation on the inside of the glass window panes, problems with the roof, and cracks in the stucco in the courtyard area. It also cited that there was an extensive amount of mold and mildew in the units and that the mold and mildew presented a clear and present danger in terms of health for the individuals that occupy the units. He went on to say, "The removal of mold and mildew within the wall cavities is extremely important, because without the removal of mold and mildew, the problem will persist and grow." He recommended that a full investigation be made, which included destructive testing.

He concluded:

> All of the above issues are significant and were persuasive throughout the entire building. I would recommend that these concerns be confirmed and documented through a program of destructive testing so that decisions can be made for corrections. Without correction, the issue of sales of unsold units and resales will come into play **I recommend that the board seek legal counsel relative to the impacts of the above issues as well as, pursuing a forensic report documenting and recording the above issues.** This report only represents observations during a limited site visit and other construction deficiencies may exist. [Emphasis added]

A copy of the Glick report was sent to Jack Burnett, the President of the HOA. The report was discussed on at least two different occasions by the Board of Directors for the HOA as reflected by the meeting minutes on May 6, 2003 and June 10, 2003. In those meetings, the Board discussed the steps that they needed to take for additional investigation and destructive testing in all three buildings. Nevertheless, no additional investigation was performed and no legal action was taken.

Water intrusion problems continued and the possibility of legal action was again addressed as reflected in the meeting minutes of February 6, 2006. At that time, Joe

Dapore, the HOA's lawyer, advised the HOA that they had until April, 2006, to file suit over the water intrusion and other possible construction related issues. Notwithstanding multiple Board meetings in which the Board discussed known construction issues, the need for additional investigation, advice from Joe Dapore, their lawyer, and Myles Glick, their forensic architect, the Board did not take legal action until January, 2009. This is nearly six years after the Board of the HOA was put on notice of the problems by Myles Glick. It is also nearly six years after the Board discussed the need to further investigate all three buildings renovated by Genoa, including the gym and the cottage, to determine the full extent of the damage.

On April 8, 2010, Plaintiff filed a Second Amended Complaint alleging negligence, negligence per se, breach of implied and express warranties, strict liability and violation of the South Carolina Unfair Trade Practices Act as to Masterpiece. Genoa answered Plaintiff's Second Amended Complaint June 9, 2010 and filed Cross Claims against Masterpiece and others for contractual and equitable indemnity, breach of express and implied warranty, negligence, negligence per se, and breach of contract. CSP answered Plaintiff's Second Amended Complaint September 9, 2010 and filed Cross Claims against Masterpiece and others for breach of warranty, negligence and indemnity.

CONCLUSIONS OF LAW

South Carolina law imposes a three-year statute of limitations on actions concerning damage to real property, general negligence claims, and claims arising out of "a contract, obligation, or liability, express or implied." S.C. Code § 15-3-530 (2010). In each of those instances, Plaintiff benefits from the "discovery rule" of S.C. Code § 15-

3-535 that tolls the limitations period until such time that a plaintiff reasonably ought to have known that it had a cause of action against another party. Barr v. City of Rock Hill, 330 S.C. 640, 644 (Ct. App. 1998). Under the discovery rule, the Statute of Limitations runs from the date the injured party either knew or should have known by the exercise of reasonable diligence that a cause of action had arisen from the wrongful conduct of the tortfeasor. True v. Monteith, 327 S.C. 116, 119, 489 S.E.2d 615, 616 (1997). The fact that the injured party may not comprehend the full extent of damage or appreciate the exact nature of the wrong is immaterial to the discovery rule analysis. Christensen v. Mikell, 324 S.C. 70, 73, 476 S.E.2d 692, 694 (1996). See also Dean v. Ruscon Corp., 321 S.C. 360, 365 (1996). In this instance, the Board of the HOA had actual knowledge of leaking windows and sealant failures identified in the Myles Glick report, but also, in May and June of 2003, acknowledged the need to investigate all three buildings to determine the full extent of the damage. This acknowledgment starts the statute running.

Plaintiff maintains that repairs performed by Genoa and/or the Developer following the Glick Report temporarily "fixed" certain alleged problems until they resurfaced some years later. Thus, Plaintiff argues that its claims are not barred by the statute of limitations because its claims are for "defective repairs" rather than original work. This argument does not apply to Masterpiece, as Masterpiece did not participate in any repairs. Accordingly, the Court hereby finds that South Carolina's three year statute of limitations on any claims Plaintiff could have brought against Masterpiece began to run in 2003 when Myles Glick placed Plaintiff on notice of potential issues with Masterpiece, and the Plaintiff acknowledged the need to investigate further to determine

the full extent of the damage. Because Plaintiff did not file a lawsuit until January 16, 2009, the statute of limitations bars Plaintiff's action as it concerns Masterpiece scope of involvement in this project. This Court concludes that there is no genuine issue as to any material fact, and Masterpiece is entitled to judgment as a matter of law.

In addition, Genoa and CSP have filed cross claims against Masterpiece. The Court hereby finds that Genoa and CSP are entitled to Summary Judgment as it concerns Masterpiece because Plaintiff's claims are barred by the statute of limitations. As a result, Genoa and CSP do not have indemnification actions against Masterpiece, and Masterpiece is likewise entitled to Summary Judgment in full.

WHEREFORE, this Court hereby grants Masterpiece's Motion for Summary Judgment in full for all claims against Masterpiece by Plaintiff, Genoa and CSP.

IT IS SO ORDERED.

The Honorable Roger M. Young
Presiding Judge of the Ninth Judicial Circuit

April 5, 2012
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) CASE NO.: 2009-CP-10-267
3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC.,	)
Plaintiff,	)
vs.	) **ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER, ALTER, OR AMEND ORDER GRANTING SUMMARY JUDGMENT TO MASTERPIECE MILLWORK, INC.**
CHISOLM STREET PARTNERS, LLC, et al.	)
Defendants.	)

FILED
2012 JUL 16 PM 4:01
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before this Court upon Plaintiff's Motion to Reconsider, Alter or Amend the Order Granting Summary Judgment to Masterpiece Millwork, Inc.

STANDARD OF REVIEW

Power to open, modify or vacate a judgment is possessed solely by the court that rendered judgment. Coleman v. Dunlap, 413 S.E.2d 15 (S.C. 1992). A Rule 59(e) motion is not only the proper vehicle to request a court to alter or amend a judgment, but also to seek reconsideration of issues and arguments previously presented. Elam v. South Carolina Dept. of Transp., 361 S.E.2d 772 (S.C. 2004). It is well established that a Rule 59(e) motion can be successful in only three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Zinkand v. Brown, 478 F.3d 634 (4th Cir. 2007).

I have thoroughly considered the Plaintiff's Motion to Reconsider, supporting and opposing material and arguments, and based on same deny Plaintiff's Motion to Reconsider, Alter or Amend the Order Granting Summary Judgment to Masterpiece Millwork, Inc.

EXHIBIT B

IT IS THEREFORE ORDERED that Plaintiff's Motion to Reconsider is DENIED.

AND IT IS SO ORDERED.

Roger M. Young
Presiding Judge

7/23, 2012

Charleston, South Carolina.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2009-CP-10-267
3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC., Plaintiff, vs. CHISOLM STREET PARTNERS, LLC, et al., Defendants.	**AFFIDAVIT OF JACK BURNETT**

FILED
2011 MAR 28 AM 10:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PERSONALLY APPEARED before me, the undersigned, JACK BURNETT, who first be duly sworn, deposes and says:

1. I am a resident of Charleston County, South Carolina.

2. I am over the age of eighteen years of age and make this Affidavit based on my personal knowledge of the facts and information set forth in this Affidavit.

3. I submit this affidavit in response to Defendants' motions for summary judgment based on the statute of limitations.

4. My wife and I own and live in a unit located in the Main Building in the 3 Chisolm Street Condominiums.

5. In 2003 I was the president of the 3 Chisolm Street Homeowners Association, Inc. ("HOA").

6. The Developer had recently turned over control of the HOA to the owners and I was the first owner elected president of the HOA.

7. In 2003 the HOA had architect Miles Glick perform a preliminary assessment of the buildings because of concerns about potential leaks at the roof parapets. At that point a number of the units had not been sold and the Developer was still marketing.

8. The HOA, through its legal counsel, notified the Developer and Genoa of the issues raised in Mr. Glick's report and demanded that they correct the problems.

9. Genoa, presumably at the request or demand of the Developer, performed work to repair the items addressed in the report, including patching or repairing the roof and adding caulking and seals to address water leaks the metal windows on the main building. Genoa's workers were on site for over a year performing repair work.

10. When Genoa completed the repair work and performed its last work on the project, the HOA was informed and believed that the water issues and other issues referenced by Mr. Glick in his report had been repaired by the Developer and Genoa.

11. Around 2008 the wood windows in gym building began rotting, which is what prompted the HOA to hire Applied Buildings Sciences, Inc. to investigate the rotting wood windows. The HOA filed this lawsuit after the Developer and Genoa refused to repair the problems with the wood windows on the gym building.

FURTHER AFFIANT SAYETH NOT.

Jack Burnett

SWORN TO AND SUBSCRIBED before me this 23 of MARCH, 2011

Notary Public for SELF (L.S.)
My Commission Expires: 4/23/2011

ROBERT B PARTLOW
MY COMMISSION # DD666378
EXPIRES April 23, 2011
(407) 398-0153 FloridaNotaryService.com

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC.,

Plaintiff,

vs.

CHISOLM STREET PARTNERS, LLC, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

FILED
2011 MAR 28 AM 10:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY

AFFIDAVIT OF SCOTT A. HARVEY, AIA

PERSONALLY APPEARED before me, the undersigned, SCOTT A. HARVEY, AIA, who first be duly sworn, deposes and says:

1. I am a resident of Charleston County, South Carolina.

2. I am over the age of eighteen years of age and make this Affidavit based on my personal knowledge of the facts and information set forth in this Affidavit.

3. I am a licensed architect employed by Applied Buildings Sciences, Inc. ("ABS").

4. In 2007 the 3 Chisolm Street Homeowners Association, Inc. ("HOA") hired ABS to investigate the cause of the rotting wood windows in the gym building.

5. Some time in or around 2009, ABS was on the site looking at the firewalls and wood windows in the gym building. While on the site, ABS looked at the metal windows in the main building. During these observations it was noted that at some point additional caulking had been added at the interior of one of the metal windows. Additionally, gaps and/or openings between the operable sashes and the fixed portions of the windows were observed.

6. During these observation staining and deterioration of some of the interior wood window stools was noted. Based on these observations it was recommended that portions of the

walls under the windows be opened up. This work would allow for further survey of the wall framing as well as a survey for evidence of water intrusion in the wall cavity.

7. The HOA authorized ABS to conduct some destructive cuts in the walls under the metal windows in the main building, at which point ABS observed some water in the wall under one of the metal windows in the main building.

FURTHER AFFIANT SAYETH NOT.

Scott A. Harvey, AIA

SWORN TO AND SUBSCRIBED before me this 25 of March, 2011

Notary Public for NC (L.S.)

My Commission Expires: My Commission Expires December 14, 2020

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON 3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC., Plaintiff, v. CHISOLM STREET PARTNERS, LLC, MURRAY SCHOOL PARTNERS, LLC, GENOA CONSTRUCTION SERVICES, INC., MASTERPIECE MILLWORK, INC., ALLEN ROPER, JR. D/B/A R MASONRY BRICKWORK, CAROLINA ROOFING SYSTEMS, INC., AND LACY PAINTING, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2009-CP-10-267 **AFFIDAVIT OF RAY MOSES**
GEONA CONSTRUCTION SERVICES, INC., Third Party Plaintiff, v. THE FOX STEEL COMPANY, CAROLINA SERVICES, INC., LESCO RESTORATION, INC., FERST PLASTERING, INC., CHARLESTON GLASS & MIRROR COMPANY, 3D RENOVATIONS, WILLIAMS MECHANICAL, MASTERCRAFT INTERIOR & EXTERIOR, COASTAL GLASS AND BLOCK, ADAMS DAVIS & PARTNERS, TROY PARDEE HEATING AND AIR CONDITIONING (d/b/a PARDEE HEATING AND AIR), METRO WATER-PROOFING, INC., CT WINDOWS LIMITED, AND ARCHITECTURAL MATERIALS & SYSTEMS, Third-Party Defendants.	

FILED
2011 MAR 24 AM 11:55
JULIE J. ARMSTRONG
CLERK OF COURT

4632125

PERSONALLY appeared before me Ray Moses, who, being duly sworn, deposes and states:

1. My name is Ray Moses, I am of the age of majority and I am familiar with and fully competent to testify to the facts and opinions set forth in this Affidavit.

2. I, Ray Moses, am the President and Chief Executive Officer of Genoa Construction Services, Inc., which served as the General Contractor for 3 Chisolm Street Renovation/Conversion Project and am authorized to speak and execute documents on behalf of Genoa Construction Services, Inc.

3. On, or about February, 2004, Genoa Construction Services, Inc. stopped performing work on the 3 Chisolm Street Renovation/Conversion Project.

4. Genoa Construction Services, Inc. did not make any repairs, warranty work, or any other work after February, 2004 at the 3 Chisolm Street Project.

5. No one from Genoa Construction Services, Inc. or on behalf of Genoa Construction Services, Inc. was on site at the 3 Chisolm Street Project after February, 2004.

6. Genoa did not promise to make any repairs, warranty work, or any other work at the 3 Chisolm Street Project after February, 2004.

Further Affiant sayeth not.

Genoa Construction Services, Inc.

Ray Moses
President and Chief Executive Officer

SWORN to before me this
22nd day of March, 2011.

Rebecca D. Fakhori
Notary Public for Georgia
My Commission Expires: 8/3/15

Rebecca D. Fakhori
My Commission Expires
NOTARY PUBLIC
August 3rd 2015
Cobb County, Georgia

4632125

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON 3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC., Plaintiff, v. CHISOLM STREET PARTNERS, LLC, MURRAY SCHOOL PARTNERS, LLC, GENOA CONSTRUCTION SERVICES, INC., MASTERPIECE MILLWORK, INC., ALLEN ROPER, JR. D/B/A R MASONRY BRICKWORK, CAROLINA ROOFING SYSTEMS, INC., AND LACY PAINTING, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2009-CP-10-267 **CERTIFICATE OF SERVICE**
GEONA CONSTRUCTION SERVICES, INC., Third Party Plaintiff, v. THE FOX STEEL COMPANY; CAROLINA SERVICES, INC., LESCO RESTORATION, INC., FERST PLASTERING, INC., CHARLESTON GLASS & MIRROR COMPANY, 3D RENOVATIONS, WILLIAMS MECHANICAL, MASTERCRAFT INTERIOR & EXTERIOR, COASTAL GLASS AND BLOCK, ADAMS DAVIS & PARTNERS, TROY PARDEE HEATING AND AIR CONDITIONING (d/b/a PARDEE HEATING AND AIR), METRO WATER-PROOFING, INC., CT WINDOWS LIMITED, AND ARCHITECTURAL MATERIALS & SYSTEMS, Third-Party Defendants.	

FILED
2011 MAR 24 AM 11:55
JULIE J. ARMSTRONG
CLERK OF COURT

I, Angela S. Hook, an employee with the Law Firm of Rogers Townsend & Thomas, PC,

4637474

attorneys for Genoa Construction Services, Inc., hereby certify that I have served or caused to be served a copy of the foregoing document upon the below named individuals and/or counsel this the 23rd day of March, 2011, via electronic mail as follows:

DOCUMENT SERVED

Genoa Construction Services, Inc.'s Affidavit of Ray Moses

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4637474-1

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Attorney for Coastal Waterproofing, Inc. n/d/b/a Wards Waterproofing, Inc.

Angela S. Hook, Paralegal

Columbia, South Carolina

4637474-1

TEL 803-771-7900
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ANGELA S. HOOK, PARALEGAL
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803-744-1834
WWW.RTT-LAW.COM

March 23, 2011

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, #106
Charleston, South Carolina 29401

Re: 3 Chisolm Street Homeowners Association, Inc. vs. Genoa Construction Services, Inc., et al.
C/A Number: 2009-CP-10-267
Our File Number: 11152.53

Dear Ms. Armstrong:

Enclosed please find the original and copy of Genoa Construction Services, Inc.'s Affidavit of Ray Moses.

Please return the extra filed copy to my office in the enclosed self-addressed envelope.

Thank you for your assistance and please contact my office with any questions or concerns.

Sincerely,

Angela S. Hook
Paralegal to D. Ryan McCabe

ASH
Enclosures
cc: All Counsel of Record (w/enclosures, via email)
Ms. Shari Bradix (w/enclosures, via email)
Mr. Ray Moses (w/enclosures, via email)

4637269-1

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC.,

Plaintiff,

vs.

CHISOLM STREET PARTNERS, LLC, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-267

FILED
2011 MAR 28 AM 10:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY

AFFIDAVIT OF WALTER G. SEINSHEIMER, JR.

PERSONALLY APPEARED before me, the undersigned, WALTER G. SEINSHEIMER, JR., who first be duly sworn, deposes and says:

1. I am a resident of Charleston County, South Carolina.

2. I am over the age of eighteen years of age and make this Affidavit based on my personal knowledge of the facts and information set forth in this Affidavit.

3. My wife and I own and live in a unit located in the Main Building in the 3 Chisolm Street Condominiums. We purchased and moved into our unit in 2005.

4. The metal windows in my unit occasionally cloud/fog during certain times of the year, but the fogging occurs only infrequently and only during certain temperature conditions. The fogging is visual nuisance only, which I address by cracking open the windows. I did not notice and was not aware that there were any water instruction issues associated with water leaks at the metal windows until 2009 after ABS conducted destructive testing under and reported to the HOA that it had observed some water in the walls under some, but not all, of the metal windows in the main building.

5. I was never notified or aware of the 2003 Mile Glick report.

6. At an annual meeting of the HOA, the owners approved and agreed to pay a pro rata share of the costs of replacing the wood windows in the gym building.

FURTHER AFFIANT SAYETH NOT.

Walter G. Seinsheimer, Jr.

SWORN TO AND SUBSCRIBED before
me this 24 of March, 2011

Notary Public for S.C. (L.S.)
My Commission Expires: 12/11/2014

the vice-president. I talked to a lot of people at Genoa because it was very frustrating to get anything done.

Q. When did you speak with the president of Genoa?

A. I don't know. Back in around 2000, I guess. I don't remember, I guess 2000. But I remember specifically I was on a business call in England, and I had to get him on the phone because my wife said this is happening and that's happening, and so I got him and he said, "Don't worry about it, I'll take care of it."

Q. Do you remember what the issues were at the time?

A. One or all of the above that are listed there. One of the issues was the condensation on the inside of the window. My wife called and said it looks like a flood inside. I don't know what that issue is all about. They blamed it on the Architectural Review Board, or whatever they have in Charleston, and said that they couldn't put insulated glass in the windows.

Q. When you say "they blamed it," who is "they"?

A. The developers.

Q. David Perdue and others or --

A. I talked to David most of the time, when I could get him; he wasn't very available. I talked to his brother once or twice to see if he was still involved in the business because I couldn't get him. Then they gave me the

there have been some leaks in the past but they seem to be corrected?

A. Like I said, I don't go in that part very much.

Q. And then there was some doors that leak around the edges on the terrace. Do any of the terrace windows have any issues, or is that part of the Tradd Street side?

A. It's mainly doors with the transom lites around it. Like I said, it's pretty much protected from the weather.

Q. Has anybody ever tried to do a fix on the condensation issue?

A. Not to my knowledge.

Q. I understand from previous depositions this week that there was -- actually, I think it was from last week, that there was a presentation made to the Board of Architectural Review regarding a possible window fix for the main building at Chisolm Street. Have you heard whether anything was accepted or what the --

A. I wasn't even aware there was a presentation. Was that something recent?

Q. My understanding was it was late last week.

A. I'm not involved in that.

Q. Okay. All right, the ill-fitting doors, are those doors going onto the terrace or are those some other doors?

about specifically. I know we had issues with the roof. We had issues with the windows. We had issues with the parapet thing. We had some cracks up there. We had somebody that did a study.

Q. Let me show you what's been marked as Exhibit 30, it's the Glick/Boehm. Is this the study you're referring to?

A. Yeah. I remember the name Glick.

Q. This is actually addressed to you?

A. Not addressed to me, somebody like that. Yeah, that was addressed to me.

Q. As president of the Homeowners Association?

A. Yes, uh-huh.

Q. And this is dated April 8, 2003, and was that something that the Homeowners Association commissioned?

A. Yes, it is.

Q. And what prompted the Homeowners Association to hire Glick/Boehm & Associates to do --

A. We just had a lot of problems on the roof and we didn't know how extensive they were, and the management company recommended we get someone to -- or somebody on the Board, I don't know, and said let's find out what is wrong with this building and get it fixed, see what the developer can take care of, see where we are, what's going on, and so that's the study we got.

A. No. I've got a closet there and water would go in the closet, which caused a big problem, so what they did is put another level of slate so it raised the floor of the closet by a half-inch, which kept the water -- I hope it's not going in there. It might be going under the slate. Those are things you don't know until you get inside of them.

Q. If you'll go to the conclusions?

A. (The witness complied.)

Q. Do you see that second sentence?

A. Uh-huh.

Q. Was a program of destructive testing ever undertaken pursuant to that recommendation?

A. Not pursuant to this, no.

Q. Was a program of destructive testing ever undertaken outside of the present litigation?

A. Not to my knowledge.

Q. If you go down to the fourth sentence starting "I recommend" --

A. Uh-huh.

Q. -- "that the Board seek legal counsel relative to the impacts of the above issues as well as pursuing a forensic report documenting and recording the above issues." Did the Board seek legal counsel regarding these issues?

A. No, I don't think we did. We might have talked

through your tenants?

A. Not much. They're excellent tenants because we don't have much communication. Things seem to go very well and we have a cordial but infrequent relationship.

Q. If they have complaints, do they go to you or do they go to the Board or to someone else?

A. They would call me.

Q. And have you had complaints from them, from any of your tenants?

A. I've had, you know, the various and sundry, you know, the refrigerator is not working, would you take care of that. I have had a couple of tenants complain that there has been some condensation on the windows over the past.

Q. Anything else?

A. The current tenant and I recently replaced wall coverings because they were getting aged. But other than that, it's been pretty smooth sailing.

Q. And did you have any issues while you were living in Chisolm Street?

A. There was condensation on the windows, but we, you know, dealt with it. We wiped the water off and it wasn't a huge issue for us. I will tell you, whether it's out of order or not, there was an issue in 2008 when the unit was empty. During a huge rainstorm, water came over the gutter and then came inside the window and damaged the

location?

A. Well, it was an open spot by design. So, when it rained, water would blow in there.

Q. And that's just because of the rain --

A. I think so, yeah.

Q. Do you know who was complaining of the stucco issues?

A. I don't know who complains about what. No, I don't know.

MR. BARNES: I believe that's all I have. Thank you, Dr. Cogar.

EXAMINATION BY MS. PARIS:

Q. Dr. Cogar, my name is Laura Paris. How are you today?

A. I'm fine. Thank you, Ms. Paris.

Q. I represent Brock Green in this action. Briefly, do you have any architectural training, either formal or informal?

A. Zip.

Q. With respect to the condensation problems that you've experienced, when did you first notice the condensation on the windows?

A. Probably as soon as I moved in there.

Q. And am I correct that you and your wife are the original owners of unit 304?

COPY

STATE OF SOUTH CAROLINA)
:
COUNTY OF CHARLESTON)

3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC., Plaintiff,

-vs-

CHISOLM STREET PARTNERS, LLC; MURRAY SCHOOL PARTNERS, LLC; GENOA CONSTRUCTION SERVICES, INC.; MASTERPIECE MILL WORK, INC.; ALLEN ROPER, JR. d/b/a R. MASONRY - BRICKWORK & STUCCO; CAROLINA ROOFING SYSTEMS, INC.; and LACY PAINTING, Defendants,

GENOA CONSTRUCTION SERVICES, INC., Third-Party Plaintiff,

-vs-

THE FOX STEEL COMPANY; CAROLINA SERVICES, INC.; LESCO RESTORATION, INC.; FERST PLASTERING, INC.; CHARLESTON GLASS & MIRROR COMPANY; 3D RENOVATIONS; WILLIAMS MECHANICAL; MASTERCRAFT INTERIOR & EXTERIOR; BONIFAY MASONRY; COASTAL GLASS AND BLOCK; ADAMS DAVIS & PARTNERS; TROY PARDEE HEATING & AIR CONDITIONING d/b/a PARDEE HEATING & AIR; and JACK BURNETT, FRANCES HEGENBERGER, CHARLES WYRICK, JACKALYN NOLLER, ANGELA HALFACRE, LAURA RADLEY, LINDA AUSTIN,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2009-CP-10-267

THE DEPOSITION OF:

GEORGE GRAY DAVIDSON

Date: October 25, 2010

Time: 1:38 p.m.

Location: Nexsen Pruet, LLC
205 King Street
Suite 400
Charleston, SC 29401

Reporter: Kimberli S. Hogle
Professional Court
Reporter & Notary
(843) 849-3007

KIMBERLI S. HOGLE
Independent Court Reporter
Tele: (843) 849-3007 Fax: (843) 849-7127

A. He is the past president.
Q. There's only been you and he?
A. I was the silly one to walk in after the fact.
Q. I'm sorry, did I ask you have you seen this before?
A. I have not seen this.
Q. Do you see under "B", under "water intrusion", where it says "water intrusion in the main building were in the following areas: Windows, window ledges, condensation build-up on the inside of the glass," does it surprise you that this report came out in 2003?
A. Well, I haven't seen it before, so I don't know if "surprise" is the word I would use.
Q. Does this look like the same complaints that the unit owners in the main building have made to the Board today?
MR. ELLIS: Object to the form of the question.
Q. "Today" not being a literal day.
A. It looks like the complaints are consistent, yes.
Q. The last paragraph of that "water intrusion" section says, "The condensation issues were apparent. They may have associated problems with the size and distribution of the mechanical systems." Are you aware of any issues

STATE OF SOUTH CAROLINA)
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COUNTY OF CHARLESTON)

3 CHISOLM STREET)
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CHISOLM STREET PARTNERS,)
LLC; MURRAY SCHOOL)
PARTNERS, LLC; GENOA)
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INC.; MASTERPIECE MILL)
WORK, INC.; ALLEN ROPER,)
JR. d/b/a R. MASONRY -)
BRICKWORK & STUCCO;)
CAROLINA ROOFING SYSTEMS,)
INC.; and LACY PAINTING,)
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BURNETT, FRANCES)
HEGENBERGER, CHARLES)
WYRICK, JACKALYN NOLLER,)
ANGELA HALFACRE, LAURA)
RADLEY, LINDA AUSTIN,)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2009-CP-10-267

THE DEPOSITION OF:

Mr. Myles L. Glick, AIA

Date: March 18th, 2011

Time: 10:13 a.m.

Location: Nexsen Pruet, LLC
205 King Street
Suite 400
Charleston, SC 29401

Reporter: Kimberli S. Hogle
Professional Court
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(843) 849-3007

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tell time, but very few people know how to build a watch. I think I separate myself that I know how to build a watch, and I know how to practice architecture. It doesn't make me perfect, I make mistakes, but I analyze buildings for problems.

Q. And typically when a Homeowners Association, or someone on behalf of a Homeowners Association, contacts you to do forensic work, it's because they already have some concerns about the construction of the building?

A. Yes, sir.

Q. And is that what took place at some point in the 2003 time period involving 3 Chisolm Street?

A. It happened in 2003. The report that I ended up writing was in April. It looks like I went out there in January of 2003. And I can't say who called me, but I suspect it was Joe DaPore as opposed to the Homeowners Association, but I really don't have a specific recollection.

Q. But you can say is that in April of 2003 you prepared a report based on your investigations in January of 2003, and that report was sent to Jack Burnett as President of the 3 Chisolm Street Homeowners Association; is that correct?

A. Correct; and that's Exhibit 183 that I see in front of me of the Okon deposition.

Q. And you've had a chance to look at Exhibit 183 of Ms. Okon's deposition, and do you agree with me that's the report you prepared for the Homeowners Association on April 8th, 2003?

A. Yes, it is.

Q. And that report consists of four typed pages, which is your analysis, and then it is followed by a series of photographs which best depict the condition of the building; is that correct?

A. The answer is yes, and the photographs depict the building that is the main building. There are three buildings there, and I only looked at the main building, the old schoolhouse. Although, there are pictures of the other building, I guess just what else was existing, for instance, the gymnasium pictures there.

Q. So the building that you investigated at the time was the building that is known as the School Building?

A. Yes, sir.

Q. Do you recall if you ever met Mr. Burnett?

A. I cannot recall at this time whether I did or did not.

Q. And based on your report, you were present during the inspection, Tom Carlson was present, his son Brett Carlson was present, and Joe DaPore was present. Do you recall anybody else being present during the inspection?

A. Only when we went to the individual homeowners. There were homeowners in different units; I don't know their names.

Q. But you remember that the homeowners were in their units, and were they pointing out problems to you that they had with their units?

A. Yes.

Q. And those problems included problems with the windows and related water intrusion; is that correct?

A. Yes, sir.

Q. Do you recall how many units you went into?

A. No, sir, I really don't. If it's not specified in the report --

Q. It's not. When you were at your inspection, you took a series of photographs; is that correct?

A. Correct.

Q. Some of which were attached to your report and some of which were not; is that right?

A. Correct. I brought all the photographs that I have in my file. It does appear that the photographs attached to this report are in a PowerPoint format. And the photographs that we were able to find, because it's seven/eight years later, were not in a PowerPoint format. They seem to be the same photos, but they may not be all the photos in the report that I brought today. I just happened

intersections.

Q. What were you telling the Homeowners Association on Item F5?

A. Well, when they replaced the windows, and I can only tell this from the ground floor because this was a visual walk-through, so you could get to the sills of the first floor windows as opposed to the upper floors, that they had to remove grout and things of that nature from the existing materials, and that there was holes that would let water in to the wall envelope I'll call it.

Q. And that was a concern because that can lead to the mildew and mold growth and water intrusion; is that correct?

A. Correct.

Q. And you reported that concern to the Homeowners Association?

A. Yes, sir; that's what No. 5 says.

Q. If you skip to the last page of your written portion of your report, which is Item H, your conclusions, if you could read that first sentence of your conclusion, please?

A. "All of the above issues are significant and were pervasive throughout the entire building."

Q. And you put the Homeowners Association on notice of your concern that there were significant and pervasive

problems with this entire building; is that correct?
A. Yes, sir, recommended further documentation and confirmation of my concerns. Because, again, I couldn't get up on a ladder. We walked the roof. We walked the ground.
Q. What you expected them to do was allow you to do additional testing on the building; is that right?
MR. ELLIS: Object to the form of the question.
A. I recommended that I do it or somebody do additional testing, yes.
Q. But even absent the additional testing, you already had significant concerns about this building involving water intrusion; is that correct?
A. Yes, sir.
Q. And you actually recommended to the Board that they seek legal counsel and that they pursue a forensic report that would further document the problems that you already discovered that could potentially lead to more discovery of problems; is that correct?
MR. ELLIS: Objection.
A. Yes, sir.
Q. And to your recollection, did you ever hear from Jack Burnett after you sent this report to him?
A. I can't recall if I did or did not. For all I know, he could have been one of the homeowners I met with.

Q. If you had gone back and investigated the School Building pursuant to your recommendations, do you think you would have also looked at the other two buildings on the property while you were there?

MR. ELLIS: Object to the form.

A. I think as a forensic architect or an engineer, if you're on a site, you cannot put blinders on and not look to your right or look to your left to see what's going on, so I would think, the way I work, that I would have recommended that we take a look at all of the buildings.

Q. And if you went in and looked at the other buildings, do you expect you would have, from a visual standpoint, been able to observe the same problems that ABS observed with the original construction?

MR. ELLIS: Object to the form.

A. I have not seen any report by ABS, so I can't answer that question.

Q. This has already been marked so I'm not gonna re-mark it, but this is from April 8th, 2010, an ABS report. And they did some destructive testing, but they also just made some observations in December of 2009. For example, on figure No. 2, what ABS was reporting in unit 401 is that the drywall was discontinuous in the storage area. If you had been asked to go into the Gym Building and into this particular unit, with your own eyes could you have made that

observation and reported that to the Homeowners Association?

MR. ELLIS: Object to the form.

A. If I had been in that room and the condition was the same when I was there, I would have reported it, yes.

Q. For example, if that goes back to original construction, the condition would have been the same; is that right?

A. Correct. If it's a firewall or a tenant separation wall, it would heighten my concern.

Q. So if you had been in that room, you would have reported that problem back in 2003; is that correct?

A. If I had seen it, yes.

Q. I'm looking at Figure 4 of the Applied Building Sciences report. If you had been asked to go take a look at unit 404, you would have observed that condition; is that correct, if it dates back to original construction?

MR. ELLIS: Object to the form.

A. If I was investigating that portion of the building and the condition existed at the time, I probably would have noted it as well.

Q. And you would have reported that to the Homeowners Association back in 2003; is that correct?

A. Most likely.

Q. There are several photos. Figure 5, again this is not destructive. Applied Building Sciences is reporting

obvious stuff.

Q. You reported one condition that a homeowner mentioned and that was that a door wouldn't close all the way because the wood floor was buckling. Were there other specific instances of complaints that homeowners made to you such as condensation on all the windows and things of that nature?

A. There were some complaints about condensation on the windows, yes.

Q. Did anybody tell you that they had seen water leaking through the windows?

A. I can't sit here today and say that someone told me those exact words. I actually put that kind of stuff in my reports. When someone tells me exactly something, I write it down. But it was pretty obvious because there were towels. In some of the pictures I have, there are towels sitting on the sills. I mean, that's a way of telling me they know water is coming through.

Q. And as I understand it, in all of the forensic investigations you've done throughout the years, I think you said there were only about four instances where you had told people "you've got a problem and you need to get it investigated further" that you never heard anything back from the homeowners?

A. Yes, maybe three or four. They went in other

directions or did whatever they did, I don't know.
Q. And roughly how many forensic investigations have you done through the years where you've expressed to the homeowners or building owner that there needed to be additional testing?
A. I would say 99 percent, and I've done hundreds and hundreds of investigations.
Q. And have you worked with Joe DaPore on any prior construction defect matters?
A. Prior to 2003?
Q. Yes, sir.
A. That's a real hard one to answer. I know we did Riverside together, and I think that was prior to 2003. I think that may have been the only one, Riverside Condominiums.
Q. Did you and Joe DaPore know each other in any other context except for construction litigation?
A. No, sir.
Q. So when he contacted you, he was contacting you because he knew you were a forensic architect experienced in construction litigation; correct?
A. Yes.
Q. What was your belief?
A. That was my belief, and the fact that he probably heard I was really a nice guy.

STATE OF SOUTH CAROLINA)
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ANGELA HALFACRE, LAURA)
RADLEY, LINDA AUSTIN,)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2009-CP-10-267

VOLUME I

THE DEPOSITION OF:

Mr. Scott A. Harvey

Date: March 15, 2011

Time: 10:20 a.m.

Location: Offices of ABS
1890 Milford Street
Charleston, SC 29405

Reporter: Kimberli S. Hogle
Professional Court
Reporter & Notary
(843) 849-3007

KIMBERLI S. HOGLE
Independent Court Reporter
Tele: (843) 849-3007 Fax: (843) 849-7127

have robust condensation that's draining down -- I guess it's coming into contact, as you said, with the wood, so what robust system are you talking about that would handle --

A. A wood product that can handle long-term moisture contact, or sealants that are gonna deter water from entering into those joints.

Q. And do you think that the sealants that were specified were incorrect in some way in regards to the wood windows?

A. I have not reviewed the sealant specification.

Q. Do you believe that the wood product itself that was specified was incorrectly specified?

MR. NORRIS: Object to the form.

A. No. Again, had it been preservative-treated, I think it would have fared all right.

Q. And the steel windows?

A. The steel windows are a similar issue. We didn't necessarily talk about it in wood, but you've got adjacent construction as well that can have resulting damage as a result of the condensation on the windows. So in the case of the School Building, we have wood stool damage on the insides of the windows, and in some cases we have the condensation that's in the metal stud construction adjacent to the windows.

Q. Does that go back to the finger joints we were talking about?

A. No, there typically weren't finger joints right at those corners. Finger joints occurred in longer runs, but not necessarily at the corner intersection; in close proximity to, but not at those corners.

Q. How is that an install issue? You had said it could be installation or painting?

A. Or the manufacturing of the window, meaning that one member wasn't terminated or sealed or glued to another member. When we pulled the window apart, we didn't have any -- there wasn't a way of telling anything about the manufacturing just simply because the things were falling apart. We didn't delve into the manufacturing.

Q. Is there a way you can test to see if there was glue present?

A. I don't know. I'm sure there would be, but I don't know.

Q. So you had said painting, install or manufacture of the window. How could it have been -- or how was it an install issue?

A. And when I said "install," I misspoke. That was where I was talking about the manufacturing of the window.

Q. Okay. Other than those two, the painting or the manufacturing of the window, anything else that would relate

to the deterioration of the corners and intersections on the outside?

A. Sealants possibly.

Q. Anything else?

A. I don't think so.

Q. Did you do any testing -- I know you did -- well, was there any testing of the painting done at the corners and intersections of the outside of the window?

A. Sunderman Labs did some testing near the corner, but not as you take the corner pieces apart, not on what would have been hidden portions of the wood.

Q. So is there any way you can tell whether painting was an issue of the deterioration at the corners and intersections on the outside of the windows?

A. I can say from the corner sample that we sent, the paint did not meet the dry film thickness of the paint specification, again in that one-foot by one-foot sample, and that his documentation of the preservative treatment showed that there was little to no traceable evidence of preservative treatment in those areas. He also indicates lack of primer in certain locations, exposed wood.

Q. Was there any testing done of the sealants?

A. No.

Q. And I think you said there was no testing done related to the manufacturing of the window, how it was

joined together, correct, whether it was glued properly?
A. That's correct.
Q. And, again, we're talking about the wood windows?
A. The wood window.
Q. So you have -- we were talking about sources of water intrusion and you said there were several areas, and one you were talking about on the outside because of the corners and intersections. What other ones are there?
A. On the inside, we saw evidence of deterioration in the same or in similar corners and intersections. We also saw deterioration of muntins and rails as the glass would join at those particular pieces.
Q. And what is that suggestive of?
A. It suggests that -- again, we're talking about the inside, so most likely condensation was the source of that deterioration, and due to the lack of preservative treatment, that wood wasn't able to hold up to the condensation.
Q. Again, did you talk with anybody regarding when condensation issues started in the Gym or Cottage?
A. No.
Q. Do you know of any reason why they would not have begun at the beginning of -- once they were installed, is there any reason why there would have been a period where

condensation that you noted when you came in to observe, is there any reason that you can think of that that condensation wouldn't have been occurring prior to your observations?

MR. ELLIS: Object to the form of the question.

A. No.

Q. But you did not ever find out, or I guess seek to find out, how long the wood had been exposed to this condensation issue?

A. No, we didn't look into that issue.

Q. Do you have any opinions regarding the wood windows that we have not covered up until this point?

A. I don't think so.

Q. Was there any difference of your opinion as to the issues with the wood windows in the Gym as opposed to the wood windows in the Cottage, or are they the same?

A. No, they were the same.

Q. ABS also did a scope of work regarding the mock-up?

A. Mock-up for the window replacement?

Q. Right.

A. Yes, that's correct.

Q. Did you do a water test, a spray test with the mock-up?

question.

A. No. Without knowing when it was done and who did it, then, no.

Q. Anything else in regards to stucco?

A. I don't think so.

Q. Now, we've talked about energy panels a little bit already. How many energy panels -- well, first, let me ask you this. When were you first asked to look at the energy panel issue, was that in October of 2010?

A. No, it was earlier than that. I believe it was around April or May of 2010.

Q. And at that point in time, what were you asked to do?

A. Well, it stemmed from the initial field observations that we made and the test cuts that we made in the two units at the main building where we observed condensation and damage, deterioration to some of the adjacent construction, so we were asked to start looking into methods that may limit or eliminate the condensation.

Q. And who asked you to do that?

A. I don't recall. I believe it came through communication through Sentry Management, but I don't recall who was the originator of that request.

Q. And it was your understanding that all that you were being asked to do at that point in time was figure out

frame and the mylar, it was light-weight. It was fairly puncture-proof, you could push on it and it didn't puncture easily. And it was fixed, which allowed it to be installed into a space and basically sealed, for the most part, around so it didn't have as many air gaps as possibly some of the other systems may have had.

Q. Is there any way that you can know -- well, let me ask you this way. If these windows leaked because of weatherstripping or anything else, will the energy panel correct that problem?

MS. FITZHENRY: Object to the form.

A. No, the energy was there to deal with condensation. It didn't deal with window installation issues, weatherstripping, whatever else there may be associated with the window, operation of the window, the ability of a window to close and open, it didn't deal with that. It simply was just a panel to help isolate the window from the indoor warmer temperatures.

Q. How critical is the installation of these energy panels, in other words, the exactness of the installation, in order for it to work?

A. The difficulty in these systems is they have to fit snugly into an opening. You're installing it as a way to stop air infiltration or air from getting to the metal window and the glass, so they have to be fairly tight, so

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IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2009-CP-10-267

VOLUME II

THE DEPOSITION OF:

Mr. Scott A. Harvey

Date: March 17, 2011

Time: 10:18 a.m.

Location: Offices of ABS
1890 Milford Street
Charleston, SC 29405

Reporter: Kimberli S. Hogle
Professional Court
Reporter & Notary
(843) 849-3007

KIMBERLI S. HOGLE
Independent Court Reporter
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responsibility?

MR. ELLIS: Object to the form.

A. The condensation doesn't necessarily relate to the species of wood, but, again, to the treatment of the wood, the painting, the preservative treatment of the wood, the caulking of the window. And the contractor has responsibility in the fact that they have a contract with the subcontractor or the manufacturer to provide a particular type of windows, to meet a particular type of standard.

Q. Okay. So, again, was there anything in the windows that you saw -- well, let me do it this way. Was the painting that was done not to specification, to the original specifications?

MR. ELLIS: Object to the form.

A. The painting that was tested by Sunderman Labs showed that the dry film thickness was less than that required by the specifications from the 2000 renovation.

Q. And the sealants, are you aware if they were applied in some manner that wasn't consistent with the specifications that applied to the 2000 renovations?

A. No, we didn't evaluate the sealants.

Q. And we've discussed the preservative treatment in the past. The species of wood was to the specifications set out related to the 2000 renovations; correct?

A. Again, I remember talking with Palmetto about the possibility that only the upper-floor windows would be replaced at this time and that it was gonna be phased, but I don't recall anything else in that regard.

Q. I'm gonna show you what was marked as 194. This is an email indicating that the replacement windows that Palmetto was installing did not have two coats of primer; is that correct?

A. Yes. It's in regards to the primer, that's correct.

Q. It's also saying that several sections of the window didn't have any primer at all; is that right?

A. Yes, that's correct.

Q. And is that a similar issue to what you believe caused some of the damage, at least, in the wood windows that you were replacing or that Palmetto was replacing?

MR. ELLIS: Object to the form.

A. The lack of priming and painting is something that we identified on the original windows; is that what you're asking?

Q. Right.

A. Yes, that's correct.

Q. And this would be an example I guess of what you're saying of contract administration, them being out there?

during the break. As I understand it, as it relates to the single-paned metal windows in the School Building, the source of water intrusion associated with that area is condensation; is that correct?

MR. ELLIS: Object to the form.

A. The source that we have identified and that we have put forth a repair for is condensation. We've talked about a few other items where gaps in the metal window frame have been noted, but we haven't observed the water intrusion or identified water intrusion through those gaps.

Q. So you're not gonna render opinions as it relates to those gaps that those gaps are causing water intrusion because you have not been able to identify that as an issue; is that right?

MR. ELLIS: Object to the form.

A. I think earlier I had identified them as a possible source. But, again, I have not observed the water coming through those joints. And as of yet, I have not been asked to do anything further with the metal windows.

Q. As I understand it, the discovery deadline has passed in this case for expert opinions. Have you been asked to do any additional work as it relates to the metal windows?

A. No, not as of yet.

Q. So the identified source of water intrusion in

that area is isolated to condensation and a possible water entry point in the gaps of the metal frames?

MR. ELLIS: Object to the form.

A. That's correct.

Q. Did y'all do any investigation as to any of the glazing around the individual panes of the window?

A. No, we did not survey the -- making sure we're talking about the right thing, the glazing putty?

Q. Yes.

A. Around the glass, we did not. We haven't pulled any, and the only observation that we've made is that we noted two colors.

Q. And we're speaking just on the School Building on this one?

A. Yes.

Q. That's your understanding; right?

A. Yes. Earlier you had identified it was in regards to just the metal windows.

Q. And as I understand it -- well, I don't recall hearing any testimony about any sealant around the metal windows in the main School Building being investigated. Am I right, that y'all did not identify that as a problem area?

A. That's correct, we have not identified that.

Q. Are there any other sealant areas on the main School Building that you identified as a source of water

intrusion or leading to any damage?
A. No, I don't believe we've identified any sealant locations on the School Building that may be contributing to water intrusion.
Q. Let me ask you a question on the gap in the metal windows. I understand it's the fixed frame and the operable frame maybe don't seal all the way together; is that right?
A. That's correct.
Q. And y'all have not done any investigation to determine whether -- what causes that?
MR. ELLIS: Object to the form.
A. That's correct; we have not removed a window, taken it apart, to figure out what causes that.
Q. And you're not gonna render any opinions as to the manufacturing of the window and whether it was done properly, are you?
A. No. I don't have sufficient information yet to do that.
MR. MCCUE: That's it.
EXAMINATION BY MR. WILLIAMS:
Q. Scott, I'm Bo Williams. I represent Charleston Glass & Mirror. Have you examined in any detail the specifications for the installation of the steel windows for the 2001, approximately, project?

Q. Have you done anything other than work for your own business since '85?
A. No.
Q. It's my understanding you worked for 3 Chisolm Street?
A. Sub.
Q. You were a sub?
A. Well, the management company, when they have a problem with Chisolm, I go do the repairs. I'm a handyman.
Q. And that's through Jerry Huddleston Painting?
A. Jerry Huddleston. I changed it.
Q. So it's just Jerry Huddleston now?
A. Now, yeah.
Q. Is that a sole proprietorship?
A. Yes.
Q. So they call you on an as-needed basis?
A. Yes.
Q. And have you worked for more than one management company at Chisolm?
A. No.
Q. Which management company?
A. CCM, which sold out to Sentry.
Q. Is there any regularly scheduled maintenance that you do on Chisolm?
A. No.

Q. The first line is "made windows operable"?
A. Right.
Q. What was wrong with the windows?
A. They just would stick, hard to open.
Q. Those are the wood windows?
A. Yes. The little, small ones at the front.
Q. I'm sorry, you said small ones where?
A. In the front of the unit, by the stairs.
Q. Do you remember what the condition of the gym windows were in early 2004?
A. Fine, they were all right.
Q. Any damages related to the windows other than just making them unstick?
A. No.
Q. Unit 105, which is invoice 672, should be the next page.
A. Right.
Q. That's March 31st, 2004. Now, this one was billed to Chisolm Street Partners to the attention of David Perdue; do you see that?
A. Yes.
Q. And why would you bill them instead of CCM?
A. Because David Perdue had me go in because the windows would condensate real bad. I guess the unit sat empty, nobody in it. So I went in and put dehumidifiers in

there and cleaned the mildew off the walls.

Q. So unit 105 was unoccupied at the time?

A. Right.

Q. And based on who you were billing, would you think that Chisolm Street Partners would have owned that?

A. I'm pretty sure, yeah. Because I think that's who David Perdue worked for.

Q. And you removed mildew from the walls and around the windows. Where exactly was the mildew?

A. Walls, windows, and about this much water on the floors.

Q. And when you say "this much," that's about an inch?

A. Yeah.

Q. Was it standing water?

A. Yes.

Q. Did you figure out where that leak came from?

A. It wasn't a leak. It was condensation.

Q. Did you tell David Perdue or someone else at Chisolm Street Partners about this condition?

A. Yeah, I'm pretty sure I told somebody.

Q. Would that have been Chisolm Street Partners, do you know?

A. I'm pretty sure, yeah.

Q. And what do you remember being told after you

talked to them about the amount of water in the apartment or in the condo?

A. He told me to check the windows.

Q. And you did?

A. Yes.

Q. And you found that it was condensation?

A. Condensation.

Q. Okay. That much water seems like a lot of condensation. How much condensation did you see when you were in there?

MR. PARRISH: Object to the form. Go ahead and answer it. Just ignore what I just said.

