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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price

Case No. 2015-CP-07-02047

Appellant Case No. 2023-000222

James R. Brady……..……..……..…..……...Respondent.

v.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company, LLC,
Lancaster Redevelopment Corp. and
Gary Grossman …….....Appellants.

SECOND AMENDED RECORD ON APPEAL
VOLUME I OF II

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 **CP-**07-02047

James R. Brady,	Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; Lancaster Redevelopment Corp.; and Gary L. Grossman
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: Charles W. Thomson	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant Gary L. Grossman's Motion for Judgment Notwithstanding the Verdict, filed on September 7, 2022 and heard on November 2, 2022, is respectfully DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

ELECTRONICALLY FILED - 2023 Jan 13 4:19 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	CLERK OF COURT

Court Reporter:

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

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

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

ELECTRONICALLY FILED - 2023 Jan 13 4:19 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

ELECTRONICALLY FILED - 2023 Jan 13 4:19 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

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ELECTRONICALLY FILED - 2023 Jan 13 4:19 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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Beaufort Common Pleas

Case Caption:	James R Brady VS Hilton Head Homes At Allenwood Llc , defendant, et al
Case Number:	2015CP0702047
Type:	Order/Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

ELECTRONICALLY FILED - 2022 Sep 01 11:53 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP0702047

James R Brady		**Hilton Head Homes At Allenwood Llc** **Lancaster Redevelopment Corp**	**Village Square Development Company Llc** **Gary L Grossman**
PLAINTIFF(S)		**DEFENDANT(S)**	
Submitted by:		**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

See Verdict Form

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
James R. Brady	**Gary L. Grossman**	**$711,027.00**

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge Bentley Price	2766	8/30/2022
	Judge Code	**Date**

For Clerk of Court Office Use Only

This judgment was entered on **the day of August 2022**, and a copy mailed first class or placed in the appropriate attorney's box on **the day of August 2022**, to attorneys of record or to parties (when appearing pro se) as follows:

Glynn Lindsey Capell PO Box 1559 Bluffton, SC 29910
Charles Whaley Thomson 102 Wappoo Creek Drive, Unit 8 Charleston, SC 29412

George Hamlin O'Kelley III 652 Coleman Blvd., Ste.200 Mt. Pleasant, SC 29464
Gary L Grossman 2138 Route 522 Selinsgrove, PA 17870

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Cathy Young

Jerri Ann Roseneau - Clerk of Court

Court Reporter: Cathy Young
P.O. Box 4604
Beaufort, SC 29903
clyoung@sccourts.org

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

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

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

ELECTRONICALLY FILED - 2022 Sep 01 11:53 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

ELECTRONICALLY FILED - 2022 Sep 01 11:53 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
James R. Brady,	)	Civil Action No. 2015-CP-07-2047
Plaintiff,	)	
vs.	)	**VERDICT FORM**
Gary L. Grossman,	)	
Defendant.	)	

BREACH OF CONTRACT CLAIM AGAINST GARY L. GROSSMAN

1. Do you find, by a preponderance of the evidence, that the Defendant Gary L. Grossman breached a contract with the Plaintiff James R. Brady?

✓ YES: **If you answer yes, go to Question No. 2.**

_____ NO: **If you answer no, then stop here.**

2. Do you find, by a preponderance of the evidence, that the Plaintiff James R. Brady was damaged by this breach?

✓ YES: **If you answer yes, go to Question No. 3.**

_____ NO: **If you answer no, then stop here.**

3. What damages are owed to Plaintiff James R. Brady as a result of the breach?

$ 711,027.00

ELECTRONICALLY FILED - 2022 Sep 01 11:53 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

CONVERSION CLAIM AGAINST GARY L. GROSSMAN

1. Do you find, by a preponderance of the evidence, that the Defendant Gary L. Grossman converted the Plaintiff James R. Brady's personal property, prevented Plaintiff from using the property, and did so without Plaintiff's permission?

__✓__ YES: **If you answer yes, go to Question No. 2.**

_____ NO: **If you answer no, then stop here.**

2. What damages are owed to Plaintiff James R. Brady as a result of this conversion?

$ 711,027.00

FOREMAN

August 30, 2022.
Beaufort, South Carolina

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE, NOTIFY THE BAILIFF.

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 30, 2022

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

2022 APR -1 AM 11:06
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

REMITTITUR

Re: James R. Brady v. Hilton Head Homes
Lower Court Case No. 2015CP0702047
Appellate Case No. 2019-000200

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V Claire Allen

CLERK

Enclosure

cc: George Hamlin O'Kelley, III, Esquire
Glynn Lindsey Capell, Esquire
Charles Whaley Thomson, Esquire

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

James R. Brady, Respondent,

v.

Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman, Appellants.

2022 APR -1 AM 11:06
BEVERLY ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Appellate Case No. 2019-000200

Appeal From Beaufort County
J. Mark Hayes, II, Circuit Court Judge

Unpublished Opinion No. 2022-UP-105
Submitted December 1, 2021 – Filed March 9, 2022

AFFIRMED

George Hamlin O'Kelley, III, of Buist Byars & Taylor, LLC, of Mt. Pleasant, for Appellants.

Glynn Lindsey Capell, of Bluffton, and Charles Whaley Thomson, of Charleston, both of Capell Thomson, LLC, for Respondent.

PER CURIAM: In this civil matter, Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment

Corporation, and Gary Grossman (collectively, Appellants) challenge the trial court's order granting James Brady's motion for summary judgment regarding Appellants' counterclaims. We affirm.

After viewing the evidence in a light most favorable to Appellants, we find the trial court did not err in granting Brady's motion for summary judgment on Appellants' counterclaims for breach of contract and unjust enrichment as no evidence submitted to this court creates a genuine issue of material fact. *See Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002) ("An appellate court reviews a grant of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP."); *id.* at 361–62, 563 S.E.2d at 333 ("In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party."). Here, the 2004 letter (2004 Agreement) that Appellants wrote Brady constituted their contract and outlined the terms of the agreement between the parties; Appellants did not point to any specific terms within the contract to prove Brady breached the contract, nor did they provide evidence to support an equitable claim of unjust enrichment. Next, through an affidavit, Brady swore that Appellants owe him money for work performed under the 2004 Agreement. The affidavit also stated that the payments Appellants made to him were not loans or advances as they claimed and that all the money he owed to third-party contractors was accounted for. Appellants did not submit any affidavits or other evidence to rebut Brady's affidavit.

Finally, Appellants relied almost exclusively on Ginger Griffith's[1] deposition and a letter she wrote to Brady in 2007 (2007 Letter) to support their counterclaims. In their brief, Appellants make general statements that Griffith's testimony alone is sufficient to overcome a motion for summary judgment without pointing to specific testimony to buttress their claims. If Appellants point to any specific testimony, they point to only Griffith's cross-examination by Appellants' counsel whereby she explains the circumstances surrounding Appellants' failure to pay Brady—the issue of how fees were to be paid, the difficult housing market in 2007, the housing inventory, and foreclosure threats from banks. Nothing Appellants point to in the record provides a scintilla of evidence that supports a finding that Brady breached the contract or was unjustly enriched by payments already made to him. *See Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801,

[1] Griffith was Appellants' treasurer and accountant. Under the 2004 Agreement, Appellants were to perform all accounting and debt management in office, meaning Griffith would be in charge of all accounting pertaining to the projects.

803 (2009) ("[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.").

To the contrary, Griffith's testimony and the 2007 Letter show that Appellants owe Brady $711,027. Griffith admitted during her deposition that the total amount due to Brady was the $711,027 listed in the 2007 Letter, that the letter accounted for all debts Brady owed to Appellants for third-party contractors' fees, and that the total figure owed to Brady was based on duties he had already performed under the 2004 Agreement. Griffith explicitly testified that Brady did not owe third-party contractors any money and he did not employ other parties to help construct or sell the homes after the 2007 Letter was written. Because Appellants failed to rebut Brady's affidavit or point to any evidence in the record that supports their counterclaims, we find further inquiry into the facts surrounding Appellants' counterclaims is not required to clarify the application of the law. *See Lanham*, 349 S.C. at 362, 563 S.E.2d at 333 ("Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law."). Thus, we hold the trial court did not err in granting Brady's motion for summary judgment.

CONCLUSION

Based on the foregoing, the trial court's order is

AFFIRMED.[2]

WILLIAMS, C.J., MCDONALD, J., and LOCKEMY, A.J., concur.

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

ELECTRONICALLY FILED - 2019 Mar 01 3:19 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
James R. Brady, *Plaintiff*, v. Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; Lancaster Redevelopment Corp.; and Gary L. Grossman, *Defendants*.	C.A. No. 2015-CP-07-02047 **ORDER GRANTING SUMMARY JUDGMENT AS TO COUNTERCLAIMS**

This matter came before the Court on the Plaintiff's motion for summary judgment as to the counterclaims asserted against the Plaintiff by the Defendants. According to SCRCP 56, summary judgment shall be granted when there is no genuine issue as to any material of fact. Once the moving party has come forth with evidence to support its motion, the non-moving party must offer some evidence that a genuine issue of material fact exists as to each element of the claim. It is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.