A. Can you ask the question again?

Q. Yeah. How much condensation did you see -- strike that. One inch on the floor of water from condensation seems like a lot.

A. What I did is I ran the dehumidifier. I ran it I guess for about 30 days. Bone dry. We had rain the whole time is how I figured out the leak. And then when I unhooked it, because I knew it wasn't the windows leaking, then you could watch the water just run off and build up on the sill. It was a concrete floor. It was a dark area. I don't know how long it was empty. Water just builds up in this room, it just runs off. I know for a fact that it was condensation, I know for a fact.

Q. And did you do anything other than the dehumidifier to try and adjust the condensation issue?

A. No.

MR. GARRAUX: Trey, was that the main building?

MR. TURNER: Yes, this is the main building, unit 105.

BY MR. TURNER:

Q. So, was there mildew all over?

A. There was like five windows in that place and they're about ten foot tall. You would be amazed. That's why everybody thought it was a leak from the windows, but it wasn't a leak from the windows.

Q. When you say I would be amazed, I would be amazed at how much water?

A. Yeah. And plus, like I said, it's on a concrete floor, and it takes forever for water to dry on a concrete floor.

Q. Now, you say you painted the window sills and Kilzed stains and touched up the walls. These are the steel windows?

A. All of this is on the inside.

Q. Okay.

A. None of this is on the outside. And on the windows, they've got these big sills, sheetrock, it comes

out like that. When the water comes down, it just runs right down on the floor. Nothing here is on the outside; it's all on the inside.

Q. So you were just painting where the condensation had run down and hit the sill?

A. No. I painted basically the whole thing because it was all mildewed from where the water sat in there for I don't know how long.

Q. How did you remove the mildew?

A. Bleach, and then Kilzed everything and painted.

Q. In unit 106, that's also the main building?

A. Same thing. Yes, right beside it.

Q. Next we have this letter of April 1st, 2004, and is Susan Huddleston your wife?

A. Yes.

Q. Did you see this letter?

A. No.

Q. You can take a second to read it.

A. Okay.

Q. It asks the question about how long to keep the dehumidifiers running?

A. Right.

Q. And do you remember wanting to know how long to keep them running in the units?

A. No.

Q. How long had they been there when this letter went out, do you know?

A. I have no idea. But I know there's a bill somewhere for the dehumidifiers.

Q. Do you remember how many units you had dehumidifiers in?

A. Two. I'm pretty sure two, 105 and 106.

Q. Do you remember what the answer was for how much longer you had to keep them running?

A. No.

Q. But that's related to that same condensation issue?

A. Yes.

Q. If you go to the next one, which is invoice 678?

A. Right.

Q. And again this is billed to Chisolm Street Partners; correct?

A. Right.

Q. Now we've got unit 103?

A. Right.

Q. Is this the same issue?

A. Same issue, but not as bad because that one gets most of the sun.

Q. So you still had condensation. And when you say "that one gets most of the sun," explain that for me.

A. When the sun is hitting the window, the condensation dries quicker. And unit 105 is on the backside and it doesn't get the morning sun.

Q. So you had condensation. It was evaporating quicker and so the mildew wasn't --

A. Yeah, it wasn't as bad.

Q. And were you running a dehumidifier in 103?

A. No.

Q. And I take it for unit 103 you didn't take any steps to try and address the condensation, either; correct?

A. Right.

Q. If you go to the next one, which is invoice 680?

A. Okay. Yeah, maybe I did then.

Q. So there was a dehumidifier in 103?

A. Yes.

Q. 103, 105 and 106; correct?

A. Right. My bad.

Q. That's all right. And it says here runoff started on March 8th through April 19th; is that right?

A. Yes.

Q. Do you know if it went on longer than that?

A. I don't think so.

Q. What happened after -- when you pulled them after April 19th, did the condensation issue continue?

A. Not as bad.

Q. Why do you think, what happened?
A. Because I went in every day and cleaned them until they sold them. That, and plus we ran the fan in the unit, had circulation in there.
Q. And when you say "the fan" --
A. And I'm not sure when he sold it anyway. Once they sold them, we never had a problem like we did in 105 and 106 and 103.
Q. When you say "ran the fan," that's on the A/C unit?
A. Yeah.
Q. And when you say you never had the problem once they were sold like you had previously, you say that because you weren't called by the owners to fix those type of issues?
A. Yeah.
Q. 685, which is April 30th, 2004?
A. Okay.
Q. And that's unit 104-G, do you see that?
A. Right.
Q. So that's in the gym?
A. Right.
Q. And it says, "Repaired rotted window sill and painted"?
A. Right.

MR. NORRIS: Object to the form.

Q. You can answer.

A. Do I think double-paned is better than single-paned?

Q. Yes, sir.

A. I don't believe that to be true.

Q. You do not?

A. No.

Q. Do you have any knowledge as to -- are you familiar with issues related to condensation on single-paned glass windows?

A. You can get condensation on double-paned glass windows as well as single-paned windows.

Q. Would you agree with me that it's much less likely that you would have a condensation issue on double-paned glass as opposed to single-paned glass windows?

A. That wouldn't be my experience. I have double-paned glass out at Kiawah and I get more condensation there than I do downtown, and I believe those are single-paned in the cottage.

Q. And the double-paned glass that you have at Kiawah, do you know the condition of the window sills?

A. I just readjust the air-conditioning vents and it tends to go away. Usually the vents are above the windows.

STATE OF SOUTH CAROLINA)	
:	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	FOR THE NINTH JUDICIAL CIRCUIT
	Case No.: 2009-CP-10-267
3 CHISOLM STREET)	
HOMEOWNERS ASSOCIATION,)	
INC.,)	
Plaintiff,)	
)	THE DEPOSITION OF:
-vs-)	
)	MS. GWEN MCCURDY
CHISOLM STREET PARTNERS,)	
LLC; MURRAY SCHOOL)	
PARTNERS, LLC; GENOA)	Date: September 17, 2010
CONSTRUCTION SERVICES,)	
INC.; MASTERPIECE MILL)	Time: 9:32 a.m.
WORK, INC.; ALLEN ROPER,)	
JR. d/b/a R. MASONRY -)	Location: Nexsen Pruet, LLC
BRICKWORK & STUCCO;)	205 King Street
CAROLINA ROOFING SYSTEMS,)	Suite 400
INC.; and LACY PAINTING,)	Charleston, SC 29401
)	
Defendants,)	
)	Reporter: Kimberli S. Hogle
GENOA CONSTRUCTION)	Professional Court
SERVICES, INC.,)	Reporter & Notary
Third-Party Plaintiff,)	(843) 849-3007
)	
-vs-)	
)	
THE FOX STEEL COMPANY;)	
CAROLINA SERVICES, INC.;)	
LESCO RESTORATION, INC.;)	
FERST PLASTERING, INC.;)	
CHARLESTON GLASS & MIRROR)	
COMPANY; 3D RENOVATIONS;)	
WILLIAMS MECHANICAL;)	
MASTERCRAFT INTERIOR &)	
EXTERIOR; BONIFAY)	
MASONRY; COASTAL GLASS)	
AND BLOCK; ADAMS DAVIS &)	
PARTNERS; TROY PARDEE)	
HEATING & AIR)	
CONDITIONING d/b/a PARDEE)	
HEATING & AIR; and JACK)	
BURNETT, FRANCES)	
HEGENBERGER, CHARLES)	
WYRICK, JACKALYN NOLLER,)	
ANGELA HALFACRE, LAURA)	
RADLEY, LINDA AUSTIN,)	

KIMBERLI S. HOGLE
Independent Court Reporter
Tele: (843) 849-3007 Fax: (843) 849-7127

A. But the Board felt in order to keep our property compatible with other condo properties in the city and in the area, we needed to do that very badly, so we did.

Q. Let me turn to, and this is the first time I've gone over this so it will be a little bit halting, but to what's been marked as Exhibit 39, which you have in front of you, which are the documents that you brought today --

A. You're talking about this, Exhibit 39?

Q. Yes, ma'am. And the first part is Historic Charleston Foundation?

A. Uh-huh.

Q. And it's dated February 1st, 2008?

A. Uh-huh.

Q. I'll tell you what, before I ask you something about that, we were talking with Collin Bruner on Tuesday, and he made reference to the fact that there had been a presentation to, I don't think the HCF, but actually to maybe the Board of Architectural Review, one of the two, regarding windows in the main building. Do you know what the result of that presentation was?

A. I really don't. My unit was one of the ones where they did destructive testing. And from the very beginning, in winter, we get condensation on those windows. They're single-paned windows, which would have been nice, but the story is Historic Charleston Foundation didn't

A. Well, I do now, yes.
Q. And what are those?
A. Deterioration of walls adjacent to the windows, particularly on the east and north sides. That's all they are, by the way.
Q. That's all -- the windows are on the east --
A. Well, one of mine faces Chisolm Street which is east, and then the gymnasium building which is north, so I noticed that we had some serious condensation.
Q. So you had deterioration on the drywall around the windows?
A. Uh-huh.
Q. What about on the window frames themselves? I understand they're steel, but --
A. They're steel.
Q. -- any rusting or anything else?
A. There may be some bits of that, I guess, because of gaps. And in some areas between the movable portion of the window and the frame itself.
Q. Okay. You gave me two things: There were some gaps between the movable portions of the window and the frame itself, and condensation. I take it those are two separate issues?
A. You'll have to ask an expert on that, I don't know. You've gotta have moisture inside and contact with a

Q. Any particular issue at all?

A. Well, I've touched on a bunch of them. I think I've got leakage, condensation, deterioration of plaster, rotting of the sills on windows, and I think an air circulation problem because it was insufficiently designed to carry air with some uniformity throughout the unit, and I think the return air duct is misplaced so it draws air from the hall and not from the condominium. Those are just a few things.

Q. Well, let's make sure we touch on all of them. I'll go back to the -- are you attributing any moisture issues on the windows to poor air circulation?

A. No, I'm not trying to place blame. I think the windows are steel, and you've got a big space. They're large windows, so you've got a difficult problem to deal with condensation from the beginning. Then apparently we were told you could not put in double-paned windows which they requested. I'm not sure that question was answered properly in the first place, but that might have helped matters or it might not have. I think a design system that would have gotten a sufficient amount of air into the total unit may have improve circulation. It may have ameliorated the condensation and probably would have dried it out more quickly, but that's conjecture on my part.

Q. Has anyone evaluated your HVAC unit or airflow

if it was Joe or if it was me, might have been both of us, suggested that we needed to bring in a design professional to at least do a preliminary look at the buildings. The outgrowth of that was the Board agreed to hire Myles to come over and take a preliminary look.

Q. And when that report came out, did it come directly to you?

A. It probably came directly to me initially, but it went to the Board shortly thereafter, which is part of what we did.

Q. And what is your recollection of what the Board's response was?

A. After some discussion, and there's probably discussion in the meeting minutes, but what the Board decided to do was to present this report to the developer and ask the developer to come back and address some of the issues that were raised in this report, and they did subsequently come back and work on the windows.

There was also some work done -- and, again, I don't recall exactly without going back and looking at the invoices in that time frame. But as I recall, the HOA did some repair work to address some of the issues in this, and then wrapped it into a demand letter, for lack of a better words, to the developer that was kind of encompassing those bills that were HOA bills paid by the

developer, those bills that were developer bills paid by the HOA, there were some unpaid assessments. It was all kind of wrapped into one big, global number that the developer ultimately paid back into the HOA.

Q. So it's your understanding that the developer paid money for the fixes that were set out in the Glick report?

A. Reimbursed the Association for some moneys they had spent; for instance, to tie down the HVAC units up on the roof. As I recall, we brought a roofer in that addressed some of the parapet problems with the waterproofing. Genoa came back out and they did a bunch of work on windows, the steel windows in the main building, caulking and trying to seal, those kinds of things. And there may have been a couple of other items in there to try to address some of what was raised in Myles' preliminary report.

Q. Was there ever a -- do you remember Mike, whether or not he suggested a follow-up at some point in time, to come back out and look at the project?

A. I think his report talks about a recommendation that they ought to do a more extensive forensic investigation, and the Board took that under advisement, that they wanted to try to not have litigation if they could work with the developer and the developer would address the

there and the things that they're trying to do, and keep in mind the Board does have Myles' original report. There is no one codification of all specific issues. It will be helpful when you get to the letter that was going back to Perdue, because that should summarize whatever the outstanding concerns were at the time.

Q. Well, I guess when you said that the Board had Myles' report, you're --

A. The original preliminary.

Q. And they kept that in mind as time went on?

A. Oh, absolutely. I think the issues with the building were fairly well-known, and a lot of alternatives had been explored. You can address the appearance of the cracking if you can put an elastomeric coating on it. The windows, if they would let them replace the windows with some different quality windows. Clearly, if you've gotta keep those, you're gonna have to have some sort of an ongoing inspection and recaulking program. Or if there's a better caulk that will be more durable, then instead of having to do something every year, you can do it every three years. You know, looking at alternatives. Keep in mind, even at this point in time, this was probably one of the highest regime fees on the Peninsula. I think I understand it's even worse and it's even higher now. It's a very high maintenance property.

would be the third page of the exhibit, the fifth line down again starts Maintain, Inc., and it looks like there are six of those payments. In regards to the "install humidifiers," which is the last entry; do you see that?

A. Yes, sir.

Q. For 102, 103, 105 and 106, what is your understanding of why the humidifiers were installed?

A. I would have to go back and look at the invoices. I would be guessing, this far after the fact, of why they were there. But, obviously, to control humidity in the units. My initial supposition would be the units didn't have any power turned on.

Q. If you go to the next page, the fourth paragraph down, starting "Finally, as part of my review transition," do you see that?

A. Yes, sir.

Q. You said you've been made aware of certain construction issues that remain unresolved. Do you recall what those particular issues were that you're referring to in this letter?

A. I suspect that these are the same issues that Myles Glick's preliminary report addresses; condensation, cracks in stucco.

Q. The last sentence of that paragraph that we just referred to talks about receiving a copy of the results of

this morning. I represent Ferst Plastering. Trey has covered a lot of ground, so I'm not gonna have very many questions for you. What I wasn't too clear on in your testimony is whether or not the issues raised by Mr. Glick concerning the stucco on the main building were ever resolved at some point?

A. Without going back and looking at the financial statement to see what was being spent by the Association, I don't know that the cracking that he refers to has ever been completely resolved. I can't tell you right now as we sit here.

Q. What you do know is that the Board knew it had problems with stucco on the main building as early as 2002; correct?

A. That's correct, and it was the stucco surfaces that were added on. As I said earlier, I'm having trouble picturing where those new stucco walls were.

Q. And is there any doubt in your mind that Mr. Glick's report of April 2003 was actually submitted to the Board for their review?

A. Oh, they got it.

Q. And would it have been incumbent upon the Board to pass on that information to the other homeowners at 3 Chisolm?

A. They did.

we go.

Q. You mentioned that part of what took place after Mr. Glick's letter in April of 2003 was that someone, either the developer or general contractor, came out and did some caulking on the windows?

A. I recall Genoa at the direction of the developer came over and worked on the windows.

Q. Can you tell me what work they performed on the windows, the nature of that work?

A. I'm pretty sure they did some caulking and they may have done some other things. I was not privy to the full scope. They sent a crew in.

Q. Did that work by Genoa on the windows alleviate or eliminate the leaks through the caulking?

A. I think from some of what we looked at, it reduced the frequency of reports of water intrusion from leaks from outside.

Q. It reduced it, but it didn't eliminate the problem?

A. There were still other sources of water coming in, I believe.

Q. So the Homeowners Association was aware at least as of April of 2003 and on a going-forward basis that they had continual water intrusion issues around or through the windows; is that accurate?

associations, and I just kind of told you some of the attorneys that I've worked for in response to a question. I've been qualified twice in the South Carolina Court System as an expert witness.

Q. So when you were talking about some of the national things you do, you're actually teaching some of the managers how to be managers?

A. I teach managers all over the country, the fundamentals.

Q. And when you say "governance," what is that --

A. It's one of the courses, community governance. It talks about homeowner associations, master deeds, covenants, by-laws, hierarchy, all of those kind of things that go into the governance of a community.

Q. Let me ask you one last question on Exhibit 240.

A. HVAC unit on the roof?

Q. Well, on the last part, and you can look back over the front part before you answer this, but it's saying again that if the issues are not resolved by November 30th, 2003, the board intends to take appropriate action to bring them to a resolution. My question is gonna be, on that, was it your understanding, again, that the appropriate action was gonna be litigation?

MR. ELLIS: Object to the form.

A. Not necessarily in that order. Again, the

ultimate hammer the Board has is to file a lawsuit. Nobody wins in a lawsuit except everybody sitting in this room. If you can reach a resolution and get the developer to do things that are rightfully his responsibilities without having to do a lawsuit, then you try to do that. This is like any other threat -- like Pete Wyrick's threat, you know, do what you're supposed to do or I'm gonna sue you. But, you know, you get to that point. And as you've seen in this correspondence, we were making small steps. We got some money and we got some response.

Q. But it's your understanding that do this or we'll sue you is the implicit threat?

A. Absolutely. You've seen that on several other times.

Q. And then on the "please provide a written response that can be shared with the Board," do you know if that was done?

A. I think we looked at some of those responses back from David Perdue.

MR. TURNER: I don't have anything else.

FURTHER EXAMINATION BY MS. FITZHENRY:

Q. Do you know who Sally Rhett is?

A. Who?

Q. Sally Rhett.

A. That name rings a bell. I'm not sure if she was

Awning Quotes

3 CHI ST BLDG.

CAROLINA CONCRETE SYSTEMS, INC.

PROPOSAL

12/29/04

CCM MANAGEMENT
354 FOLLY RAOD
CHARLESTON, S.C 29412

ATTENTION: MIKE PARADES

SUBJECT: 3 CHISLOM STREET CONDOMINIUMS.

I appreciate the opportunity you have given me to provide you with a proposal concrete repair, parapet cap repairs, recaulking all windows and doors, repairing up to 2000 s.f. of stucco, patching all cracks and installing 2 coats of acrolastic elastomeric coating. Our proposal includes supervision, labor, equipment and material unless otherwise specified, to complete the project as described in our scope of work.

Scope of Work

We will mobilize to the site and begin preparation by repairing all cracks and disbonded stucco and tuck pointing joints on the parapet cap that are cracked. We will then clean the entire exterior surface of the building by hydro blasting to remove any loose paint and to clean the wall. After all repairs and cleaning have been completed, we will coat the exterior of the building with 2 coats of elastomeric coating. We will install backer rod and Dow 790 caulk around all exterior windows and doors. We will clean & pressure wash the caretakers house, tuck point and backer rod & caulk all doors and windows. We will then apply a clear sealer on the brick.

Basis of Proposal

1. This proposal does not include licenses are permits or any special requirement by The City of Charleston Historical or ARB.
2. Trash bin for disposal of debris from preparation and bags will be provided by others.
3. Electricity and potable water will be provided by others.

PLF000383

4. We will be allowed to work during daylight and evening hours to perform task.
5. We will have clear and free access to the work site at all times.
6. This proposal will become a part of the contract that shall be written on an AIA Subcontract with verbiage agreeable to both parties.

Payment

Payment will be in the amount of **$93,750.00** painting the building and **$75,000.00** stucco repairs, patching concrete removal and replacement of caulk at all windows and doors using Dow 790 caulk for 3 Chisolm Street. Payment for the work performed on the caretakers' home will be in the amount of **$21,000.00.** Payment will be due within 15 days of receipt of invoice.

Mike, I look forward to having the opportunity to working with you on this project, and if you have any questions, please don't hesitate to call me.

Sincerely

Bob

Bob Wiggins

CAROLINA CONCRETE SYSTEMS INC.

843-588-6721 FAX 843-588-6722

P.O. BOX 13149; CHARLESTON, S.C. 29422

PLF000384

David, we need to know the specific location of each window which is leaking and where on the window the leak is occurring before we can address this new request.

This if the first time Genoa has received any complaint regarding window leaks in the Burnett unit. Are you sure it is not a condensation problem. That is what is was before.

H. Clay Martin
Exec. Vice President
Genoa Construction Services, Inc.
Office (770) 984-2337
Fax (770) 984-2378
Mobile (404) 630-0634

-----Original Message-----
From: David L. Perdue [mailto:dlperdue@iqworks.net]
Sent: Wednesday, December 10, 2003 10:20 AM
To: Mike Parades
Cc: jack burnett; Wilcox, Jack; Ray ; Clay
Subject: Re: window leaks

These leaks were not reported to me. We will certainly address them asap.

Thanks,

DLP

----- Original Message -----
From: Mike Parades
To: David Perdue
Cc: jack burnett
Sent: Wednesday, December 10, 2003 10:01 AM
Subject: Fw: window leaks

David

I am forwarding this report of window leaks to you from Jack Burnett. Please arrange to have these leaks addressed ASAP.

Thanks

Mike Parades
----- Original Message -----
From: jackburnett
To: Mike Parades
Sent: Wednesday, December 10, 2003 9:30 AM
Subject: window leaks

Mike:

Confirming our conversation, during the rain last week we had seven incidents of water intrusion through various windows in our unit. These leaks were reported many months ago and we have not been contacted by anyone regarding the repairs.

Thank you,

Jack Burnett

EXHIBIT
244
KH 3/29/11 PARADES
PENGAD 800-631-6989

12/15/2003

GN007742

COPY

STATE OF SOUTH CAROLINA)
:
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2009-CP-10-267

3 CHISOLM STREET HOMEOWNERS ASSOCIATION, INC.,
Plaintiff,

-vs-

CHISOLM STREET PARTNERS, LLC; MURRAY SCHOOL PARTNERS, LLC; GENOA CONSTRUCTION SERVICES, INC.; MASTERPIECE MILL WORK, INC.; ALLEN ROPER, JR. d/b/a R. MASONRY - BRICKWORK & STUCCO; CAROLINA ROOFING SYSTEMS, INC.; and LACY PAINTING,
Defendants,

GENOA CONSTRUCTION SERVICES, INC.,
Third-Party Plaintiff,

-vs-

THE FOX STEEL COMPANY; CAROLINA SERVICES, INC.; LESCO RESTORATION, INC.; FERST PLASTERING, INC.; CHARLESTON GLASS & MIRROR COMPANY; 3D RENOVATIONS; WILLIAMS MECHANICAL; MASTERCRAFT INTERIOR & EXTERIOR; BONIFAY MASONRY; COASTAL GLASS AND BLOCK; ADAMS DAVIS & PARTNERS; TROY PARDEE HEATING & AIR CONDITIONING d/b/a PARDEE HEATING & AIR; and JACK BURNETT, FRANCES HEGENBERGER, CHARLES WYRICK, JACKALYN NOLLER, ANGELA HALFACRE, LAURA RADLEY, LINDA AUSTIN,

THE DEPOSITION OF:

BEVERLY DAVISON SEINSHEIMER

Date: October 20, 2010

Time: 9:19 a.m.

Location: Nexsen Pruet, LLC
205 King Street
Suite 400
Charleston, SC 29401

Reporter: Kimberli S. Hogle
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A. A house.
Q. Okay, so you went and looked at it, and who was the real estate agent for that?
A. Chuck Sullivan. I think he ultimately ended up representing John Doyle.
Q. So he represented you and Mr. Doyle?
A. I may have represented myself, I honestly don't remember. I think I did.
Q. Do you have a brokerage license?
A. Yes.
Q. Do you have any other licenses?
A. No.
Q. So when you looked at this condo in 2005 or 2006, did Mr. Doyle tell you there had been anything wrong or that he experienced any issues with the condo?
A. Only the condensation issue with the windows.
Q. And what did he say?
A. And he said, "I'm sure you're aware that the condominium has condensation issues with the windows, but the way I dealt with it is I just crack the windows at night," which is what we've done since we have lived there.
Q. And does that work?
A. Yes. But, of course, it's not efficient for heating and air, but it does help with the condensation rolling down the window sills.

windows, but I don't recall having seen any documents.

Q. And you say since you've been living there you've heard about issues with the windows. What issues have you heard about since you've been living there?

A. The condensation.

Q. Have you heard of any other leaking issues with the windows?

A. The gym building, that the windows were leaking.

Q. Anything else?

A. No.

Q. With the gym building, I know you said Ms. Hearst. Anybody else tell you they had windows leaking at the gym building?

A. Mims Roberts I think is her name, and she still lives there.

Q. Anybody else?

A. No, because I didn't know anyone else.

Q. What did Ms. Roberts tell you?

A. She just said that she had a major problem with leaking windows.

Q. Were you on the Board at that time, or was this some other time.

A. It was just a by-and-by, out-with-the-dogs conversation.

Q. What year was that?

Q. But anything that you can remember as we sit here today?

A. There's a condensation problem.

Q. Describe that problem for me?

A. We frequently get heavy condensation on the inside of our windows in our unit. The exterior steel frame windows.

Q. Does unit 201 have a terrace?

A. Yes.

Q. And do you get condensation on the inside of those windows as well?

A. We do not. However, we do have continuing problems with the steel frame doors to the terrace.

Q. Are those condensation issues?

A. No, they're not. They're fitting issues. They had to refit them several times, and one set of doors does not work to this day.

Q. Which set is that?

A. The first set that you pass as you come in. They also installed hardware with no consideration of our salt air climate here, and some of them rusted very early and can't be replaced because they were manufactured in Italy or somewhere.

Q. Where exactly is the condensation occurring. Is it on a particular set of windows?

A. The south and west side, and some degree on the north side where it turns from west.

Q. Maybe it's better then to ask which set of windows do not have condensation issues?

A. Frankly, only the ones on the doors to the terrace.

Q. And when did you first notice the condensation issues?

A. Very early.

Q. If you moved in in December of 2001, how soon after that, moving into winter in that January and February, did you notice this?

A. I don't recall specifically, but I reported it.

Q. You did report it?

A. Yes.

Q. Who did you report it to?

A. To David Perdue.

Q. And what did he do?

A. Said they would look into it.

Q. Did he take any action of which you're aware?

A. No.

Q. Did it self correct in any way?

A. No.

Q. That's still an issue today?

A. Yes.

later, but I would like the maintenance files related to your house, too, if you have them.

A. If I still have them. I don't keep them forever.

Q. Was condensation an issue on your windows?

A. Yes.

Q. When did you first notice that condensation was an issue?

A. January the 29th, 2001.

Q. That's right -- well, that's even before you moved in? You're laughing, so why?

A. Whatever day I moved in.

Q. So on the date you moved in --

A. That's just an Adam-and-Eve question.

Q. What did you do when you found out the condensation was an issue?

A. Bought a lot of towels.

Q. Did you report it to anybody?

A. Yes.

Q. Who was that?

A. The developer first, an emergency call the first morning in that building, when water was everywhere. And I reached him in Atlanta, and he started calling other people. It was horrible.

Q. When you say water was everywhere --

Q. You keep saying that the windows were not properly caulked at that time. How do you know they weren't properly caulked?

A. Because they had to go back and caulk them.

Q. Do you know who did that?

A. I do not.

Q. You were originally saying that you discovered that there was a condensation issue on the night you moved in?

A. There was a caulking problem and major leaks in the beginning.

Q. That was discovered in the storm?

A. Yeah.

Q. That was, I guess, not the night you moved in but shortly after you moved in?

A. Yeah.

Q. So the condensation you discovered right when you moved in and this storm happened --

A. That was probably going on at the same time, but the big storm made us more conscious of the problem. But the windows leaked all the time, depending on the change in temperature too. So, you know, if you've got a massive change in temperature, the condensation gets a heavier degree. But

condensation continues to be a problem.

Q. Do the leaks continue to be a problem?

A. Yes. On the window -- yes, in two sensitive areas.

Q. And what are those?

A. On the terrace west-facing, and you can touch the wall and it's damp.

Q. The wall across from the windows?

A. Under the windows.

Q. The wall under the windows?

A. Uh-huh. It gets mold.

Q. And where else? You said there were two sensitive areas?

A. Same room.

Q. Same room?

A. Uh-huh. And I think that's it, the major ones right now. There's some minor things.

Q. So the wall under the west-facing windows, looking out onto the terrace?

A. On the -- yeah, correct, yeah.

Q. When did you notice that that wall was damp? How long has that wall been damp?

A. Off and on, the whole time.

Q. Since you moved in?

A. Correct.

Glick/Boehm & Associates, Inc.

April 8, 2003

Jack Bernette
President
Chisholm Street Homeowners Association
3 Chisholm Street
Charleston, SC 29401

Re: Initial Site Visit
Chisholm Street Condominiums
Charleston, SC

Dear Mr. Bernette,

In accordance with the request of the Chisholm Street Homeowners Association Board of Directors, I have prepared comments regarding my visual observations that took place on January 30, 2003. Present during that site visit were Myles Glick, Thomas Carlson, Brett Carlson, and Joe Dapore. The following comments are based on visual observations only, therefore, no destructive testing has taken place. The goal of the visit was to get an understanding of the project and to see what appeared to be some very obvious building failures.

A. Introduction

The Chisholm Street Condominiums are located in three buildings at 3 Chisholm Street. The first of three distinct buildings is known as the old Murray Vocational School, which is a three-story masonry building with a flat roof. The second building is known as the old headquarters for the Charleston Symphony Orchestra, which is a two-story residential scaled building. The third building was the gymnasium associated with the Murray Vocational School that has been divided into units on the top floor and an indoor parking garage on the first floor. The following comments represent an overview of my observations are specific to the main three-story Murray Vocational School building. The other two buildings that are listed above were not reviewed.

B. Water Intrusion

The indications of water intrusion into the main building were in the following areas: windows, window ledges, condensation building on the insides of the glass, and a strong possibility that the roof parapet is leaking. Of the four areas identified, the roof parapet will need more research so that this area can be eliminated or to determine that it is contributing to the water intrusion into the exterior wall cavity.

EXHIBIT A

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In almost every case, the window system is a steel window with fixed panes of glass and an opening panel that does not close. Therefore, the windows do not stop water from intruding into the building. Water has accumulated on window sills as a result of water intrusion through the gaps created in the operable window areas. It also appears that water is coming through the frames (mullions) of the fixed panes as well.

Condensation issues were apparent on the inside of the glass within the units and these areas may have associated problems (in terms of cause and effect) with the size and distribution of the mechanical systems.

C. Interior Floors

The floor problems noticed throughout the building had to do with undulating wood floors as a result of water intrusion. In some cases, there were construction quality issues that resulted in finishing problems on the wood floors. Most of the moisture intrusion problems associated with the wood floors, had to do with the first floor units. The damage in Unit 101 is an example of extensive movement within the floor system itself. In this case, the floor moved so much that the closet door in one of the bedrooms would not even open.

D. Mechanical Systems:

Problems associated with the mechanical systems will fall into two categories. The first category would be capacity of the unit relative to specific unit sizes and unit orientation. The other concern is air distribution within the actual spaces. The air distribution system is not adjacent to the glass areas and therefore, this begins to contribute to the extremes in temperature differentials causing condensation. An additional item with the mechanical system was noticed on the roof. The units (compressors) were sitting on 4x4 wood members and therefore, the units are not tied down to the roof, which is required by code and within the standard care for construction. This would be a separate construction deficiency in addition to the possibility of design issues with capacity and distribution.

E. Exterior Stucco

It was noticed that there were new walls built at the rear courtyard of the main building and these walls appear to be metal studs with a three-coat masonry stucco finish. Intersections of the metal stud walls with the original masonry building are beginning to show cracks because of the construction defects associated with the installation of the three-coat masonry system. There are other areas of this exterior system that are also not installed in accordance with the standard of care for stucco as called for in the ASTM Standards

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2254-40836

which are in turn, called for in the building code. Stucco cracks will allow water to enter the building envelope.

F. Predicable Results From Water Intrusion

1. It can be seen in some of the units that are occupied, but mostly in the first floor units that are not occupied, that there is an extensive amount of mold and mildew. Mold and mildew presents a clear and present danger in terms of health for the individuals that occupy the spaces. The removal of mold and mildew within the wall cavities is extremely important, because without the removal of mold and mildew and without stopping the water intrusion causing the mold and mildew, the problem will persist and grow.
2. Because of the extensive amount of water intrusion into various areas of the building, there is rotted drywall associated with the windows.
3. Because of the sealant failure at the windows and the fact that the opening portion of the windows do not close properly to stop water intrusion, there is an extreme amount of rust showing up on the steel windows. Steel windows that are subject to rust will eventually be a maintenance problem if these problems are not stopped. Even under the best circumstances, a strong maintenance program will be needed to stop the rust on these steel windows.
4. Sealant Failures- In a lot of cases there was evidence that water was coming through fixed mullions of the steel windows. There were indications of added sealant to stop the water intrusion from coming through the window panes/mullion intersections. A full investigation of these areas needs to be made.
5. Grout at existing exterior window ledges- Sill areas on the exterior of the building, where existing windows were replaced with new steel windows are problematic. In many cases there was grout missing which allows water to intrude in and around the frames of the steel windows. This is a particular concern to me, because the walls of the existing building are extremely thick and therefore, it will take some time for the water to show up on the inside of the units In the interim, the walls will be subject to mildew and mold growth if water intrudes.

G. Miscellaneous Issues

1. The roof, which is a flat roof, looks as if there are numerous patches that could very well be from the original construction. A full investigation is recommended to see if there are any hidden failures.
2. Slope of exterior verandas-It was noticed that in at least two units, that the scuppers associated with water removal from the exterior verandas did not have slope to them. In one case, water was sloping away from the scupper. Without proper slope on these verandas, water will have a tendency to puddle, break down mortar joints and ultimately penetrate into the slab

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H. Conclusions

All of the above issues are significant and were parsuasive throughout the entire building. I would recommend that these concerns be confirmed and documented through a program of destructive testing so that decisions can be made for corrections. Without correction, the issue of sales of unsold units and resales will come into play. I recommend that the board seek legal counsel relative to the impacts of the above issues as well as, pursuing a forensic report documenting and recording the above issues. This report only represents observations during a limited site visit and other construction deficiencies may exist.

If I can be of any further assistance, please do not hesitate to call.

Sincerely,

Myles E. Glick, AIA
Principal

Copy: Joe DaPore
Tom Carlson

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2254-40836

Glick/Boehm & Associates, Inc.

April 11, 2003 0319

Jack Burnett III
President
Chisholm Street Homeowners Association
3 Chisholm Street
Charleston, SC 29401

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EXHIBIT 9

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EXHIBIT 183 3/16/11 OKCR

Architecture / Planning / Interior Design 493 King Street, Suite 100 Charleston, South Carolina 29403 (843) 577-6377 FAX 722-1765

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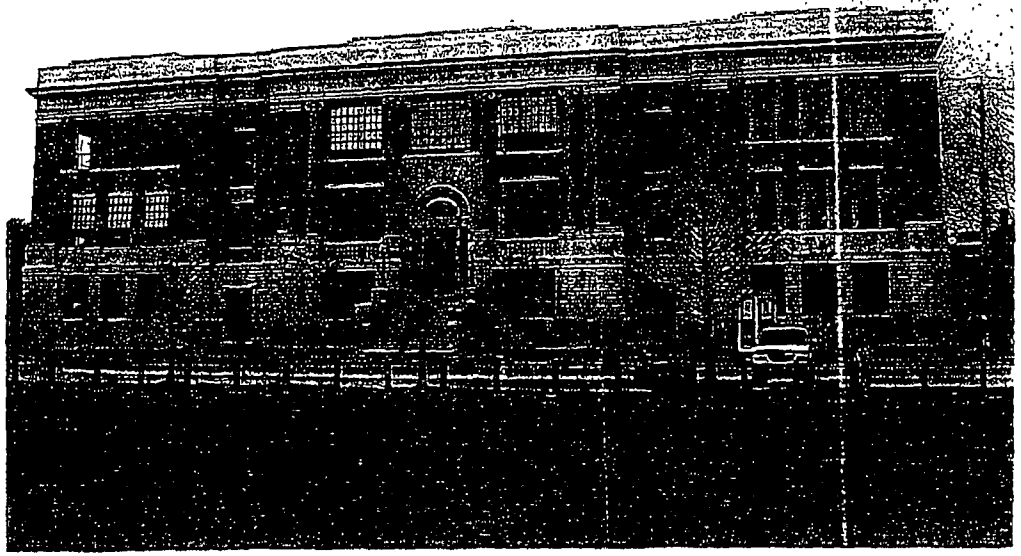
If I can be of any further assistance, please do not hesitate to call.

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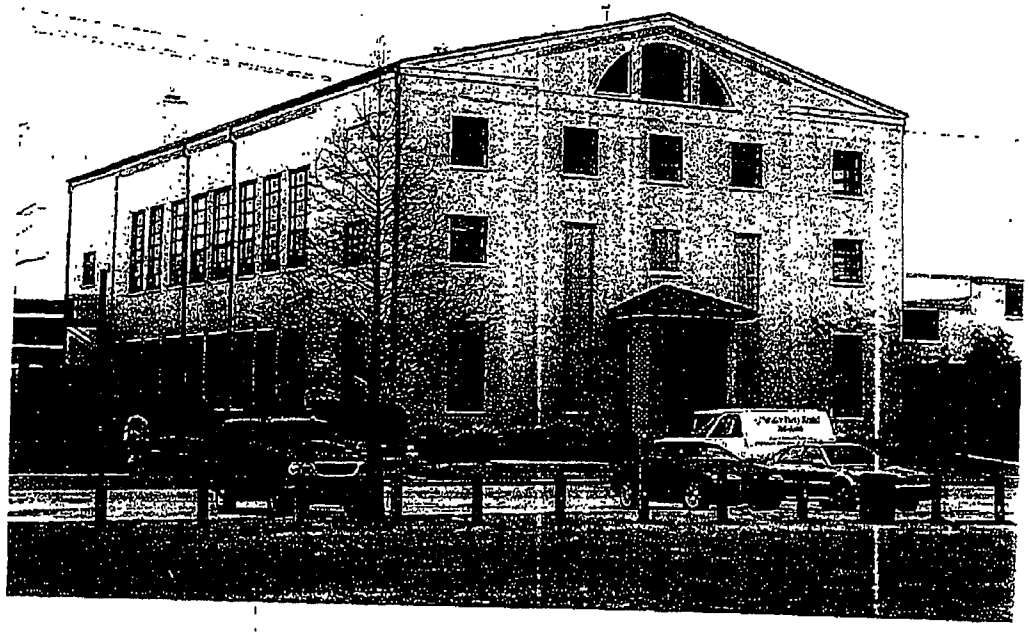
Myles I. Glick, AIA
Principal

Copy: Joe DaPore
Tom Carlson

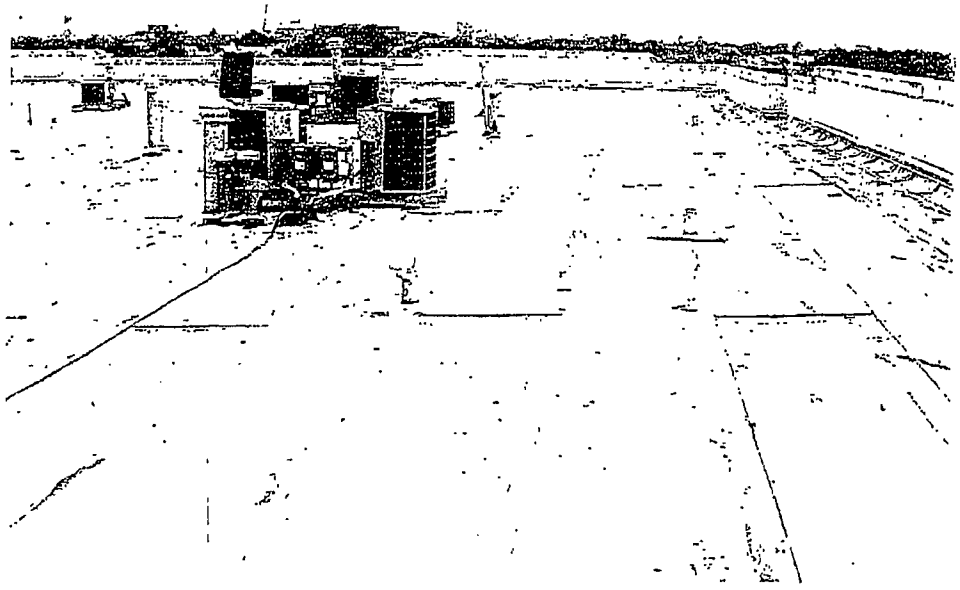
Front Elevation



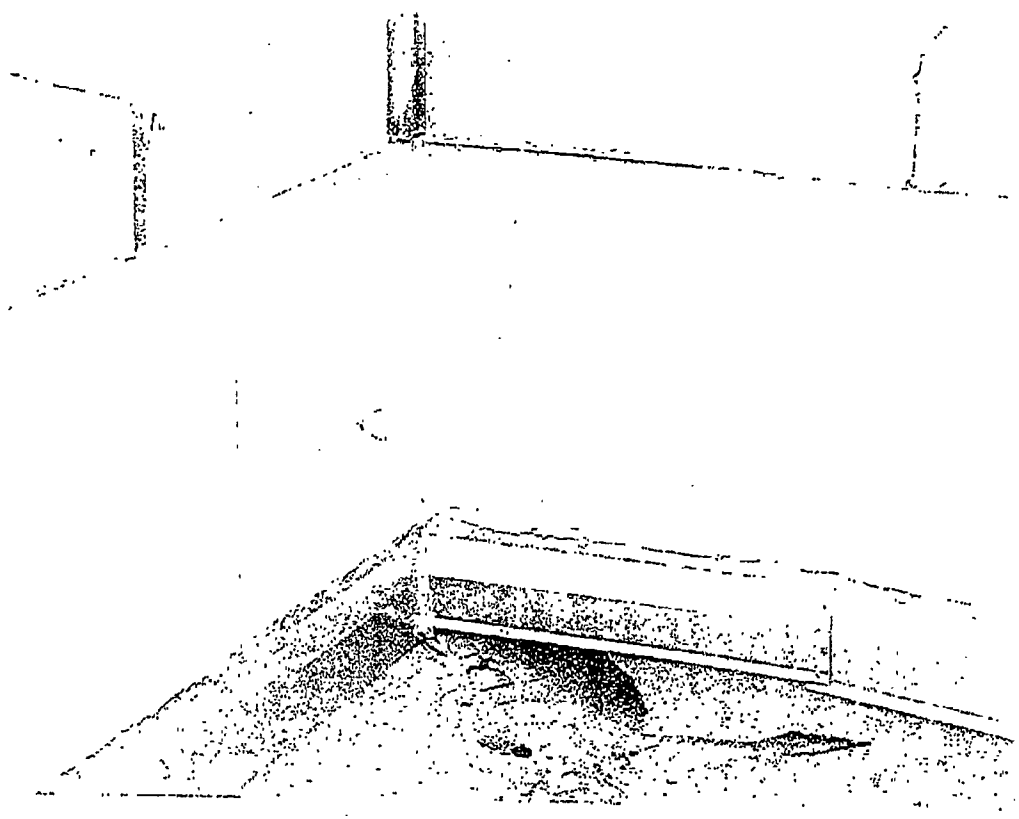
Gymnasium Building



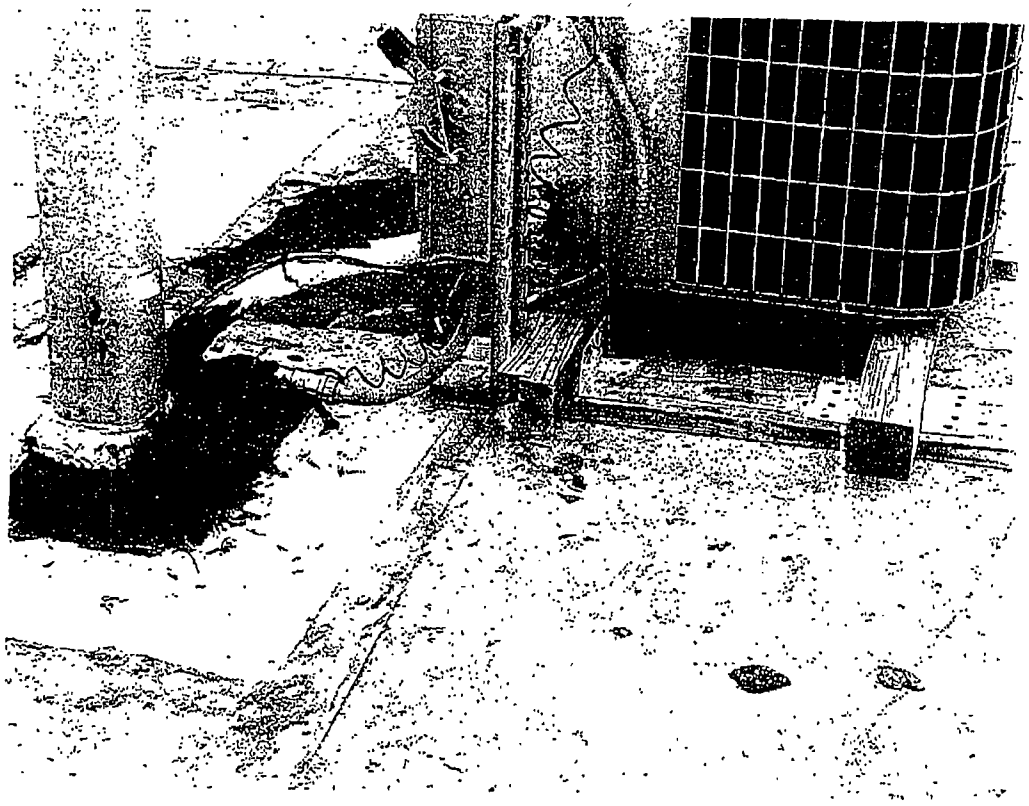
Typical Roof



Possible Parapet Leaking

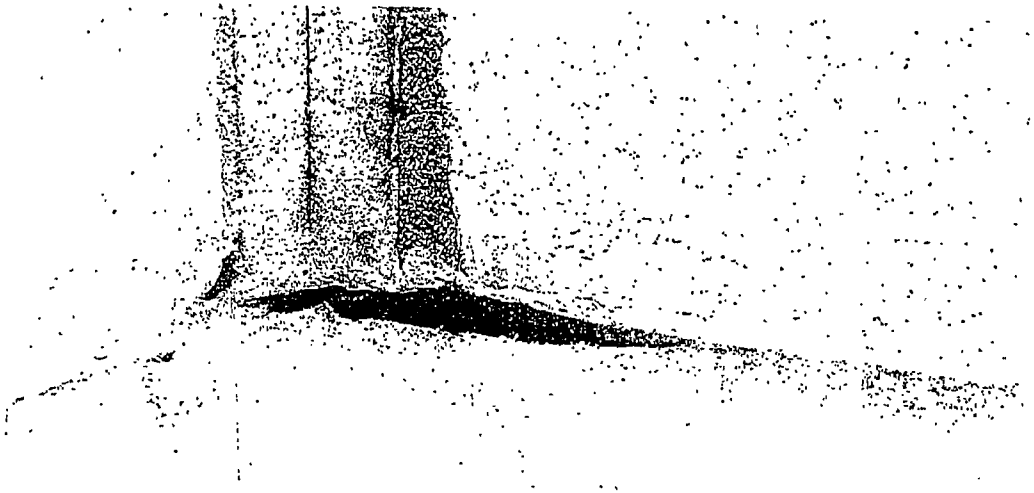


HVAC Compressors Not Tied Down

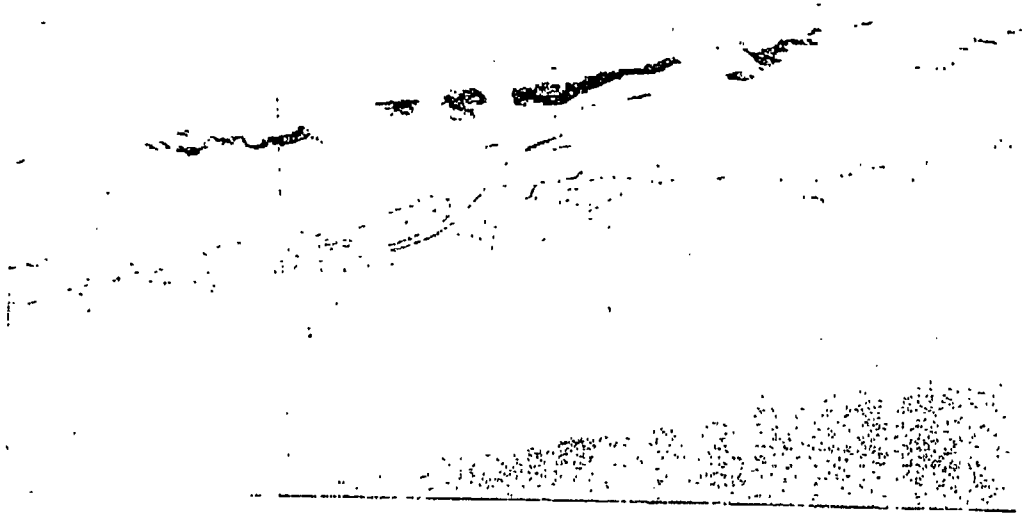


Cracks @ Parapet

Parapet Waterproofing Problems



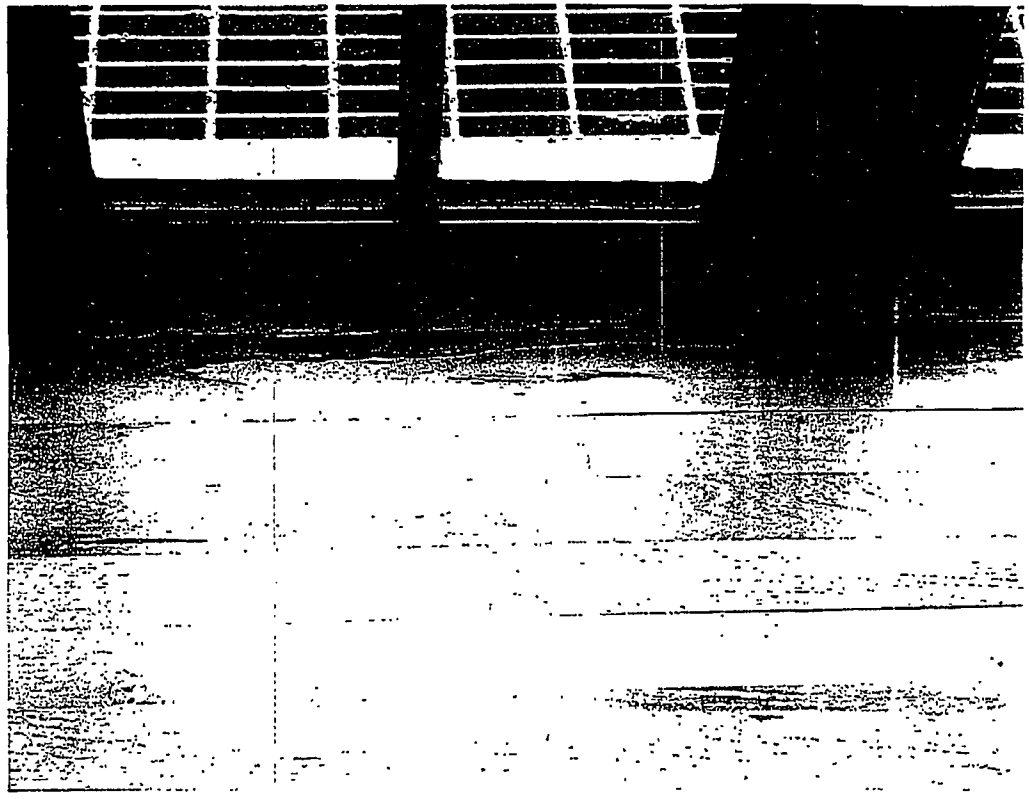
Parapet Problems



Water Intrusion @ Window Sill

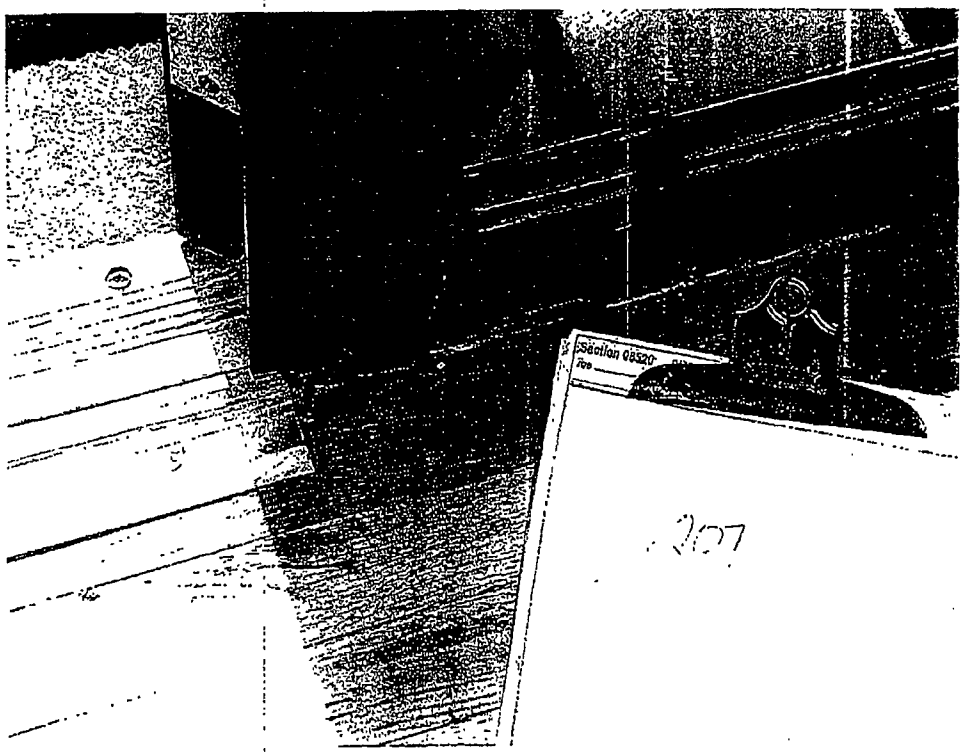


Water Intrusion @ French Door Threshold

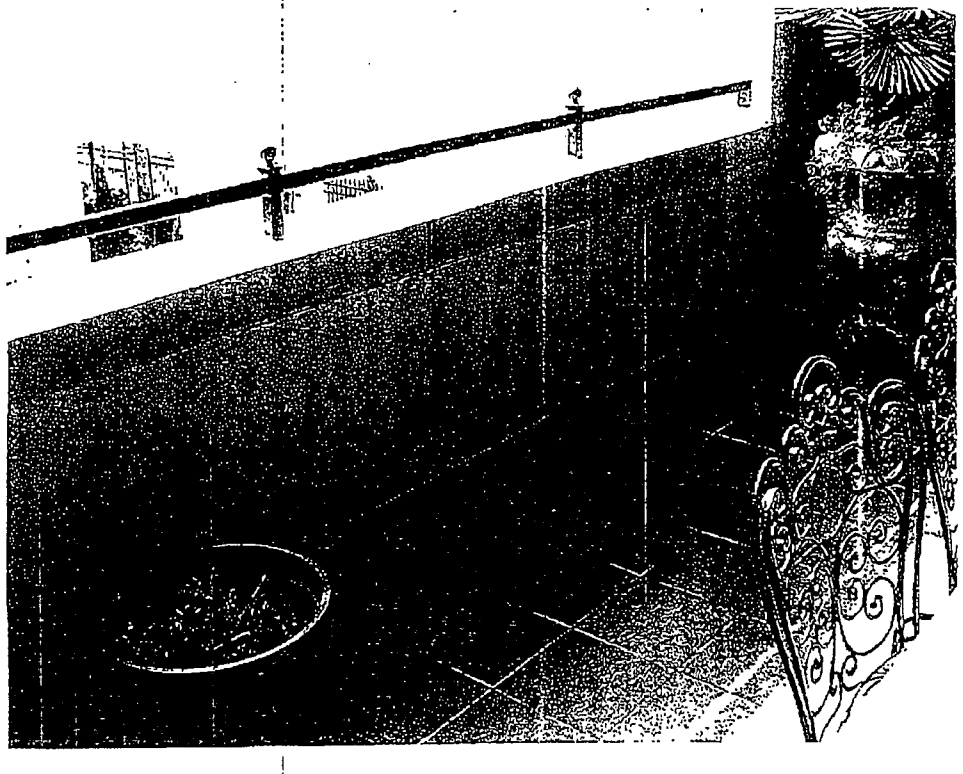


Water Intrusion @ Window Frame/Wall Intersection

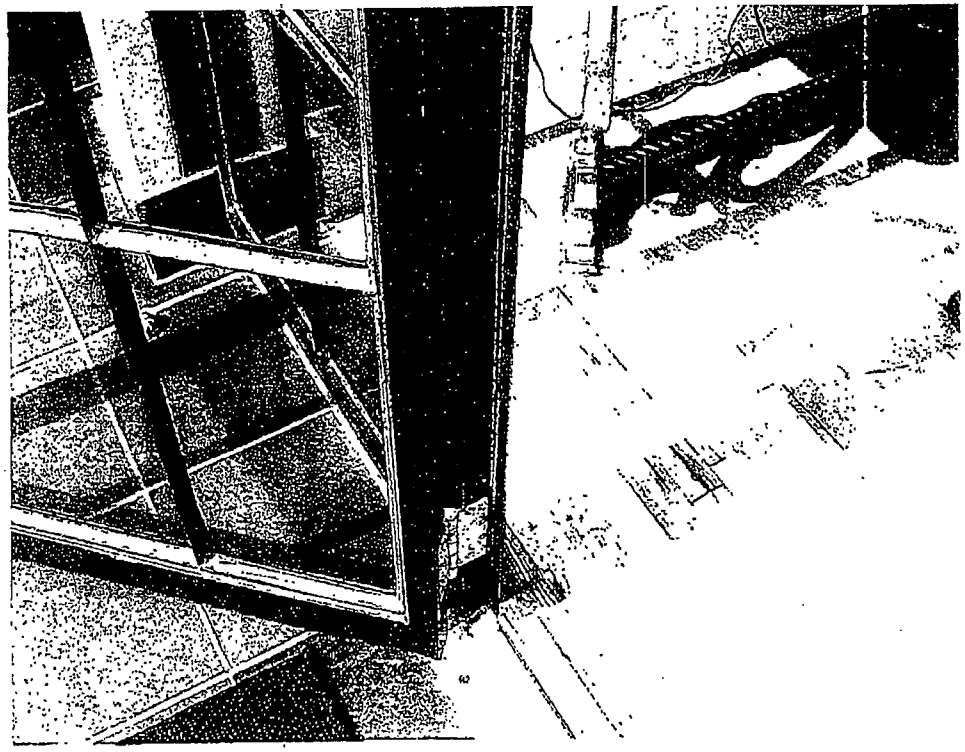
Water Intrusion @ Threshold



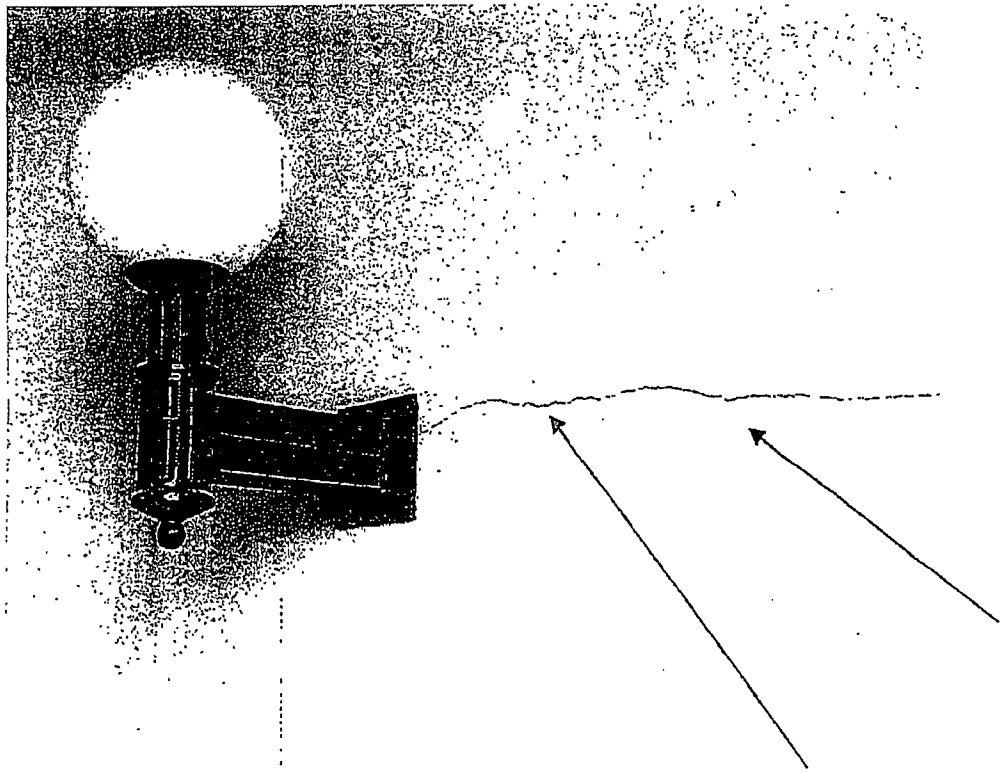
Drainage Problems @ Veranda



Water Intrusion @ Door Threshold



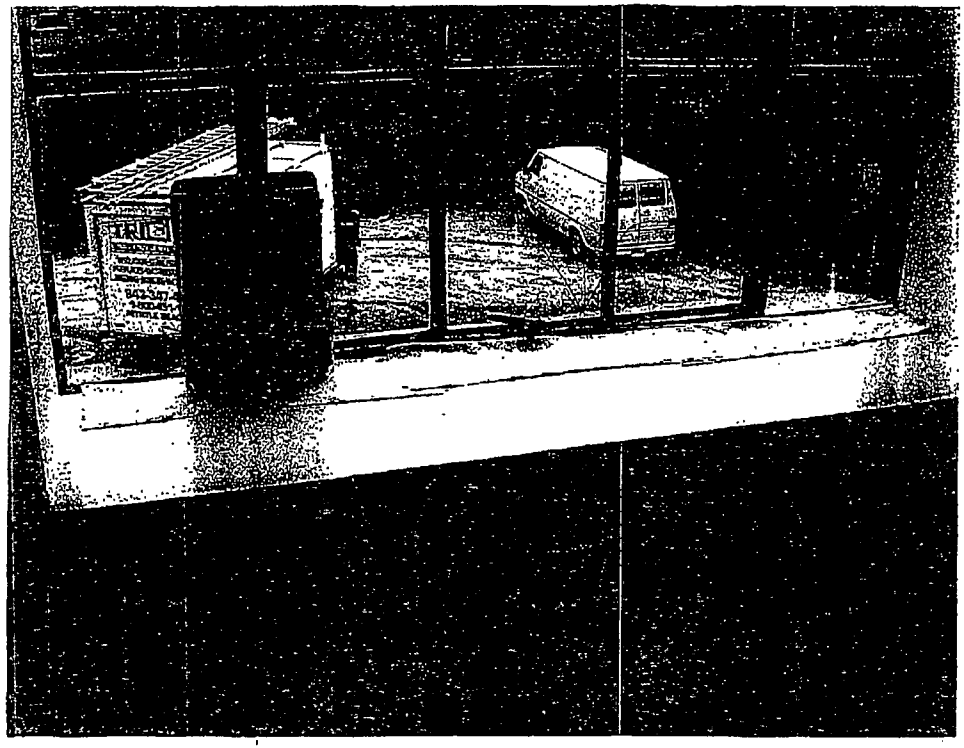
Cracks @ New Stucco Wall



Drainage Problems @ Veranda

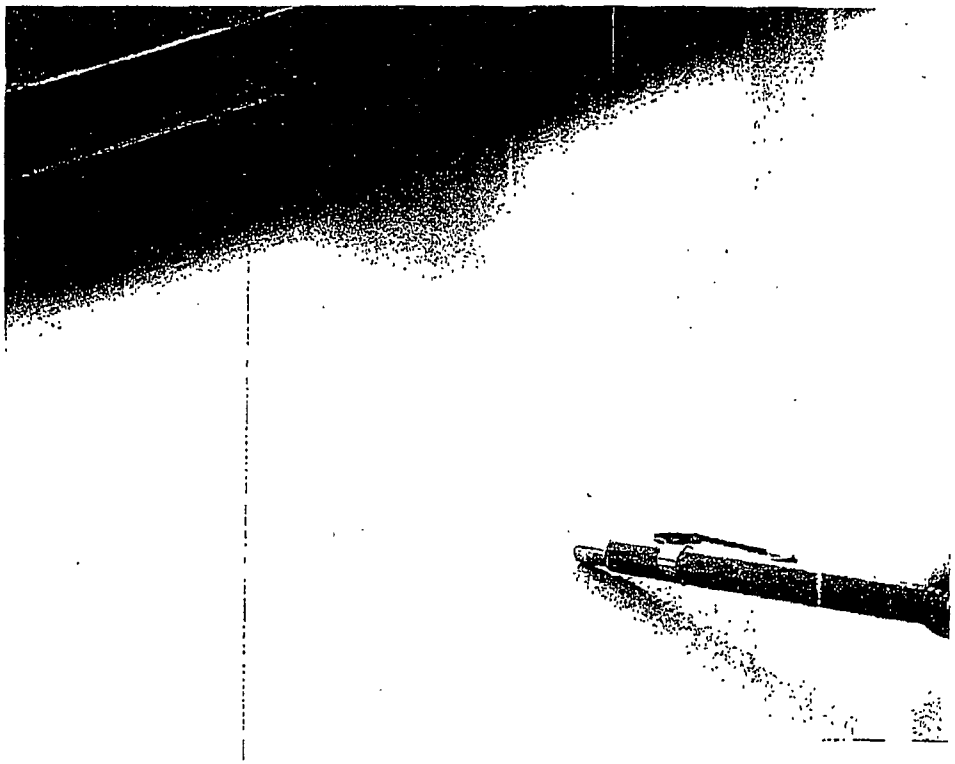


Water Intrusion @ Window

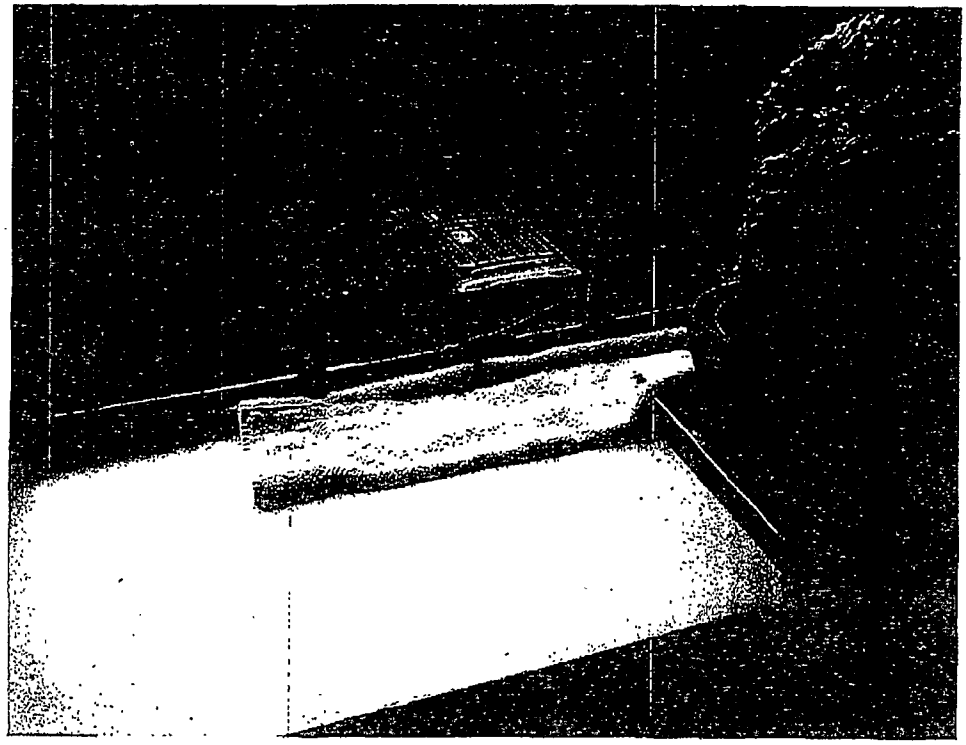


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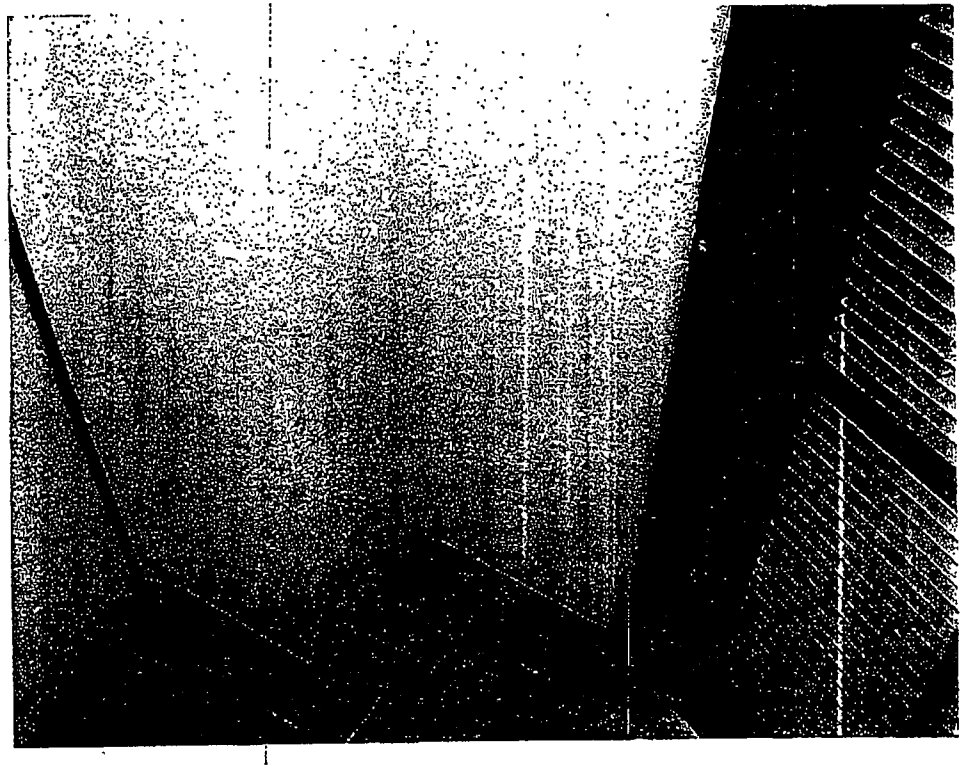
Water Stains @ Window Sill



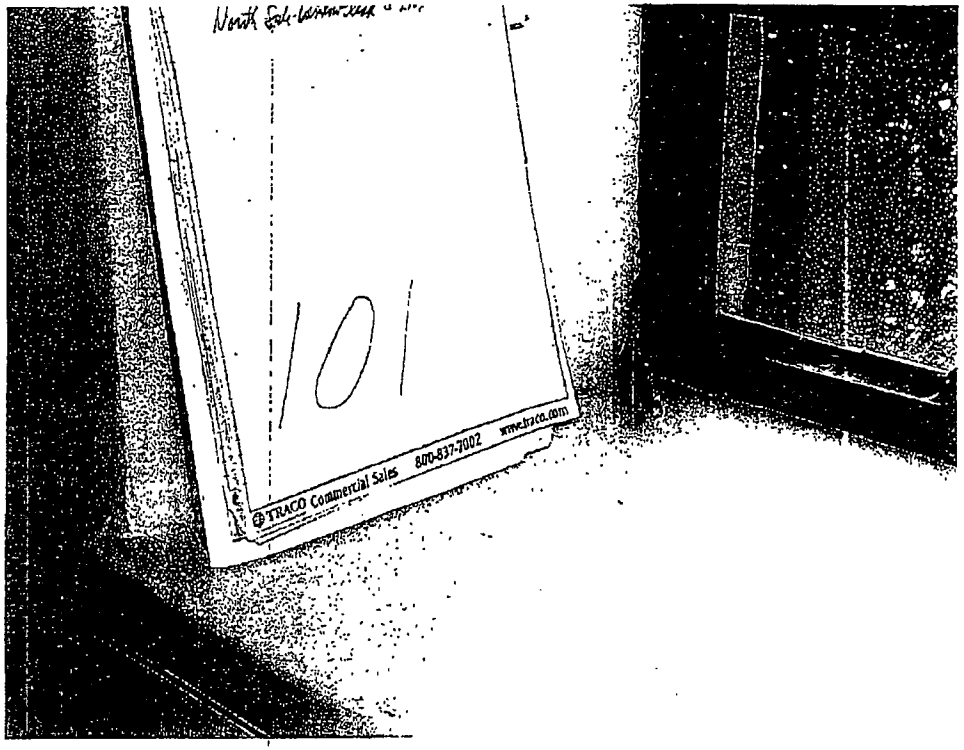
Water Intrusion @ Window



Stucco Wall Cracks



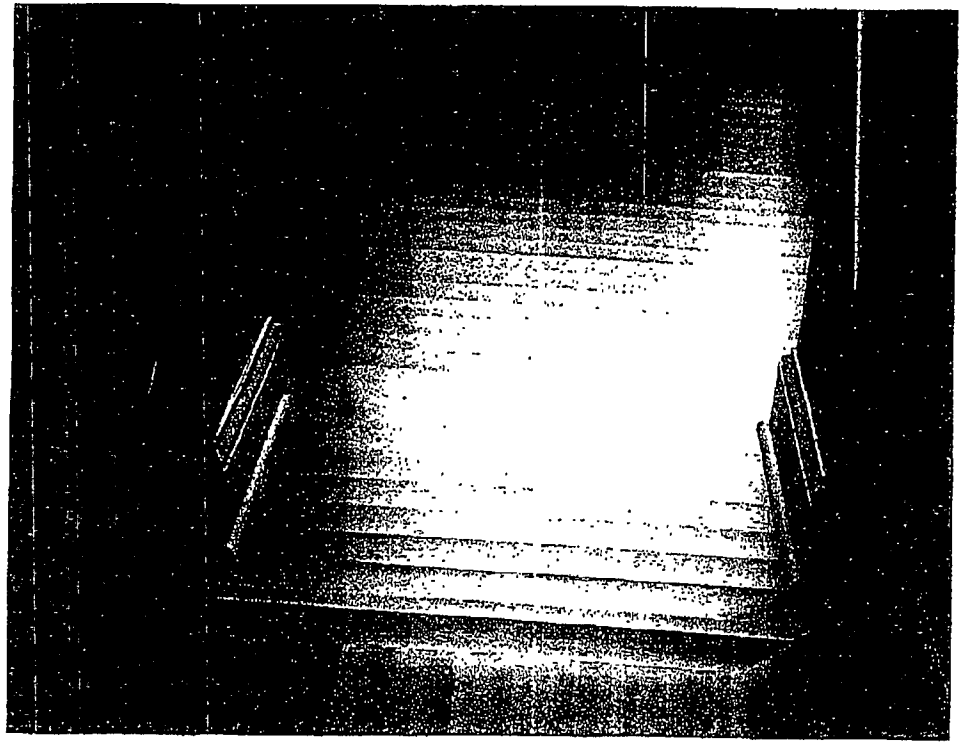
Gaps (rotted) @ Drywall



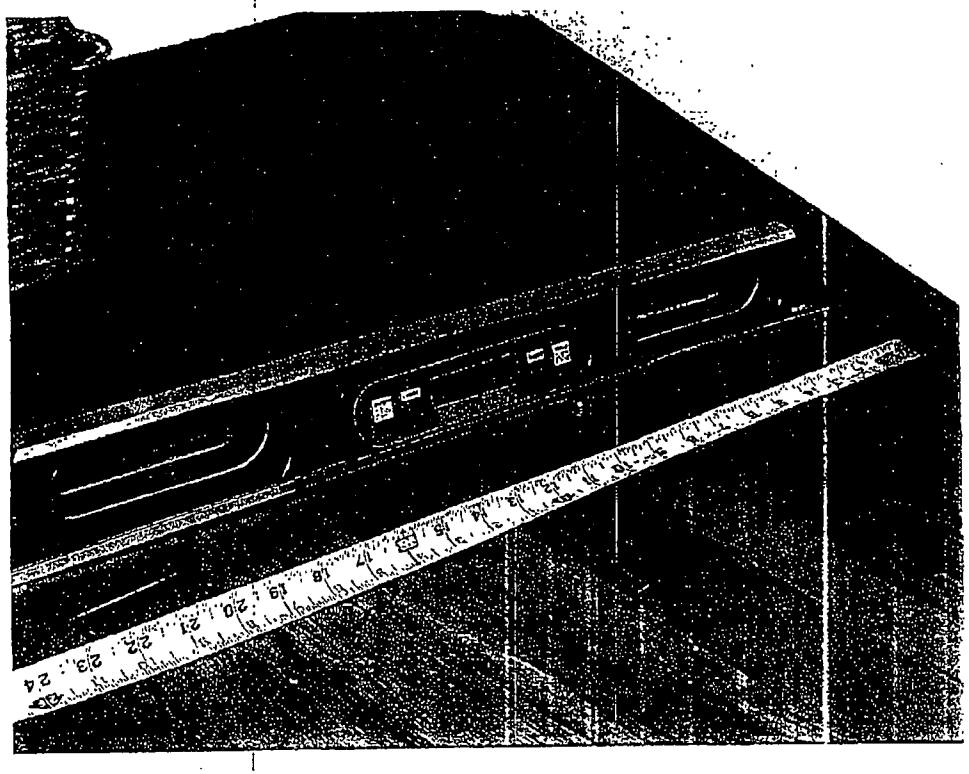
First Floor Wood Floors Warping



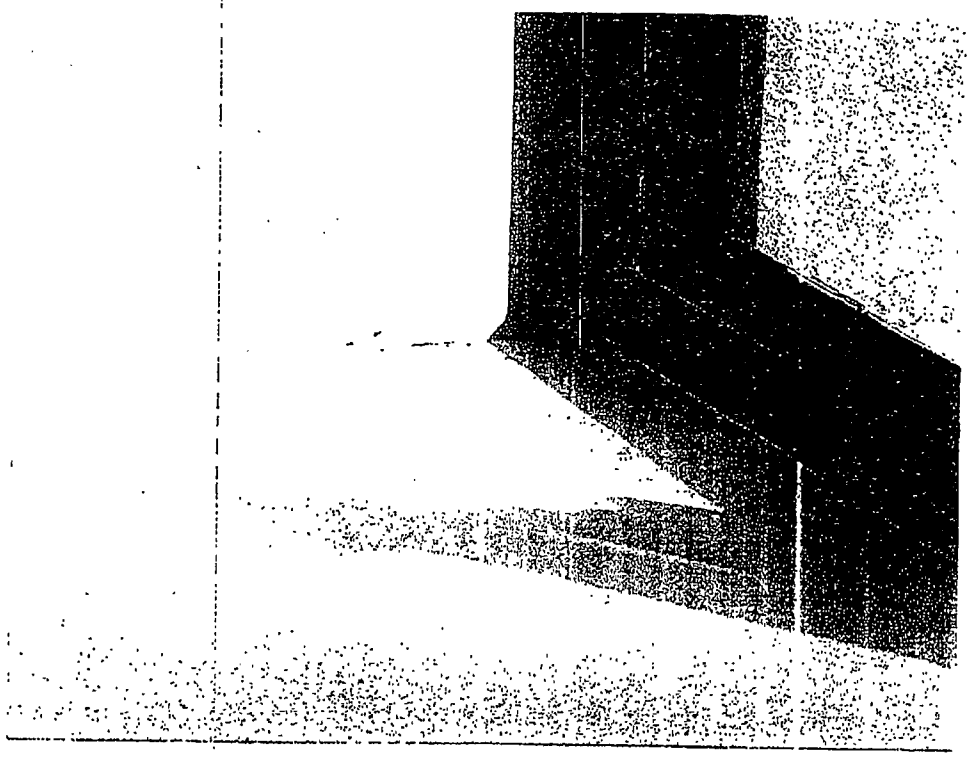
First Floor Wood Floors Warping



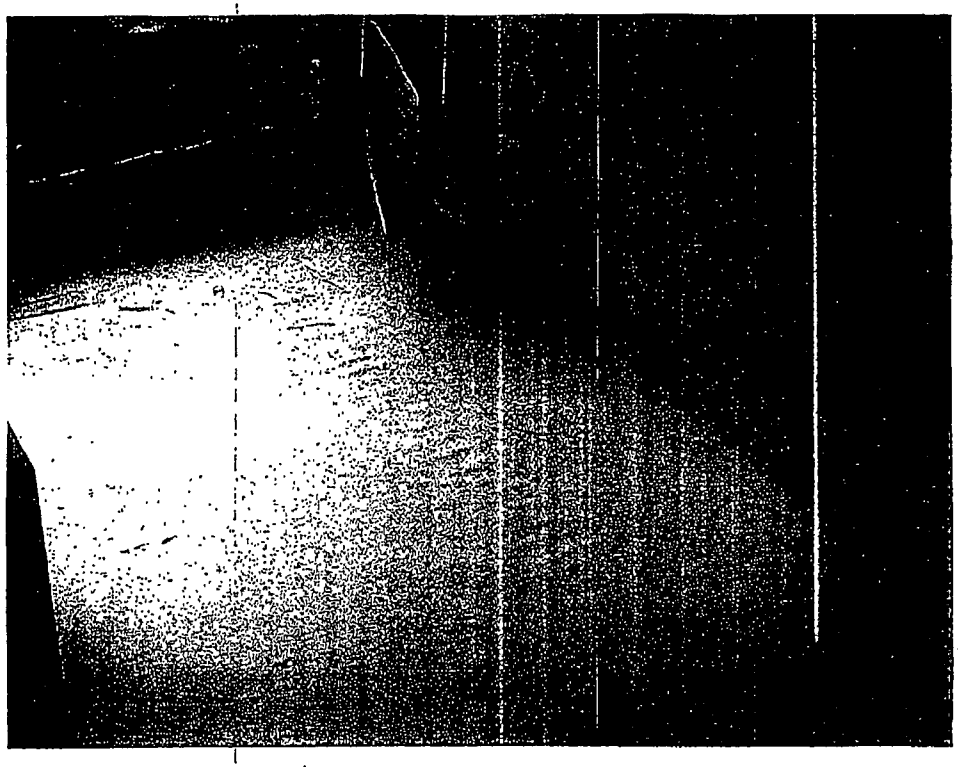
Wood Floor Buckling Not Allowing Closet Door to Open



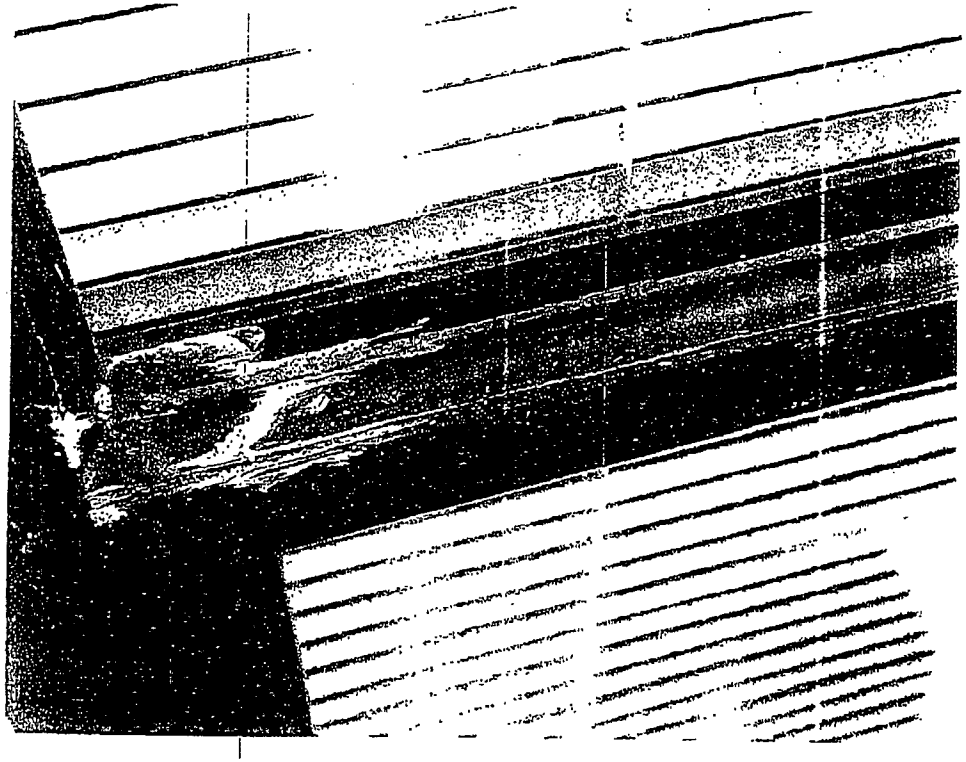
Mildew and Water Intrusion



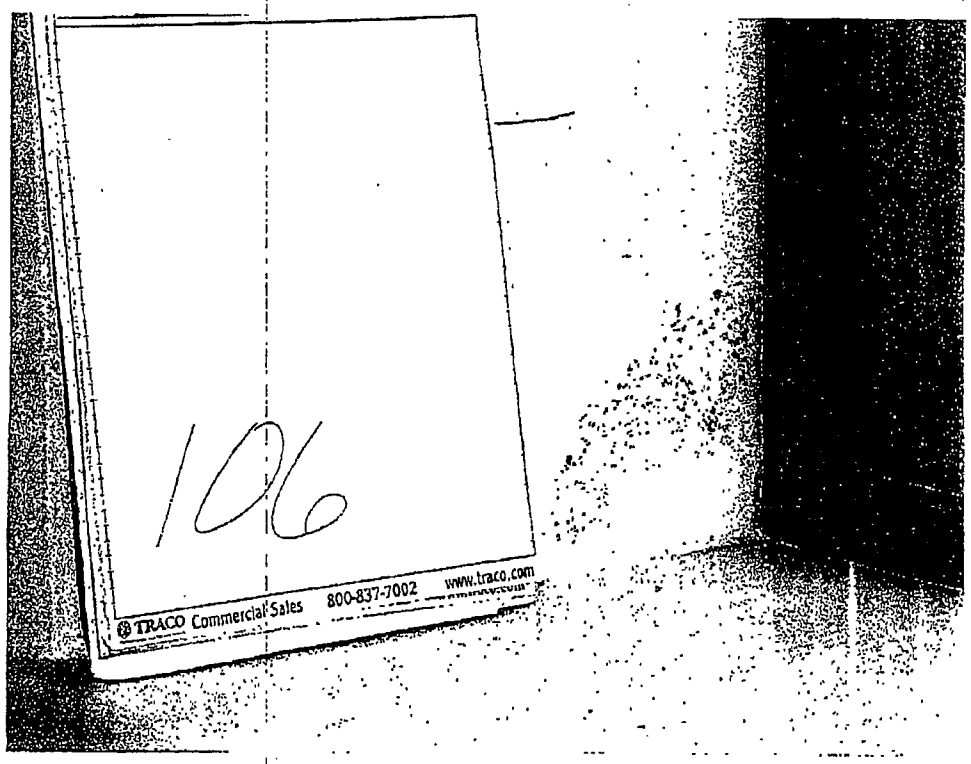
Gaps @ Windows



Sealant Problems



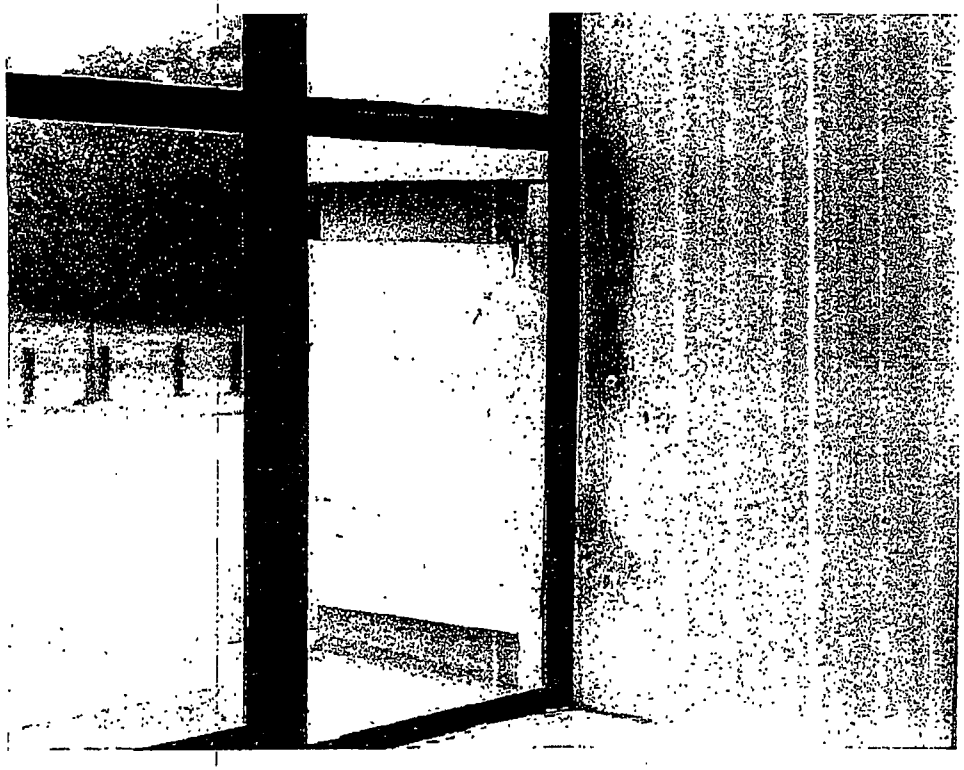
Mildew Problems



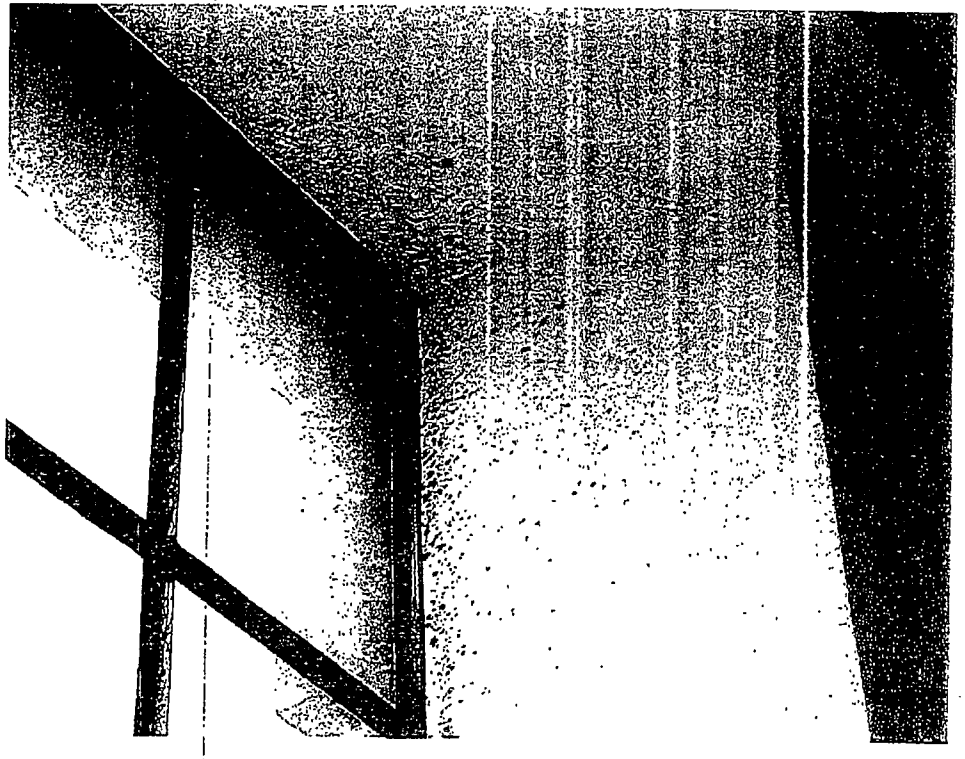
Water Intrusion On Window Sill



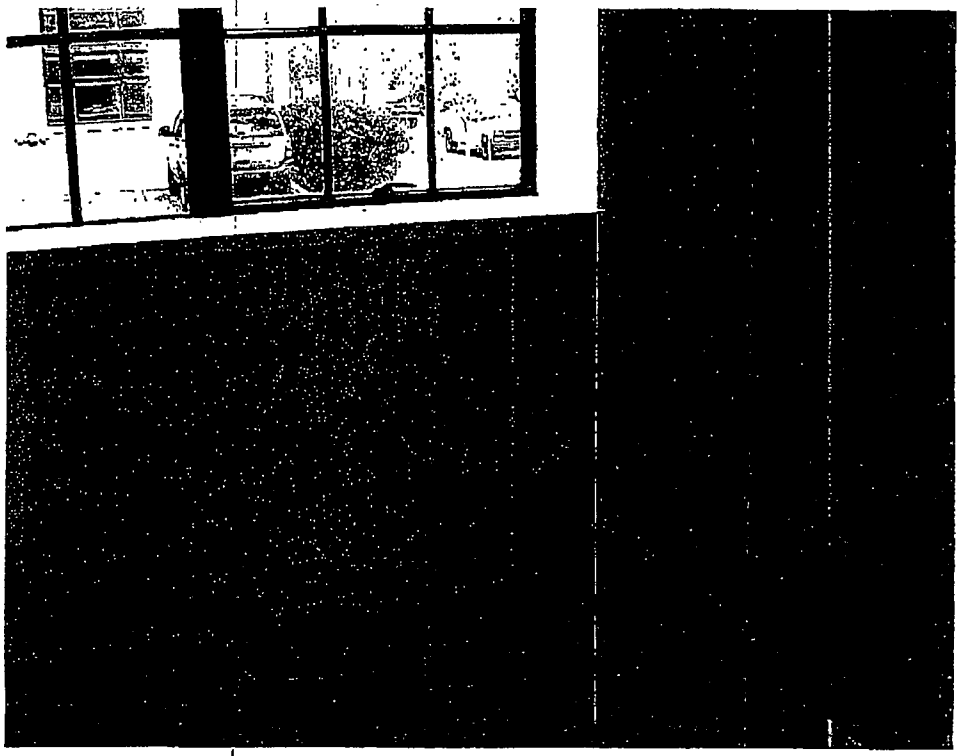
Mildew @ #105



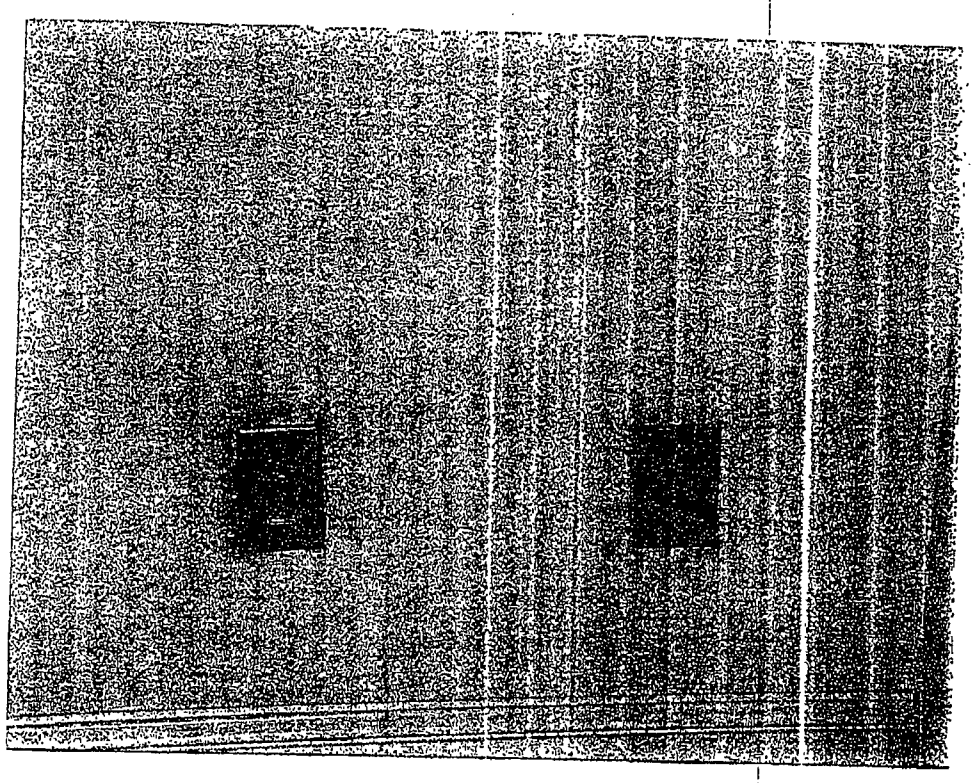
Mildew @ Water Intrusion



Water In Wall Cavity



Mildew



WEATHERPROOFING EVALUATION

OF

III CHISOLM STREET

CHARLESTON, SOUTH CAROLINA

APRIL 10, 2003

W&A PROJECT # – 203241

WILLIAMSON & ASSOCIATES, INC.
5180 ROSWELL ROAD, SUITE 100 SOUTH
ATLANTA, GA 30342

OBSERVATIONS

On April 10, 2003, Williamson & Associates conducted a visual inspection and water nozzle spray tests on selected windows at the above referenced facility. The following observations were made:

1. The windows installed in the units are a single-pane window assembly, with operable windows along the lower ends of the units.
    a. Most of the operable windows have had weather stripping installed in response to air infiltration.
    b. The tops of the operable windows have been retrofitted with a plastic strip to divert water to the exterior.
    c. Several of the operable windows still contain significant voids between the window and the frame, in spite of the installation of the weather stripping.
    d. Most of the windows observed appeared to be wet sealed.