In ruling on this summary judgment motion, the court has viewed all of the evidence offered to it and viewed that evidence, and the inferences therefrom, in a light most favorable to the non-moving party. Having reviewed all of the evidence and considering the arguments presented, this Court will grant the Plaintiff's motion for summary judgment as to the counterclaims asserted by the defendant.

The defendants rely solely upon the deposition testimony of Ginger Griffith. In their memorandum opposing the motion, the defendants make general references to the Answer and Counterclaim. The Counterclaims seeks damages in the amount of "in excess of $600,000.00" based on assertions that the plaintiff, generally, failed to perform services he should have, invokes equitable theories against the plaintiff, that plaintiff breached a valid a contract for services he failed to provide, and asserts that the plaintiff should not have relied upon a letter from a Mr. Grossman to support his claim. Again, the defendant submitted only the deposition of Ms. Griffith. The Plaintiff also relied upon the deposition of Ms. Griffith but also submitted the affidavit testimony of the plaintiff, Rod Brady.

ELECTRONICALLY FILED - 2019 Mar 01 3:19 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

The defendants make reference in its memorandum to only pages 7, 37, and 38 to 39, of Ms. Griffith's deposition. The references do not support the assertions made in the counterclaims. Ms. Griffith's testimony was secured as *de bene esse* deposition for use at trial. After being examined by Plaintiff's attorney, her cross examination simply dealt with issue involving the arrangement of how fees were paid, the difficult housing market in 2007, the housing inventory, the banks threating foreclosures or actual foreclosures, that Mr. Grossman's being a guarantor, the plaintiff not being a guarantor, and that the plaintiff might not have been an employee of Lancaster Redevelopment. Nowhere in her deposition are the issues raised in the counterclaims mentioned. When viewed in a light most favorable to the defendants, her deposition, at best for the defendants, may explain why the Plaintiff was not paid. No affidavit was submitted to counter Mr. Brady's affidavit.

With respect to an issue upon which the non-moving party has the burden of proof, the moving party may meet its initial responsibility of demonstrating that the absent of a genuine issue of material fact by pointing out to the trail court that there is an absence of evidence to support the non-moving party's case. As referenced in *Hedgepath v. AT&T*, 348 S.C. 340, 559 S.E.2d 327) (Ct App. 2001), once the moving party carriers its initial burden, the opposing party must, under Rule 56, do more than simply show a metaphysical doubt as to the material facts but must come forward with specific facts showing a genuine issue for trial. The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings.

Based on the documents and arguments presented to this Court and applying the required standard of review, the present motion for summary judgment is granted.

The Honorable Mark Hayes

ELECTRONIC SIGNATURE ON FOLLOWING PAGE

ELECTRONICALLY FILED - 2019 Mar 01 3:19 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

Beaufort Common Pleas

Case Caption: James R Brady VS Hilton Head Homes At Allenwood Llc , defendant, et al

Case Number: 2015CP0702047

Type: Order/Summary Judgment

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP0702047

James R Brady
PLAINTIFF(S)

Hilton Head Homes At Allenwood Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

See Additional Order Information.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☑ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/08/2019 .

Gary L Grossman for Gary L Grossman
Gary L Grossman for Gary L Grossman

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 Feb 08 1:36 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

ELECTRONICALLY FILED - 2019 Feb 08 1:36 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

Court Reporter:

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

This matter came before the Court on the Plaintiff's motion for summary judgment as to the counterclaim asserted against the Plaintiff by the Defendants. According to SCRCP 56, summary judgment shall be granted when there is no genuine issue as to any material of fact. Once the moving party has come forth with evidence to support its motion, the non-moving party must offer some evidence that a genuine issue of material fact exists as to each element of the claim. It is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.

In ruling on this summary judgment motion, the court has viewed all of the evidence offered to it and viewed that evidence, and the inferences therefrom, in a light most favorable to the non-moving party. Having reviewed all of the evidence and considering the arguments presented, this Court will grant the Plaintiff's motion for summary judgment as to the counterclaims asserted by the Defendant. Plaintiff's counsel is asked to prepare a formal order granting the motion. The formal Order, once signed and filed with the clerk's office, will be final order of this Court on this motion. This email will be incorporated into a form 4 for filing with the Clerk's office.