2. Condensation was observed on the interior of the windows in several of the occupied units, to the extent that moisture flowed down, collecting on the sills. This condition has been noted prior to our inspection.

3. Water nozzle spray tests were conducted on selected windows, including some that were cited as currently leaking. Water was observed entering the interior of Unit 101 when water was applied to the left jamb of the corner window on the west exposure, near the courtyard. An examination of the exterior showed that the sealant was applied to damaged masonry, and the water is entering behind the sealant at these points.

4. Water was observed entering the interior of Unit 201 along the top of the operable window. The plastic diverter was not apparent on this window, and water running down the face of the window leaked in at this horizontal section.

5. Moisture was noted at the heads of the windows, and the jambs of windows on the north courtyard exposure of Unit 101. Water testing these windows did not produce any visible flow into the unit; however, moisture probing of the walls indicates significant moisture content in the drywall.

6. Water was observed flowing over the north courtyard windows of Unit 101 while sprayed on the windows and walls of the unit above. There is no provision in the head recess of the windows for water to drip off the building, so it flows under the wall, to the head. There are observable cracks in the stucco at the heads of these windows that are very likely allowing water to enter the wall and get into the units, behind the sealant at the head of the window.

7. There is an exposed patio directly above two of the windows on the north courtyard exposure of Unit 101 that was built on the l flat roof location of the original building. We have requested information about any waterproofing that was applied under the tile floor. Details 5, 6, & 7/A-7.2 do not show any membrane under the tile floor. If that is the case, water could be entering at these patios, and migrating to the wall, showing up along the windows of the lower floor.

8. General observations of the sealant applied around the perimeter of the windows shows areas where the sealant is disbonding from mortar joints in the stone sills. Clear silicone sealant has been used in several locations in an attempt to stop leaks, including applications over mortar, stucco, and other sealants.

9. The surface area of the stucco around the windows of Unit 101 suggests that moisture can be migrating through the surface cracks, bypassing sealants around the perimeter of the windows, and entering the interior of the Unit.

RECOMMENDATIONS

The recommendations for repairing the observed deficiencies would be:

- Cut out perimeter sealants around windows cited as leaking. This would include repair materials applied to additional joints at the sills and jambs.
- Remove damaged stucco, repair areas for receipt of sealant joint. Seal mortar joints in sill stones with Dow Corning 795 Silicone Sealant after cutting mortar down ½".
- Re-seal perimeter joints with Dow Corning 795 Silicone Sealant after stucco has been completely repaired.
- Install sheet metal drip edge in the return of each window where water flows to the window from the wall sections above. Set in full bed of Dow Corning 795 Silicone Sealant, and mechanically attach.
- Apply surface coating of a waterproofing material over the stucco that would comply with the architectural requirements of Charleston, if this is possible. Cracks are inevitable on this stucco exterior assembly. W&A believes that a coating will be required, as will soft joint repair to the stucco to mitigate water penetration.
- The scuppers as designed and installed do not allow for subsurface drainage of the patios. There is no waterproof (sealant) seal between stucco/scupper/tile. This needs to be re-visited in general design prior to our recommendations.
- Have the window manufacturer/installer address the weather stripping and water diverters to ensure that air and water infiltration is minimized at the operable windows.
- None of these recommendations will address the condensation on the interior of the windows.

PHOTO LOG

Photos 1 – 6 show views of the facility. Photo 1 is the east elevation; Photo 2 the north elevation; Photo 3 the south elevation; Photo 4 the west elevation; Photo 5 the west interior courtyard elevation; and Photo 6 the north interior courtyard elevation. The areas that were focused on during our inspection was the west elevation, and the north interior courtyard elevation; with particular attention on Unit 101.

Photo 7 shows the south interior courtyard windows of Unit 101. Leaking has been noted in each of these windows, particularly along the heads of the windows.

Photo 8 shows the patio of Unit 201; this is directly above part of Unit 101, and may be contributing to the leaking. A review of the Specifications indicates that a waterproofing membrane was to be installed, but the Architectural Drawings provided for our review do not provide any details for the termination of this membrane. In fact, the drawings do not reflect a waterproofing membrane within this assembly.

Photos 9 and 10 show the inside and outside of through wall scuppers installed on the patios to drain them. There is no indication of how these scuppers are tied into the waterproofing membrane, or, how the waterproofing membrane would allow moisture that penetrates through the tile floor to drain to the exterior.

Photos 11 and 12 show two areas where the stone on top of the parapet wall at the patios ties into the main building. The arrows point to the juncture with the wall, and the lack of a sealant joint at these points. Moisture can enter the walls at these points.

Photos 13 – 21 show general observations about the windows around the facility. Some of these observations were made in unoccupied units, and some in occupied units. Weather-stripping has been added to the windows by the Manufacturer to minimize air infiltration in the units, and water diverters have been added at the top interior edge of each operable window. Photos 13 and 14 show arrows pointing to gaps where light is visible through windows that have been locked in place.

Photo 15 shows an arrow pointing to a gap between window frame components that is wider at the bottom than at the horizontal intermediate. This is an operable window, and it is locked in place.

Photo 16 shows another window where a knife blade can be passed through the gaps between the window frame and the operable window unit, in spite of the weather-stripping that has been added to the windows.

Photo 17 shows the hardware that allows the operable windows to open. These hinges keep the window open, and limit the distance that the window can be open. There is no apparent sealant on the screw penetrations within the jambs on these windows. Water

that penetrates thorough any of the openings previously noted can leak through the screw penetrations, past the jambs into the walls.

Photo 18 shows a first floor operable window unit, where the lower restraining hinge has been removed to allow the window to open wider and serve as an egress in case of fire. The circle area in the photo shows a hole through the jamb where water can pass by the window and get into the walls.

Photo 19 points to the approximate location of the water diverter that has been added by the Manufacturer to prevent water from leaking in at the top of the operable windows. This was retrofitted on the windows.

Photos 20 – 30 show photos of the water test that was conducted on the west elevation window in Unit 101. This was the last window before the building turned into the courtyard.

Photo 20 shows the lower left corner of the window, where leaking has been observed. Also apparent is the condensation that forms on the interior of the windows. The conditions on the day of this inspection were temperatures in the low 50's, and 100% humidity. It had rained in the area through the night, and off and on during the day.

Photos 21 and 22 show water flowing up over the sill of the operable window when water was sprayed along the sill. This water flowed up between the two pieces of additional weather-stripping installed by Genoa personnel to address continuing air infiltration.

Photos 23 and 24 show water flowing into the unit on the interior sill through deteriorated wall board at the sill/jamb intersection. The source of the water entry was determined to be through deteriorated stucco in the window returns that allow water to by-pass the perimeter sealant joints. This particular leak has been persistent enough to result in the deterioration of the wall board.

Photos 25 and 26 show the condition of the stucco in the window return of the jamb that leaks. The arrows point to the cracks in the stucco that were not patched during the rehabilitation of this building, and may be a source of water entry. The area pointed to in Photo 26 appeared to allow the most water to enter the unit when water was sprayed directly over this area. Photo 27 shows the opposite jamb, and the cracking that exists there as well. Water sprayed in this area did not produce a visible leak into the building.

Photo 28 shows an arrow pointing to a crack emanating from the corner of the top of the window. Note that this crack in the stucco runs up to what had been the top of the wall before the building renovations. A roof detail existed here, and a wall was added to the top of the existing wall. Photo 29 shows a closer view of this crack. Water appears to have an entry point into the wall here.

Photo 30 shows the opposite corner of this window. More cracks are visible in the stucco, and the arrow points to moisture that appears to be absorbed into the stucco through the cracks. The absorption of moisture into the stucco walls could contribute to the leaking, and will have a detrimental affect on the stucco over time.

Photos 31 – 41 show photos taken during the water test of one of the windows on the courtyard side of Unit 101. Photo 31 shows the water being sprayed onto the stucco wall above the window, allowing the water to flow down the wall.

Photos 32 and 33 show the water dripping off of the wall, at the return to the window. It is apparent in Photo 33 that a significant amount of water can flow across the return and run directly onto the windows. There is no device here for the water to drip off before getting to the perimeter sealant joint at the head of the window, or the window unit.

Photos 34 and 35 show the interior sill corners of this window unit. The water damage in these corners is apparent. A Delmhorst Moisture Meter was used to determine if the wall boards were wet or damp. The probes were placed on the interior surface of the walls in these corners, and the meter indicated saturation. Note the location of the needle on the face of the meter to the extreme right. The needle moves left to right across the face of the meter, with higher concentrations of moisture indicated on the right. These walls are very wet.

Photos 38 and 39 show the interior head conditions of this window. Arrow A in each of the photos points to previous water marks on the wall boards. Arrow B in each of the photos points to new watermarks observed during the testing. Photo 40 shows another watermark developing in a corner.

Photo 41 shows the return area above these windows. The wall above this window was not sprayed during our testing, but note the wet marks in the stucco return above the head of the window. This indicates that the wall is absorbing moisture, or moisture from the patio above is getting behind the wall and flowing downward.

Photos 42 and 43 show the leaking window in Unit 201. In Photo 42, the towels on the sill were placed there by the homeowner to absorb the water that leaks in. Water testing this unit revealed that the leak is at the top of the operable unit, on the right side of the window. Water was sprayed at the top of the window unit, and it immediately leaked in, as seen in Photo 43. The water diverter along the top of this operable unit is ineffective and needs to be replaced.

Photos 44 – 54 show exterior conditions around the windows in the courtyard. Photo 44 shows the area around Units 101 and 202.

Photo 45 shows a typical perimeter sealant joint at the sill of a window. The sealant spans from the window frame to the stones that form the sill, or stucco detail in lieu of the stones. Photo 46 shows a typical jamb sealant condition, and Photo 47 shows that

the individual glass lights have been wet sealed to the frame. There do not appear to be any openings in the frame, except at operable window units.

Photo 48 shows stones forming the sill of this window. Photo 49 shows a mortar joint in between the stones. The condition of the mortar joints varies around the building. At no time, however, was sealant observed used in place of mortar.

Photos 50 and 51 show the sill/jamb corners of the window in the sunroom of Unit 202. Mortar joints were installed here, rather than sealant joints. Photo 52 shows a closer view of the joint in Photo 51, at the return. The arrows point to openings in the mortar joint that could allow water to get behind the sill stones, by-passing the sealant joints, and get into the walls. A look back at Photo 44 does not show any means for water to weep from the wall if it does get into it.

Photos 53 and 54 show examples of where the horizontal sealant joint at the sill of windows peels free at the perpendicular mortar joints. It is apparent that moisture can migrate under the sealant at each of these mortar joints.

Photos 55 – 70 show sill conditions around the building. Photo 55 shows clear silicone sealant applied to cracks in the stucco and at jamb/sill intersections. Photo 56 shows old, weathered sealant that does not completely cover the joint in the sill.

Photo 57 shows clear silicone sealant applied over a mortar joint that is perpendicular to the perimeter sealant joint along the sill. We do not typically recommend clear silicone sealant for these types of conditions. Compatibility of the sealants is another issue.

Photos 58 – 63 show joints in various sill locations that could possible allow moisture to penetrate behind them. Photo 61 shows a section of stucco on a new wall between window sills. The sill stones are not sealed to the stucco and could allow water to pass between the different substrates. The presence of clear silicone sealant in several of these indicates that these areas were suspected of leaking, and the clear silicone was the repair attempt.

Photos 64 – 70 show sill conditions at the front and sides of the facility. Most of these conditions are mortar joints in a deteriorating state that intersect the sill sealant joint. These are sources of water penetration into the building. At the present time, however, no leaking was noted in any of these areas along the first floor. However, if the same conditions are present on the upper floors, water could be migrating to the lower levels and contributing to the leaking conditions at the heads of windows below.

Photos 71 – 83 show conditions around the remainder of the facility relating to the windows, stone copings at the head condition, the condition of the mortar joints between those stones, and the stucco between the stone bands and floor levels.

Photo 72 shows cracks in the stones that form the head condition over this window. The window is apparently sealed to the stone around the window, but the perpendicular mortar joints have not been addressed. Photo 73 shows more of the same condition in another area. Photo 74 shows a closer view of the cracks in the stone, and the condition of the mortar joints.

Photo 75 shows some "veining" in the face of the stucco between these windows. This is between the first and second floors. It is obvious that moisture is penetrating the stucco and wetting the walls.

Photo 76 shows a vertical crack in the stucco that has been repaired. It appears, however, that the crack is still taking in water through the patch material.

Photo 77 shows a stone band across the head of a window on the east elevation of the building. The circled joint is shown in closer detail in Photo 78, and the condition of the mortar joints, and what appears to be a horizontal sealant joint. Water that enters through these open vertical joints can weep out through the open horizontal joints along the bottom of the stone, in the return. However, if some of that moisture flows on top of the stones, can it by-pass the sealant joint of the windows, and enter the unit?

Photos 79 – 82 show interior wall conditions in Unit 106, in the northeast corner of the facility. At the time of the inspection, the unit had de-humidifiers running in it, in an attempt to dry out the area. These conditions are prevalent on the north wall, which has an exposure to weather driven in from the west. Note the relation of the problems, associated with leaking, to mortar joints in the stones along the head of the windows. It appears that the open joints, and porous surface of the stucco walls is allowing moisture to by-pass the sealants around the windows and affect interior conditions.

End of Report

October 16, 2007

Mr. Christopher Ogiba, Esquire
Nexsen Pruet, LLC
205 King Street
Suite 400
Charleston, South Carolina 29401

Re: Preliminary Observations Report
3 Chisolm Street Condominiums
Gymnasium and Cottage Structures
Charleston, South Carolina
ABS Project No. 950.0787

Dear Mr. Ogiba,

Pursuant to your request, personnel from Applied Building Sciences, Inc. (ABS) performed a preliminary visual survey at 3 Chisolm Street Condominiums (the facility). The purpose of our survey was to make observations related to the general condition of the window assemblies installed at the subject property. You also asked that we review the architectural drawings produced in association with the renovations performed in 2000.

DESCRIPTION

The subject address consists of three buildings, referred to on the architectural drawings as the *school* building, the *gymnasium* building and the *cottage*. Only the cottage and the gymnasium buildings are addressed in this report. Based on the information that was provided to us, both of the brick clad buildings were converted from the Murray Vocational School into residential structures. The gymnasium consists of multiple two story condominiums elevated over an enclosed parking garage. The cottage is a single-family, stand alone structure situated between the gymnasium and the school building. For orientation purposes the north elevation is the side of the facility facing Broad Street.

BACKGROUND

Based on the information provided to us by you, Mr. Collin Bruner (the property manager) and the architectural plans provided for our review, the condominiums at 3 Chisolm Street were most recently renovated in 2000. The plans were produced by Brock Green Architects and Planners, based out of Atlanta, Georgia, on behalf of

Chisolm Street Partners, LLC. The 1997 Standard Building Code (97 SBC) was the applicable code at the time the building permit was issued and Genoa Construction acted as the general contractor on the project.

OBSERVATIONS

Scott Harvey, AIA, of ABS, performed a cursory visual survey of selected areas of the interior and exterior of the structures on August 23, 2007 in the presence of yourself and Mr. Bruner. A follow-up site visit was performed by Scott Harvey, and Whitney Okon, following a review of the architectural contract documents dated June 16, 2000. The contract documents called for isolated removal, repair, and in some cases replacement of several of the window units on the gymnasium and cottage structures. Effort was made during the surveys to gain a general understanding of the condition of the fenestration throughout the facility. Our most significant observations are listed below.

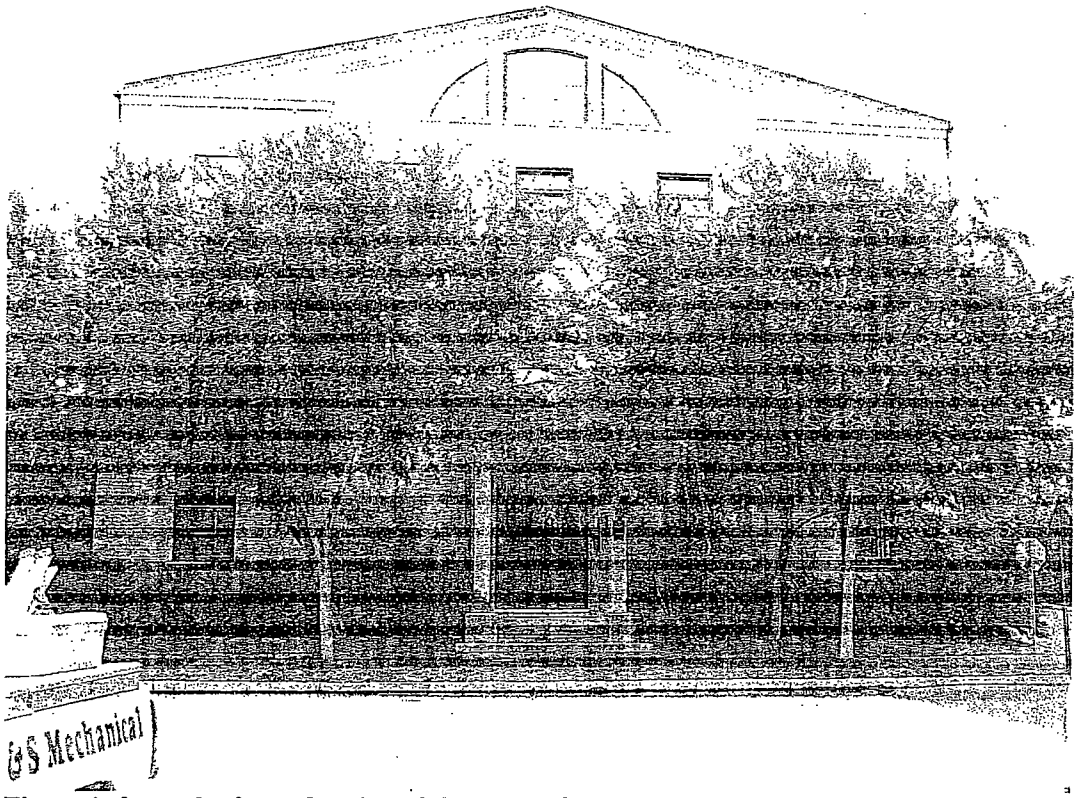


Figure 1 shows the front elevation of the gymnasium structure. The majority of the observations included in this report were made on this building.

General

- Double-hung and fixed, single glazed wood windows are installed on site. The manufacturer of the windows has not been identified to date. No proprietary

markings were observed on the frame, glazing, or hardware of the windows surveyed.

- According to the architectural plans, isolated windows were to be completely replaced during the construction process. Other windows were to receive replacement glass, sill height modifications, and/or replacement of wood trim (**Figure 2**). No visual indications of the aforementioned work were identified during the site visits.

- The glazing, hardware and framework observed appeared relatively consistent in age.

Exterior

- Moderate to severe deterioration of the wood window frames was observed throughout the facility. Wood decay and visible rot was noted in multiple locations along the jambs, sill and mullions of the windows (**Figures 3 & 4**). The deterioration did not appear to be isolated to specific portions of the framework nor was it limited to specific elevations of the structures.

- Discoloration of the wood frames and fungal growth was observed on the window units from the exterior of the structures (**Figure 5**). Mushroom-like fungal growth was noted projecting from the rotted framework. The exterior paint covering the window frames is severely deteriorated (cracking, peeling, etc...) and the wood was soft to the touch in locations.

- The sealant joints surrounding the fenestration exhibited both adhesion and cohesion failures. Gaps in excess of 3/16 inch wide were noted in isolated locations.

- Separation in the finger jointing of the wood frames was observed. Untreated (unpainted) wood was exposed as a result of the separations in the jointing.

- Plexiglass was installed on the exterior side of multiple windows along the gymnasium structure. According to Mr. Bruner, the plexiglass had been attached over the wood windows in effort to inhibit water intrusion at windows which consistently leaked during rain events.

Interior

Interior observations were made on selected windows within units 402, 404, 405 and 406.

- From the interior of the units, dark staining was observed showing through the off-white colored window trim paint (**Figure 6**). Gaps were identified along

joints in the wood framework and air migration was noted between the sash and the framework in the majority of the windows surveyed. Similarly, daylight was visible through the frame in multiple locations.

- Ponding and staining consistent with standing water was noted along the sill of multiple windows in the gymnasium building. The tenant in unit 402 explained that she frequently saw water collecting on one of the sills within her unit, but could not identify the point(s) of the water intrusion.

- Observations made along the glazing revealed that all of the windows surveyed had been stamped with the following information: ANSI Z97.1-1984 16 CFR 1201 CII 1/8 UTP. Windows which had been identified on the architectural contract documents to be "replaced" and those that were not modified (according to the drawings) exhibited the same marking on the glass.

- Comparison of the architectural contract documents with the *as-built* conditions on site revealed that several infill windows had not been installed on the rear (west) elevation of the gymnasium structure. It is unknown at this time why the as-built conditions are not consistent with the contract documents (dated 6.16.00).



Figure 2 illustrates the typical wood windows installed at the facility. The subject photo was taken looking along the second story of the gymnasium building's north elevation.

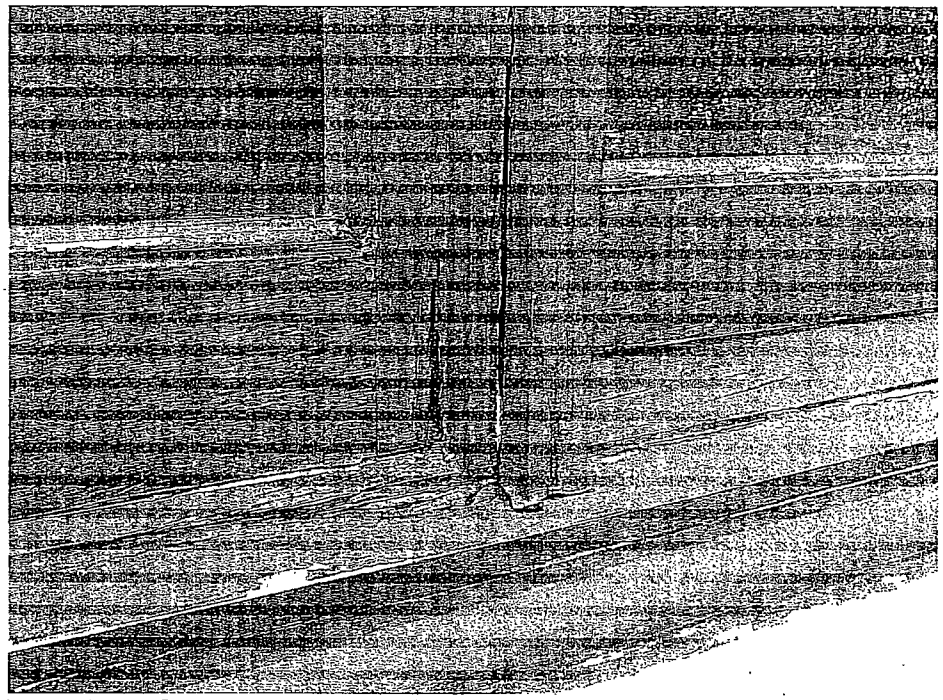


Figure 3 reveals the decay observed along the majority of the wood window frames at the subject facility.

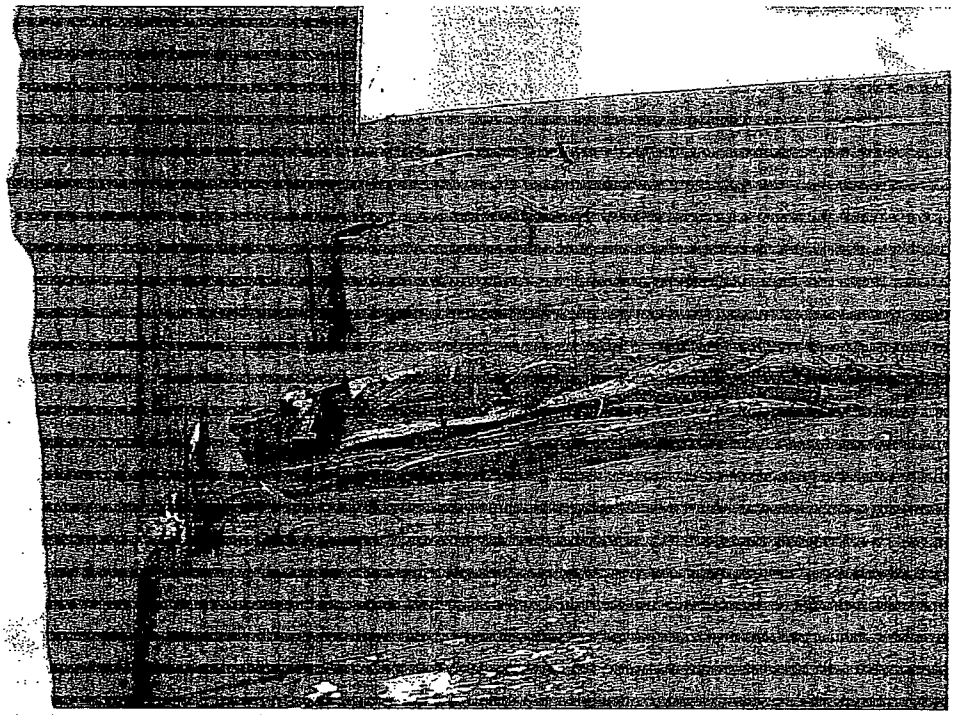


Figure 4 illustrates the severity of the wood decay on some of the windows identified as "new windows to match existing" on the architectural plans.

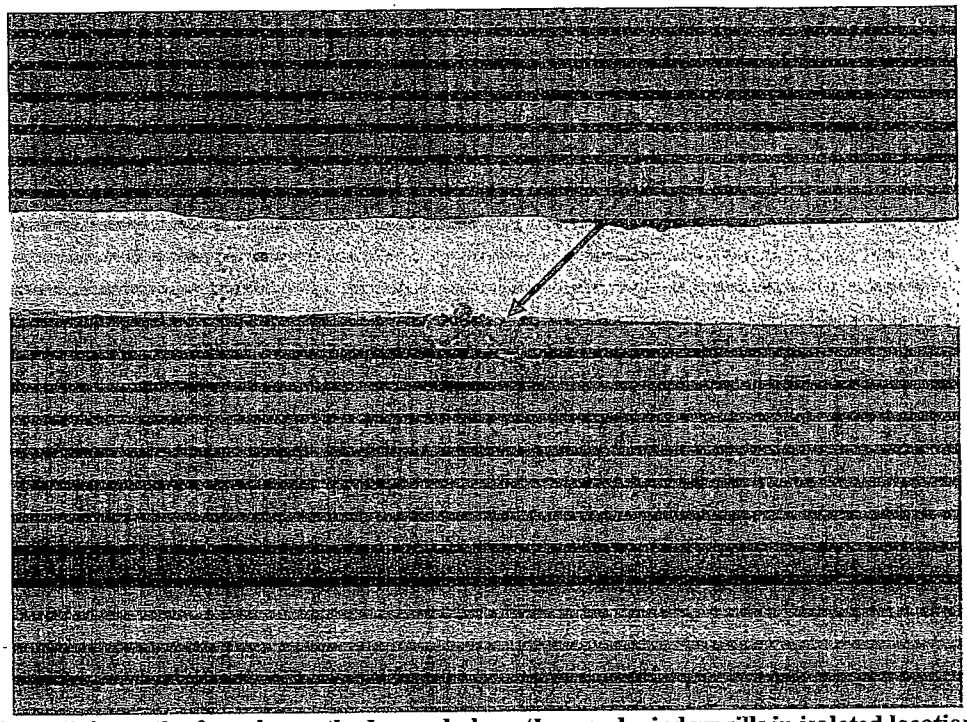


Figure 5 shows the fungal growth observed along the wood window sills in isolated locations.

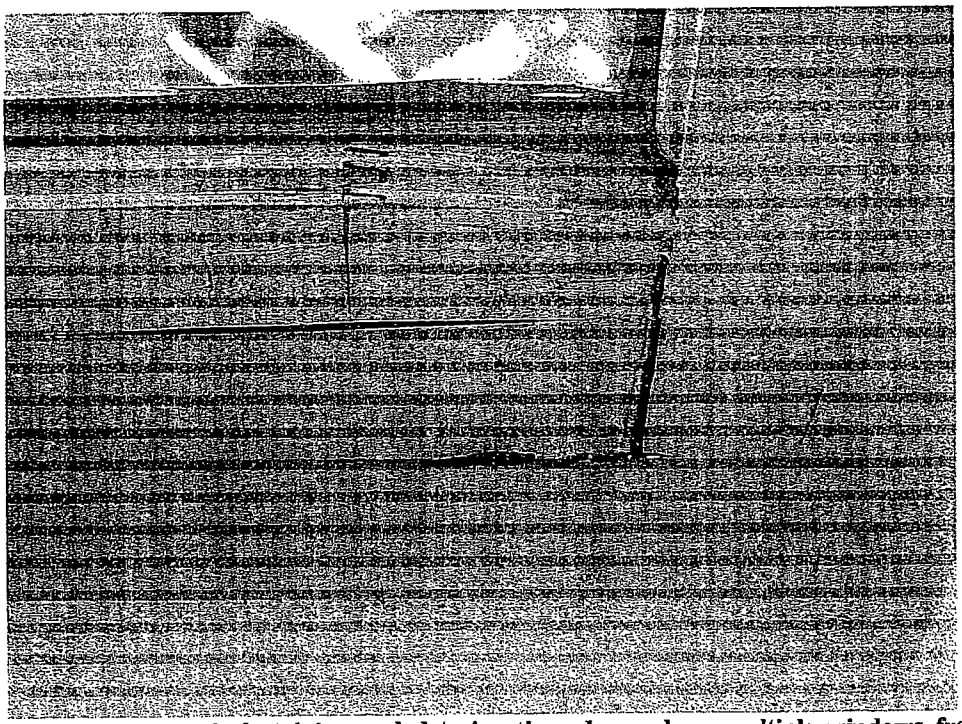


Figure 6 reveals the typical staining and deterioration observed on multiple windows from the interior of the gymnasium building. Note: this window, in unit 406, is identified as "new windows to match existing" on the architectural plans produced by Brock Green in 2000.

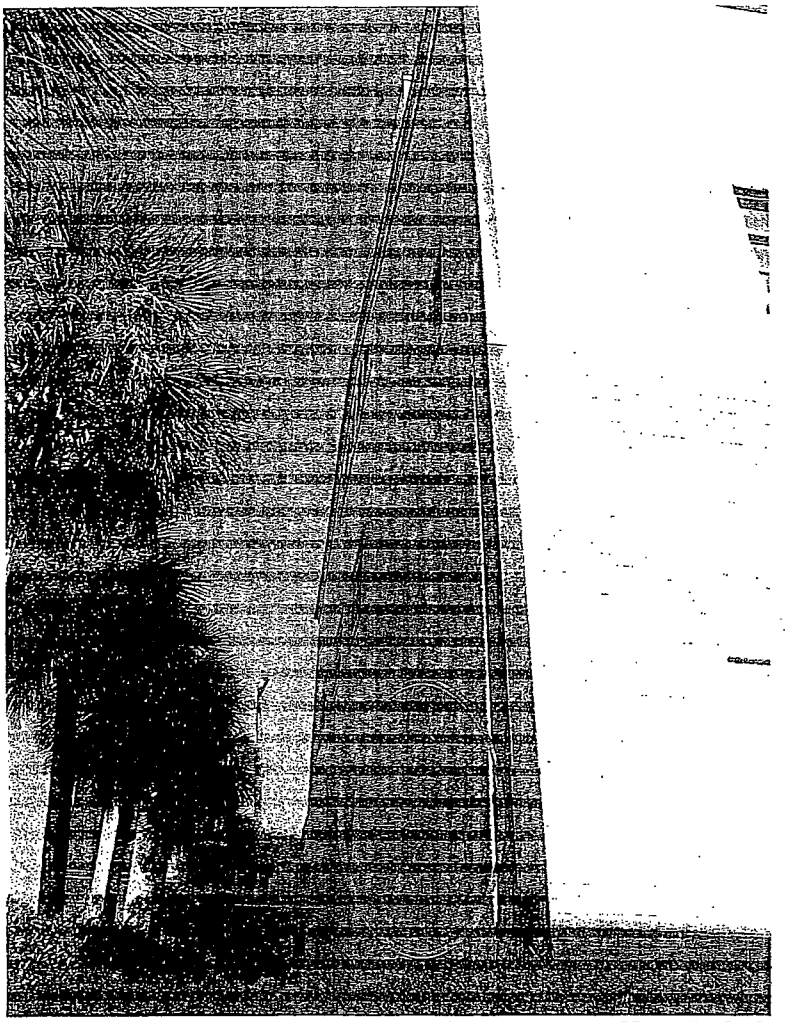


Figure 7 shows the rear (west) elevation of the gymnasium structure. Note the lack of windows on the ground level.

CONCLUSIONS

Based on our survey, the information provided to us and our experience with similar problems, it appears that window replacement and/or modification at 3 Chisolm Street Condominiums was not accomplished in accordance with the Brock Green contract documents provided for our review. None of the windows observed during our preliminary survey were indicative of replacement windows exhibiting only seven years of age. Instead, all of the windows appeared to be of the same age based on the visual survey conducted. Severe deterioration to the wood framework of the windows was typical throughout the facility. Separation in the jointing, sealant failures, and fungal growth were noted. No visible distinction could be made in the field to distinguish between the windows identified for replacement and/or repair on the contract documents and those which were identified to remain original.

ABS has not, to date, identified any manufacturer codes or date stamps associated with the windows. However, subsequent research was performed in regards to the stamp identified on all of the operable windows surveyed at the facility. The nomenclature on the glazing characterized the glass as being rated for human body impact in accordance with the American National Standards Institute (ANSI) Safety Performance and Methods of Test for Safety Glazing Material Used in Buildings. The ANSI standard was produced in 1984 and was not modified until 2004. The applicable building code at the time the renovations occurred references the 1984 version of the standard. Therefore, the stamp observed does not help to identify the age of the window as specifically being manufactured after the mid-1980's. It is likely that additional information regarding the windows will be required in order to determine if replacement units were ever installed during the 2000 renovations.

In summary, it does not appear, based on our preliminary observations, that the windows at 3 Chisolm Street were repaired or replaced in accordance with the contract documents. No destructive testing was conducted to verify the installation/replacement methods or the cause of the observed window deterioration. We reserve the right to amend this report and modify our opinions once additional information is provided to us.

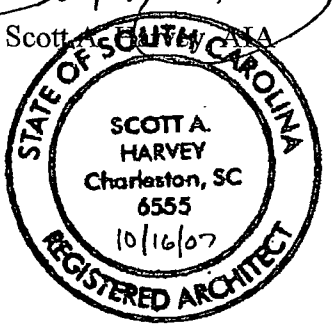
If you have any questions regarding this report please feel free to call us.

Sincerely,
APPLIED BUILDING SCIENCES, INC.

Whitney E. Okon, Associate AIA

Scott A. Harvey, AIA





APPLIED BUILDING SCIENCES INC.
ENGINEERS, ARCHITECTS AND
ENVIRONMENTAL CONSULTANTS

April 8, 2010

3 Chisolm Street Home Owners Association
c/o Sentry Management, Inc.
4925 Lacross Rd Ste 112
North Charleston SC 29406

Re: **Fire Protection, Sound Attenuation & Window Observations Report**
3 Chisolm Street Condominiums
Gymnasium & School Buildings
Charleston, South Carolina
ABS Project No. 950.0787

Dear Chisolm Street HOA,

Personnel from Applied Building Sciences, Inc. (ABS) performed a visual survey, destructive testing and subsequent document review at 3 Chisolm Street Condominiums (the Facility). The purpose of the survey was twofold. The first portion of the survey was conducted for the purpose of making observations related to the fire protection and sound attenuation in the Gymnasium Building. The purpose of second portion of the survey requested was to make observations related to the extent of the damage incurred due to condensation from the School Building's metal window assemblies. You also asked that we compare our findings to the architectural drawings and specifications produced in association with the renovations performed in 2000.

DESCRIPTION

The subject facility consists of three buildings, referred to on the architectural drawings as the *School* building, the *Gymnasium* building and the *Cottage*. For the purpose of this report, only the School and the Gymnasium buildings are addressed. For orientation purposes the north elevation is the side of the facility facing Broad Street.

BACKGROUND

ABS reviewed information related to the subject facility that was provided by you and Nexsen Pruet. This information included the contract documents originally produced by Brock Green Architects and Planners (Brock Green). No additional specifications, drawings, or construction correspondence have been provided and/or reviewed by ABS to date.

OBSERVATIONS

A survey of the subject facility was conducted by Scott A. Harvey, AIA, Whitney E. Okon, Associate AIA, Barbara Burnham (Sentry Management) and you on November 6, 2009. A

follow-up survey, for the purpose for conducting destructive testing in the areas identified on November 6, was conducted by Whitney E. Okon. . Access to the site was provided by Barbara Burnham and Spence Thomas of Sentry Management and were accompanied by George Davidson, 3 Chisolm Street Home Owners Association President. Our most significant observations are listed below.

Gymnasium Building

Observations and destructive testing were conducted in the Gymnasium building for the purpose of determining the continuity of the fire protection and sound attenuation at the tenant separation walls. Observations were made within Units 402 and 404.

Unit 404

- Discontinuities in the gypsum wall assembly were observed at the southeast corner of Unit 404 (referenced on the Brock Green documents as Unit 104) (**Figure 1**). The observations were made along a portion of the wall that is adjacent to Units 403 and 401 (referenced on the Brock Green documents as Units 103 and 101) (**See Floor Plan 1**).

- Discontinuities in the gypsum wall assembly were identified in proximity to existing, horizontal and vertical HVAC trunk lines. Sections of missing gypsum left exposed steel studs and the inboard side of the adjacent wall's gypsum (along Unit 401) exposed (**Figure 2**).

- Closer observations made along the south elevation wall, between the vertical portions of the exposed HVAC truck line, revealed HVAC trunk lines in the adjacent unit (likely Unit 403) visible (**Figure 3**).

- Portions of the exposed wall cavity were not filled with fiberglass batt insulation (**Figure 4**). Twenty (20) gauge steel studs were exposed along with 5/8 inch thick gypsum in the "open" wall areas.

- Discontinuities in the gypsum wall assembly were observed in proximity to structural members (**Figure 5**) as well. Several locations were identified in which open gaps existed surrounding beams that penetrated the demising wall (separating Unit 404 from Unit 401 and 402).

- Isolated destructive testing was performed to remove additional gypsum drywall in proximity to the area on the east wall shown in Figure 1 (**Figure 6**). Removing approximately five square feet of gypsum revealed the inboard side of Unit 401's gypsum drywall at the demising wall. Portions of the exposed area revealed a lack of insulation within the wall cavity and sections of the gypsum drywall which had not been fastened into the steel studs.

- Closer observations made along the inboard side of Unit 401's gypsum (facing Unit 404) exposed an Underwriter's Laboratory stamp signifying the material's designated fire resistance classification (**Figure 7**).

Unit 402

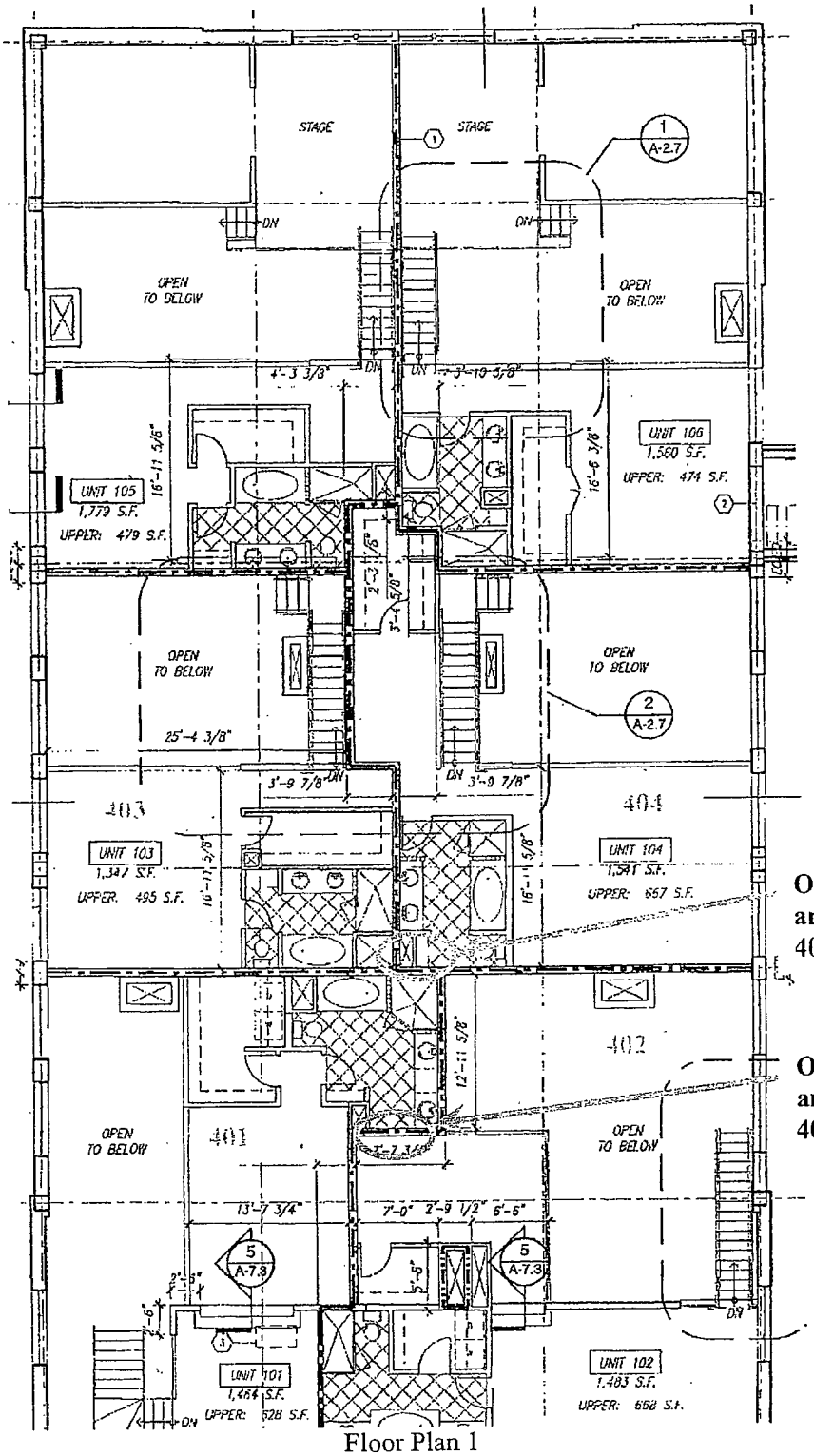
- Discontinuities in the gypsum wall assembly were observed at the northwest corner of Unit 402 (referenced on the Brock Green documents as Unit 102) (**Figure 8**). The observations were made along a portion of the wall that is adjacent to Unit 401 (referenced on the Brock Green documents as Units 101) (**See Floor Plan 1**).

- Closer observations revealed open gaps surrounding structural members (**Figures 9 & 10**). Several locations were identified in which discontinuities in the gypsum left open areas between the gypsum and the beams penetrating the demising wall separating Unit 402 from Unit 401.

- Isolated destructive testing was performed to remove gypsum drywall in proximity to the area of the wall shown in Figure 8 (**Figures 11 & 12**). Removal of gypsum revealed the fiberglass batt insulation and steel studs at the demising wall between Unit 402 and 401.

- Removal of the fiber glass batt insulation, in the area of the destructive test cut, revealed open gaps visible between individual gypsum boards at the demising wall separating Unit 402 from Unit 401 (**Figure 13**). The gap allowed open visibility into the ceiling area believed to be above Unit 401's bathroom area. Light fixtures, wiring and HVAC ducts were visible through this open joint. Wiring, typically concealed within the wall cavity, had been routed through the open joint.

- Sections of the gypsum board that had been removed during the destructive testing exhibited stamps indicating portions of the material's fire resistance classification rating (**Figure 14**).



Floor Plan 1

Observation area in Unit 404

Observation area in Unit 402

School Building

Observations and destructive testing were conducted in the School building for the purpose of attempting to determine the extent of the damage incurred due to condensation from the School Building's metal window assemblies. Observations were made within Units 103 and 301.

Unit 103

- Observations were made, from the interior, at the series of south facing windows in the front bedroom of Unit 103 (**Figure 15**). The windows' metal frames consist of a combination of fixed and operable (awning) sections with single pane glazing.

- Portions of the frame-to-glazing interfaces exhibited maroon colored sealant, not consentient with the black sealant installed along the majority of the mullions (**Figure 16**). The maroon colored sealant appeared to be a secondary application, installed over black sealant. Adhesion and cohesion failure of the maroon colored sealant were noted.

- Staining and discoloration was identified in locations along the gypsum drywall returns at the windows' jambs (**Figure 17**).

- A self-adhered white vinyl product had been installed over the entire laminate wood stool at the subject window in Unit 103. Observations made prior to the vinyl being disturbed showed staining patterns on top of the vinyl in proximity to the window frame. The staining pattern was more prominent directly adjacent to the frame and lessened in severity inboard toward the bedroom.

- Removal of the white vinyl product unveiled a painted wood laminate stool. Deterioration to the laminate wood stool, in proximity to the metal window frame, was noted (**Figure 18**). Similarly, discoloration and possible fungal growth was identified on the underside of the white vinyl product.

- Staining and discoloration was observed on the gypsum drywall under the sill of the subject window in Unit 103 (**Figure 19**)

- Destructive testing performed under a section of the window sill resulted in removal of a portion of the adhesively attached wood stool and gypsum drywall (**Figure 20**). The laminate wood stool was cut out in section, along with gypsum drywall, exposing the wall cavity.

- Paper faced fiberglass batt insulation was exposed (paper facing toward the interior) when the gypsum drywall was removed. Minor staining was identified on the fiberglass batt's paper facing. No corrosion or discoloration was observed on the steel studs.

- Removal of the fiberglass batt insulation revealed the inboard side of the masonry wall (**Figure 21**). The wall cavity, between the studs and the masonry appeared dry. The

metal window frame was situated over the masonry wall (outboard of the steel studs and gypsum).

Unit 303

- Observations were made along the sitting room's north facing window (**Figure 22**). Moderate to severe blistering of the green paint was identified at the jamb-to-sill interface of the window.

- Destructive testing was performed in proximity to the paint blister, exposing sections of gypsum drywall and the interior of the wall cavity (**Figure 23**). Staining and liquid water was noted on the fiberglass batt insulation's paper facing when the gypsum was removed.

- Corrosion was identified along the gypsum drywall's corner bead accessories and fasteners. Minor corrosion was also noted on a portion of the steel stud track in proximity to the window (**Figure 24**)..

- Removal of the gypsum sill revealed that the metal window frame was installed over the steel stud track (**Figure 25**). Building paper and a plastic membrane had been installed between the stud track and the window frame at the sill.

- Severe staining and discoloration was identified at the inboard side of the exterior gypsum once the fiberglass batt insulation was peeled back (**Figure 26**). Liquid water was also seen dripping from the underside of the stud track.

CONCLUSIONS

Based on our site surveys, destructive testing, information relayed to us by the property management and review of the design documents provided to us to date, it is our opinion that construction defects have resulted in discontinuity in the demising walls between units in the Gymnasium building. These discontinuities have resulted in code violations related to the fire rated assemblies and sound attenuation requirements. In addition, destructive testing has better revealed the extent of the damage incurred by the reported condensation at the School building windows.