The Defendants rely solely upon the deposition testimony of Ginger Griffith. In their memorandum opposing the motion, the Defendants make general references to the Answer and Counterclaim. The Counterclaims seeks damages in an amount "in excess of $600,000.00" based on assertions that the plaintiff, generally, failed to perform services he should have, invokes equitable theories against the plaintiff, that plaintiff breached a valid a contract for services he failed to provide, and asserts that the plaintiff should not have relied upon a letter from a Mr. Grossman to support his claim. Again, the defendant submitted only the deposition of Ms. Griffith. The Plaintiff also relied upon the deposition of Ms. Griffith but also submitted the affidavit testimony of the plaintiff, Rod Brady.

The Defendants make reference in its memorandum to only pages 7, 37, and 38 to 39, of Ms. Griffith's deposition. The references do not support the assertions made in the counterclaims. Ms. Griffith's testimony was secured as de bene esse deposition for use at trial. After being examined by Plaintiff's attorney, her cross examination simply dealt with issues involving the arrangement of how fees were paid, the difficult housing market in 2007, the housing inventory, the banks threatening foreclosures, actual foreclosures, Mr. Grossman's being a guarantor, the plaintiff not being a guarantor, and the plaintiff's not being an employee of Lancaster Redevelopment. Nowhere in her deposition are the issues raised in the counterclaims mentioned. When viewed in a light most favorable to the defendants, her deposition, at best for the defendants, may explain why the Plaintiff was not paid. No affidavit was submitted to counter Mr. Brady's affidavit.

With respect to an issue upon which the non-moving party has the burden of proof, the moving party may meets its initial responsibility of demonstrating that the absent of a genuine issue of material fact by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case. As referenced in Hedgepath v. AT&T, 348 S.C. 340, 559 S.E.2d 327 (Ct App. 2001), once the moving party carriers its initial burden, the opposing party must, under Rule 56, do more than simply show a metaphysical doubt as to the material facts but must come forward with specific facts showing a genuine issue for trial. The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings.

Based on the documents and arguments presented to this Court and applying the required standard of review, the present motion for summary judgment is granted.

Again, this email will be incorporated into a form 4 for filing with the Clerk's office and this Court requests a formal order be submitted to the Court for signing.

ELECTRONICALLY FILED - 2019 Feb 08 1:36 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

Beaufort Common Pleas

Case Caption: James R Brady VS Hilton Head Homes At Allenwood Llc , defendant, et al

Case Number: 2015CP0702047

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

ELECTRONICALLY FILED - 2019 Jan 23 8:24 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT James R. Brady, Plaintiff, vs. Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman, Defendants.	IN THE COURT OF COMMON PLEAS C/A NO.: 2015-CP-07-2047 **CONSENT MOTION FOR AN ORDER OF PROTECTION AND FOR A STATUS CONFERENCE TO SET A TRIAL DATE CERTAIN**

Plaintiff James R. Brady and Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman, by and through undersigned counsel, hereby jointly move this Honorable Court for an Order granting protection for Defendants' counsel, G. Hamlin O'Kelley, III, on the grounds that he has long-standing plans to be out of town from February 11, 2019 through February 15, 2019.

Counsel also hereby move for a status conference for a day certain trial in March 2019 or later, in the above-captioned case.

Respectfully submitted,

WE SO MOVE:

s/ Charles W. Thomson, Esq.
THE CAPELL LAW FIRM LLC
Charles W. Thomson, PE, Esq.
The Blake House
321 East Bay Street
Charleston, South Carolina 29401
cthomson@capelllaw.cm
Attorney for Plaintiff

WE CONSENT:

s/ G. Hamlin O'Kelley, III
BUIST BYARS & TAYLOR LLC
G. Hamlin O'Kelley, III
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
Hamlin.okelley@buistbyars.com
Attorney for Defendants

ELECTRONICALLY FILED - 2019 Jan 23 8:24 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

ELECTRONICALLY FILED - 2018 Sep 19 11:01 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT James R. Brady, Plaintiff, vs. Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman, Defendants.	IN THE COURT OF COMMON PLEAS C/A NO.: 2015-CP-07-2047 **CONSENT ORDER OF CONTINUANCE**

The Plaintiff and the Defendants in this matter hereby consent to a continuance of this case currently scheduled for a motion hearing on Tuesday, September 18, 2018, in Beaufort County, South Carolina.

Both parties request the need for more time due to scheduling conflicts and the mandatory evacuation from Hurricane Florence.

ORDERED that the matter in the above-captioned case scheduled for a motion hearing on Tuesday, September 18, 2018, in Beaufort County, South Carolina is hereby continued, and

IT IS SO ORDERED!

_____
The Honorable Marvin H. Dukes, III
Beaufort County Master in Equity

Beaufort, South Carolina
September _____, 2018

WE SO MOVE AND CONSENT:

BUIST, BYARS & TAYLOR, LLC

s/ G. Hamlin O'Kelley,III
G. Hamlin O'Kelley, III, Esq.
652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
843.856.4488
Hamlin.okelley@buistbyars.com
Attorney for the Defendants

THE CAPELL LAW FIRM, LLC

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321 E. Bay Street
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Attorney for the Plaintiff

ELECTRONICALLY FILED - 2018 Sep 19 11:01 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

ELECTRONICALLY FILED - 2018 Sep 19 11:01 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

Beaufort Common Pleas

Case Caption: James R Brady VS Hilton Head Homes At Allenwood Llc , defendant, et al

Case Number: 2015CP0702047

Type: Order/Continuance

It is so Ordered

s/ Perry M Buckner III 2122

FORM 4

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

JUDGMENT IN A CIVIL CASE

2009060153

CASE NO. 2009 **CP**-07-02690

James R. Brady — PLAINTIFF(S)

Hilton Head Homes at Allenwood LLC et al — DEFENDANT(S)

Submitted by: Megan White	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: After a hearing on May 15, 2015, Plaintiff's Motion to Refer to a Special Referee is denied. Upon the consent of counse, this case shall be dismissed pursuant to 40(j) and immediately refiled with a new case number.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

FILED BEAUFORT COUNTY JUN 16 2015 10:33 AM

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge | 242 **Judge Code** | 6/15/15 **Date**

For Clerk of Court Office Use Only

This judgment was entered on the 16th day of June, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 23rd day of June, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Glynn Lindsey Capell, Esq

ATTORNEY(S) FOR THE PLAINTIFF(S)

George Hamlin O'Kelly, III
Gary L. Grossman

ATTORNEY(S) FOR THE DEFENDANT(S)

Dena S. Atkinson Staff
CLERK OF COURT

Court Reporter:

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

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

ELECTRONICALLY FILED - 2022 Oct 31 11:13 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT James R. Brady, Plaintiff, v. Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; Lancaster Redevelopment Corp.; and Gary L. Grossman, Defendants.	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT C.A. No. 2015-CP-07-02047 **Memorandum in Support of Plaintiff's Motion for Prejudgment Interest**

Plaintiff James R. Brady submits this Memorandum in Support of his post-trial Motion for Prejudgment Interest.

S.C. Code § 34-31-20(A) provides:

> In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum.

Id. Per this statute section, an award of prejudgment is mandatory if the damages are a sum certain.

South Carolina caselaw expands upon the interpretation of this statute section. As set forth in *Butler Contracting v. Court Street*, 631 S.E.2d 252, 369 S.C. 121 (S.C. 2006):

> The law has long allowed prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable, if the sum is certain or capable of being reduced to certainty. *Smith-Hunter Constr. Co. v. Hopson,* 365 S.C. 125, 128, 616 S.E.2d 419, 421 (2005); *Babb v. Rothrock,* 310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993); *Ancrum v. Slone,* 29 S.C.L. (2 Speers) 594 (1844). Stated another way, prejudgment interest is allowed on a claim of liquidated damages; i.e., the sum is certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties. Prejudgment interest is not allowed on an unliquidated claim in the absence of an agreement or statute. *Babb,* 310 S.C. at 350, 426 S.E.2d at 791; *Builders Transport, Inc. v. S.C. Prop. & Cas. Ins.*