Preliminary test cuts made at Units 402 and 404, within the Gymnasium Building, revealed what is believed to be discontinuity in the fire rated assemblies at the demising walls separating the tenant units. Lack of adequately rated and/or installed fire protection assemblies can result in a life safety concern for the residents. The Brock Green drawings, on sheets A 4.12 – A 4.15, address the fire protection requirements for the demising walls in the units surveyed. The demising walls are called out as P-4. Sheet A 8.1 illustrates P-4 as a 1 HOUR PARTITION – NEW. The 1 hour rated assembly called out by Brock Green refers to Underwriters Laboratory (U.L.) designation U451 which is a nonbearing wall with a rating of one hour. Sheet A 8.2 addresses through penetrations in rated assemblies. All of the details shown, in which penetrations (pipes, structural, etc...) penetrate a rated assembly, call out the necessity for caulk (and in some cases packing material) to be installed.

Observations made during the destructive testing at Units 402 and 404 indicated that the subject wall assemblies installed at the Gymnasium building were not installed in conformance with U.L. U451. The required furring strips were not observed in the areas surveyed, nor was the fastener spacing consistent with the twelve inch on center (12" o.c.) requirement in some areas. Large sections of the gypsum drywall were missing entirely in Unit 404. Similarly the gypsum drywall was discontinuous surrounding the majority of the structural members surveyed. Sections of the demising wall, separating the HVAC ducts in Unit 404 from Unit 403, are missing entirely. The combination of all of the aforementioned conditions has resulted in an installation not in compliance with the contract documents. It is possible that other U.L. classification numbers, utilizing the same construction materials, may enable a one hour rated non-load bearing wall to be appropriate for the facility. However, it is ABS's experience that no U.L. classifications will allow for discontinuities or unsealed penetrations in the rated assembly such as those identified at the Gymnasium building to date.

ABS was asked to survey the Gymnasium building's demising walls for sound attenuation purposes. Sound attenuation is determined based upon a defined Sound Attenuation Classification (S.T.C.) number, which is defined as an integer rating of how well a building partition attenuates airborne sound. U.L. U451, specifically identified on the Brock Green contract documents, corresponds to a S.T.C. rating of 50. Generically speaking, and S.T.C. of 50 will allow for the transmission of loud sounds, such as musical instruments and loud stereos to be faintly heard, but will not allow loud speech to be audible. While surveying units in the Gymnasium building it was noted that a baby crying in an adjacent unit could be clearly heard, as could conversations in some instances. The discontinuity of the rated assemblies surveyed has resulted in a lack of compliance with U.L. U451. These discontinuities, along with the absence of batt insulation in some of the demising walls, have inhibited the as-built assembly from meeting the S.T.C. rating of 50. It is likely that the lack of continuity at the demising walls' rated assemblies has fostered an increase of airborne sound as reported by the unit owners and tenants.

Observations and destructive testing made at the request of the HOA were also conducted in the School building. The purpose of the effort expended in the School building was to determine the existence of damage caused by condensation at the metal window assemblies. Evidence of moisture related damage was confirmed by ABS during both site visits. The moisture related damage identified in Unit 103 appears to be isolated to the wood stools and drywall in proximity to the window frames. Based on the fact that the window frame is situated outboard of the newly built (circa 2000) gypsum drywall and steel stud assembly, severe moisture damage has not resulted in this unit. The majority of the condensation reported is likely being absorbed into the existing masonry wall due to the masonry's inherently large moisture storage capacity. Observations made within Unit 303, on the other hand, revealed severe moisture damage in proximity to the metal window surveyed. The metal window surveyed in Unit 303 was installed inboard of the masonry wall, directly over the newly built (circa 2000) gypsum drywall and steel stud assembly. The moisture storage capacities of gypsum drywall and metal studs are far less than that of masonry (such as brick veneer and concrete masonry units). Additional effort will be required to determine if the moisture damage observed is a result of condensation alone or is a result of both condensation and bulk water intrusion. Further effort may also be required to

determine if the conditions observed, based upon the specific placement of the metal window within the depth of the as-built wall cavity, is consistent throughout the School building.

In summary, construction deficiencies, code violations and moisture damage have been identified at the 3 Chisolm Street facility. These observations are in addition to the condition of the Gymnasium building's wood windows previously reported. The lack of adequately rated and/or installed fire protection assemblies is a life safety concern for the residents of the Gymnasium building. The discontinuity of the installed demising walls has likely resulted in an increase of airborne sound within the Gymnasium building (based upon the lack of compliance with the designated U.L. design and therefore S.T.C. rating). Finally, the moisture related damage at the School building has resulted in damage to portions of the interior finishes. This damage appears to be the result of non-insulated, single pane, metal frame exterior windows which led to condensation on the windows during certain times of the year and resulted in the slow migration of condensation into the wall cavity under the windows and resulting moisture and water damage in the wall system in portions of the building to the windows' single pane glass (resulting in condensation) and fostered by certain placement locations of the metal window assemblies within the depth of the wall cavity.

PRELIMINARY REMEDIAL RECOMMENDATIONS

Remedial action will be required at the Gymnasium building in order to address the inadequate fire protection at the unit demising walls. Ensuring the continuous installation of gypsum drywall, at all of the walls identified in the Brock Green contract documents as P-4, shall be necessary. This will include adding additional gypsum in the missing areas and adequately sealing all of the through-wall penetrations. Extra effort should be expended to ensure that the P-4 walls are continuous in concealed areas, such as above gypsum ceilings and within mechanical chases.

In effort to address the complaint of audible sound transmittance between units it will likely be necessary to add the missing insulation and resilient furring channels to the existing tenant demising walls as shown on the UL U451 design. This will enable the demising walls to meet the S.T.C. designation associated with the U.L. cited on the contract documents and thus reduce the transmission of airborne sound between units.

Based upon observations previously noted at the Gymnasium building's wood windows, in addition to the more recent observations at the School building's metal windows, moisture related damage will continue to manifest itself if modifications to the as-built assemblies are not made. It is recommended that insulated glass windows be considered for installation in place of the single pane glazing currently in place throughout the facility. If insulated glass and windows with better thermal performance cannot be installed, ABS recommends considering alternative design solutions. These solutions may include, but are not limited to, the installation of weather stripping and a secondary, operable, energy/thermal panel covering the existing windows from the interior. Additional design effort will need to be expended if new, thermally performing windows cannot be installed.

The information and opinions provided herein are based upon the work expended to date as well as the information provided to us. Should additional information be provided at a later date we reserve the right to review said information and modify our opinions and recommendations accordingly.

If you have any questions or comments regarding the information included in this report please feel free to contact us.

Regards,

Whitney E. Okon, Associate AIA

Scott A. Harvey, AIA

STATE OF SOUTH CAROLINA
APPLIED BUILDING SCIENCES INC
CHARLESTON, SC
100129
REGISTERED ARCHITECTS

STATE OF SOUTH CAROLINA
SCOTT A. HARVEY
4-8-10
Charleston, SC
8555
REGISTERED ARCHITECT

Enclosure: U.L. U451
Cc: Mr. David Parrish, Esquire

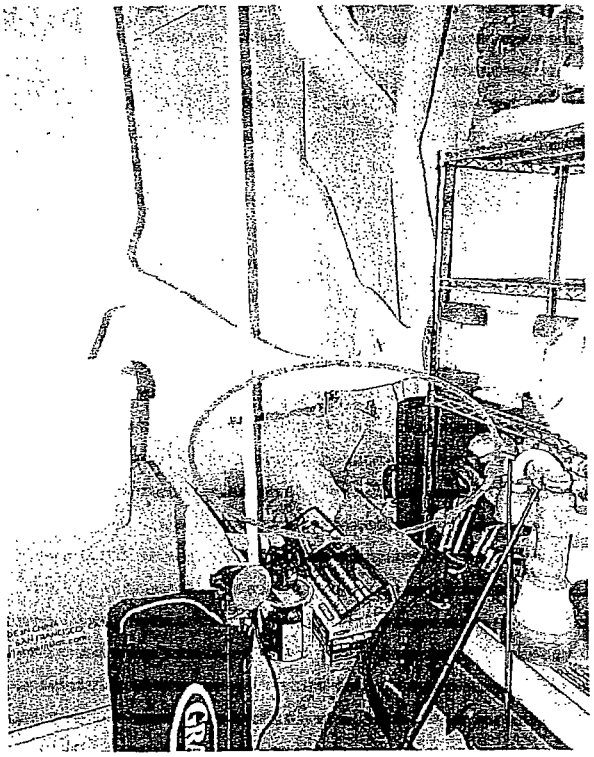
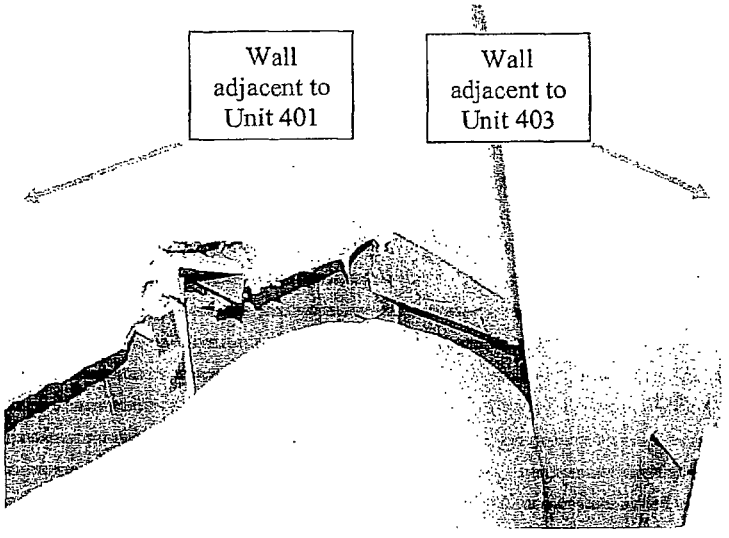


Figure 1: Overview of the third floor "storage" area in Unit 404. The conditions shown in Figure 1 were prior to any destructive testing being performed.
Figure 2: Overview of the southeast corner of Unit 404 (as highlighted within the red oval in Figure 1). The conditions shown in Figure 2 were prior to any destructive testing being performed.



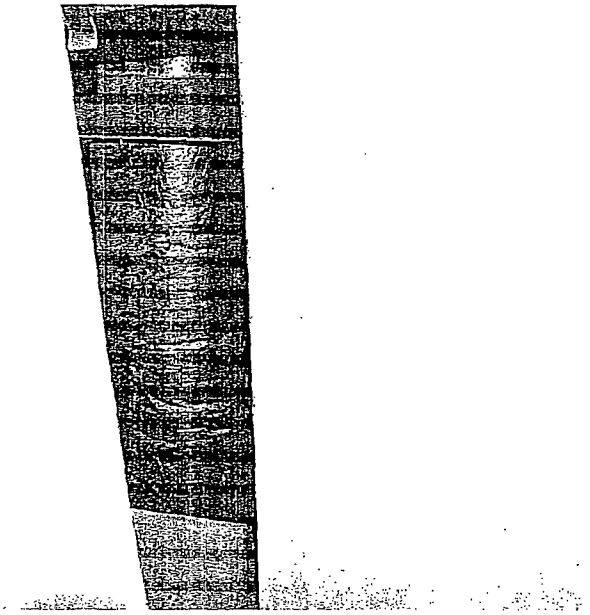
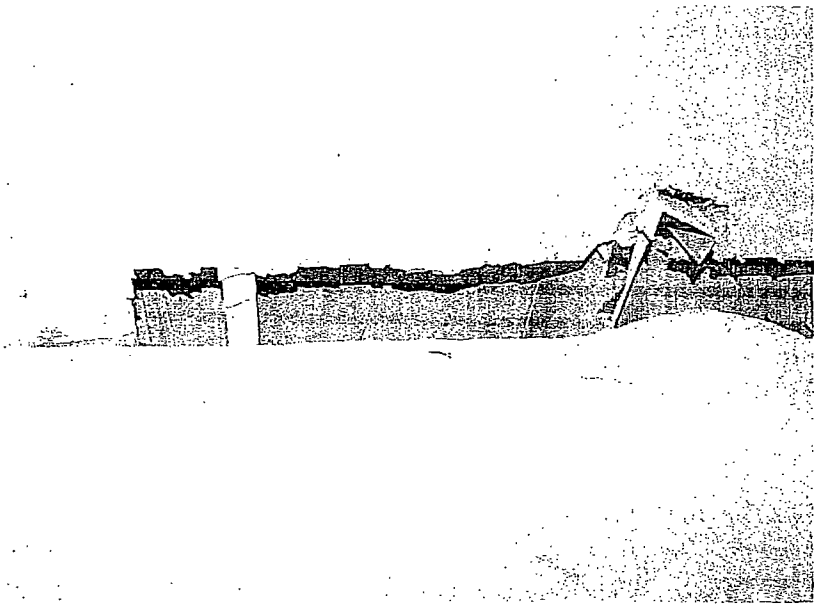


Figure 3: Observations made from within Unit 404, along the south elevation wall (between the vertical portions of the exposed HVAC truck line) revealed trunk lines from the adjacent unit (likely Unit 403). The conditions shown in Figure 3 were prior to any destructive testing being performed.
Figure 4: Lack of fiberglass batt insulation installed in the wall cavity between Units 404 and 401. The conditions shown in Figure 4 were prior to any destructive testing being performed.



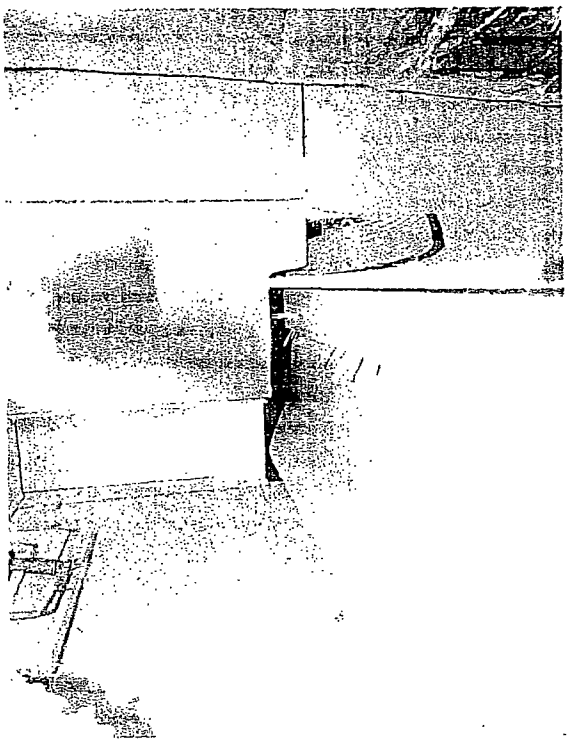
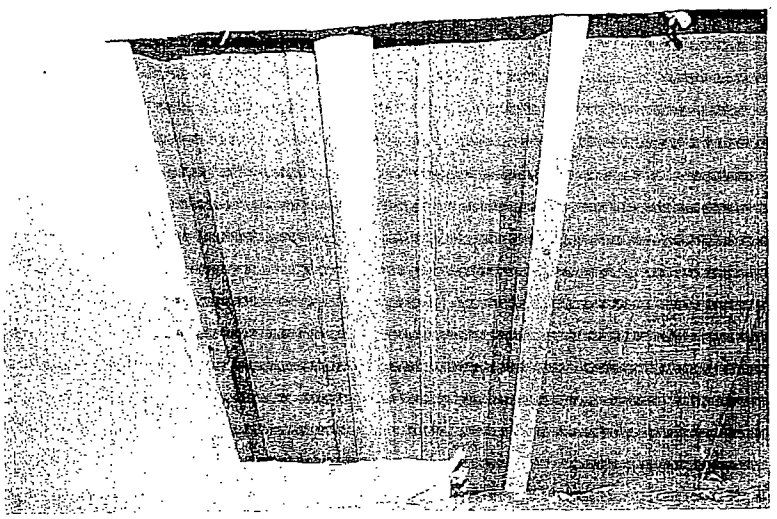


Figure 5: Gaps and discontinuity in the gypsum drywall in proximity to structural members penetrating the demising wall.

Figure 6: Gypsum drywall removed from Unit 404 (exposing the inboard side of Unit 401's gypsum along the demising wall).



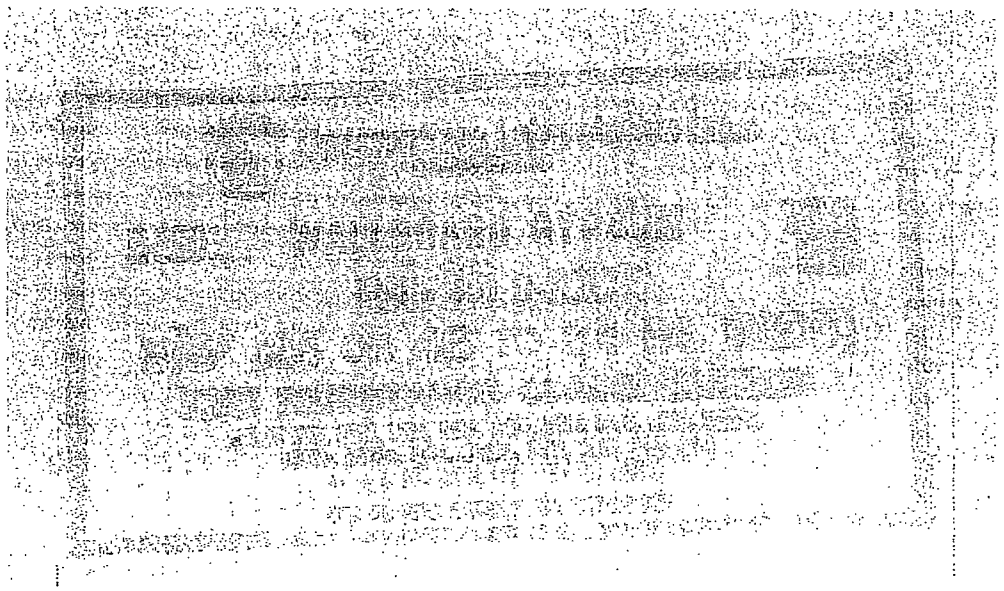
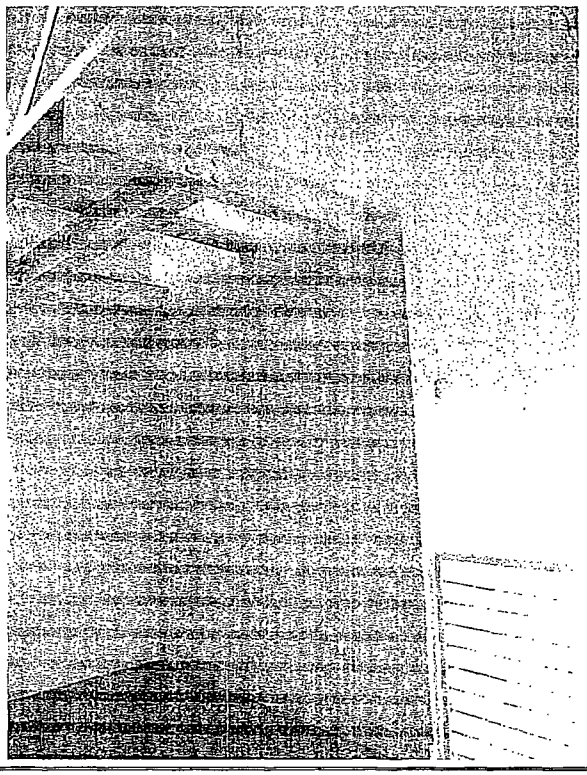


Figure 7: Underwriter's Laboratory stamp signifying the material's designated fire resistance classification (as seen from the inboard side of Unit 401's demising wall).
Figure 8: Overview of the observation and destructive testing area in Unit 402.



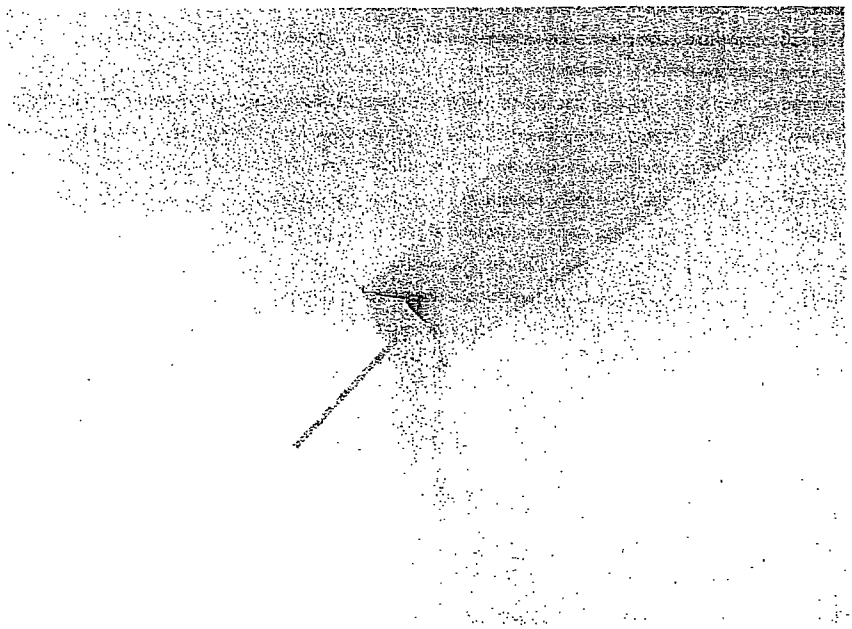
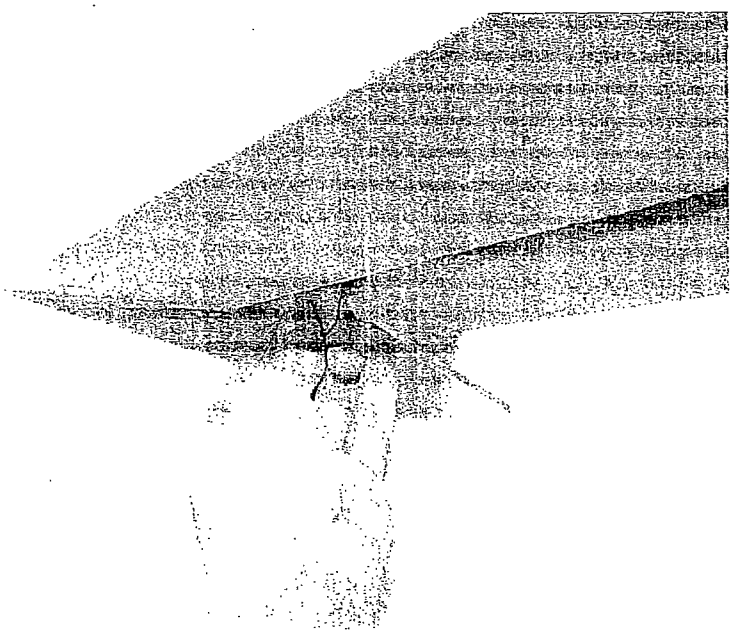


Figure 9: Gaps in the gypsum drywall in proximity to structural members penetrating the demising wall. The conditions shown in Figure 9 were prior to any destructive testing being performed.
Figure 10: Discontinuity in the rated assembly at the interface of two "l"-shaped angle iron beams. The conditions shown in Figure 10 were prior to any destructive testing being performed.



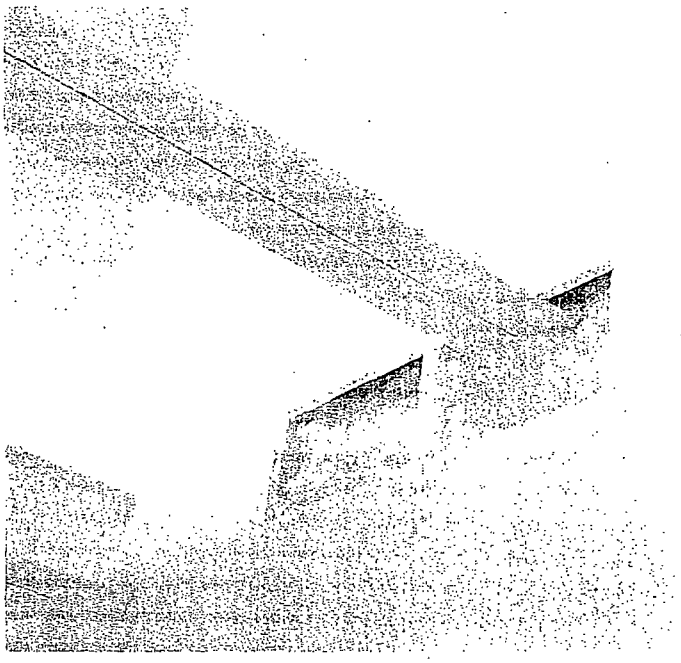
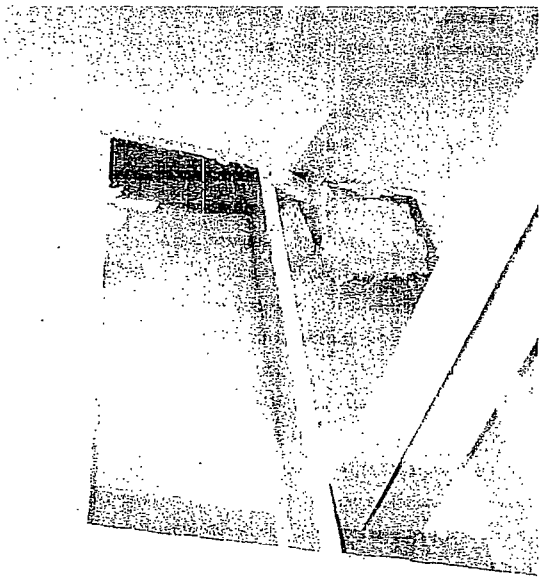


Figure 11: Preliminary destructive testing performed in Unit 402's loft area.
Figure 12: Additional destructive testing, further exposing the area inboard of the gypsum, in Unit 402's loft area.



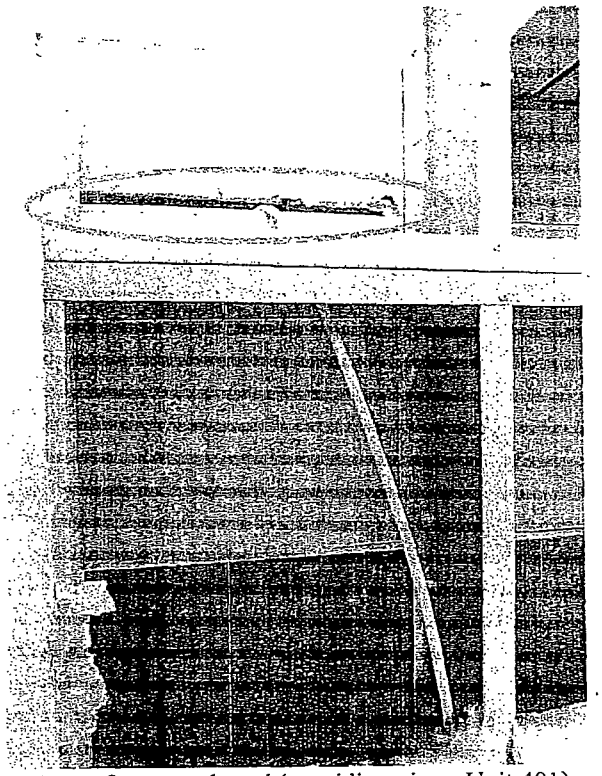
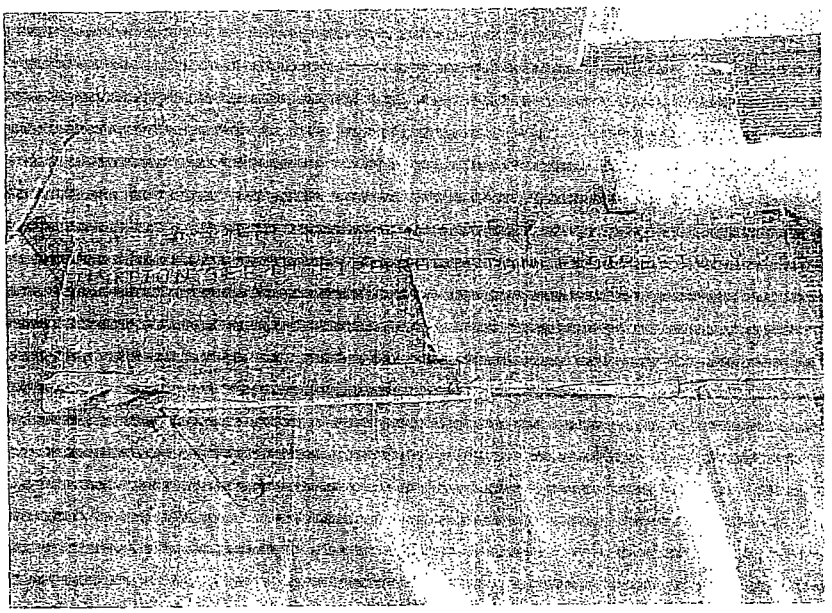


Figure 13: Open joints between sections of gypsum board (providing views Unit 401).
Figure 14: Evidence of a partial fire resistance classification rating label uncovered along the inboard side of Unit 402's removed gypsum.



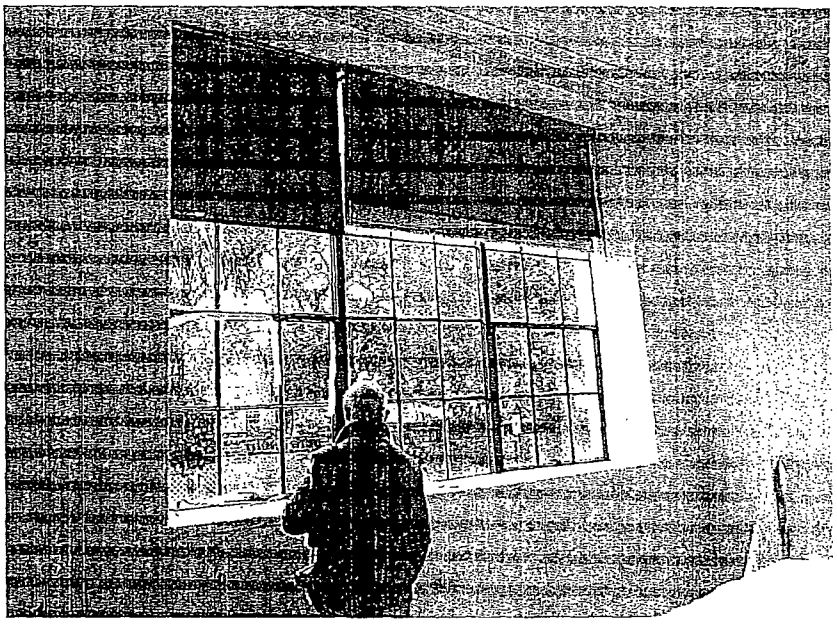
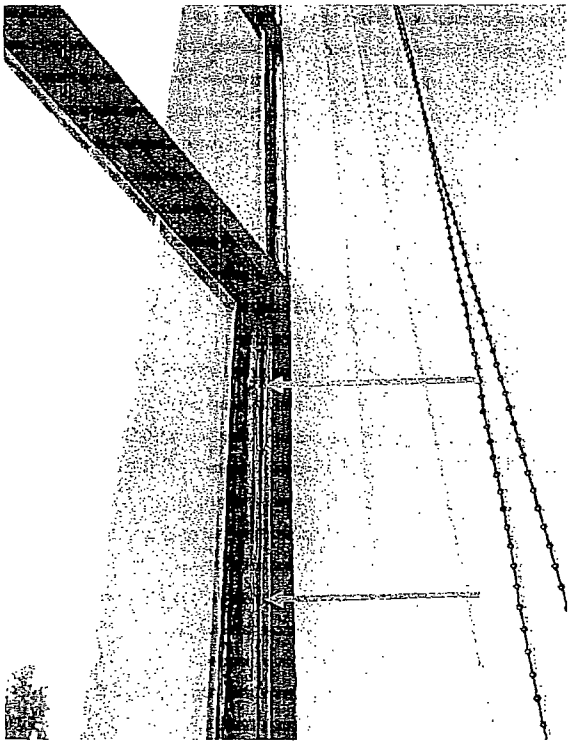


Figure 15: Overview of south facing bedroom window observed in Unit 103.
Figure 16: Maroon colored sealant observed along potions of the frame-to-glazing interfaces.



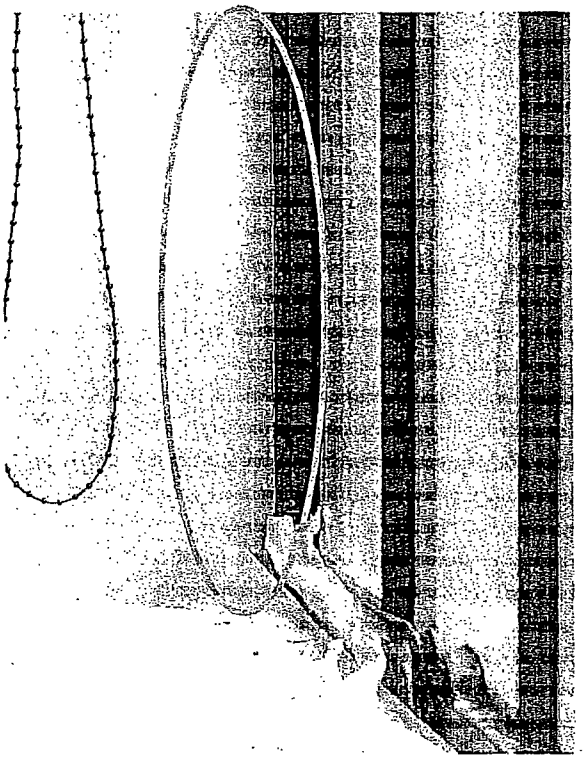
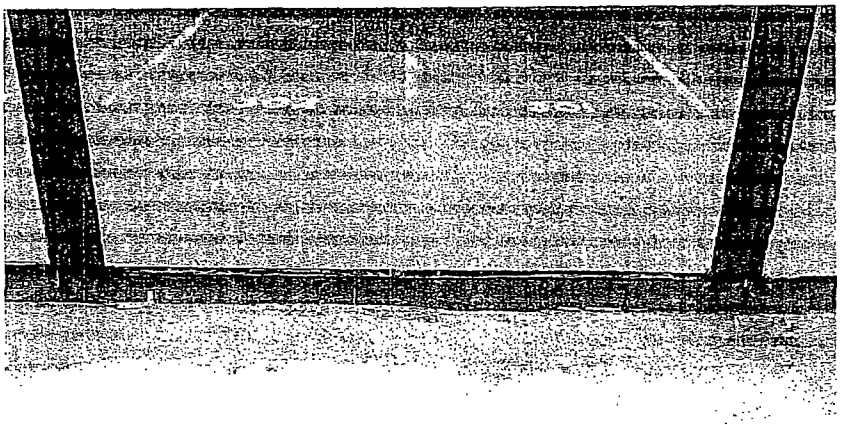


Figure 17: Staining observed along the jamb at a gypsum drywall return in Unit 103.
Figure 18: Discoloration and possible fungal growth was identified in proximity to the metal window frame in Unit 103.





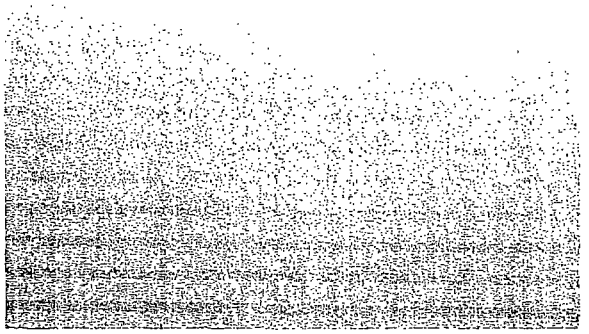
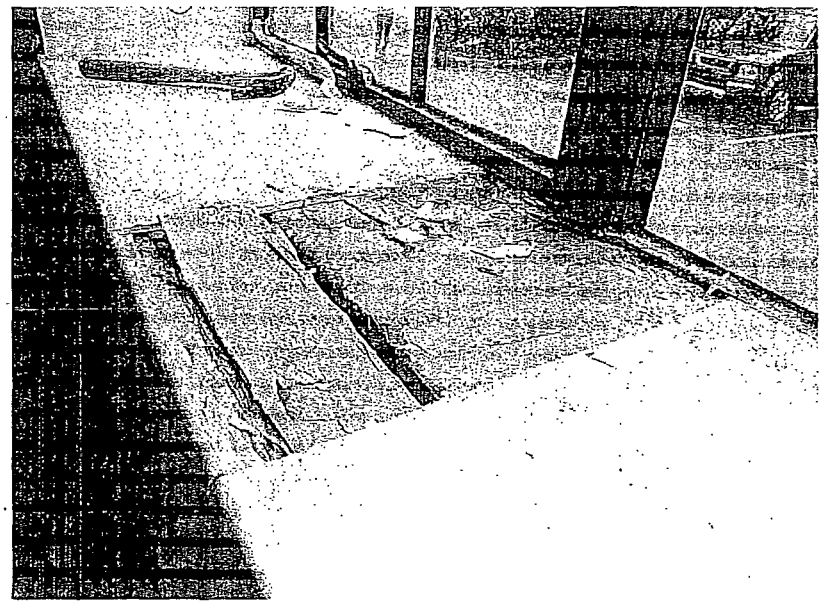


Figure 19: Staining, along the gypsum drywall, was identified under the subject window in Unit 103.
Figure 20: Removal of a portion of the wood stool in Unit 103 exposed the metal window's placement far outboard of the steel stud wall cavity (the frame was situated over the existing masonry wall).



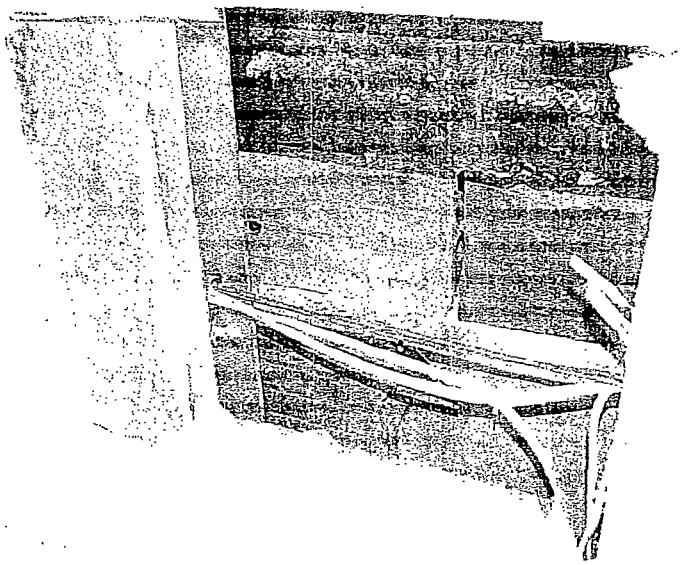
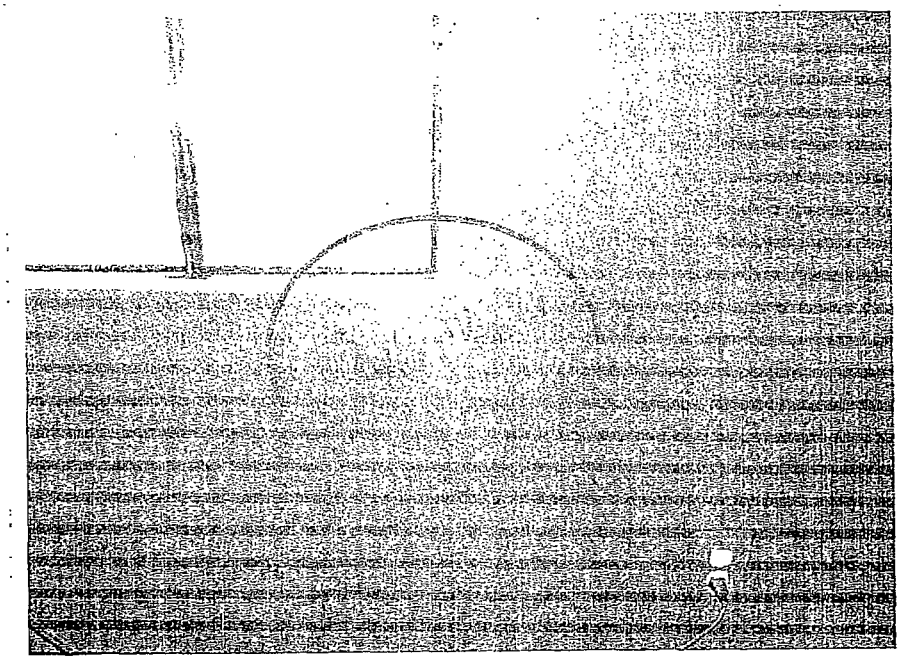


Figure 21: The stud cavity and inboard side of the masonry wall cavity exposed.
Figure 22: Blistering of the paint at the sitting room's north facing window (Unit 303).



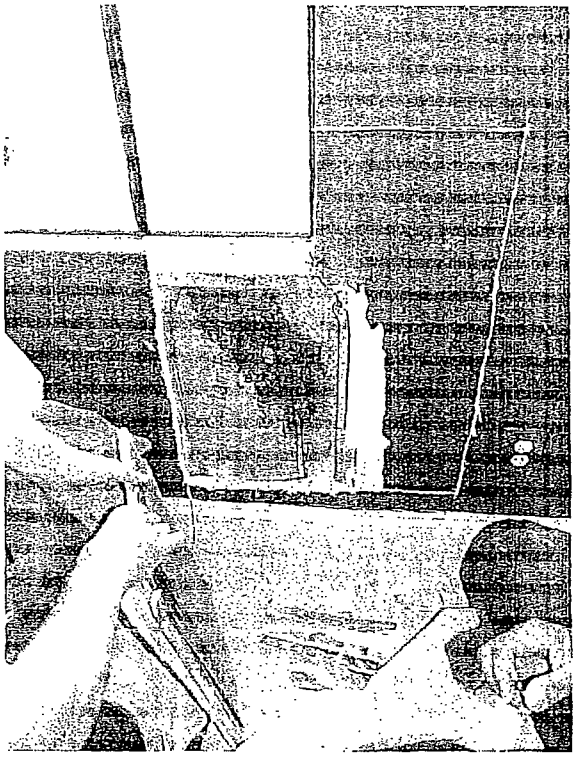
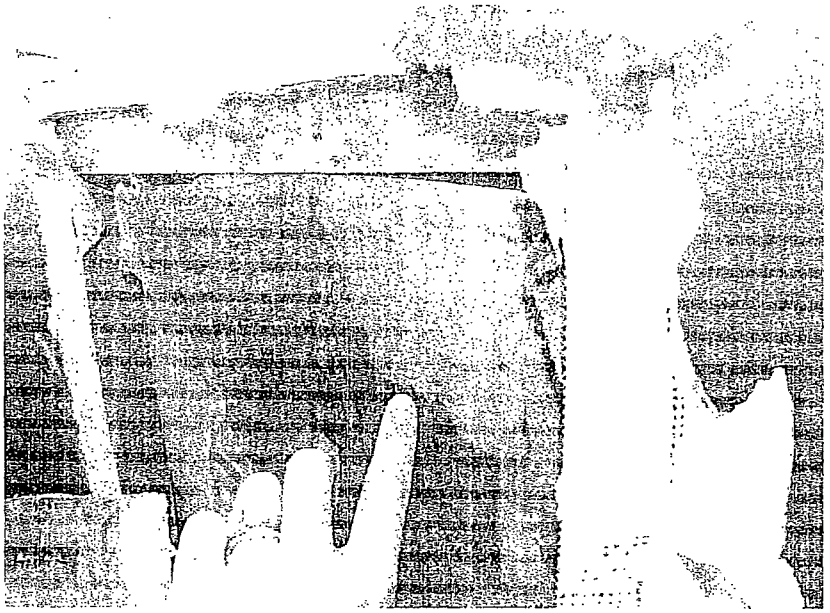


Figure 23: Removal of the gypsum drywall revealed staining on the paper facing of the fiberglass batt insulation.
Figure 24: Liquid water and corrosion to the steel stud track were identified inboard of the destructive test cut.



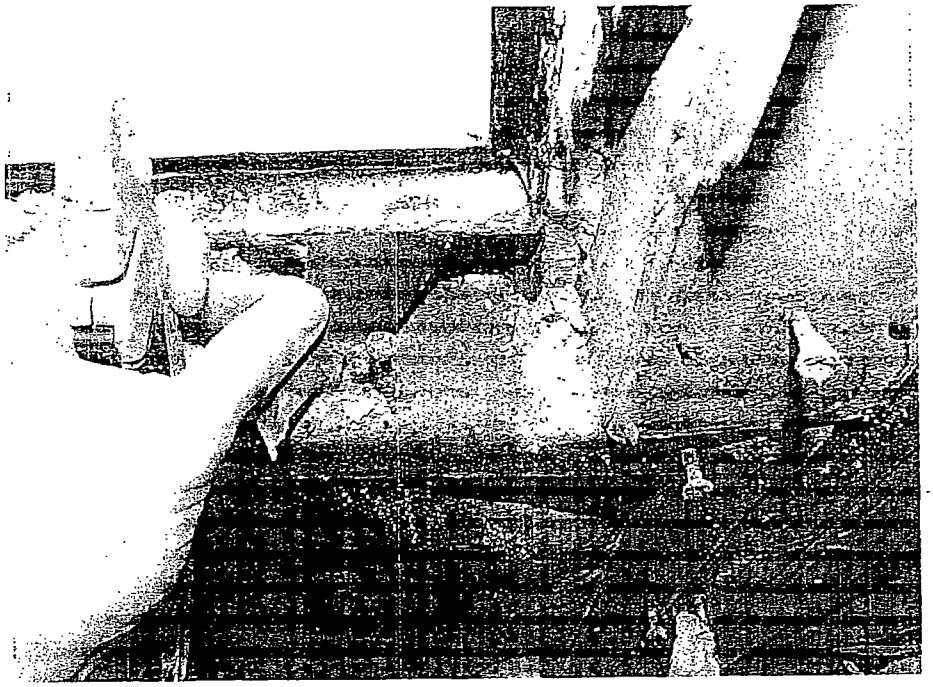
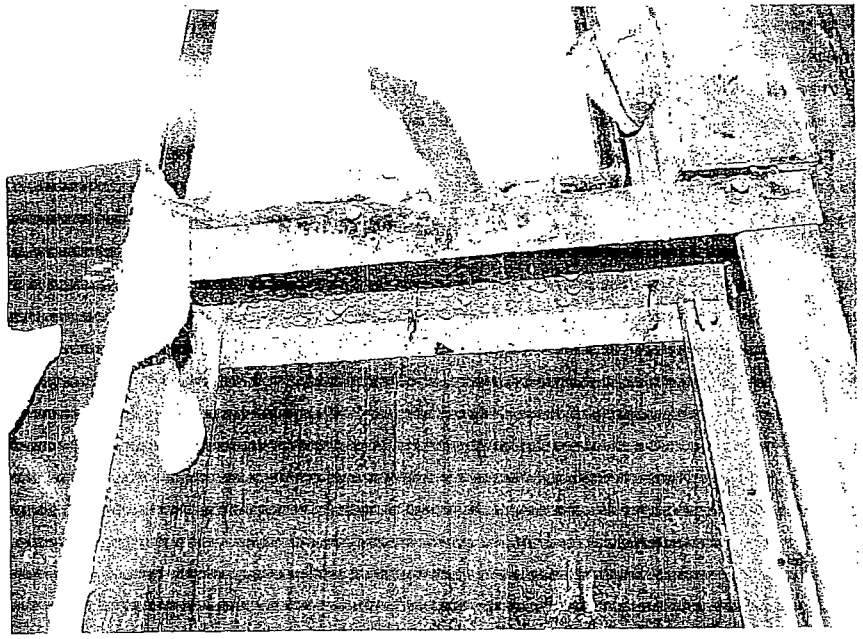


Figure 25: The metal window frame was installed over the stud track at the subject window (with building paper and plastic membrane between the frame and the stud).
Figure 26: Liquid water observed dripping from the underside of the stud track.



ONLINE CERTIFICATIONS DIRECTORY

BXUV.U451
Fire Resistance Ratings - ANSI/UL 263

Page Bottom

Design/System/Construction/Assembly Usage Disclaimer

- Authorities Having Jurisdiction should be consulted in all cases as to the particular requirements covering the installation and use of UL Listed or Classified products, equipment, system, devices, and materials.
- Authorities Having Jurisdiction should be consulted before construction.
- Fire resistance assemblies and products are developed by the design submitter and have been investigated by UL for compliance with applicable requirements. The published information cannot always address every construction nuance encountered in the field.
- When field issues arise, it is recommended the first contact for assistance be the technical service staff provided by the product manufacturer noted for the design. Users of fire resistance assemblies are advised to consult the general Guide Information for each product category and each group of assemblies. The Guide Information includes specifics concerning alternate materials and alternate methods of construction.
- Only products which bear UL's Mark are considered as Classified, Listed, or Recognized.

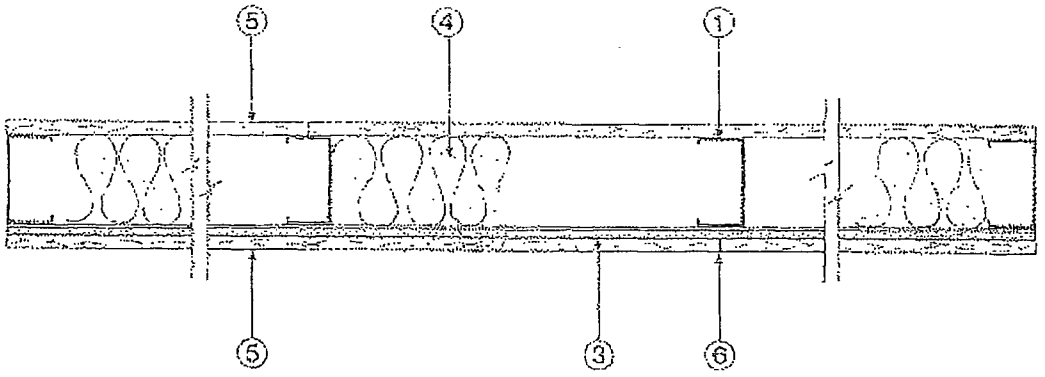
Fire Resistance Ratings - ANSI/UL 263

See General Information for Fire Resistance Ratings - ANSI/UL 263

Design No. U451

October 22, 2009

Nonbearing Wall Rating — 1 HR.



1. **Studs** — Channel-shaped, min 2-1/2 in. wide by 1-1/4 in. deep with 5/16 in. folded back return flange legs. Fabricated from No. 25 MSG galv steel. Max stud spacing 24 in. OC. Studs to be cut 1 in. less than assembly height.

1A. **Framing Members* - Steel Studs** — Not shown - In lieu of Item 1 — For use with Item 2A, proprietary channel shaped steel studs, 1-1/4 in. deep by min 2-1/2 in. wide fabricated from min 0.020 in. thick galv steel. Max stud spacing 24 in. OC. Studs cut 1 in. less in length than assembly height.

MARINO\WARE A DIV OF WARE INDUSTRIES

INC — Viper20S™, Viper20D™

1B. **Framing Members*— Steel Studs** — Not shown - In lieu of Item 1 — For use with Item 2B, channel shaped steel studs, 1-1/4 in. deep by min 2-1/2 in. wide fabricated from min 0.018 in. thick galv steel, spaced max 24 in OC. Studs cut 1 in. less in length than assembly height.

CLARKWESTERN BUILDING SYSTEMS INC — CW ProSTUD

DIETRICH INDUSTRIES INC — DIETRICH ProSTUD

DMFCWBS L L C — ProSTUD

2. Floor and Ceiling Runners (Not Shown) — Channel-shaped runners, min 2-1/2 in. wide by 1-1/4 in. deep, fabricated from No. 20 MSG galv steel. Attached to floor and ceiling with fasteners, 24 in. OC, max.

2A. Framing Members* - Floor and Ceiling Runner — Not shown - In lieu of Item 2 — For use with Item 1A, proprietary channel shaped runners, 1-1/4 in. deep by min 2-1/2 in. wide fabricated from min 0.020 in. thick galv steel, attached to floor and ceiling with fasteners spaced 24 in. OC max.

MARINO\WARE A DIV OF WARE INDUSTRIES

INC — Viper20S™ Track, Viper20D™ Track

2B. Framing Members*— Floor and Ceiling Runners — Not Shown - In lieu of Item 2 — For use with Item 1B, channel shaped runners, 1-1/4 in. deep by min 2-1/2 in. wide fabricated from min 0.018 in. thick galv steel, attached to floor and ceiling with fasteners spaced 24 in. OC max.

CLARKWESTERN BUILDING SYSTEMS INC — CW ProTRAK

DIETRICH INDUSTRIES INC — DIETRICH ProTRAK

DMFCWBS L L C — ProTRAK

3. Resilient Channel — 25 MSG galv steel resilient channels spaced vertically max 24 in. OC, flange portion attached to each intersecting stud with 1/2 in. long Type S-12 pan head steel screws.

3A. Framing Members*— (Not Shown) — As an alternate to Item 3, furring channels and Framing Members as described below:

a. Furring Channels — Formed of No. 25 MSG galv steel. 2-3/8 in. wide by 7/8 in. deep, spaced 24 in. OC perpendicular to studs. Channels secured to studs as described in Item b. Ends of adjoining channels are overlapped 6 in. and tied together with double strand of No. 18 SWG galv steel wire near each end of overlap. As an alternate, ends of adjoining channels may be overlapped 6 in. and secured together with two self-tapping No. 6 framing screws, min. 7/16 in. long at the midpoint of the overlap, with one screw on each flange of the channel.

b. Framing Members* — Used to attach furring channels (Item a) to studs (Item 1). Clips spaced 48 in. OC., and secured to studs with 1-5/8 in. wafer or hex head Type S steel screw through the center grommet. Furring channels are friction fitted into clips.

PAC INTERNATIONAL INC — Type RSIC-1.

3B. Framing Members* — Optional - Not Shown - Used as an alternate method to attach resilient channels (Item 3). Clips attached at each intersection of the resilient channel and the steel studs (Item 1). Resilient channels are friction fitted into clips, and then clips are secured to the stud with min. 1 in. long Type S-12 pan head steel screws through the center hole of the clip and the resilient channel flange.

KEENE BUILDING PRODUCTS CO INC — Type RC Assurance.

4. Batts and Blankets* — Placed in stud cavity, 1-1/2 in. min thickness.

THERMAFIBER INC — Type SAFB.

5. Gypsum Board* — 1/2 or 5/8 in. thick, 4 ft wide. Screw attached one side to resilient or furring channels with 1 in. long, Type S steel screws spaced 12 in. OC. Gypsum board on direct attached side secured to studs with 1 in. long Type S-12 steel screws spaced 12 in. Gypsum board joints oriented vertically, located over studs and offset between layers.

AMERICAN GYPSUM CO — Type AG-C.

CERTAINTEED GYPSUM INC — 1/2 in. or 5/8 in. ProRoc Type C.

CERTAINTEED GYPSUM CANADA INC — 1/2 in. or 5/8 in. ProRoc Type C.

CANADIAN GYPSUM COMPANY — 1/2 in. Type C, IP-X2, IPC-AR or WRC, 5/8 in. Type AR, IP-AR, IP-X1 or SCX

GEORGIA-PACIFIC GYPSUM L L C — Types 5, C, , DAP, DA.

LAFARGE NORTH AMERICA INC — Type LGFC-C, LGFC-C/A.

NATIONAL GYPSUM CO — Types FSK-C, FSW-C, FSMR-C.

PABCO BUILDING PRODUCTS L L C, DBA

PABCO GYPSUM — Type C or PG-C.

PANEL REY S A — Type PRC

TEMPLE-INLAND — Type TG-C.

UNITED STATES GYPSUM CO — 1/2 in. Type C, IP-X2, IPC-AR or WRC, 5/8 in. Type AR, IP-AR, IP-X1 or SCX.

USG MEXICO S A DE C V — 1/2 in. Type C, IP-X2, IPC-AR or WRC; 5/8 in. Type AR, IP-AR, IP-X1 or SCX.

5A. Gypsum Board* — (As an alternate to Item 5) — Nom 3/4 in. thick, 4 ft wide, installed as described in Item 5 with screw length increased to 1-1/4 in.

CANADIAN GYPSUM COMPANY — Types AR, IP-AR.

UNITED STATES GYPSUM CO — Types AR, IP-AR.

USG MEXICO S A DE C V — Types AR, IP-AR.

6. Joint Tape and Compound — Vinyl, dry or premixed joint compound, applied to joints and screw heads; paper tape, 2 in. wide, embedded in first layer of compound over all joints. As an alternate, nom 3/32 in. thick gypsum veneer plaster may be applied to the entire surface of Classified veneer baseboard. Joints reinforced.

7. Caulking and Sealants* — (Optional, not shown) — A bead of acoustical sealant applied around the partition perimeter for sound control.

ITW TACC — Type SCS-200

UNITED STATES GYPSUM CO — Type AS.

8. Wall and Partition Facings and Accessories* — (Optional, Not shown) — Nominal 1/2 in. thick, 4 ft wide panels, for optional use as an additional layer on one or both sides of the assembly. Panels attached in accordance with manufacturer's recommendations. When the QR-510 panel is installed between the steel framing and the UL Classified gypsum board, the required UL Classified gypsum board layer(s) is/are to be installed as indicated as to fastener type and spacing, except that the required fastener length shall be increased by a minimum of 1/2 in. Not evaluated or intended as a substitute for the required layer(s) of UL Classified Gypsum Board.

QUIET SOLUTION INC — Type QuietRock QR-510

* Bearing the UL Classification Mark

Last Updated on 2009-10-22

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APPLIED BUILDING SCIENCES INC.
ENGINEERS, ARCHITECTS AND
ENVIRONMENTAL CONSULTANTS

January 20, 2011

3 Chisolm Street Home Owners Association
c/o Sentry Management, Inc.
4925 Lacross Rd Ste 112
North Charleston SC 29406

Re: Stucco Observations and Recommendations
3 Chisolm Street Condominiums
School Building
Charleston, South Carolina
ABS Project No. 950.0787

EXHIBIT
23e

Dear Chisolm Street HOA,

Personnel from Applied Building Sciences, Inc. (ABS) performed a visual survey and subsequent document review at 3 Chisolm Street Condominiums. This survey was conducted for the purpose of making observations related to the stucco installed in the courtyard of the school building. You also asked that we compare our observations to the architectural drawings, specifications and industry standards available at the time of the renovations performed in 2000.

DESCRIPTION

The subject facility consists of three buildings, referred to on the architectural drawings as the *School* building, the *Gymnasium* building and the *Cottage*. For the purpose of this report, only the school building was addressed. For orientation purposes the north elevation is the side of the facility facing Broad Street.

BACKGROUND

ABS reviewed information related to the subject facility that was provided by you and Nexsen Pruet. This information included the contract documents originally produced by Brock Green Architects and Planners (Brock Green) dated June 16, 2000. In addition, ABS reviewed the following:

1. Standard Building Code, 1999 Edition,
2. ASTM 926-94, *Standard Specification for Application of Portland Cement-Based Plaster,*
3. ASTM C 1063-94, *Standard Specification for Installation of Lathing and Furring to Receive Interior and Exterior Portland Cement-Based Plaster,*
4. Portland Cement Plaster (Stucco) Manual, 1996 Edition,
5. Portland Cement Association's (PCA) IS526, entitled *Repair of Portland Cement Plaster*

1890 Milford Street – Charleston, South Carolina 29405 – Tel 843.724.1456 – Fax 843.724.1458
1416 Chapin Road – Chapin, South Carolina 29036 – Tel 803.345.3833 – Fax 803.345.2823

OBSERVATIONS

A visual survey of the subject facility was conducted on October 21, 2010 by Scott A. Harvey, AIA, and Whitney E. Okon, Associate AIA. Our most significant observations are listed below.

1. Staining and discoloration, consistent with water intrusion, were observed along horizontal portions of the stucco installation adjacent to the window heads **(Figures 1 and 2)**. No drip screed, drip edge, or throughwall flashing was visible in the stucco installation at the window heads.

   ASTM 926-94, *Standard Specification for Application of Portland Cement-Based Plaster – A2.1.2 "...Flashing shall be specified at openings, perimeters, and terminations to prevent water from getting behind plaster..."*

   ASTM 926-94, *Standard Specification for Application of Portland Cement-Based Plaster – A2.2.3 "Where vertical and horizontal exterior plaster surfaces meet, both surfaces shall be terminated with casing beads with the vertical surface extending at least ¼" (6mm) below the intersecting horizontal plastered surface, thus providing a drip edge. The casing bead for the horizontal surface shall be terminated not less than ¼" from the back of the vertical surface to provide drainage."*

2. Along the base of the walls, no drip screed, throughwall flashing, or weep holes were visible in the stucco installation **(Figures 3 and 4)**.

   ASTM 926-94, *Standard Specification for Application of Portland Cement-Based Plaster – A2.2.2 "At the bottom of exterior walls where the wall is supported by a floor or foundation, a drip screed and throughwall flashing or weep holes or other effective means to drain away any water that may get behind the plaster shall be provided."*

3. Staining, discoloration, cracking and evidence of spalling were observed along portions of the stucco installation at the heads of the openings in the "screen wall" located along the west side of the courtyard. No drip screed, drip edge, or throughwall flashing was visible in the stucco installation at the screen wall openings **(Figures 5, 6 and 7)**. Additionally, no coping cap was observed over the top edge of the screen wall.

   ASTM 926-94, *Standard Specification for Application of Portland Cement-Based Plaster – A2.2.3 "Where vertical and horizontal exterior plaster surfaces meet, both surfaces shall be terminated with casing beads with the vertical surface extending at least ¼" (6mm) below the intersecting horizontal plastered surface, thus providing a drip edge. The casing bead for the horizontal surface shall be terminated not less than ¼" from the back of the vertical surface to provide drainage."*

4. Horizontal cracking was observed along the transition between the portions of the first and second floors **(Figure 8).** No expansion joint was visible at this location.

> *Per detail 7/A-7.2 in the Brock Green drawings a control joint was to be installed at the transition between the first and second floors where the substrate, to which the stucco is attached to, changes.*
>
> ASTM 926-94, *Standard Specification for Application of Portland Cement-Based Plaster – A2.3.3 "Where dissimilar base materials abut and are to receive a continuous coat of plaster: (1) a two piece expansion joint, casing beads back-to-back or pre-manufactured control-expansion joint member shall be installed..."*

CONCLUSIONS

Based on our observations and review of the documents referenced above and provided to us to date, it is my opinion that construction defects in the installation of the stucco have resulted in staining, discoloration, cracking and spalling of the exterior portland cement based plaster. These observations are likely the result of moisture being trapped behind the plaster. Retained water can result in premature deterioration of the plaster due to corrosion of metal accessories, corrosion/deterioration of the supporting substrates and construction, expansion/contraction, and deterioration of the plaster during freeze/thaw cycles. It is recommended that repairs be made to the stucco in order to address the moisture being trapped behind the plaster. Correcting these conditions will help prevent future deterioration of the exterior portland cement plaster assemblies and the supporting construction and substrates. A scope of work has been provided to address the repair of these conditions.

The information and opinions provided herein are based upon the work expended to date as well as the information provided to us. Should additional information be provided at a later date we reserve the right to review said information and modify our opinions and recommendations accordingly.

If you have any questions or comments regarding the information included in this report please feel free to contact us.

Regards,

Scott A. Harvey, AIA, RWC

STATE OF SOUTH CAROLINA
SCOTT A. HARVEY
1·26·11
Charleston, SC
6555
REGISTERED ARCHITECT

STATE OF SOUTH CAROLINA
APPLIED BUILDING SCIENCES INC
CHARLESTON, SC
100129
REGISTERED ARCHITECTS

Cc: Mr. David Parrish, Esquire

Enclosures - Photo Log
- ABS Scope of Repair

APPLIED BUILDING SCIENCES, INC. Job Number: 950.0787 Page 1 of 4	PROJECT: Stucco Observations 3 Chisolm Street – School Building Charleston, South Carolina Date: 01.20.11

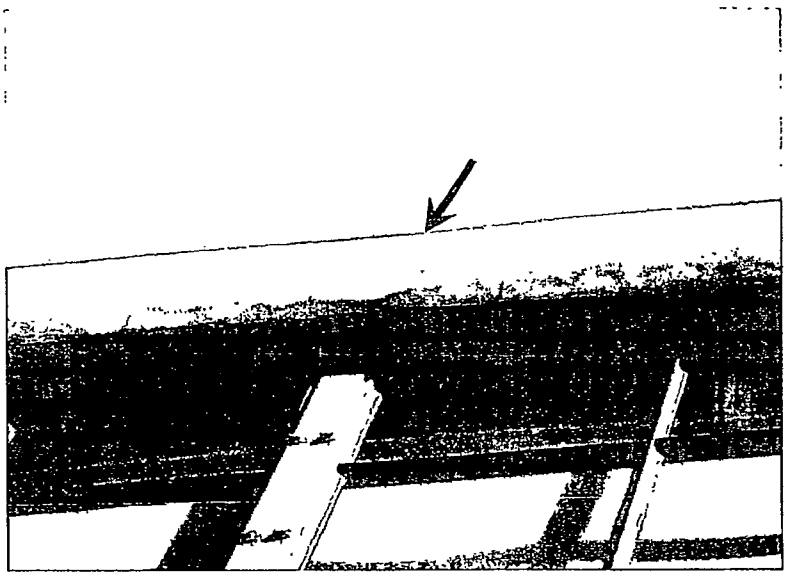


Figure 1: Staining visible in the stucco along the window head. No evidence of a drip screed/through-wall flashing was visible at the vertical to horizontal stucco transition (red arrow).
Figure 2: Staining visible in the stucco along the window head. No evidence of a drip screed/through-wall flashing was visible at the vertical to horizontal stucco transition (red arrow).

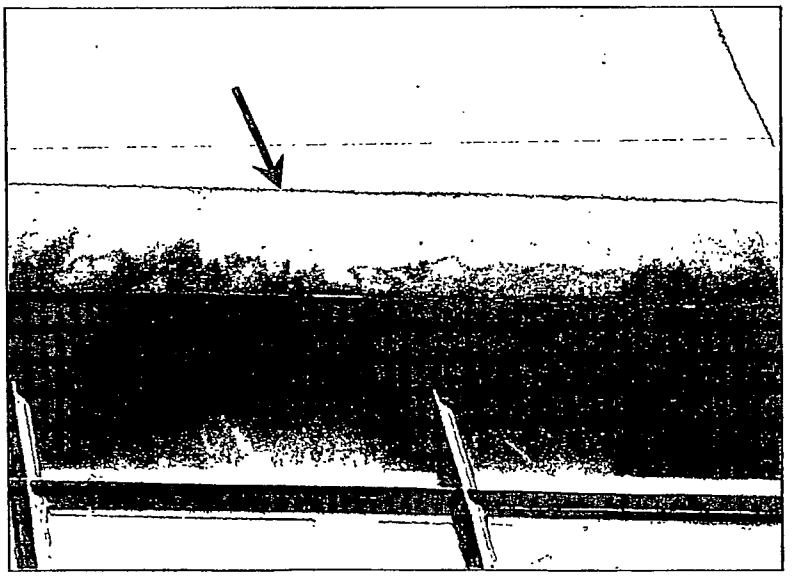




Figure 3: No base of wall through-wall flashing or weep holes were visible at the stucco transition between the first and the second floor.
Figure 4: Close-up view showing the lack of wall through-wall flashing or weep screed visible at the stucco transition between the first and the second floor.



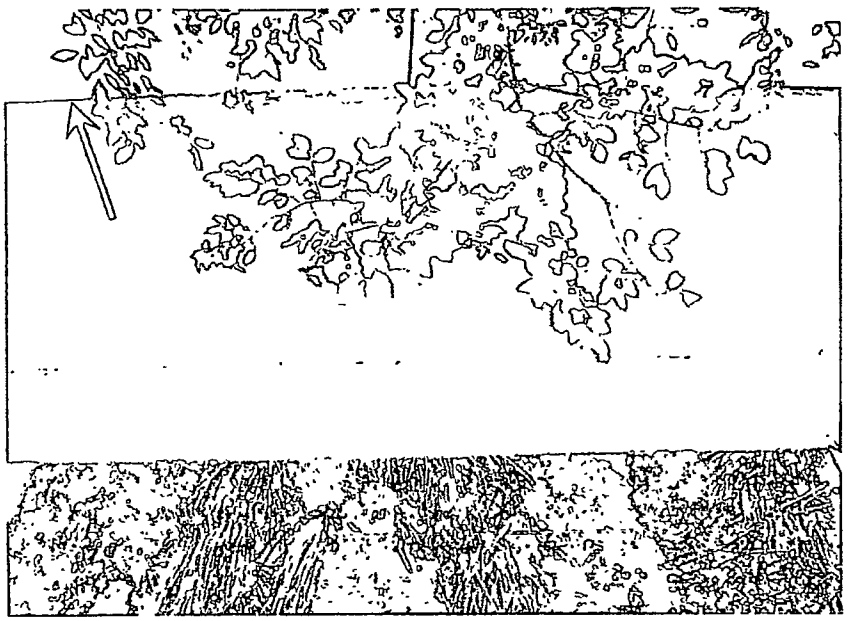
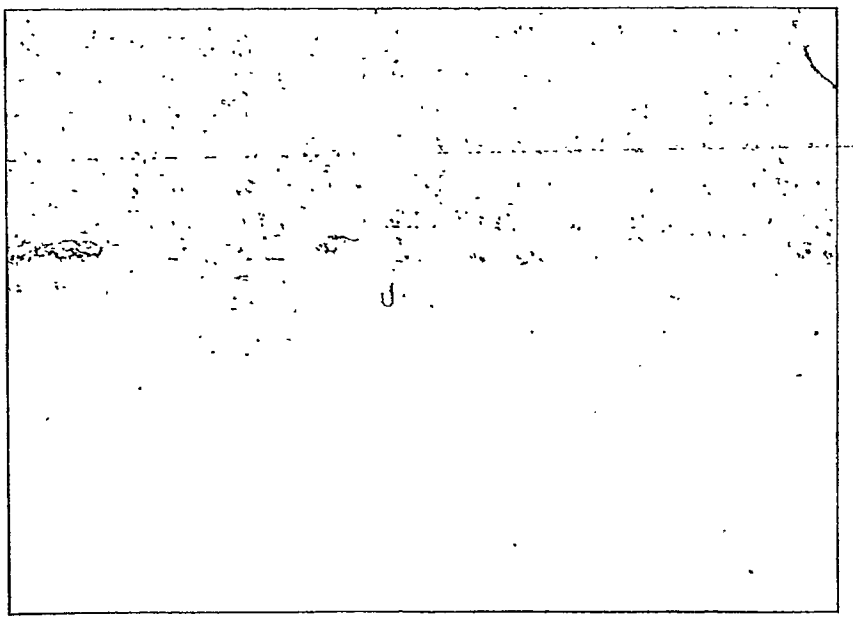


Figure 5: Overall view of the base of the stucco at the opening in the "screen wall". No coping cap was observed along the top edge of the wall.
Figure 6: Close-up view showing No weep screed was visible at the transition between vertical and horizontal stucco above the openings in the "screen wall". Efflorescence was visible along the head of the "screen wall" opening.



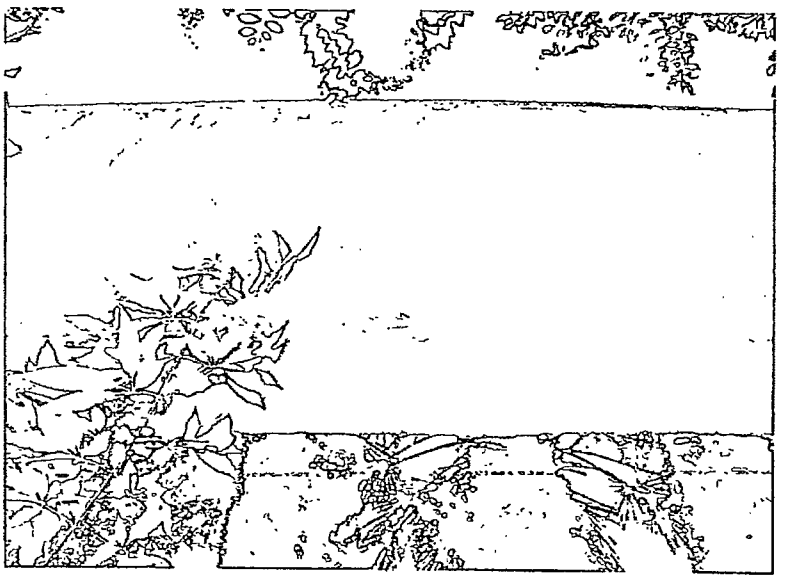


Figure 7: No weep screed was visible at the transition between vertical and horizontal stucco above the openings in the "screen wall". Staining, cracking and evidence of spalling stucco were visible at this location.
Figure 8: Horizontal cracking was visible along the transition between the first and second floors. No expansion joint was visible at this location.



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> ASTM 926-94, *Standard Specification for Application of Portland Cement-Based Plaster – A2.3.3 "Where dissimilar base materials abut and are to receive a continuous coat of plaster: (1) a two piece expansion joint, casing beads back-to-back or pre-manufactured control-expansion joint member shall be installed..."*

CONCLUSIONS

Based on our observations and review of the documents referenced above and provided to us to date, it is my opinion that construction defects in the installation of the stucco have resulted in staining, discoloration, cracking and spalling of the exterior portland cement based plaster. These observations are likely the result of moisture being trapped behind the plaster. Retained water can result in premature deterioration of the plaster due to corrosion of metal accessories, corrosion/deterioration of the supporting substrates and construction, expansion/contraction, and deterioration of the plaster during freeze/thaw cycles. It is recommended that repairs be made to the stucco in order to address the moisture being trapped behind the plaster. Correcting these conditions will help prevent future deterioration of the exterior portland cement plaster assemblies and the supporting construction and substrates. A scope of work has been provided to address the repair of these conditions.

The information and opinions provided herein are based upon the work expended to date as well as the information provided to us. Should additional information be provided at a later date we reserve the right to review said information and modify our opinions and recommendations accordingly.

If you have any questions or comments regarding the information included in this report please feel free to contact us.

Regards,

Scott A. Harvey, AIA, RWC

STATE OF SOUTH CAROLINA
SCOTT A. HARVEY
1.26.11
Charleston, SC
6555
REGISTERED ARCHITECT

STATE OF SOUTH CAROLINA
APPLIED BUILDING SCIENCES INC
CHARLESTON, SC
100129
REGISTERED ARCHITECTS

Cc: Mr. David Parrish, Esquire

Enclosures - Photo Log
- ABS Scope of Repair

APPLIED BUILDING SCIENCES, INC. Job Number: 950.0787 Page 1 of 4	PROJECT: Stucco Observations 3 Chisolm Street – School Building Charleston, South Carolina Date: 01.20.11

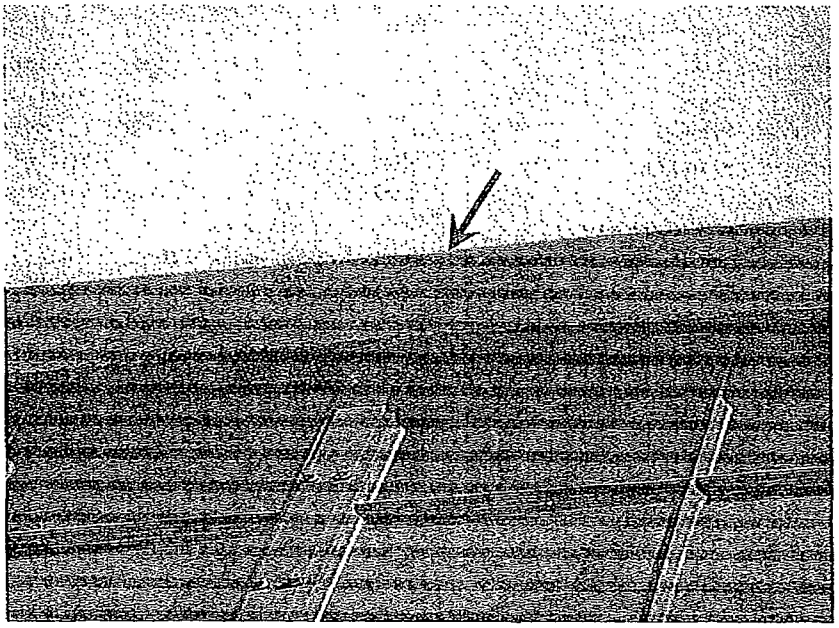
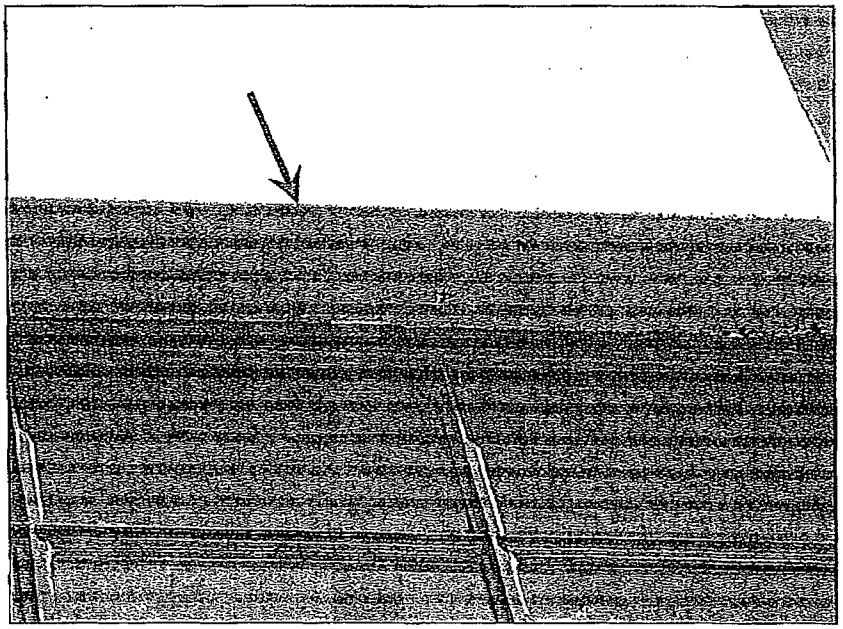


Figure 1: Staining visible in the stucco along the window head. No evidence of a drip screed/through-wall flashing was visible at the vertical to horizontal stucco transition (red arrow).
Figure 2: Staining visible in the stucco along the window head. No evidence of a drip screed/through-wall flashing was visible at the vertical to horizontal stucco transition (red arrow).



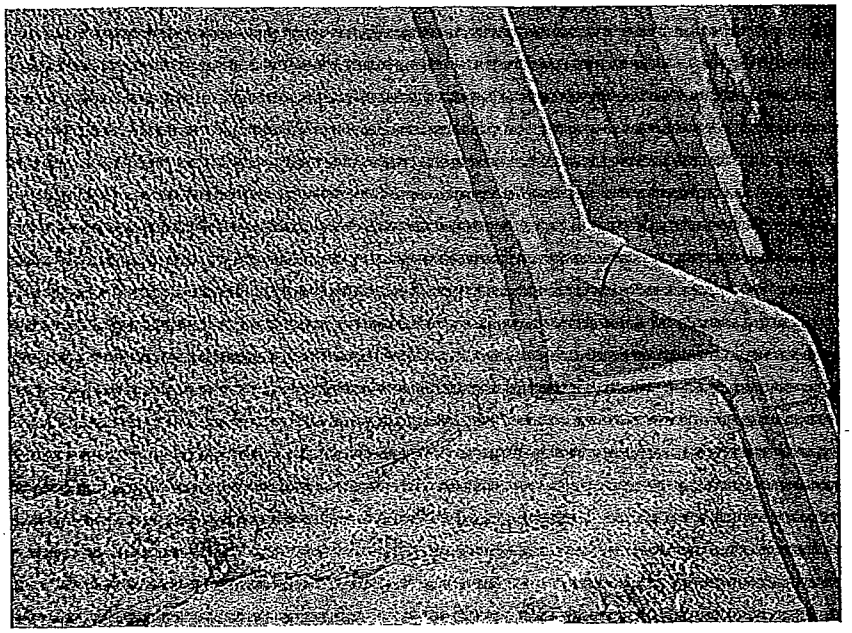
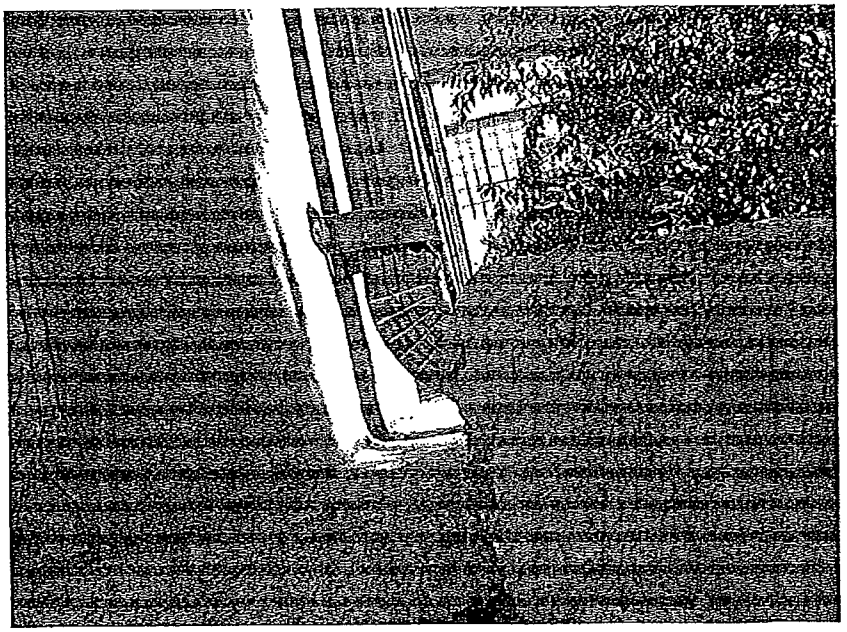


Figure 3: No base of wall through-wall flashing or weep holes were visible at the stucco transition between the first and the second floor.
Figure 4: Close-up view showing the lack of wall through-wall flashing or weep screed visible at the stucco transition between the first and the second floor.



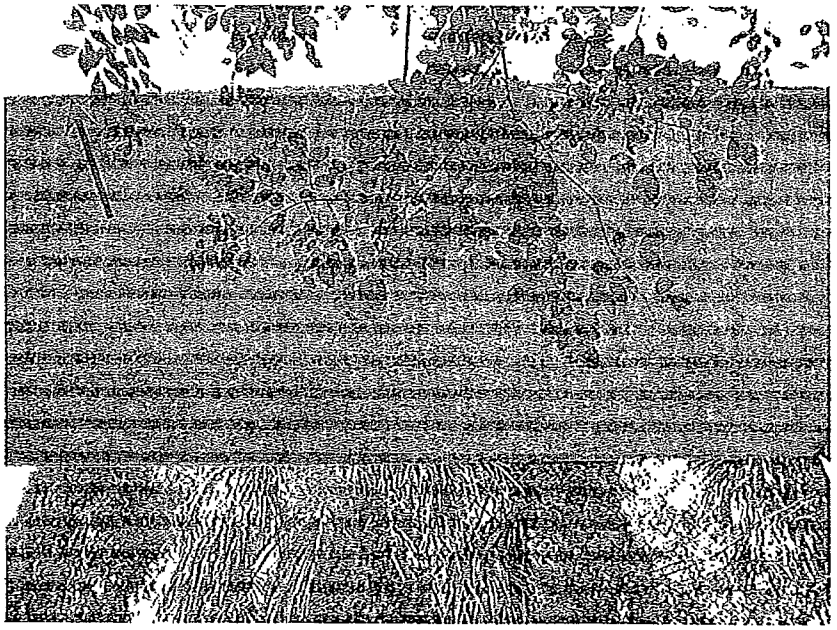
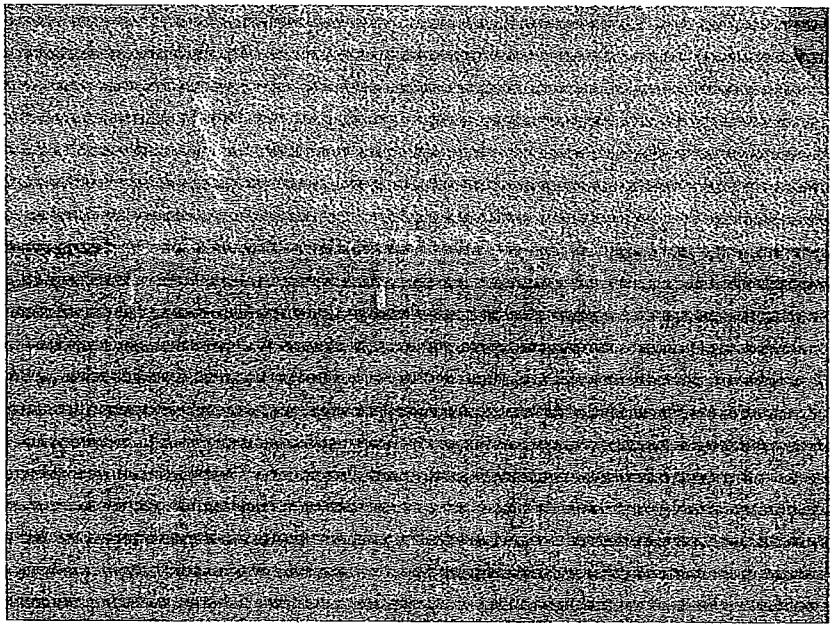


Figure 5: Overall view of the base of the stucco at the opening in the "screen wall". No coping cap was observed along the top edge of the wall.
Figure 6: Close-up view showing No weep screed was visible at the transition between vertical and horizontal stucco above the openings in the "screen wall". Efflorescence was visible along the head of the "screen wall" opening.



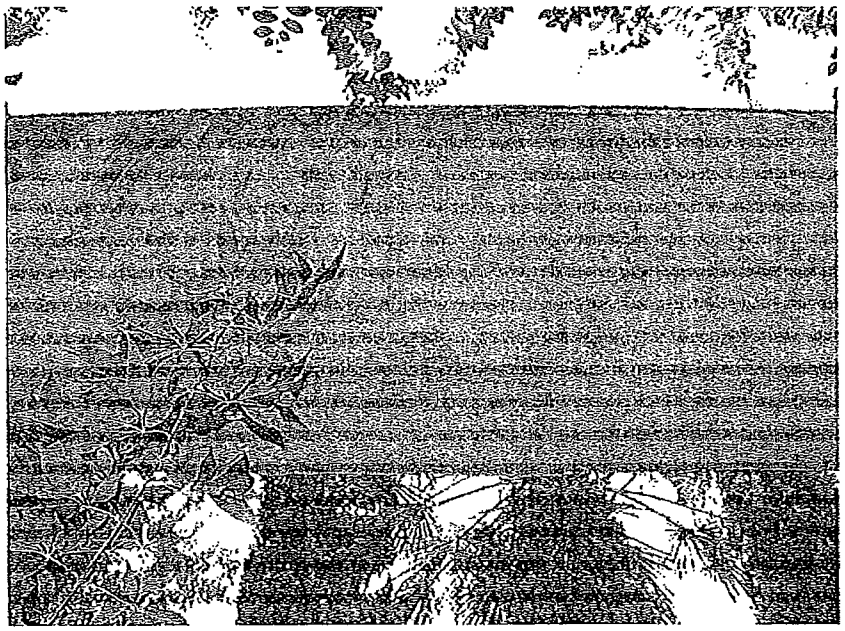
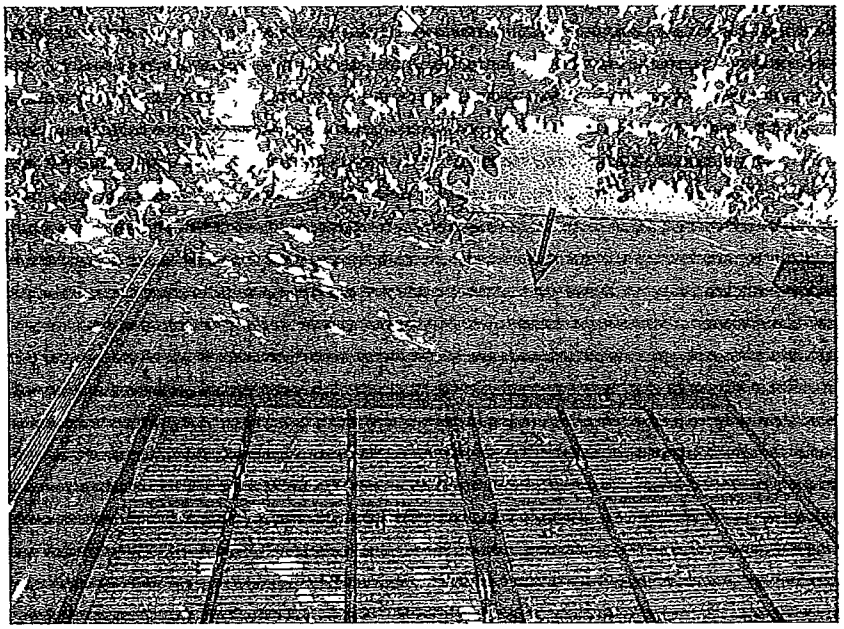


Figure 7: No weep screed was visible at the transition between vertical and horizontal stucco above the openings in the "screen wall". Staining, cracking and evidence of spalling stucco were visible at this location.
Figure 8: Horizontal cracking was visible along the transition between the first and second floors. No expansion joint was visible at this location.



APPLIED BUILDING SCIENCES INC.
ENGINEERS, ARCHITECTS AND
ENVIRONMENTAL CONSULTANTS

Preliminary Scope of Work
at
3 Chisolm Street

January 20, 2011

For the Repair of School Building's Stucco in Courtyard Area

Courtyard Stucco Repair Scope

1. Remove stucco in accordance with the following criteria.
   a. Scope A
      i. Remove stucco to a height of approximately 12" along the base of the wall (as shown on attached sketches). Install new vinyl through-wall flashing at the base of the stucco. The new through wall flashing shall be weather lapped by the existing weather resistant barriers a minimum of 8". Install a new base of wall drip screed. Lap the existing lath over the new base drip screed. Install new stucco in strict accordance with the most recent versions of ASTM 926, *Standard Specification for Application of Portland Cement-Based Plaster* and ASTM C 1063, *Standard Specification for Installation of Lathing and Furring to Receive Interior and Exterior Portland Cement-Based Plaster.*
      ii. Remove stucco to a height of approximately 12"at the heads of the windows (as shown on the attached sketches). Stucco removal shall extend approximately 12" beyond the window jambs. Install new vinyl through-wall flashing at the base of the stucco adjacent to the window head. The new through wall flashing shall be weather lapped by the existing weather resistant barrier a minimum of 8". Install a new base of wall drip screed. Lap the existing lath over the new base drip screed. Install new stucco in strict accordance with the most recent versions of ASTM 926, *Standard Specification for Application of Portland Cement-Based Plaster* and ASTM C 1063, *Standard Specification for Installation of Lathing and Furring to Receive Interior and Exterior Portland Cement-Based Plaster.*
      iii. Remove stucco to a distance of approximately 6" on either side of the horizontal crack along the floor line between the first and second floor. Cut the existing metal lath along the floor line transition. Ensure that the weather resistant barrier is continuous at this location and repair any break or cut in the weather resistant barrier to ensure a continuous weather lapped barrier. Install a new expansion joint and install new stucco in strict accordance with the most recent versions of ASTM 926, *Standard Specification for Application of Portland Cement-Based Plaster* and ASTM C 1063, *Standard*

1890 Milford Street – Charleston, South Carolina 29405 – Tel 843.724.1456 – Fax 843.724.1458
1416 Chapin Road – Chapin, South Carolina 29036 – Tel 803.345.3833 – Fax 803.345.2823

Specification for Installation of Lathing and Furring to Receive Interior and Exterior Portland Cement-Based Plaster.

b. Scope B
   i. Remove stucco to a height of approximately 12" along the base of the wall (as shown on attached sketches). Install new vinyl through-wall flashing at the base of the stucco. The new through wall flashing shall be weather lapped by the existing weather resistant barriers a minimum of 8". Install a new base of wall drip screed. Lap the existing lath over the new base drip screed. Install new stucco in strict accordance with the most recent versions of ASTM 926, *Standard Specification for Application of Portland Cement-Based Plaster* and ASTM C 1063, *Standard Specification for Installation of Lathing and Furring to Receive Interior and Exterior Portland Cement-Based Plaster.* Stucco shall terminate a minimum of 8" above finished grade.
   ii. Remove stucco to a height of approximately 12"at the heads of the windows (as shown on the attached sketches). Stucco removal shall extend approximately 12" beyond the window jambs. Install new vinyl through-wall flashing at the base of the stucco adjacent to the window head. The new through wall flashing shall be weather lapped by the existing weather resistant barrier a minimum of 8". Install a new base of wall drip screed. Lap the existing lath over the new base drip screed. Install new stucco in strict accordance with the most recent versions of ASTM 926, *Standard Specification for Application of Portland Cement-Based Plaster* and ASTM C 1063, *Standard Specification for Installation of Lathing and Furring to Receive Interior and Exterior Portland Cement-Based Plaster.*

2. Courtyard Screen Wall (West Side of Courtyard)
   a. Remove stucco to a height of approximately 12"at the heads of the openings (at both the east and west elevations of the screen wall). Stucco removal shall extend approximately 12" beyond the jambs of the openings. Install new vinyl through-wall flashing at the base of the stucco adjacent to the head of the opening. The new through wall flashing shall be weather lapped by the existing weather resistant barrier a minimum of 8". Install a new base of wall drip screed. Lap the existing lath over the new base drip screed. Install new stucco in strict accordance with the most recent versions of ASTM 926, *Standard Specification for Application of Portland Cement-Based Plaster* and ASTM C 1063, *Standard Specification for Installation of Lathing and Furring to Receive Interior and Exterior Portland Cement-Based Plaster.*
   b. Install a new .032 coated aluminum coping cap with continuous cleats over the top of the entire screen wall.
   c. Repair cracking in the screen wall in accordance with criteria provided below.
3. Identify all cracks greater than 1/32" in the existing stucco cladding assembly.
   a. Repair all cracks in the existing stucco cladding per the Portland Cement Association's (PCA) IS526, entitled *Repair of Portland Cement Plaster.* These repairs shall include filling the static cracks with a brush and knife grade sealant and plaster finish coat in accordance

with the PCA protocol. Sealant shall be GE's VIP5000 Series Buttering Grade Elastomeric Ter-Polymer Sealant and shall be installed in strict accordance with the manufacturer's installation guidelines.

b. All new stucco shall be installed in strict accordance with the most recent versions of ASTM 926, *Standard Specification for Application of Portland Cement-Based Plaster* and ASTM C 1063, *Standard Specification for Installation of Lathing and Furring to Receive Interior and Exterior Portland Cement-Based Plaster*.

4. Clean all stucco in the courtyard repair areas and on the screen wall in accordance with PCA IS526's Cleaning Plaster guidelines.
5. Cover all stucco in the courtyard repair areas and on the screen wall (new and existing) with a fog coat layer as outlined in the Stucco Manufacturers Association document on *Fog Coating*. The new material shall be LaHabra Fog Coat® and shall be installed in strict accordance with the manufacturer's installation guidelines.

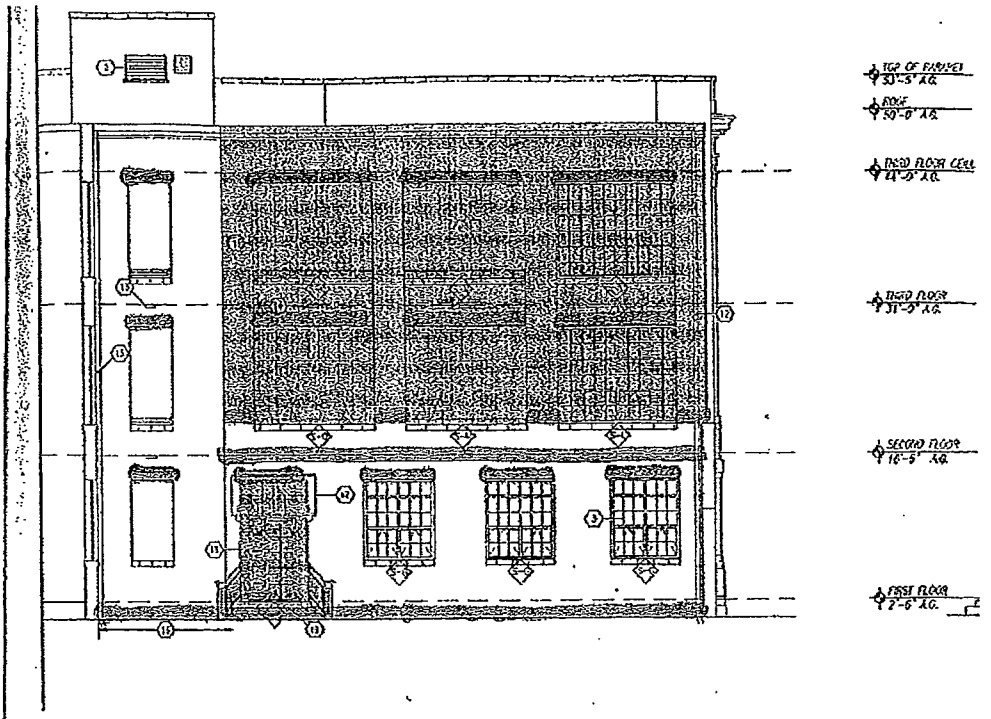
Note: The application of an elastomeric coating is not recommended.