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> *Guar. Assn.,* 307 S.C. 398, 406, 415 S.E.2d 419, 424 (Ct.App.1992); *Wayne Smith Constr. Co. v. Wolman, Duberstein, and Thompson,* 294 S.C. 140, 146-47, 363 S.E.2d 115, 119 (Ct.App.1987).
>
> The fact that the amount due is disputed by the opposing party does not render the claim unliquidated for the purposes of an award of prejudgment interest. The proper test for determining whether prejudgment interest may be awarded is whether the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose. *Smith-Hunter Constr. Co.,* 365 S.C. at 128, 616 S.E.2d at 421; *Babb,* 310 S.C. at 353, 426 S.E.2d at 791; *Wayne Smith Constr. Co.,* 294 S.C. at 146-47, 363 S.E.2d at 119. The right of a party to prejudgment interest is not affected by rights of discount or offset claimed by the opposing party. It is the character of the claim and not the defense to it that determines whether prejudgment interest is allowable. *Lee v. Thermal Engineering Corp.,* 352 S.C. 81, 88-89, 572 S.E.2d 298, 302 (Ct.App.2002); *Southern Welding Works, Inc. v. K & S Constr. Co.,* 286 S.C. 158, 164, 332 S.E.2d 102, 106 (Ct. App.1985)
>
> **A judgment debtor is required to pay interest on his debt as compensation for his continued retention and use of the creditor's money beyond the date payment was due.** *Sears v. Fowler,* 293 S.C. 43, 45-46, 358 S.E.2d 574, 575 (1987). In South Carolina, prejudgment interest is set by statute at annual rate of 8 percent, although parties are free to agree, within legal limits, on a higher rate of interest. S.C.Code Ann. § 34-31- 20(A) (Supp.2005); *Turner Coleman, Inc. v. Ohio Constr. & Engr., Inc.,* 272 S.C. 289, 292, 251 S.E.2d 738, 740 (1979).

(Emphasis added).

The *Butler Contracting* matter quoted above was a construction contract payment claim, as is the present case. In that matter, the Supreme Court of South Carolina reversed the trial court's order refusing to allow prejudgment interest. The fact that the Defendant in that case asserted a counterclaim seeking an offset did not change the character of the plaintiff's claims being for a sum certain.

Here, Plaintiff Brady's damages were a sum certain. The evidence at trial showed that Grossman admitted that Brady was owed $711,027 as of September 2007. Brady stipulated to this precise amount of damages and obtained a verdict in that precise amount. Brady's Complaint includes a plea

for prejudgment interest. Also, the September 2007 letter trial exhibit demonstrates that the money was due as of that time. Thus, September 2007 is the latest date that could be chosen as a starting point of when interest began to accrue. *See Dixie Bell, Inc. v. Redd*, 656 S.E.2d 765, 376 S.C. 361 (S.C. App. 2007).

Additionally, the award of prejudgment interest applies to both of Plaintiff's causes of action awarded by the jury, breach of contract and conversion. *See id.*

A calculation of the interest accrued at the statutory rate of 8.75% per annum is attached as Exhibit A to this Memorandum.

CONCLUSION

Plaintiff Brady respectfully requests on order entering a judgment in the amount of $1,791,190.61 for prejudgment interest only, which is to be added to the judgment of $711,027, for a total amount of $2,502,217.61.

Respectfully submitted,

CAPELL THOMSON, LLC

s/ Charles W. Thomson
Glynn L. Capell (16552)
GCapell@CapellThomson.com
Charles W. Thomson (101471)
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Attorneys for Plaintiff

October 31, 2022
Charleston, South Carolina

ELECTRONICALLY FILED - 2022 Oct 31 11:13 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

ELECTRONICALLY FILED - 2022 Oct 31 11:08 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT James R. Brady, Plaintiff, v. Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; Lancaster Redevelopment Corp.; and Gary L. Grossman, Defendants.	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT C.A. No. 2015-CP-07-02047 **Plaintiff's Memorandum in Opposition to Defendant's Motion for Judgment Notwithstanding the Verdict**

Plaintiff James R. Brady submits this Memorandum in Opposition to Defendant Gary Grossman's Motion for Judgment Notwithstanding the Verdict Pursuant to Rule 50(b), SCRCP.

LEGAL STANDARD

A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. In deciding a motion for JNOV, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party; if more than one inference can be drawn, the case must be submitted to the jury. *Gastineau v. Murphy*, 331 S.C. 565, 503 S.E.2d 712 (1998). "The court must deny the (JNOV) motion if either the evidence yields more than one reasonable inference or the inferences are in doubt." *V.E. Amick & Associates, LLC v. Palmetto Environmental Group, Inc.*, 394 S.C. 538, 548-49, 716 S.E.2d 295, 300 (Ct. App. 2011).

ARGUMENT

I. The LLC Operating Agreement and Assignments Do Not Override the 2/2/04 Letter of Agreement.

The letter of agreement that constituted the agreement between Grossman and Brady was dated 2/2/04 (Exhibit A). The Assignments that Grossman allege override the 2/2/04 agreement matriculated in July 2004. In 2007, both Ginger Griffith and Gary Grossman admitted that the 2/2/04 letter was what constituted the agreement between the parties. (See Exhibit

B, handwritten notes supplied by counsel for Brady). Both Ginger Griffith and Rod Brady testified to same at trial. The jury's apparent finding that the Exhibit A 2/2/04 letter constituted the Agreement is the only reasonable finding.