General Conditions

1. All work shall be performed in accordance with applicable building codes, industry standards, and manufacturer's installation instructions. All products shall be installed in accordance with the most recent installation guidelines applicable at the time the repairs are implemented.
2. Any damage to the exterior sheathing or stud framing identified shall be repaired/replaced in conjunction with this scope. All damage shall be brought to the attention of ABS prior to being repaired/replaced.
3. Full time supervision shall be present while the work is in progress.
4. Rental equipment and temporary protection shall be provided by contractor.
5. Temporary sanitary facilities for workers and refuse containers for rubbish and debris from demolition shall be provided by the contractor.
6. Clean up of all construction debris including removal, installation, and repairs shall be included with this scope.
7. Replace all landscaping damaged during the removal, installation, and repairs included with this scope.
8. Include a 10% contingency for scope of repairs.

Enclosures:

- Sketches
- Portland Cement Association's (PCA) IS526, entitled *Repair of Portland Cement Plaster*
- Stucco Manufacturers Association *Fog Coating*
- LaHabra Fog Coat product data sheet
- GE's VIP5000 Series Buttering Grade Elastomeric Ter-Polymer Sealant product data sheet

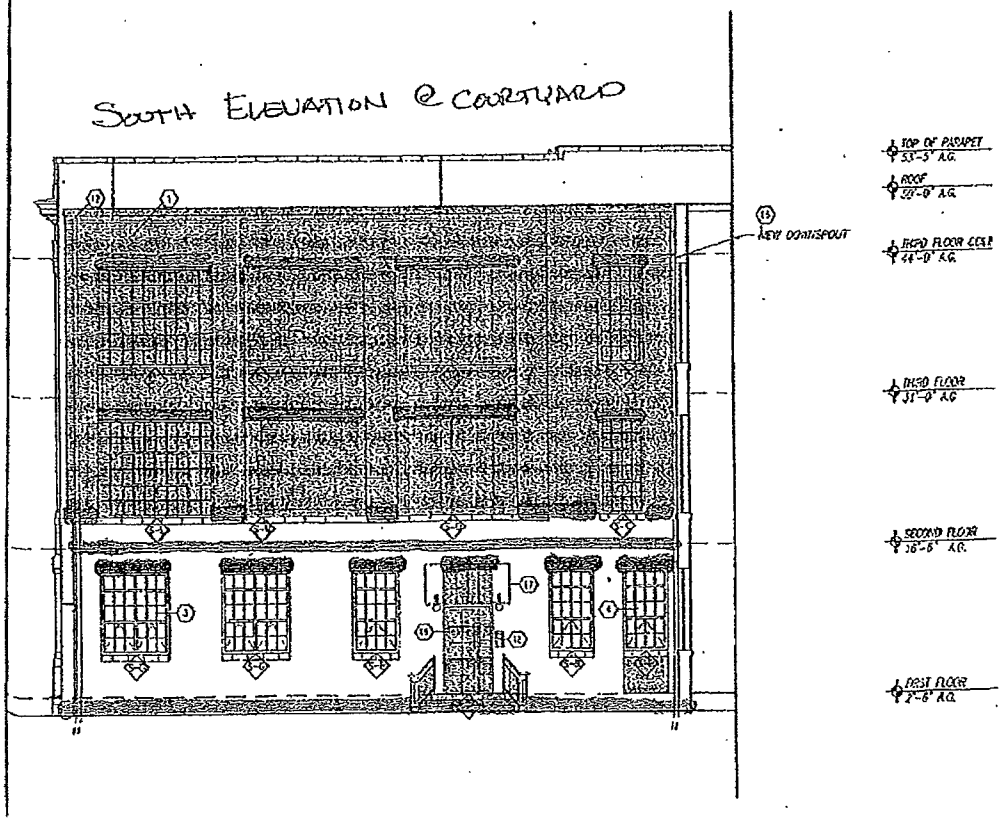


1 NORTH ELEVATION @ COURTYARD
A-3.2 1/8" = 1'-0"

Slope A

Slope B

South Elevation @ Courtyard



1 EAST ELEVATION
A-3.1
1/8" = 1'-0"

Scale A
Scale B

2 WEST ELEVATION
A-3.1
1/8" = 1'-0"

MASONRY *Information*

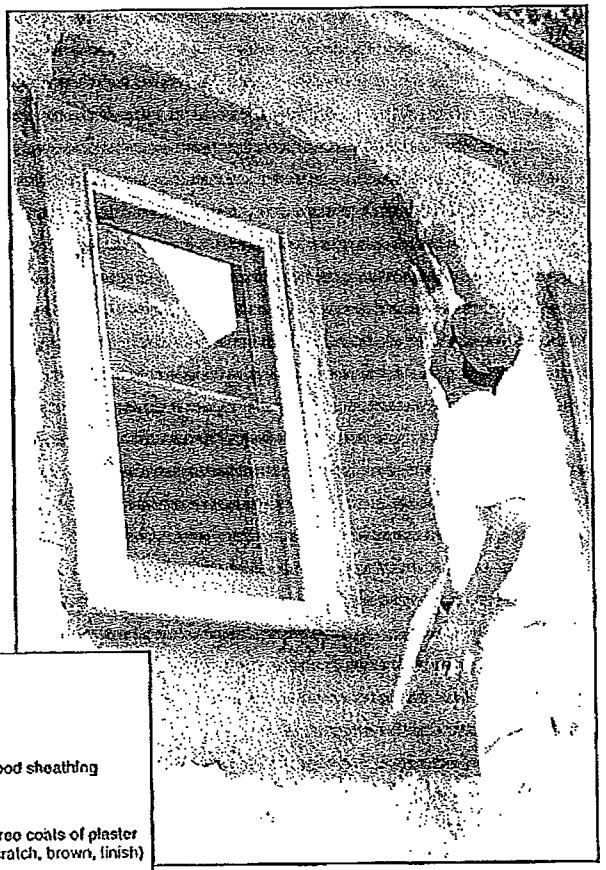
Repair of Portland Cement Plaster (Stucco)

Portland cement plaster (stucco) is a building facing material consisting of portland cement-based materials and sand, mixed with water to form a workable mixture. Plaster is applied either by hand or machine to exterior and interior wall surfaces in two or three coats. It may be applied directly to a solid base, such as masonry or concrete walls, or it can be applied to metal lath attached to frame construction, masonry, or concrete construction.

Applied directly to concrete or masonry, plaster provides a tough, 13-mm (1/2-in.) thick facing that is integrally bonded to the substrate. When applied to metal lath, three coats of plaster form a 22-mm (7/8-in.) total thickness. The first coat is often referred to as the scratch coat, the second is the brown coat, and the third is the finish coat (Fig. 1).

Portland cement plaster has many qualities that make it a desirable facing material, including hardness, fire resistance, and attractive appearance. Plaster has proved to be a durable wall covering in all climates and has great appeal as a surface finish because of its utility, low first cost, and need for minimal maintenance.

But like all building materials, plaster deteriorates with age and exposure to the elements. Although cement plaster provides a hard, durable cladding, it is not intended to resist building movements, such as those from settlement or the expansion of wood frame members as a result of moisture intrusion. This manual presents recommended procedures for repairing portland cement plaster. This publication does not address synthetic plaster (EIFS) systems.



Integrating patches into the existing plaster is one of the many challenges of plaster repair. (69912)

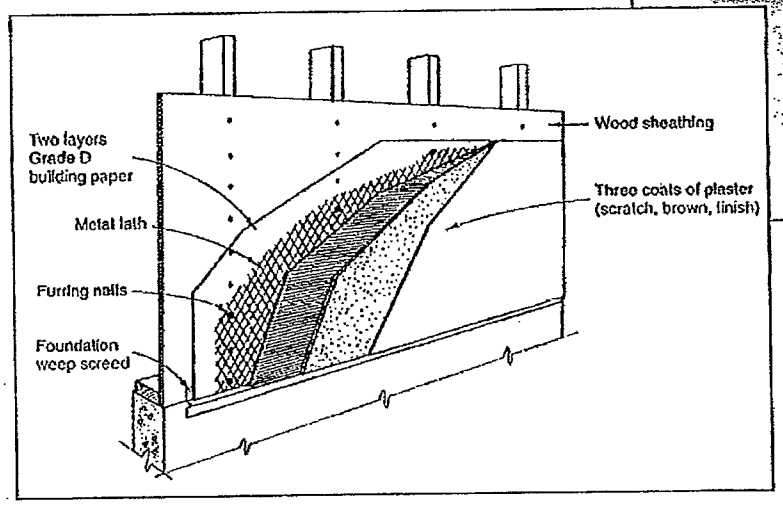


Fig. 1. Portland cement plaster is often applied to metal lath attached to frame construction.

IS526

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Causes of Plaster Damage

Portland cement plaster can deteriorate for a variety of reasons, including inadequate design details, poor installation, or the use of improper materials. In many cases, damage results from water infiltration into the building structure either through cracks, through the roof, around chimneys, or through window and door openings. Water that gets behind the plaster can cause wood lath to rot and metal lath and nails to rust, and can cause plaster to delaminate from the substrate.

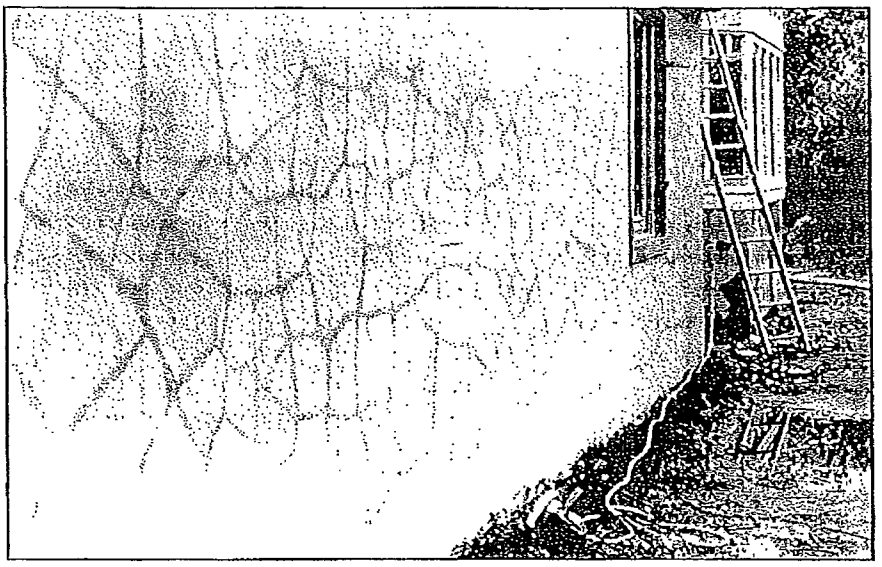


Fig 2. Improper curing of plaster can result in map cracking. (69914)

Cracking in plaster is usually shrinkage-related or the result of external loads, such as ground settlement or inadequate stiffness of the backing. Common causes of cracking are improperly placed control joints, improper lath installation, and inadequate curing.

Control joints are provided in plaster to relieve drying shrinkage stresses and to provide stress relief in areas subjected to movement, such as window and door openings. Drying shrinkage cracks are often caused by violating the rules of control joint spacing (ASTM C 1063):

- Each continuous vertical area should be no more than 13.4 m^2 (144 ft^2).
- Distance between joints should be no more than 5.5 m (18 ft) in any direction.
- No panel should have a length-to-width ratio greater than 2-1/2 to 1.
- Joints should be positioned at movement joints in the substrate.

In wood-frame plaster construction, metal lath expands and contracts with the surrounding plaster. If lath is installed incorrectly, sufficient tensile stresses can develop within the plaster to cause it to crack. Rules for lath installation include:

- Lath should not be continuous at control joints.
- Lath should be lapped 13 mm (1/2 in.) at the sides and 25 mm (1 in.) at the ends (ASTM C 1063), with wire ties spaced 230 mm (9 in.) apart.
- If paper-backed lath is used, laps should be installed to allow a paper-paper and lath-lath lap.

Freshly placed plaster must be protected from excessive moisture loss in the first few days after application. Otherwise, early shrinkage of the plaster can result in map cracking (Fig. 2).

After the cause of deterioration has been identified, any necessary repairs to the building should be made before repairing the plaster. These may include roof, gutter, downspout, and flashing repairs. Horizontal areas, such as the tops of parapet walls or chimneys, are particularly vulnerable to water infiltration. These areas may require modifications to their original design, such as the addition of flashing (Grimmer 1990).

Identifying Damaged Plaster

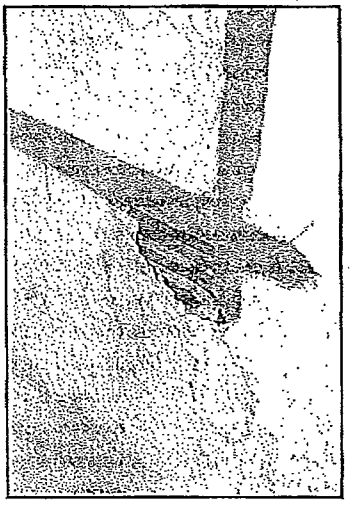


Fig. 3. Water-damaged plaster often bulges or falls away from the building. (69906)

Before beginning any repair, the plaster should be evaluated to determine the extent of damage and how much must be repaired or replaced. Some areas in need of repair are obvious, such as missing sections or layers of plaster (Fig. 3). Water-damaged plaster often bulges or falls away from the building because excessive moisture causes the coats of plaster to delaminate and the metal lath and nails to rust. Unsound or soft areas that have delaminated will make a hollow sound when tapped with a hammer.

Petrographic examination and chemical analysis (ASTM C 1324) of samples of the plaster can determine its mix components and can provide other relevant information, such as the quality of the bond between coats. This information can offer clues as to the

expected useful life of the plaster that remains and aid in determining the appropriate scope of the repair project.

Plaster Removal



Plaster that has delaminated from the base, but is otherwise sound, may require a saw or diamond grinder to be removed. Soft or crumbled plaster can usually be removed with a chisel or other hand tool (Fig. 4). If the plaster is properly keyed into the lath, the lath may have to be cut as well. In these cases, sound plaster at the patch perimeter will have to be removed to make room for lapping the new and existing lath.

Fig. 4. Soft or crumbled plaster can usually be removed with a chisel or other hand tool. (69907)

When patching the plaster, replace it in layers to the same thickness as the existing plaster. Therefore, each succeeding coat is cut back further than the preceding one, the base coat being the smallest area, and the finish coat being the largest area to be patched (Fig. 5).

If matching the color and texture of the existing plaster is critical, one option is to use abrasive blasting to remove the finish coat of the plaster surrounding the patch. Then the patch and surrounding areas share the same finish coat upon reapplication.

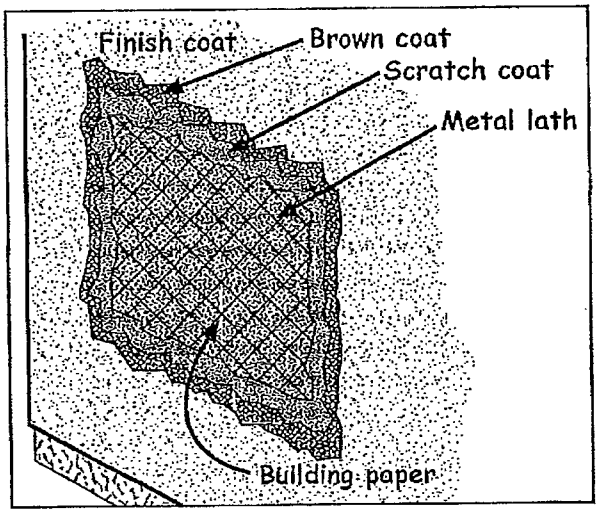


Fig. 5. When patching plaster, each succeeding coat is cut back further than the preceding coat, the base coat being the smallest area and the finish coat being the largest area to be patched.

Lath and Paper Repair

If the existing building paper is torn, it should be replaced with new paper that meets the requirements of *UU-B-790a, Federal Specifications for Building Paper, Vegetable Fiber (Kraft, Waterproofed, Water Repellent, and Fire Resistant).* Slip the new paper behind the existing paper at the top and sides and allow it to extend over the old paper at an existing lap. Laps should be at least 100 mm (4 in.). This will help prevent water that gets behind the plaster from running down behind the paper.

Corroded or otherwise damaged lath should be cut out and replaced with a new section of lath conforming to ASTM C 847. Follow the lath lapping guidelines outlined above. Also, if using lath that comes pre-attached to a paper backing, you must separate the lath from the paper so the existing building paper is in contact with the new paper and the existing lath is in contact with the new lath. Anchor the new lath to studs at no more than 180 mm (7 in.) on center, but avoid nailing the lath to the substrate between the studs. Doing so prevents the lath from expanding and contracting with the plaster, which can cause cracking. Instead, wire-tie the new and existing lath.

Surface Preparation

Masonry or concrete substrates usually require preparation to ensure that the plaster establishes a strong bond. These surfaces should be sandblasted or mechanically abraded to remove contaminants and roughen the surface to maximize the bonding area of the new plaster. However, don't rake out masonry mortar joints to provide a "key." Doing so will create plaster of varying thickness, which can cause cracking.

If the masonry or concrete is dry, dampen the surface to prevent it from absorbing an excessive amount of water from the plaster. The prepared substrate should be at, or slightly drier than, a saturated, surface-dry (SSD) condition.

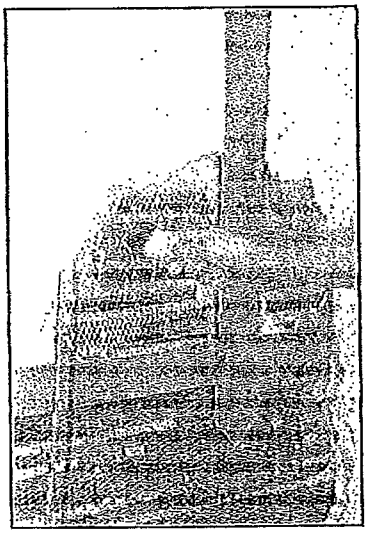


Figure 6. Applying a bonding agent can improve adhesion to the substrate and existing plaster. (69908)

The same rules that apply for a masonry or concrete substrate also apply for the edges of the existing plaster to which the patch material will bond. The edges of the existing plaster should be roughened and properly dampened.

Although plaster should bond well to a properly prepared substrate, bonding agents can also be used (Fig. 6). All bonding agents should conform to ASTM C 932.

Patch Application

The same techniques used to apply plaster in new construction are used in repair and are outlined in ASTM C 926. Apply the scratch coat at the same thickness as the surrounding scratch coat and with enough pressure to completely embed the metal lath (when present). As soon as the scratch coat becomes firm, score the surface in one direction only. Vertical wall surfaces should be scored horizontally.

After allowing the scratch coat to cure for at least 24 hours, apply the brown coat at the same thickness as the existing brown coat. Follow the same rules for applying the finish coat.

Curing Patches

Proper curing of patches is essential to avoid rapid water loss from the plaster, which can lead to cracking and debonding of the patch material from the surrounding plaster. Wind, high temperatures, and exposure to direct sunlight will accelerate water loss from the plaster. Curing procedures should maintain a relative humidity of 80% for at least 24 hours, and up to 7 days in some cases.

The plaster can be moist-cured by periodically applying a fine fog spray of water to the surface. But perhaps the most practical curing method is to install plastic film around the repaired area. Consider using an opaque film to protect the plaster from sunlight. Place the film as soon as the plaster surface has hardened enough to resist impression by contact with the film.

Crack Repair

To decide if (and how) a crack should be repaired, you must determine the cause of the crack and consider the consequences if the crack is not repaired. Most repair techniques make cracks

Continued on page 6

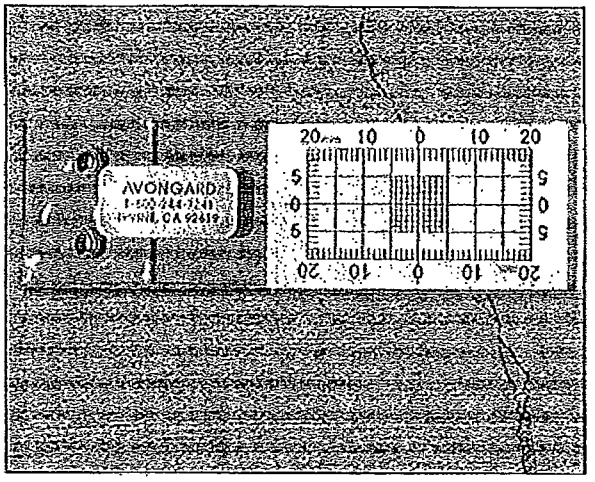


Fig. 7. A crack movement monitor is a useful tool for determining if a crack undergoes movements that are greater than would be expected from normal thermal cycling. (69913)

Selecting a Patch Material

Table 1 shows scratch coat, brown coat, and finish coat mix proportions that are recommended by ASTM C 926 and have demonstrated successful performance in service. In many cases, plaster mixes containing these material proportions will make a suitable patching material. Latex or acrylic polymer modifiers may also be added to the mix water to improve plaster properties. A wide range of colored pigments is also available for creating colored finish coats. The pigments should conform to ASTM C 979. In addition, prepackaged plaster materials are available from several manufacturers.

Selecting an appropriate mix for patching plaster presents two additional challenges that are not factors in new construction: (1) matching the color and texture of the existing plaster, and (2) physical compatibility of the new and existing plaster.

Matching Color and Texture

A common approach to disguising the different appearance of new and old plaster is to simply apply a coating over the entire surface. But a coated plaster surface may not be desirable and, although coatings will hide color differences, they may not conceal differences in surface texture.

It's virtually impossible to place plaster patches that blend in perfectly with the surrounding plaster. Exposure to the elements results in fading, erosion, and other changes in appearance that occur only over time. Nevertheless, you can take steps to reduce the contrast between new and old plaster.

A good place to start is to perform petrographic examination and chemical analysis (ASTM C 1324) on a sample of the existing plaster to determine its mix components. In most cases, you'll want to use a similar mix for the patch material, assuming it provides acceptable durability. The texture of plaster is greatly influenced by the amount and type of aggregate used in the mix. When choosing materials—especially for the finish coat—consider using aggregate with the same size and shape as the existing plaster. Also, colored masonry cements are available in many regions, or white portland cement (or a mixture of white and gray portland cement) can be blended with pigments (ASTM C 979) to match colored plaster. After materials are chosen, a skilled craftsman is required to match the application technique of the existing plaster as closely as possible.

It's a good idea to construct small samples, or mockups, of the patch material using mixes with varying color and texture and allow them to cure and weather for as long as possible next to the existing plaster. The change in appearance of the mockups over time will allow selection of the mix design that, when put into service, will most closely match the surrounding plaster. In addition, consider cleaning the existing plaster before comparing it to the mockups to provide an accurate assessment of the true color and texture differences.

Physical Compatibility

Another factor to consider when selecting a patch mix is the interaction of new and old plaster when they are bonded together in service. If the physical properties of the two materials are not similar, differing expansion and contraction in response to changing temperatures and loads will create stresses at the bond line, which can lead to cracking.

Most plaster structures built over the last 50 years will likely contain similar materials to those recommended today. In these cases, differences in physical properties between the new and old plaster should be minimal, and the selection of a patch material can be based on durability and appearance. But some older buildings were constructed with lime-based plaster or other materials that are much softer and more flexible than modern-day plaster, so compatibility of the old and new materials can be a concern. In these cases, the challenge is to develop a patch mix that has similar physical properties as the existing plaster, but still provides acceptable durability. If a relatively small area of plaster requires repair, this would be the preferred approach. If, however, a significant percentage of a wall section requires repair, it may be appropriate to re-plaster the entire section, especially if the location is highly visible. By taking this approach, the challenges of matching the existing plaster are eliminated (or at least reduced) and the more straightforward rules of new plaster construction apply.

Table 1. Portland Cement Plaster Mix Proportions

Base Coats[1]

Plaster mix symbols	Parts by volume[2]: Cementitious materials: Portland cement or blended cement	Plastic cement	Masonry cement[4] N	Masonry cement[4] M or S	Lime	Volume of aggregate per sum of separate volumes of cementitious materials: Scratch coat	Brown coat 2nd[3] coat	Finish coat[5]
C	1	—	—	—	0 – 3/4	2-1/2–4	3–5	—
CL	1	—	—	—	3/4–1-1/2	2-1/2–4	3–5	—
M	—	—	1	—	—	2-1/2–4	3–5	—
CM	1	—	1	—	—	2-1/2–4	3–5	—
MS	—	—	—	1	—	2-1/2–4	3–5	—
P	—	1	—	—	—	2-1/2–4	3–5	—
CP	1	1	—	—	—	2-1/2–4	3–5	—

Finish Coat[1]

F	1	—	—	—	3/4–1-1/2	—	—	1-1/2–3
FL	1	—	—	—	1-1/2–2	—	—	1-1/2–3
FM	—	—	1	—	—	—	—	1-1/2–3
FCM	1	—	1	—	—	—	—	1-1/2–3
FMS	—	—	—	1	—	—	—	1-1/2–3
FP	—	1	—	—	—	—	—	1-1/2–3

[1]The mix proportions for plaster coats to receive ceramic tile shall be in accordance with the applicable requirements of ANSI A108.1 series applicable to specified method of setting time.

[2]Variations in lime, sand, and perlite contents are allowed due to variation in local sands and insulation and weight requirements. A higher lime content will generally support a higher aggregate content without loss of workability. The workability of the plaster mix will govern the amounts of lime, sand, or perlite.

[3]The same or greater sand proportion shall be used in the second coat than is used in the first coat.

[4]Additional portland cement is not required when Type S or M masonry cement is used.

[5]In areas not subject to impact, perlite aggregate shall be permitted to be used over base-coat plaster containing perlite aggregate.

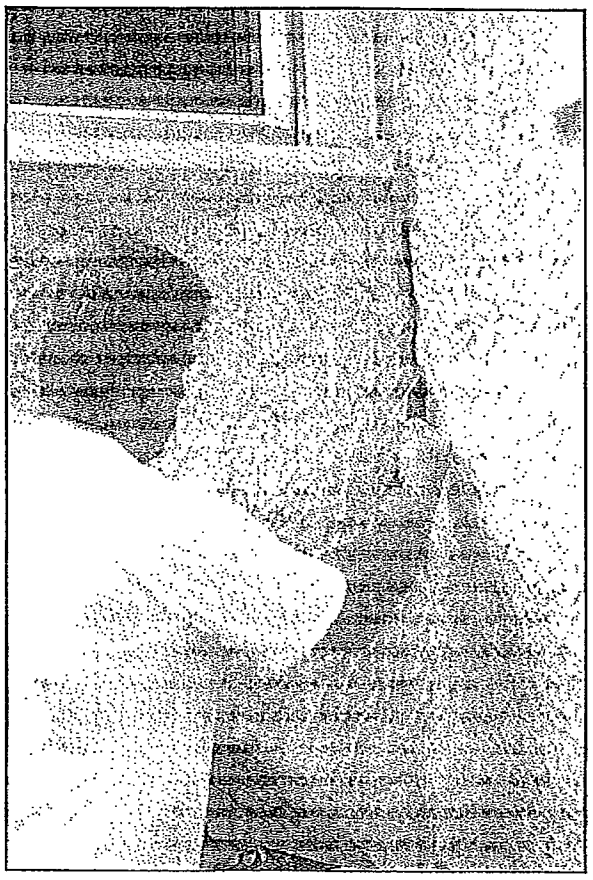


Fig. 8. Static cracks can be filled with a rigid material, such as a plaster finish coat or elastomeric coating. (69909)

more noticeable, so if appearance is the only issue, you might be better off leaving the crack alone. However, if a crack is leaking or may otherwise allow additional damage to the structure, it should be repaired.

To select an appropriate crack repair method, you must determine if the crack is "static" or "moving." Static cracks are stable and do not provide necessary stress relief for the building. As a result, they can be filled with a rigid material such as a plaster finish coat or elastomeric coating (Fig. 8). They can also be repaired by following the procedures for patching described above.

Moving cracks provide necessary stress relief for the plaster. They are often the result of improperly spaced or located control joints. Because these cracks are acting essentially as control joints, they must be allowed to open and close. If the crack is filled with a rigid material, recurrent cracking is likely. A crack movement monitor is a useful tool for determining if a crack undergoes movements that are greater than would be expected from normal thermal cycling (Fig. 7).

The most common repair method for moving cracks is routing and sealing. The crack is widened with a saw or grinder, and the resulting groove is filled with an elastomeric sealant. Cracks should usually be routed to their full depth; the width of the groove is determined by the amount of movement at the crack and the flexibility of the sealant. Consult with the sealant manufacturer to determine the proper dimensions of the sealant reservoir.

Some manufacturers offer acrylic polymer sealants marketed specifically for repairing plaster cracks. These products are often referred to as "brush grade" (for narrow cracks) and "knife grade" (for wider cracks). In addition, many manufacturers offer a variety of pigmented sealants to match the color of the plaster as closely as possible.

After the crack is repaired, the cured sealant will be glossy, which will contrast with the roughened plaster texture, making it very noticeable. One way to disguise this contrast is to broadcast silica sand onto the applied sealant immediately after tooling to give the sealant a roughened texture.

Cleaning Plaster

Much of the color difference between patches and the surrounding plaster is unavoidable due to different mix proportions, age, and the effects of weathering. But some of this visual contrast can be reduced by cleaning the building so the existing plaster more closely matches the freshly placed repairs.

A good rule of thumb for cleaning plaster is to use the least aggressive method that still provides sufficient cleaning. Evaluate the cleaning method on a test area before committing the entire project to the method. This is especially true when cleaning an unfamiliar substrate or using an unfamiliar cleaning technique.

In some cases, a garden hose will do the trick (Fig. 9). When washing the wall, pre-wet the entire wall surface, starting at the bottom and continuing to the top. Wetting the wall from bottom to top prevents dirty wash water from being absorbed by plaster lower on the wall. Direct a high-pressure stream of water against the wall to loosen the dirt. Start at the top and wash the dirt down the wall to the bottom. Then flush the remaining dirt off the wall with a follow-up application of water.

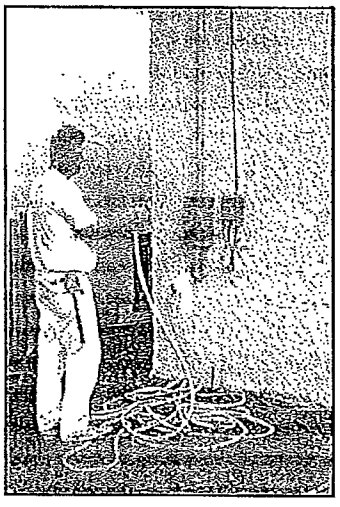


Fig. 9. Directing a high-pressure stream of water from a garden hose may be all that is needed to clean plaster. (69910)

If greater cleaning action is required, consider power washing the plaster. Fan-type spray tips producing 15- to 40-degree fan spray patterns have proven most effective for cleaning plaster surfaces. Other tips that produce a concentrated stream of water may damage the

surface. When pressure washing, keep the stream of water moving over the surface to prevent erosion of the plaster.

Use of a chemical in conjunction with water reduces both the chemical concentrations and the water volume required. Mild detergents can be used to remove oil-based contaminants and stains. Cleaners containing organic solvents can remove caulking compound residues and bituminous materials, and acids or alkalies will remove soot, fly ash, hydrocarbon residues, biological growth, and stains due to polluted environments. Special commercial cleaners are also available. In most cases, chemical cleaning should be preceded and followed by thorough water rinsing. Keep in mind that cleaning chemicals may present health and environmental hazards. Read the material safety data sheets supplied by the manufacturer and take all recommended precautions to provide a safe working environment.

For more information on cleaning and stain removal, see *Removing Stains and Cleaning Concrete Surfaces*, IS214, Portland Cement Association.

Surface Protection

One of the primary aesthetic appeals of portland cement plaster is its rough, natural texture. Therefore, painting or coating plaster is often discouraged. However, applying some form of surface protection may be advisable to provide water repellence, fill narrow cracks, or disguise color differences. Regardless of the type of product used, it's important to ask the manufacturer how long patches must cure before the product is applied.

Thin latex paints are an inexpensive option, but they provide the least amount of protection and durability. Elastomeric acrylic or silicone coatings provide better water repellence and durability than thinner paints and can also bridge narrow cracks (Fig. 10). A potential drawback of their water repellence, however, is that some elastomeric coatings, while not vapor barriers, may slow the passage of water vapor. This reduces the plaster's ability to "breathe," or dry out through evaporation, potentially trapping water in the wall.

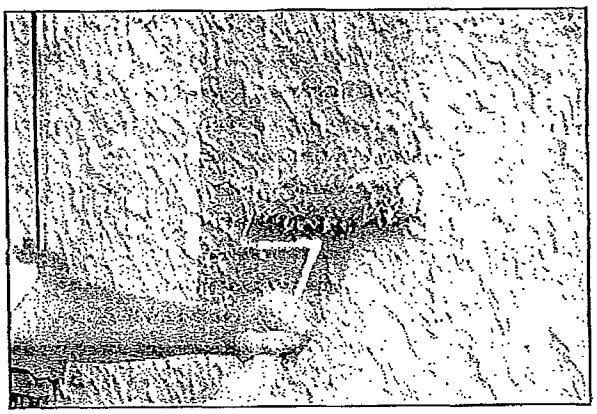


Fig. 10. Coatings provide water repellence, fill narrow cracks, and disguise color differences. (69911)

Another option is to apply a cementitious coating. Although these products may not provide the water repellence of elastomeric coatings, they are breathable and have the added benefit of retaining the natural look of plaster better than polymer-based paints.

A fog coat is a type of cementitious coating that is often applied to repaired walls. A fog coat is a dilute mixture of cement and water (or cement, lime, and water) that is mixed to a milky consistency and usually sprayed onto the surface. The primary purpose of a fog coat is to disguise color variations rather than to provide water repellence.

Instead of using film-forming paints and coatings, consider applying a penetrating water repellent to the surface. Some water repellents contain pigments or stains to hide plaster color differences. Water repellents do not provide as glossy a finish as most paints and coatings.

For more information, see *Painting Concrete*, IS134, Portland Cement Association.

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An organization of cement companies to improve and extend the uses of portland cement and concrete through market development, engineering, research, education, and public affairs work.

WARNING: Contact with wet (unhardened) concrete, mortar, cement, or cement mixtures can cause SKIN IRRITATION, SEVERE CHEMICAL BURNS (THIRD-DEGREE), or SERIOUS EYE DAMAGE. Frequent exposure may be associated with irritant and/or allergic contact dermatitis. Wear waterproof gloves, a long-sleeved shirt, full-length trousers, and proper eye protection when working with these materials. If you have to stand in wet concrete, use waterproof boots that are high enough to keep concrete from flowing into them. Wash wet concrete, mortar, cement, or cement mixtures from your skin immediately. Flush eyes with clean water immediately after contact. Indirect contact through clothing can be as serious as direct contact, so promptly rinse out wet concrete, mortar, cement, or cement mixtures from clothing. Seek immediate medical attention if you have persistent or severe discomfort.

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IS526.01

SMA

Stucco Manufacturers Association

Fog Coating

Fog Coat is a cementitious product formulated for use as a spray-applied cement paint to color stucco. The product may be used to even the color of new work or refresh existing stucco.

Preliminary evaluation:

Prior to ordering Fog Coat, it is necessary to determine the type of surface texture that the material will be applied to. Different surfaces require different strengths of Fog Coat. The standard manufactured Fog Coat is designed to be used over a sand finish application. A textured stucco application will require approximately 25% more color pigment, and a machine application will require approximately 50% more color pigment. Since colors may vary due to weather and job conditions, prior to fog coating, a sample should be applied and allowed to dry for color approval.

Stucco does not fade with age, but continues to darken. Prior to ordering Fog Coat, it is always a good practice to compare an actual stucco sample to the wall surface to determine if additional color pigment needs to be added.

Mixing fog coat material:

Add one bag of Fog Coat to approximately 3 gallons of clean water. Mix to an even paste until all lumps are removed. It is recommended that you use a high-speed mechanical mixer. Let the material sit for approximately 20 minutes.

Add an additional 7 gallons of water and stir thoroughly to a milky consistency. Screen the material through a painter's nylon screen. Fog Coat is spray applied--using a hand pump, compressed air tank sprayer, or a modified painter's airless sprayer.

Applying to the wall surface:

The wall surface to be fogged must be cool and clean. A light mist of water may be applied one half hour prior to application. Fog Coat applied to a hot, dry wall will dry light and chalky. When spraying, use a circular motion, holding the nozzle approximately 18 inches from the wall. Do not overload an area. Use several light coats rather than one heavy one. Work the sprayer up and down and side to side. Be sure to catch all angles of the texture. For the best results, always apply the Fog Coat end-to-end and top-to-bottom or to a prominent architectural break.

Cleaning up:

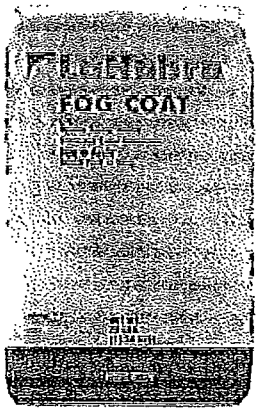
Fog Coat can be easily wiped off of most non-porous surfaces. Porous surfaces, plants and landscaping should always be masked or covered.

2402 Vista Nobleza, Newport Beach, CA 92660 ■ 949.640.9902 PHONE ■ 949.640.9911 FAX ■ WWW.STUCCOMFGASSOC.COM

stucco

LaHabra®

Fog Coat



DESCRIPTION:
LaHabra® Fog Coat, provides cost-effective, durable and long lasting colored coating for existing stucco. Fog Coat is is easy to apply and specifically designed to refresh the color of stucco.

USES:
A decorative coating for portland cement based stucco walls and ceilings.

COMPOSITION:
- Binder Base: portland cement, hydrated lime and proprietary ingredients. (White Portland Cement: ASTM C150 Type I, Type-S Hydrated Lime: ASTM C206)
- Color: White or tinted to desired color.
- VOC-Compliant

CONTAINER:
25 lb (11.3 kg) net weight in a multi-wall bag.
- Storage: Store off ground and protect from sun and moisture.
- Shelf Life: 12 months if properly stored in original unopened container.

COVERAGE:
Depending on the condition of the substrate, method of application, amount of water used per bag and number of applications. Approximate coverage when two coats are applied is: 800 to 1,000 sq. ft. (74 - 93 m²) per 25 lb. (11.3 kg) bag.

DRYING TIME:
Approximately 1 hour depending upon temperature, humidity and substrate. High humidity and low temperatures extend drying time, can be recoated after drying.

CLEAN-UP:
Water soluble prior to drying. Clean tools and containers with water prior to drying.

SURFACE PREPARATION:
- Stucco must be clean, free of dirt and foreign material.
- Remove surface contaminants such as dust or dirt without damaging the substrate.
- NOT recommended for application over painted, sealed, wood, metal or smooth surfaces.
- Fog Coat should be applied with an ambient and surface temperature above 40°F (4.4°C) for a minimum of 24 hours following the application.
- For additional options, contact Parex USA Technical Support.

MIXING:
- **Read the entire label before using this product.**
- Use clean equipment for mixing and preparation. While stirring using a drill at 400–500 rpm with a rust free mixing paddle, slowly add the 25 lb. bag of Fog Coat to 2-½ gallons of cool-clean potable water.
- Divide equally into two 5 gallon pails.
- Add an additional 1-½ gallons of water to each pail - stir and allow to stand for 10 to 15 minutes.
- Stir thoroughly and strain the Fog Coat material through a suitable paint strainer into a clean 5-gallon pail or the spray equipment tank to be used.
- If desired, add LaHabra Acrylic Bonder, 6 – 10 ounces per gallon (maximum of 1 gallon per bag in place of the equivalent amount of water) of mixed, strained Fog Coat and stir well.
- Agitate material frequently to avoid separation during application.

APPLICATION:
- Before applying this product, a sample should be applied and allowed to cure for color approval. The color level can be adjusted at this time by adding a small amount of additional color pigment from LaHabra's custom color pack of the same color.
- Spray apply Fog Coat using a hand pump (low-pressure), compressed air tank sprayer, professional grade (modified) Airless or HVLP Gun sprayer.
- While spraying use a circular motion when using a circular pattern tip, or alternate vertical and horizontal motions when using a fan pattern tip, holding the nozzle 18" from the wall.
- Apply end to end and top to bottom or to a prominent architectural break.
- Two coats are recommended to ensure complete coverage.
- Fog Coat over-spray, drips, or spills should be removed immediately with water, or soap and water to prevent the possibility of permanent staining.

CURING:
- Lightly mist wall with water to dampen 24 hours after application of Fog Coat to assist curing – allow to dry.
- Repeat step one several times. This is essential during dry and/or hot weather.
- Complete curing requires several days, and normal chalkiness will decrease as curing takes place.
- The use of LaHabra Acrylic Bonder as described in the Mixing Instructions will reduce the occurrence of the normal chalkiness. Using the maximum amount of Acrylic Bonder will eliminate the need to moist cure.

Note: LaHabra Fog Coat is designed to revitalize existing stucco colors. To change colors or for application over smooth or unusual surfaces, use LaHabra Allegro II Cement Coating.

LIMITATIONS:
- Use only on approved surfaces that are sound, clean, dry, unpainted and free from any residue which may affect the ability of the Fog Coat to bond to the surface.
- Not for use over Santa Barbara Mission Finish or other high density smooth surfaces.
- Although properly applied Fog Coat can be painted if necessary, it is not to be applied to paint or used as a primer for paint.
- Ambient and surface temperatures must be 40°F (4.4°C) or higher during application and drying time.
- Provide supplemental heat and protection from precipitation as needed.
- Colors may vary due to weather and other job conditions. Before applying Fog Coat, a sample should be applied and allowed to cure for color approval.
- Addition of LaHabra Acrylic Bonder will cause Fog Coat to dry slightly darker.
- Allow Fog Coat to fully cure prior to the application of sealers or water repellents.
- Protect adjacent surfaces from overspray and droppings.
- Fog Coat Coat overspray, drips or spills should be removed immediately with water or soap and water to prevent the possibility of permanent staining.
- Fog Coat is not recommended for spot touch-ups on any material other than Fog Coat.
- Always wear proper safety equipment, including NIOSH particle mask, eye protection, and gloves when mixing and applying this product.
- Parex USA is not responsible for color correctness after coating has been applied.
- See package for handling precautions.

LaHabra®

Benefits of Fog Coat

- Economical way to revive aging stucco
- A fast way to "even-out" color variations
- Easy to apply
- Allows texture to remain the same
- Allows future stucco applications
- Long life – low maintenance
- Can be applied over fresh stucco
- Won't blister or peal like paint
- Vapor permeable- Allows surface to breathe
- No primer necessary
- Flat, non-gloss finish
- Available in all standard LaHabra colors *(custom colors available upon request)*

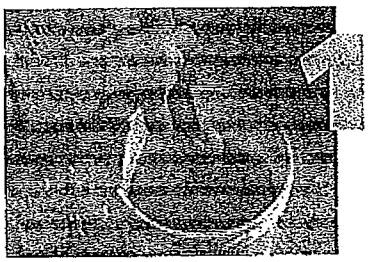
Fog coat definition by the Stucco Manufacturer's Association (SMA): "Fog coat is a cementitious product formulated for use as a spray-applied cement paint to color stucco. The product may be used to even the color of new work or refresh existing stucco."

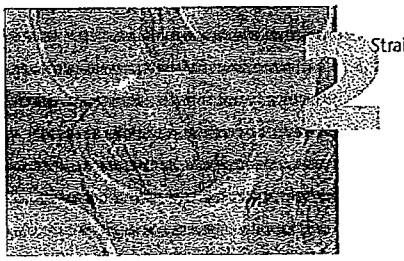
LaHabra Fog Coat is a spray-applied, portland cement coating which cures to become part of the stucco surface to which it is applied. Fog Coat is manufactured to exacting LaHabra standards that are the industry benchmarks of quality, consistency and reliability – the same ones expected from all LaHabra products.

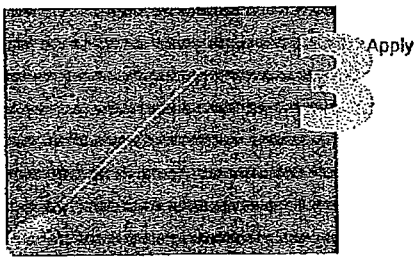
Fog Coat will revive the existing color and natural beauty of stucco. Fog Coat can also be used to eliminate color differences caused by job site conditions like changes in weather or repairs.

Fog Coat is as easy as

1 2 3







Different products for different textures.
Fog Coat DX for float finishes
Fog Coat DXT for machine finishes

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Product Name:

VIP BUTTERING GRADE ELASTOMERIC TER-POLYMER SEALANT, TEXTURED & SMOOTH (VP5100, VP5101)

Product Description

VIP5000 Series Elastomeric Ter-Polymer Sealants are smooth and textured brush and knife grade sealants which can be used to bridge a variety of non-structural cracks in stucco, precast concrete, concrete block, brick, Exterior Insulation and Finish Systems (EIFS), wood and metal.

Basic Uses

Uses: VIP5000 Series Elastomeric Ter-Polymer Sealants can be used to bridge and seal cracks from 1/16" to 1/4". They may be used for interior or exterior applications.

Technical Data

Property	Value		Test Method
	VIP6101	VIP5100	
% Solids by Weight	75.60 ± 2%	71.90 ± 2%	Lab Value
% Solids by Volume	64.25 ± 2%	63.00 ± 2%	Lab Value
Viscosity: cps at 77°F	100,000 ± 5,000	112,000 ± 5,000.	Brookfield (HBT)
Hardness (Shore A)	30	30	ASTM D-22486
% Elongation (To break)	525%	500%	ASTM D-412-75
Adhesion	14 psi 20 psi 100 psi	14 psi 20 psi 100 psi	Glass to Aluminum Aluminum to Aluminum Concrete to Concrete
Extension/ Compression (conducted at 77°)	No Failure (Joint Movement ± 12.5%)	No Failure (Joint Movement ± 12.5%)	Aluminum to Aluminum 40 Cycles @ 25%
Extension/ Compression (conducted at 77°)	No Failure (Joint Movement ± 25%)	No Failure (Joint Movement ± 25%)	Aluminum to Aluminum 20 Cycles @ 50%

Typical product data values should not be used as specifications. Assistance is available by contacting GE Sealants & Adhesives at 1-800-255-8886.

Limitations

- Do not use for structural repairs.
- Do not use below grade or under water.
- Application should be when temperature of air and surface is 50°F. (10°C.) or above in a 24 hour period.
- If rain or threatening weather is expected within 8 hours, delay application until dry conditions exist.
- Allow "new" concrete to cure for 30 days before applying. After 30 days, test for alkali presence. Do not apply if pH is above 10.
- Do not apply if relative humidity is above 90%.
- Do not freeze.

Surface Preparation

All surfaces must be firm and free of dirt, oil, grease, efflorescence, mildew and loose material. Unsound masonry must be wire brushed or blasted for a firm surface. Dirt, loose contaminates and chalk typically are best removed by high pressure chemical and water blasting. Any chalk or porous coating not removed by pressure washing must first be sealed with an alkali resistant surface conditioner such as VIP1200 Surface Conditioner. Prior to applying VIP1200, allow stucco and concrete block mortar to cure 3 days. Poured in-place precast concrete should be allowed to cure 7 days. To remove mildew, scrub with a solution of chlorine bleach and warm water. Rinse thoroughly and allow to dry.

Method of Application

Shrinkage or Hairline Cracks — Apply VIP5000 Series Series Brush Grade generously over the center of the crack; then, using a broad knife or a brush, "feather" the material to either side of the crack so as to go from 1/16" to zero, over a 2-inch area. This gradual reduction in thickness hides the patch, and should allows sufficient thickness of material over the center of the crack to permit the product to perform.

Movement Cracks—Do not attempt to repair cracks caused by structural deficiencies in the building. Non-structural movement cracks can range from 1/32" to in excess of 1/4". Cracks and joints up to 1/16" can be repaired with VIP5000 Series Brush Grade using the same technique as described under shrinkage cracks. Route out cracks larger than 1/6" to 1/4" wide by 1/4" to 1/2" deep. Flush with water. Prime with VIP1200 Surface Conditioners. Insert Bond Breaker Tape. Fill joint completely with VIP5000 Series Knife Grade. Build a small crest to compensate for shrinkage. Allow to cure for a minimum of 24 hours and apply a cap of VIP5000 Series Brush Grade. Refer to diagram details and specification guidelines for application and recommendations.

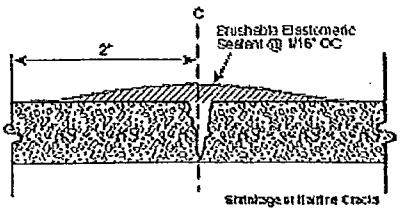
Coverage:

Coverage: Coverage will vary due to texture, porosity and size of the cavity. Allow for application losses. The desired profile and texture and finish will determine application requirements. A test patch is always recommended to determine actual requirements.

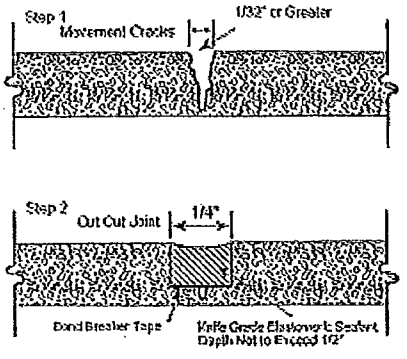
Film Thickness (Wet) Recommended: 62 mils. (1/16")
[For: Seams & Voids]
Drying Time: at 75°F, 50% RH To cure: 24 hours
Packaging: 1-gallon pails, packed 4 per carton, and 5 gallon pails.
Color: White
Texture: Textured (VP5100) or Smooth (VP5101)

DETAILS

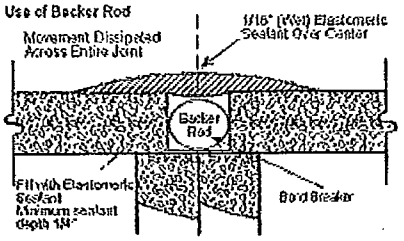
Shrinkage/Hairline Cracks



Non-Structural Cracks - greater than 1/32"



Use of Backer Rod



Note Diagrams are not to scale.

Storage: Store in a cool, dry area, out of direct sunlight between 50°F (10°C) and 80°F (26.6°C). When using, do not store in direct sunlight for prolonged periods. Keep container closed when not in use. KEEP FROM FREEZING. KEEP OUT OF REACH OF CHILDREN.

Clean Up

Clean up equipment immediately after using with warm soap and water.

VIP5000 Series Elastomeric Ter-Polymer Sealants are available in the United States, through distributors. Contact your local distributor or the nearest GE Technical Service Center for cost and availability information.

Handling and Safety

Material Safety Data Sheets (MSDS) are available upon request from GE Sealants and Adhesives (GESA). Similar information for solvents and other chemicals used with GESA products should be obtained from your suppliers. When solvents are used, proper safety precautions must be observed.

Warranty

GE Sealants & Adhesives warrants the performance of this product, provided it is properly stored and applied before the "use before" date shown. If not satisfied, return product and/or proof of purchase to address below and GE Sealants & Adhesives will, at its option, replace or refund the purchase price of this product. GE shall in no event be liable for any other damages in excess of the amount of the purchase price. THIS IS THE SOLE AND EXCLUSIVE REMEDY FOR DEFECTS IN, OR FAILURE OF, THIS PRODUCT, AND THE SOLE AND EXCLUSIVE LIABILITY OF GENERAL ELECTRIC COMPANY THEREFOR. THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Prior to considering use of a GE Sealants & Adhesives product in fulfilling any government requirement, please contact the Government and Trade Compliance Office at 413-448-4624.

LEGAL DISCLAIMER

THE MATERIALS, PRODUCTS AND SERVICES OF GE SILICONES, GE SEALANTS & ADHESIVES, GE BAYER SILICONES, GE TOSHIBA SILICONES, THEIR SUBSIDIARIES OR AFFILIATES (THE "SUPPLIER"), ARE SOLD SUBJECT TO THE SUPPLIER'S STANDARD CONDITIONS OF SALE, WHICH ARE INCLUDED IN APPLICABLE SALES AGREEMENTS, PRINTED ON THE BACK OF ACKNOWLEDGMENTS AND INVOICES, OR AVAILABLE UPON REQUEST. ALTHOUGH THE INFORMATION, RECOMMENDATIONS OR ADVICE CONTAINED HEREIN IS GIVEN IN GOOD FAITH, SUPPLIER MAKES NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, (I) THAT THE RESULTS DESCRIBED HEREIN WILL BE OBTAINED UNDER END-USE CONDITIONS, OR (II) AS TO THE EFFECTIVENESS OR SAFETY OF ANY DESIGN INCORPORATING SUPPLIER'S MATERIALS, PRODUCTS, SERVICES, RECOMMENDATIONS OR ADVICE. NOTHING IN THIS OR ANY OTHER DOCUMENT SHALL ALTER, VARY, SUPERSEDE OR OPERATE AS A WAIVER OF ANY OF THE SUPPLIER'S STANDARD CONDITIONS OF SALE.

Each user bears the full responsibility for making its own determination as to the suitability of Supplier's materials, products, services, recommendations or advice for its own particular purpose. Each user must identify and perform tests and analyses sufficient to assure it that its finished parts will be safe and suitable for use under end-use conditions. Because actual use of products by the user is beyond the control of Supplier, such use is within the exclusive responsibility of the user, and Supplier cannot be held responsible for any loss incurred through incorrect or faulty use of the products. Further, no statement contained herein concerning a possible or suggested use of any material, product, service or design is intended or should be construed to grant any license under any patent or other intellectual property right of Supplier or any of its subsidiaries or affiliated companies, or as a recommendation for the use of such material, product, service or design in the infringement of any patent or other intellectual property right.

VP5100/VP5101 REV1201

Minutes of Annual Meeting
Of
3 Chisolm Street Homeowners Association
March 19, 2002
#305

The meeting was called to order by Pete Wyrick, who explained that the master deed and by-laws set the agenda for tonight's meeting.

Mr.Wyrick stated that a quorum was present.

Since the Association has no minutes of prior meetings in its possession, the first order of business was election of officers.

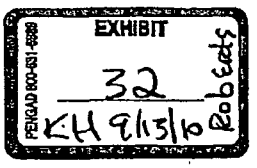
Upon motion duly made and seconded the following members of the Association were unanimously elected Directors:

Jackson Burnett
Angela Halfacre
Frances Hegenberger
Jackalyn Noller
Charles Wyrick

New Business

- Discussion on need for Board to address issue of
  - property management
  - building exterior
  - windows
- Notification of building recognized as National Historic Landmark. Mrs. Wyrick will look into ordering an official plaque.

The meeting was adjourned at 6:30 pm.





CHISOLM001143

Board of Directors Meeting
3 Chisolm Street HOA
May 6, 2003

Members Present
Pete Wyrick, Jackie Noller and Frances Hegenberger

Others Present
Mike Parades

The meeting was called to order at 5:15 p.m.

Minutes of Prior Meetings
Jackie commented she had not received a copy of the minutes. Mike will mail to her.

There being no changes or corrections, motion was made, seconded and passed to approve the minutes of the March 26, 2003 Board meeting minutes as issued.

Old Business
1. Building Report
It was noted the preliminary building inspection report has been received from Myles Glick. The report and accompanying photographs were reviewed. Discussion followed as to the next steps to be taken. It was noted that Mr. Glick only looked at the main building.

Mike discussed the typical sequence of steps that should be followed including:

1. Inspection of the cottage and gym building.
2. Some destructive testing will be needed to document cause of damage and what should be done to correct the problems.

It was agreed that proposals should be solicited from Glick/Boehm and Calibogue Construction for the next phases of investigation. Mike was asked to obtain these proposals for the next Board meeting.

2. Action Items
It was reported that all action items from the previous meeting have been completed or are in process. Mike noted he has received financial information from Great Beach and is in the process of reviewing all activity back to inception of the HOA.

3. Comparison to other regimes
Frances reported she had investigated typical regime fees for other comparable HOAs in downtown. Based on her findings, the monthly fee for 3 Chisolm is reasonable for the services being provided.

3 Chisolm Street HOA
Board Meeting
May 6, 2003

New Business

1. Noise from pets

It was noted that there is an on-going problem with barking pets, particularly in #104. It was agreed that a general letter should be sent to all owners and include a copy of the Rules & Regulations, with emphasis on the section related to pets.

2. Management Report

Mike reported he is in the process of going through the financial information provided by Great Beach. In addition, he has begun meeting with service providers to review their contracts and actual work being performed.

The fire alarm contractor has advised the warranty period has ended and is preparing a maintenance contract for approval. Mike noted that in his discussions with this contractor it has been emphasized that the HOA is not prepared to accept the warranty period is over until it can be shown the alarm system operates properly. This is based on the fact that the systems in both buildings have a history of spurious alarms.

3. Meeting Schedule

Following discussion, it was agreed that the regular monthly Board meeting will be held the second Tuesday of each month at 5:30 p.m. in one of the Board member's home.

There being no further business, the meeting adjourned at 6:15 p.m.

Respectfully submitted by
CCM Management, Inc.

MR Pamela
6/11/03

PLF000904

Board Meeting Minutes
3 Chisolm Street HOA
June 10, 2003

Members Present
Jack Burnett, Pete Wyrick, Frances Hegenberger and Jackie Noller

Others Present
Mike Parades and Piper Pelley

The meeting was called to order at 5:35 p.m.

Mike reported that due to time constraints he has not had a chance to prepare the minutes of the last meeting. With the addition of Piper, this will not happen again.

It was agreed that for future meetings, the minutes of the last meeting and the meeting agenda will be distributed by the Friday before the next meeting.

General Discussion Items

1. Service Contracts

Mike reported he has obtained most of the service contracts and will send a package of these contracts to the Board. Of particular current concern is the contract for Janitorial services. Several complaints have been received regarding this service ranging from not posting signs for wet floors when mopping to unauthorized guests accompanying the contractor.

2. Parking across from buildings

Mike reported he has left a message with Steve Livingston of the City Parks Department. This message is to follow up on a commitment to correct the problems with standing water.

3. Fire Alarm System

Mike reported the problems with the alarm systems continue. Of particular concern was the weekend alarm two weeks ago when he was out of town. Unfortunately, there was a communication breakdown between the owners and CCM. This has been corrected. In addition, a Fire Alarm Procedure has been adopted and will be sent to all owners.

The most recent problem occurred last Wednesday, when the alarm went of three separate times in the Gym building. The last alarm was at 11:30 p.m. Mike came to the site, contacted the contractor who talked him through disabling the alarm.

At this point, the main building alarm went off. Upon his return, Mike reported the alarm was false and had been reported. Subsequently the alarm went off again. Upon the second return, it was reported the alarm had been disabled and the contractor would be at the building tomorrow morning.



PLF000900

4. Unit Water Shutoff

Mike reported that a suspected leak into the first floor hallway by the elevator was investigated. After removal of a section of the ceiling, it was determined the leak is likely an elbow on the water supply to 204. The contractor was unwilling to proceed further without being able to turn off the water to 204. Subsequent investigation indicates there does not appear to be separate shutoffs for each unit. CCM is attempting to obtain building plans to identify if and where the shutoff valves are located. If there are none, the Board will need to consider installation of separate shutoffs.

Mike was also asked to find out if there is a particular code requirement.

5. Proposals

Copies of the proposals from Glick/Boehm and Calibogue Construction related to additional investigation were distributed. Costs associated with proposed work could reach several thousand dollars. Discussion followed and it was agreed that prior to taking this step, the Developer should be contacted one more time in an effort to resolve all problems short of legal action. Mike will incorporate in letter he is planning to write.

6. Dog noise

It was noted that the problem of the barking dog continues in 104. CCM will follow up.

7. Bernstein Request

It was noted that Michael Bernstein has submitted a request to address the air conditioning problems in his unit at his expense. The request and plans have been reviewed by Jack. Jack recommends approval is granted subject to Mr. Bernstein obtaining all other appropriate approvals. **Motion** was made, seconded and passed approving the request. CCM to so advise Mr. Bernstein.

8. Financial Report

Mike reported that a review of financial activity has been completed. Based on this review, there is approximately $35,000 owed to the HOA by either Great Beach, who overpaid their management fee or the Developer for past due assessments, expenses paid by the HOA and not charged back and incorrect offset of insurance costs.

As a result of the above, there are insufficient funds to pay all bills. Compounding the cash flow problem is the fact that several owners' assessments were prepaid for one year by the developer and this cash has been spent.

Letters are being prepared to Great Beach and the developer requesting reimbursement ASAP. These letters will be mailed this week.

3 Chisolm Street HOA
Board Meeting
June 10, 2003

ACTION ITEM LIST

1. Letter to David Perdue
2. Letter to Hal Ravenel
3. Owner Newsletter
4. Prepare Board minutes and distribute
5. Prepare and deliver package of service contracts to the Board
6. Follow up with City Parks re: parking by Horse Lot
7. Investigate water shut off
   a) Code violation?
   b) Where are the shutoffs?
8. Approval letter to Bernstein

There being no further business, the meeting adjourned at 7 p.m.

Respectfully submitted by
CCM Management, Inc.

M R Paredes
6/11/03

PLF000902

3 Chisolm Street
Annual Meeting
February 2, 2004

Members Present
Kent Scott (102), Charles Wyrick (201), Brent Pace (205), Layton McCurdy (301), Ada Quattrocchi (302), Darlene Shaw and George Cogar (304), Jack Burnett (305) and Laura Radley (G-106).

Others Present
Howell Morrison, Mike Parades and Piper Pelley.

The meeting was called to order at 5:05 p.m.

Proof of Notice and Certification of Quorum
Mike Parades reported the meeting notice was mailed to all owners of record. He further reported that eight (8) owners were present and proxies have been received from eleven (11) owners. A quorum is present.

Minutes of Prior Meeting
MOTION was made to waive the reading of the minutes from the March 26, 2003 Annual Meeting. The motion was seconded and passed without objection.

Managers Report
Mike Parades gave an introduction of CCM Management, Inc and Community Association Institute. He briefly talked about the new janitorial service; WW&C Industrial, the new bike racks and where they will be located, the consideration of installing carpet runners, the Rules and Regulations and the newly revised Amendments.

Election of Directors
Mike Parades reported that the terms of Jackie Noller and Angela Halfacre expire with this meeting. The floor was open for nominations. Laura Radley and George Cogar were nominated. There being no further nominations, **MOTION** was made, seconded and passed to elect Laura Radley and George Cogar.

General Discussion
Mike Parades talked about the homeowner's individual HO6 insurance policies and what they should include when purchasing.

Mike Parades stated that CCM will send out an insurance summary to all homeowners.

Mike Parades suggested, for further understanding and knowledge, everyone should read their Master Deed and paperwork that they signed at closing.

There being no further business, the meeting adjourned at 5:30 p.m

Respectfully submitted by
CCM Management, Inc.
Piper J. Pelley

PLF000918

3 Chisolm Street Owners Association
Board Meeting
September 29, 2004

Members Present
Jack Burnett, Pete Wyrick, Laura Radley and George Cogar

Others Present
Mike Parades

The meeting was called to order at 5:30 pm.

Minutes of Prior Meetings
It was noted the minutes of the 4/27/04 and 6/16/04 meetings had been previously distributed. There being no changes or corrections, **motion** was made, seconded and passed to approve the minutes as issued.

Financial Report
It was noted the financial statements for the month ended 8/31/04 had been previously distributed. Mike reported operating expenses are consistent with budget. It was noted two owners are delinquent. CCM to follow up in accordance with standard policy.

Mike reported that he plans to have the proposed budget for 2005 distributed to the Board for review and approval by 10/31/04.

Manager's Report
Mike reported that there was very little damage due to the hurricanes in August. Damage consisted primarily of some trees being blown over. These trees have been reset and staked. He further noted that due to the growth of the trees, a contractor was hired to prune them.

Mike reported that there were some leaks reported as a result of the hurricanes. A roofing contractor was engaged and a complete inspection done. Numerous deficiencies in the installation of the roof were identified that it is believed are the cause of the leaks. The roofer is in the process of correcting the deficiencies and the cost will be billed back to the Developer.

As will be discussed later, the Developer did not respond to the demand letter. The roofing contractor has suggested a method of correcting the deficient installation of the A/C units on the roof. The suggestion is being reviewed by Myles Glick. The cost associated with the correction of the deficient installation will be billed back to the Developer.



PLF000883

Mike reported that the window screens were incorrectly made. None of the screens on hand fit any windows. Following discussion, it was agreed the general contractor should be contacted for the name of the sub-contractor who provided the screens in order to have them replaced with screens that fit. Any cost will be billed back to the Developer.

Mike reported several complaints have been received regarding pigeons in the garage soiling cars. In addition, concerns have been expressed about security in the garage. In response to the complaints, a proposal has been received to install discrete screening and a gate on the pedestrian entrance. Total cost for both would be approximately $5,000.

In addition, the auto gate is frequently left open because owners are not shutting the gate after entering or leaving. A solution is to change the operator system such that it automatically closes the door after a set time period. There would be a safety device using an infrared beam that would reopen the gate during the close cycle if a pedestrian or vehicle was going through the gate. Estimated cost to install is approximately $1,000.

Following discussion, **motion** was made, seconded and passed to install screening, pedestrian gate and automate the vehicle gate during the first quarter of 2005, with the associated cost included in the budget for 2005.

Mike reported that #202 has been sold for $680,000 and #204 has been sold for $649,000. The cottage has been placed on the market for $525,000. It was noted that the regime has a right of first refusal on all resales. Suggestion was made that the Board may want to consider exercising its right with respect to the cottage as there are several possible uses that could be made. Decision was deferred at this time.

Discussion followed regarding "For Sale" signage. All agreed that "For Sale" signs detract from the overall appearance of the community. The current rules and regulations only prohibit "For Sale" signs in windows of units. **Motion** was made, seconded and passed to amend the Rules & Regulations to prohibit all signs of any type.

Old Business

Mike reported that a demand letter was sent to the Developer related to various deficiencies. Legal counsel has advised that no response has been received. As reported earlier, action has been initiated to correct the deficiencies with the cost to be billed back to the Developer. Should he refuse to pay, the Board can then make the decision of what legal action to take?

As part of the action to correct deficiencies, Carolina Concrete Systems has been engaged to conduct a complete inspection of the exterior of all buildings, provide a report of work that needs to be done with an estimated cost. This report should be ready in approximately one week.

PLF000884

3 Chisolm Street Owners Association
Board Meeting
September 29, 2004

Mike reported that the City was contacted regarding changing the street address of the Gym building. The City advised the street address could not be changed. There continue to be instances where contractors, police, service personnel and others go to the wrong buildings. Because of the continuing problem, the City is going to be contacted again with the approach being if the City is not willing to change the street address, they will be asked to accept responsibility for consequences that may result from emergency personnel not being able to find the right address.

Mike reported that a listing of unauthorized items in the common areas was prepared. For the most part, the items relate to door hardware, mats and some other miscellaneous items. At issue is how aggressive does the Board want to be on enforcing items in common areas. Following discussion, it was agreed to defer action to the next meeting when all Board members are present.

The next meeting was scheduled for Wednesday, November 10th at 5:30 pm at Jack's unit.

There being no further business, the meeting adjourned at 6:45 pm.

Respectfully submitted by
CCM Management, Inc.
MR Pandis, 9/30/04

Action Items

1. Complete Roof repairs
2. Obtain and distribute building exterior inspection report.
3. Draft budget for 2005 to Board by 10/31/04.
4. Contact Genoa regarding window screens.
5. Continue efforts with City to change street address for the Gym building.
6. Owner letter advising of Rules change regarding signs and reminder to close garage gate.
7. Get door handle repaired for door by 101.
8. Find out who bought store rooms in Gym building (copy of deeds)

PLF000885

Chisolm Street
Board Meeting
February 6, 2006

Members Present
Jack Burnett, Linda Austin, Connie Wyrick and Gwen McCurdy

Others Present
Mike Parades and Courtney Parades

The meeting was called to order at 7:05 pm.

Approval of the Minutes
Motion was made, seconded and passed to approve the October 2005 minutes as issued.

Election of Officers
Motion was made, seconded and passed to elect Jack as President. **Motion** was made, seconded and passed to elect Connie as Vice President. **Motion** was made, seconded and passed to appoint Mike as the association's secretary/treasurer.

Old Business
Jack reported he spoke with Joe Dapore, the association's lawyer, and he said that they had until April 2006 to take action against Purdue, the developer. Mike suggested using diplomacy rather than a lawsuit. A lawsuit will probably not be worth the money it would require. Mike will talk to Purdue again about getting the Gym roof warranty signed over to the association.

Jack would like to increase communications with owners as it pertains to action being taken in response to problems that have been reported. Mike said that someone in the association should update the website frequently so people want to look at it. Sentry Management does not provide one. Each association will have to decide if it wants one.

The Board is considering changing the building entrance codes. They are considering having one code for all owners that can be changed quarterly. This issue is tabled until the next meeting.

The hedges are growing, but are still not up to the agreed upon height. The pigeon problem has lessened, so the Board deferred any further action at this time.

There are 5 or 6 people who are not on the master key. Courtney is going to schedule Jantzen to come and change their locks so that the master will work. She will notify the owners first.

Chisolm Street Board Meeting
February 6, 20066

Mike met with the Coast Guard about their lights and night noise. It has been better since. The corner house dogs are still really loud. Mike suggested City Livability Court.

Courtney will email the deviation and policy change log to the Board. Mike will distribute the emergency plan in about a month.

Gwen is going to be the Board liaison for the new building and grounds committee. The committee is going to look into the problem of the bright light on the gym and review the grounds proposal from The Greenery. The Board members were all given copies of Caroline McMillan letter regarding the light issue.

Connie suggested that the Regime keep ownership of the storage closets. There is very little common area space in the building, and the Regime may need them in the future for something like generators.

There being no further business, the meeting adjourned at 7:45 pm.

Respectfully submitted by
Sentry Management, Inc.

Courtney Paradis



GENOA

Facsimile
Cover Sheet

To: Don Ford

Company: Lesco

Fax no. 843-571-4141

Date: June 11, 2003

Re: Window Leak Repairs

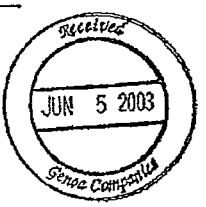
Number of pages including cover sheet 2

From: Clay Martin

Message:

1100 Circle 75 Parkway, Suite 760, Atlanta, Georgia 30339 770-984-2337 Office 770-984-2378 Fax

GN005234



WINDOW LEAK REPAIRS

SHORT TERM REPAIRS:

1. Clean existing sealants from window frames and sills.
2. Clean existing sealants from mortar in vicinity of returns at windows.
3. Remove loose mortar in sill stones.
4. Remove loose plaster adjacent to windows; grout to a smooth surface.
5. Route out cracks in window returns, and at all sill stone-to-jamb joints.
6. Apply Dow Corning 1200 Primer to all prepared joints and routed cracks.
7. Apply Dow Corning 795 Silicone Sealant in all prepared and primed joints. Joints should extend out of returns to edge of wall. Color of sealant to be selected by Owner and/or Architect.

LONG TERM REPAIRS:

1. Apply a coating, Monolastic SE by Liquid Plastics, to the exterior walls and repaired returns around windows after the repairs detailed above have been completed.
2. The recommendations for the primer and sealant must be changed to polyurethane sealants, such as Sikaflex – 1a. The Monolastic SE will not adhere to a silicone sealant. If the decision to perform short term repairs for immediate relief, with the intention to apply the coating in the future for a long-term solution, then the polyurethane sealant should be used in the Short Term Repairs.

GN005235

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	3417
CONNECTION TEL	18435714141
SUBADDRESS	
CONNECTION ID	
ST. TIME	06/12 10:37
USAGE T	00'35
PGS. SENT	2
RESULT	OK

GENOA

Facsimile
Cover Sheet

To: Don Ford

Company: Lesco

Fax no. 843-571-4141

Date: June 11, 2003

Re: Window Leak Repairs

Number of pages including cover sheet 2

From: Clay Martin

Message:

GN005236

ccm
MANAGEMENT, INC. AAMC®

June 12, 2003

David Perdue
Chisolm Street Partners
434 Marietta St., NW, Ste 204
Atlanta, Ga. 30313

CERTIFIED, RETURN RECEIPT REQUESTED

Re: 3 Chisolm Street HOA

Dear David:

As you know, my company was engaged by the Board of Directors as the permanent management company effective May 1, 2003. During this first month, we have been busy with the transition from the previous management company. As part of this transition, I have completed a review of all recorded financial activity since the HOA's inception. Of great concern to both the Board and myself is the lack of funds available for payment of HOA expenses.

My financial review has revealed the reason for the lack of funds is the fact that HOA funds were used to pay expenses that should have been paid by the Developer and the need to bring the individual developer assessments current. The following table, which assumes the HOA starts paying operating expenses when owners start paying assessments (August 2002), summarizes the amounts due from the Developer:

2002 Expenses Paid by HOA and due from Developer		
May 2002 bills paid by HOA		$ 2,998.00
June 2002 bills paid by HOA		2,303.00
July 2002 bills paid by HOA		2,457.00
August 2002 bills paid by HOA:		
CPW for July	$ 425.23	
East Coast Pest for July	75.00	
D.Kennedy-relabel parking	250.00	
Greenery for June	856.00	
SCE&G-July Developer units	1,952.20	3,558.43
September 2002 bills paid by HOA:		
Great Beach-January 02 Management	$1,000.00	
Great Beach-February 02 Management	1,000.00	
Great Beach-Overpayment Sept 02	1,000.00	
SCE&G-Developer units	3,043.39	
SCE&G-house meters June/July	2,490.51	8,533.90
October 2002 bills paid by HOA:		
AT&T-construction office long distance	$ 115.14	
Maintain, Inc-repairs Developer units	598.68	
Great Beach-overpayment for Oct 02	1,000.00	1,713.82
November 2002 bills paid by HOA:		
SCE&G-Developer units	$ 259.37	
Maintain, Inc.-repairs Developer units	89.00	348.37
December 2002 bills paid by HOA:		
Jantzen Lock-repairs Developer units	$ 85.00	
Maintain, Inc.-repairs Developer units	1,323.17	1,408.17
Total bills paid by HOA for Developer		$23,320.69

EXHIBIT 16

P.O. Box 12710 • Charleston, SC 29422-2710
843-795-0190 • Fax 843-795-0191 • Website: ccmmgt.com

354 Folly Rd. #5

Perdue
June 12, 2003

2003 Expenses Paid by HOA-Due from Developer	
SCE&G-December 02 Developer Units	$ 374.07
SCE&G-January 03 Developer Units	781.75
SCE&G-February 03 Developer Units	762.92
SCE&G-March/April 03 Developer Units	1,606.59
Maintain, Inc.-January repairs Developer Units	500.13
Maintain Inc.-February repairs Developer Units	945.49
Maintain Inc.-March repairs Developer Units	2,262.65
Maintain Inc.-April repairs Developer Units	972.20
Maintain Inc.-Hydrostop Roof leaks	1,776.68
Maintain Inc.-Install humidifiers 102/103/105/106	825.00
Total bills paid by HOA for Developer	$10,807.08

NOTE: The above items are based on review of invoices paid

Also enclosed with this letter are invoices received by our office from SCE&G and Maintain, Inc. that should be paid by your office as they relate to Developer owned units.

Another part of my financial review was the reconciliation of assessments due from you for the Developer owned units. Again, this is based on assessments beginning in August 2002. I reviewed the schedule you had prepared and sent to Regina Condy 4/14/03 in relation to the individual account histories prepared by Great Beach. The following table summarizes this review:

Assessments due from Developer (from schedule you prepared)	$76,230.00
Adjustments needed:	
Unit 101, add 2 months (Nov/Dec 02)	1,210.00
Unit 201, add 8 months (Aug 02 to Mar 03)	4,840.00
Unit 207, add 1 month (Aug 02)	605.00
Unit 303, add 1 month (Aug 02)	605.00
Unit 304, add 1 month (Dec 02)	605.00
Unit G102, deduct 1 month (Sept 02)	(605.00)
Unit G103, add 1 month (Dec02)	605.00
Adjusted assessments due from Developer	$84,095.00
Credit for insurance paid by Developer for August 02 to 4/30/03	(59,312.94)
Adjusted assessments due from Developer	$24,782.06
Payment by Developer 4/17/03, check #1137	(16,917.00)
Balance still due for August 2002 through April 2003	$ 7,865.06
Assessments for May and June 2003, statements enclosed	$14,520.00

Thus, the total due from Developer is summarized as follows:

Expenses paid by HOA for Developer 2002	$23,320.69
Expenses paid by HOA for Developer 2003	10,807.08
Assessments due for August 2002 through April 2003	7,865.06
Assessment for May & June 2003	14,520.00
Total Due	$56,512.83

CHISOLM001245

Perdue
June 12, 2003

As you can see, there is a reason why the HOA is short of cash. Your prompt remittance of the amounts due will allow us to make payment of a number of past due bills as well as bills coming due such as the insurance payment. I have enclosed a return envelope for your convenience.

In addition to my review of the financial condition of the HOA, I have conducted an inspection of the buildings in order to become more acquainted with the various spaces and learn where important components are located. During this inspection, I noted that the room in the Gym building that was apparently used by Genoa as a construction office is an accident waiting to happen. The room is filled with cans and materials of all types and in my opinion represents a fire hazard. I would appreciate your contacting Genoa and asking them to clean up the materials.

Related to my inspection, a question has arisen as to how to shut off water to individual units. I can not locate a shut off valve. There were no plans for the building turned over from Great Beach. Plans are an important part of the HOA's on-going maintenance needs. As such, I would appreciate your providing a complete set of plans, which will be added to the HOA's records and hopefully will show me where the individual unit water shut off valves are located.

Finally, as part of my review/transition process, I have been made aware of certain construction issues that remain unresolved. As you no doubt know, these issues are of great concern to the present owners and would be of concern to potential buyers of the units you still have for sale. I have been advised you recently had a contractor on site conducting water tests and caulking. I would appreciate your letting me know of any future activities of this type as well as receiving a copy of the results of the water testing.

It would be in the best interest of the HOA (of which you have a large stake as the owner of 12 units) and you in your capacity as the Developer to have these matters resolved without legal action. Having been through 10 construction defect lawsuits, I can tell you it is expensive and time consuming. If the HOA has to pursue legal action to remedy the construction issues, there will have to be a special assessment to provide the necessary funding. As the owner of 12 units, you would have to not only fund your share but also bear all the risks and costs as the Developer.

In conclusion, we are excited about the opportunity to serve the HOA and I look forward to meeting you on your next visit to Charleston. Please feel free to contact me if you have any questions.

Yours truly,

Michael R. Parades, PCAM, CPA
Management Agent

Enclosures

Cc: Board of Directors

Griffin Cochrane & Marshall
A Professional Corporation

127 Peachtree Street, 14th Floor
Atlanta, Georgia 30303-1810
Telephone (404) 523-2000
Fax (404) 523-9655

Joshua J. Kohner
Direct Dial: 404-222-4353
Fax: 404-739-0006
E-Mail: JJKohner@gcm-atty.com

July 22, 2003

Via Facsimile: 404-237-1659
and U.S. Mail

Kevin H. Hudson, Esquire
Foltz, Martin, LLC
Five Piedmont Center
Suite 750
Atlanta, Georgia 30305-1541

Re: No. 3 Chisholm Street Condominiums (the "Project")

Dear Mr. Hudson:

This letter responds to your letter of June 19, 2003. Thank you for allowing Genoa additional time to respond to your client's demands.

You have not responded to Henry Parkman's letter of June 26, 2003, which requested a copy of the punchlist made a part of the settlement agreement. We will respond to the punchlist that Genoa understands is the operative document.

Genoa has honored its obligations pursuant to the parties' agreement. Virtually all of the punchlist items are complete. The only remaining items relate to Unit 201 and Unit 303, and these issues are now in the process of being resolved. Mr. Walter Adams of Genoa has been on site at the Project for the past several weeks to ensure that these minor remaining punchlist items are complete. The Lowcountry Home Inspection reports, attached as Exhibit 2 to your letter of June 19, are not the "final punchlist." The Owner entered into a separate agreement with Genoa to repair/replace some of the items listed in these reports for approximately $52,000. Of this amount, your client owes approximately $30,000 to Genoa.

The parties agreed to hire an outside party to evaluate the Project. Williamson and Associates, Inc. was retained to provide this analysis. The Williamson Report attached as Exhibit 3 to your letter of June 19 does not cite defective installation. Please note however, that it does recognize defective design issues. Rather than engaging in a discussion of our interpretation of the Williamson Report, I will address each specific recommendation in turn.

(1). *Cut out perimeter sealants around window cited as leaking. This would include repair materials applied to additional joints at the still and jambs.*

GN004552

Lesco Restorations, the Owner's waterproofing restoration subcontractor, is working with Genoa to complete these repairs. The work is still in progress and should be complete within weeks.

(2). *Remove damaged stucco, repair areas for receipt of sealant joint. Seal mortar joints in sill stones with Dow Corning 795 silicone sealant after cutting mortar 1/2 inch.*

This work is not in Genoa's contract scope; however, Genoa will complete these repairs as a gesture of good will.

(3). *Re-seal perimeter joints with Dow Corning 795 silicone sealant after stucco has been completely repaired.*

Genoa has completed the repairs for this item.

(4). *Install sheet metal drip edge in the return of each window where water flows to the window from the wall sections above. Set in full bed of Dow Corning's 795 silicone sealant, and mechanically attach.*

This is a design issue, and is not in the scope of Genoa's contract. During a subsequent meeting to discuss the Williamson Report, which was attended by all parties, the Architect stated that this recommendation was not necessary. Additionally, the Owner has never instructed Genoa to provide sheet metal drip edges.

(5). *Apply surface coating of a waterproofing material over the stucco that would comply with the architectural requirements of Charleston, if this is possible. Cracks are inevitable on this stucco exterior assembly. W&A believes that a coating will be required, as will soft joint repair to the stucco to mitigate water penetration.*

This recommendation calls for work that is not within the scope of Genoa's contract. Further, Genoa has never been instructed to make such repairs.

(6). *The scuppers as designed and installed do not allow for subsurface drainage of the patios. There is not waterproof (sealant) seal between stucco/scupper/tile. This needs to be revisited in general design prior to our recommendations.*

This problem is clearly a design issue, and Genoa has not been instructed to make such repairs.

(7). *Have the window manufacturer/installer address the weather stripping and water diverters to insure that air and water infiltration is minimized at the operable windows.*

GN004553

Genoa contacted the manufacturer regarding this issue, and it is in the process of being resolved. The weather stripping has arrived and is being installed by Lesco.

Also, in your letter of June 19, you claim that many of the problems faced by the Owner are due to the defective installation of windows. The assertion that the windows were installed backwards is incorrect. Charleston Glass did not defectively install the windows. If the windows were incorrectly installed, that issue would have been addressed in the Williamson Report.

In addition to your letter of June 19, 2003, David Perdue sent Genoa the memorandum attached hereto as Exhibit "A." Since that time, Walter Adams has been on site to oversee the resolution of these issues. However, in an effort to clarify any disagreement between the parties, I address each of Mr. Perdue's concerns.

(1). *Numerous ongoing window issues that include to both manufacturer and contractor issues. Many areas of leaking occur in operable sections and areas of new construction such as the sunroom at Unit #201.*

On June 24, 2003, Walter Adams, Don Ford of Lesco Restorations and Mr. Pete Wyrick met to resolve the problems in Unit 201. All such problems have either been resolved or are currently being worked out.

(2). *The double front doors at Unit #303 need to be replaced with doors that are consistent in quality, appearance and operation as the other doors within the main school building. We closed the sale of that unit on August 8, 2002 and agreed to escrow $2,500 to ensure the replacement of the doors by December 2002. We have released the escrowed funds to the owner of #303 and promised the doors in addition as a gesture of goodwill in recognition of their patience. We will expect full reimbursement from Genoa of the $2,500 as well as the new doors.*

Genoa has ordered the door for Ms. Susan Taylor-Wall in Unit 303. Once the door is available, it will be correctly installed.

(3). *There is a continuing leak in the study bath ceiling of Unit #101.*

Walter Adams inspected Mrs. Stover's home (Unit 101) and saw no evidence of water infiltration. Because Mrs. Stover was not home, Mr. Adams met with and was given permission to inspect the property by Mrs. Stover's housekeeper. If Mrs. Stover continues to have problems in her unit, please contact Genoa to discuss possible resolutions.

(4). *Any other items listed in the Punch list dated November 30, 2002.*

See above.

(5). *We are still waiting on the "Close Out Book" with information on warranties and other vital information.*

Genoa will deliver the "closeout book" to the Owner within five business days of this letter.

As explained above, all of the remaining items within Genoa's scope of work have been completed or are in the process of being resolved. Throughout the past year Genoa has worked above and beyond its contractual obligations on the Project, and more importantly, it has done so in a good faith effort to satisfy the residents of No. 3 Chisholm Street.

Please identify any incomplete "final punchlist" items. Genoa is willing to complete any legitimate items. Your client has obligations to pay Genoa pursuant to the settlement agreement. Genoa expects your client to satisfy its payment obligation to Genoa.

Please feel free to call me if you have any questions, or would like to discuss this matter further.

Sincerely,

GRIFFIN COCHRANE & MARSHALL
A Professional Corporation

Joshua J. Kohner

JJK/bb

cc: Mr. Ray Moses
Mr. Clay Martin
W. Henry Parkman, Esquire
Mr. Jack Wilcox
Mr. David Perdue

jjk/\\bb\mydocs\genoa\l-kevin hudson 07-16-03.doc

Mike Parades

From: "Mike Parades" <mike@ccmmgt.com>
To: "David Perdue" <dlperdue@mindspring.com>
Cc: "Angela Halfacre" <halfacreA@cofc.edu>; "Frances Hegenberger" <fheg@comcast.net>; <cherleswyrick@bellsouth.net>; "jack burnett" <jackburnett@comcast.net>; "Jackie Noller" <jnoller@attglobal.net>
Sent: Friday, October 24, 2003 7:30 AM
Attach: Photo001.bmp; Photo002.bmp; Photo004.bmp; Photo005.bmp; Photo007.bmp; Photo008.bmp; Photo009.bmp; Photo010.bmp; Photo011.bmp; Photo012.bmp; Photo013.bmp
Subject: Open Issues

David

As a follow up on our various conversations, I would like to summarize what I believe to be the outstanding issues as follows:

Water Intrusion
You have advised me that all known window leaks have been addressed. I recently reported to Tim Woods that a window in 207 is leaking. **Please provide a summary of all reported leaks and the action taken.**

The report from Glick/Boehm noted the strong potential that roof parapets were leaking. I have personally observed a number of extremely large open cracks in both the parapet cap and face of stucco. I noted that at some point in the past, a number of other cracks have been caulked. **Please advise if the caulking is intended to be the permanent solution.**

Interior Floors
You advised me that with regard to first floor wood floors, the Developer gave an allowance to buyers to install floor systems and that any problem with moisture is between the buyer and the contractor the buyer selected to install the wood floors.

Mechanical Systems
You advised me that with respect to sizing of HVAC systems, you are dealing directly with those owners who have problems.

With respect to the compressor units on the roof, I advised you they are not installed in accordance with code, as they are not permanently attached to the roof. You told me you would investigate. To date, nothing has been done. Attached to this email are pictures I recently took that show the compressors are not attached. I could lift the units and slip a coke can under the wood members.

Please advise when this problem will be corrected.

Exterior Stucco System
As noted previously, there a numerous cracks in the exterior stucco system that will lead to water intrusion. The report from Glick/Boehm also noted other problems that must be corrected. **Please advise when these problems will be corrected.**

Roof Condition
There are a number of concerns about the general condition of the roof. You advised me that it is under warranty and you would send me a copy of the warranty. To date, I have not received the warranty. **Please send it to me.**

Payment of Accounts
During one of our conversations, we discussed the issue of unit 201, who were told they did not have to pay assessments for a period of time until their punch list was cleared. Accordingly, you should pay the assessments for that period of time. You stated you would research the matter. **Please advise me of the status of this issue.**

EXHIBIT 17 tabbies

10/24/2003

As was reflected on the statements mailed to you the 1st of October, your accounts are behind. Have you forwarded a check to bring them current?

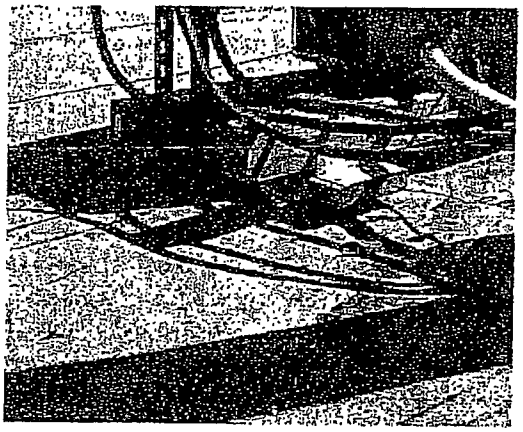
In summary, it is the Board's position that these issues need to be resolved in the near future. Accordingly, if all issues are not resolved by November 30, 2003, the Board intends to take appropriate action to bring them to a resolution.

Please provide a written response that can be shared with the Board.

Yours truly,

Mike Parades, PCAM, CPA
Management Agent

Pictures attached to this email



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August 2, 2004

David Perdue
Chisholm Street Partners, LLC
P.O. Box 518
Somerset, Virginia 22972

Re: Three Chisolm Street – Demand Letter
YCRT File: 11246-20022677

Dear David:

The current owners of three Chisolm Street, through their attorneys, assert there are multiple construction defects in the above referenced property. A description of each of these claims and a description of any results of these defects, if known, follows:

1) The HVAC units located on the roof are sitting on 4x4 members and are not tied down to the roof. This construction defect is a deficiency arising out of the construction of this dwelling, and it is in violation of the applicable codes in effect at the time of the residential improvements. Specifically, the HVAC units are in violation of the 1997 Standard Building Code that requires these compressors to be tied to their supports, which then need to be tied to the roof. Should these compressors be relocated by high winds then we will hold you strictly liable for any resulting damage.

2) The additional walls built at the rear of the courtyard of the main building are showing cracks. These walls appear to be metal studs with a three-coat masonry stucco finish. The intersections of the metal stud walls with the original masonry building are cracking because of construction defects associated with the installation of the three-coat masonry system. This construction defect is a deficiency arising out of the construction of this dwelling, and it is in violation of the applicable codes in effect at the time of the residential improvements. This defect will allow water to enter the building envelope and cause damage. Should any water intrusion occur we will hold you strictly liable for the resulting damage.

3) The lines running from the HVAC units down the sides of the building were to be "boxed out" and finished with stucco. Currently the lines are visible and not behind the necessary cover. This construction defect needs to be cured.

You have 45 days from the date of this letter to cure these defects. Should the above listed defects not be cured within this 45 day time period, then we will pursue all legal avenues to ensure proper resolution of these issues.

Should any damage occur because of these defects, then we will hold you strictly liable. This may not be a complete and accurate list of all the construction defects at three Chisholm Street, so we reserve the right to amend or add any claim that may be discovered and is not listed above.

With kindest regards, I am

Sincerely,

YOUNG, CLEMENT, RIVERS, LLP

Joseph E. DaPore

cc: Mike Parades – CCM Management, Inc.
Howell Morrison – Attorney for Chisolm Street Partners, LLC

CHISOLM002734

Caulking Quotes

3 CHI ST BLDG.

CAROLINA CONCRETE SYSTEMS, INC.

PROPOSAL

12/29/04

CCM MANAGEMENT
354 FOLLY RAOD
CHARLESTON, S.C 29412

ATTENTION: MIKE PARADES

SUBJECT: 3 CHISLOM STREET CONDOMINIUMS.

I appreciate the opportunity you have given me to provide you with a proposal concrete repair, parapet cap repairs, recaulking all windows and doors, repairing up to 2000 s.f. of stucco, patching all cracks and installing 2 coats of acrolastic elastomeric coating. Our proposal includes supervision, labor, equipment and material unless otherwise specified, to complete the project as described in our scope of work.

Scope of Work

We will mobilize to the site and begin preparation by repairing all cracks and disbonded stucco and tuck pointing joints on the parapet cap that are cracked. We will then clean the entire exterior surface of the building by hydro blasting to remove any loose paint and to clean the wall. After all repairs and cleaning have been completed, we will coat the exterior of the building with 2 coats of elastomeric coating. We will install backer rod and Dow 790 caulk around all exterior windows and doors. We will clean & pressure wash the caretakers house, tuck point and backer rod & caulk all doors and windows. We will then apply a clear sealer on the brick.

Basis of Proposal

1. This proposal does not include licenses are permits or any special requirement by The City of Charleston Historical or ARB.
2. Trash bin for disposal of debris from preparation and bags will be provided by others.
3. Electricity and potable water will be provided by others.

PLF000383

4. We will be allowed to work during daylight and evening hours to perform task.
5. We will have clear and free access to the work site at all times.
6. This proposal will become a part of the contract that shall be written on an AIA Subcontract with verbiage agreeable to both parties.

Payment

Payment will be in the amount of **$93,750.00** painting the building and **$75,000.00** stucco repairs, patching concrete removal and replacement of caulk at all windows and doors using Dow 790 caulk for 3 Chisolm Street. Payment for the work performed on the caretakers' home will be in the amount of **$21,000.00.** Payment will be due within 15 days of receipt of invoice.

Mike, I look forward to having the opportunity to working with you on this project, and if you have any questions, please don't hesitate to call me.

Sincerely

Bob

Bob Wiggins

CAROLINA CONCRETE SYSTEMS INC.

843-588-6721 FAX 843-588-6722

P.O. BOX 13149, CHARLESTON, S.C. 29422

PLF000384

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 27, 2013

David J. Parrish
NEXSEN PRUET, LLC
P.O. Box 486
Charleston, SC 29402
(843) 720-1771
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the Court of Common Pleas
For Charleston County
Honorable Roger M. Young, Circuit Judge
Civil Action No.: 2009-CP-10-267

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3 Chisolm Street Homeowners Association, Inc., Plaintiff-Appellant,

v.

Chisolm Street Partners, LLC, Murray School Partners, LLC, Genoa Construction Services, Inc., Masterpiece Millwork, Inc., Allen Roper, Jr. d/b/a Masonry Brickwork and Stucco, John Doe #1, John Doe #2, and Brock Green Architects and Planners, LLC, Defendants

Of whom Genoa Construction Services, Inc., Masterpiece Millwork, Inc., and Brock Green Architects and Planners, LLC, are the Respondents.

Genoa Construction Services, Inc., Third-Party Plaintiff,

v.

The Fox Steel Company, Carolina Services, Inc., Lesco Restoration, Inc., Ferst Plastering, Inc., Charleston Glass & Mirror Company, 3d Renovations, Williams Mechanical, Mastercraft Interior & Exterior, Coastal Glass and Block, Adams Davis & Partners, and Troy Pardee Heating and Air Conditioning (d/b/a Pardee Heating and Air), CT Windows Limited, and Architectural Materials & Systems,

Third-Party Defendants,

Lesco Restoration, Inc., Fourth-Party Plaintiff,

v.

Coastal Waterproofing, Inc. n/d/b/a Wards Waterproofing, Inc.,

Fourth-Party Defendants.

Proof Of Service for the
RECORD ON APPEAL
VOLUMES I and II

RECEIVED
JUL 01 2013
SC Court of Appeals

I, hereby certify that on June 28, 2013, I served one copy each of the ***Record on Appeal (Volumes I and II)*** on counsel for the parties of record in this case via United States Mail, postage pre- paid, as addressed shown below or via hand delivery.

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