As Grossman admits, Mr. Grossman was not a party to the Assignments. He did not sign those Assignments in his individual capacity. Thus, the Assignments cannot override a previous contract to which he was a party.

The LLC Operating Agreement and Assignments constitute separate subject matter than the 2/2/04 agreement wherein Brady was to construct houses. The LLC Operating Agreement and Assignments do not include any of the following terms that Grossman admitted in 2007 were at the heart of the agreement between the parties:

- Construction Management Fees;
- Sales and Marketing Fees;
- Incentive Management Fees; or
- The 500 Basis points to Gary Grossman individually that he accepted in 2007.

Exhibit B to this memorandum further sets out how the 2/2/04 agreement at the heart of this matter is separate from the LLC Operating Agreement and Assignments. The Exhibit demonstrates that Brady did not even sue over the amounts he was due under these separate LLC operating agreements.

Brady is entitled to control his own claims. He decided to sue over the 2/2/04 agreement and not over the LLC agreements. Had Brady sued over the LLC Operating Agreement and Assignments, he would have demanded additional money. Instead, Brady opted to keep his claims simple to facilitate the Court's endeavor to find the truth in this matter.

Grossman's argument that the LLC agreements are relevant constitute an attempt to obscure the truth. He was allowed to admit these documents as trial exhibits and show them to the jury. The jury saw through this and rejected Grossman's argument. The Court should respect the jury's finding.

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II. Grossman's Statute of Frauds Argument Fails for Multiple Independent Reasons.

Grossman's Statute of Frauds argument fails for multiple reasons, each of which is sufficient in and of itself to render the defense inapplicable.

A. Statute of frauds is an affirmative defense that must be pled.

The statute of frauds is an affirmative defense that must be pled in the Answer to be considered. Rule 8(c), SCRCP; *Bocook Outdoor Media, Inc. v. Summey Outdoor Advertising, Inc.,* 294 S.C. 169, 363 S.E.2d 390 (S.C. App. 1987) ("[T]he statute of frauds is an affirmative defense," which must be pled).

Here, Grossman did not plead this defense. And of course he did not, because the Defendants countersued Brady for breach of contract in their Answer. (Hence, they are judicially estopped from asserting that the contract is invalid as well, as set forth below). Grossman brought the statute of frauds up for the very first time in this matter in a post-trial motion, i.e. *after* the trial had already been conducted. Per the Rules of Civil Procedure, Grossman cannot assert this defense.

B. Brady satisfies the statute of frauds by showing an agreement in writing that is digitally signed by Grossman, who also subsequently acknowledged the terms.

That statute of frauds primarily protects against oral agreements. Where the terms are in writing and "signed" with a digital signature by the party against whom enforcement is sought, the statute of frauds defense does not apply. The 2/2/04 agreement is in writing and includes Gary Grossman's name in the signature block. The statute of frauds does not require an inked signature.

A writing sufficient to remove an oral agreement from the statute of frauds "must reasonably identify the subject matter of the contract, sufficiently indicate a contract has been made between the parties, and state with reasonable certainty the essential terms of the agreement." *Smith v. McClam*, 289 S.C. 452, 456, 346 S.E.2d 720, 723 (1986).

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Here, the 2/2/04 letter satisfies the statute of frauds requirements, even moreso in conjunction with the 2007 writings acknowledging that the 2004 letter constitutes the agreement. The September 13, 2007 letter acknowledges, in great detail, the application of each and every term located within the 2/2/04 letter of agreement. Additionally, Gary Grossman acknowledged the 2/2/04 letter of agreement in a 2007 email that is a trial exhibit in the record. The September 13, 2007 letter also indicates that Grossman accepted money in recognizance of the fact that the 2/2/04 letter of agreement was enforceable (the 500 basis points to Gary Grossman individually).

C. Promissory Estoppel bars Grossman's statute of frauds defense.

The elements of promissory estoppel are: "(1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by the party to whom the promise is made; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise." *Rushing v. McKinney*, 370 S.C. 280, 295, 633 S.E.2d 917, 925 (Ct. App. 2006) (emphasis omitted).

Brady easily establishes all four elements here. The 9/13/07 letter shows there is no ambiguity in any of the terms in the 2/2/04 letter of agreement. Brady devoted nearly three years of his life's work exclusively to the project at the heart of this matter, and was hardly paid for those efforts, despite that Grossman profited from Brady's work. No better example of promissory estoppel exists.

D. Judicial Estoppel bars Grossman's statute of frauds defense.

The concept of judicial estoppel applies here too. The Court applied the doctrine of judicial estoppel against a litigant asserting statute of frauds in *Eadon v. White*, Opinion No. 2008-UP-043 (S.C. App. 2008). In that matter, the party against whom enforcement was sought admitted the existence of

an agreement in the litigation, and thus, was judicially estopped from asserting a statute of frauds defense. *Id.*

Here, Defendants countersued Brady for breach of contract over the agreement in their Answer. They maintained this position all the way through the Court of Appeals wherein Grossman appealed a grant of summary judgment to Brady over those counterclaims. Therefore, Grossman is judicially estopped from asserting that the statute of frauds abrogates the contract, for the first time *after* trial no less.

Grossman's statute of frauds defense fails for the four different reasons stated above. Brady needs to prevail on only one of those arguments to defeat Grossman's statute of frauds defense. Brady prevails on all four.

CONCLUSION

For the reasons set forth above, Plaintiff Brady respectfully requests that this Court enter an Order Denying Defendant's Motion for Judgment Notwithstanding the Verdict.

Respectfully submitted,

CAPELL THOMSON, LLC

s/ Charles W. Thomson
Glynn L. Capell (16552)
GCapell@CapellThomson.com
Charles W. Thomson (101471)
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Attorneys for Plaintiff

October 31, 2022
Charleston, South Carolina

ELECTRONICALLY FILED - 2022 Oct 31 11:08 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

EXHIBIT
A

ELECTRONICALLY FILED - 2022 Oct 31 11:08 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

GARY L. GROSSMAN
419 COFFEE GOSS ROAD
MARIETTA, PA 17547

February 2, 2004

James R. Brady
29 Otter Hole Road
Bld. #1, Unit #11
Hilton Head Island, SC 29926

Dear Rod,

As you know, I have been in direct negotiations with Chris Gannon to keep us in the single-family lot takedown transaction by agreeing to purchase the 92 townhouse lots in a 3 phase bulk buy.

This past weekend, I convinced Chris to separate these transactions by using Lancaster Redevelopment Corporation as the purchaser of the townhouse lots.

Chris Gannon and I went back and forth all weekend by e-mail, which resulted in the enclosed contracts.

Please make note that the 64 single family lot agreement has Hilton Head Homes LLC **not** Hilton Head Homes, Inc. as the purchaser.

I do not want any creditor of Hilton Head Homes, Inc. to be able to take hostile action against the Allenwood project (i.e.: subcontractor vendors).

At this point in our business relationship, I am somewhat torn between trying to help you as a friend, and making predent business decisions on my own behalf.

The two Allenwood transactions require an absolute minimum of $110,000 in cash equity (probably more) and recourse positions on a minimum of $3,000,000 in debt.

From a business only standpoint of view, I have a problem putting up all the cash, funding the interest expense by myself and taking all the real risk of recourse on a 50/50 basis.

I also have some concern about the unresolved problem at Cypress Harbour. At some point in time the bank will move through the foreclosure process, seize the assets, sell the asset and most likely come up with a loss.

In which case, I believe there is a high probability the bank will pursue a deficiency action against you. Unless and until this threat is resolved, I do not believe it in my best

interest to be "joined at the hip" on a 3 or 4 year project that involves 3,000,000 plus dollars of debt.

Having said all of this, I value our friendship highly. I want to work through these difficult issues and move on to better times.

I would like to proceed with both transactions in separate limited liability companies wherein, Lancaster Redevelopment Corporation owns 100% of the companies, but engages you and Joy Walker as independent contractors under the following terms and conditions:

- We move the entire Hilton Head Homes operation into the Allenwood model home. This will keep someone on site at all times.
- We do our own sales and marketing through you and Joy Walker and offer a 3% co-broker commission on all products.
- We pay Joy Walker a flat rate of $2500 per single family home and $500 per townhouse for her administrative assistance/sales work as and when homes are settled as her sales compensation.
- We pay you a flat fee construction management fee of $5000 for each single family home and $1250 per unit for each townhouse, as and when homes are settled as her sales compensation.
- The 3% sales fee should be paid to you or Joy Walker for any sale of single family homes and a flat $2000 fee for townhouses, either of you write and close, as and when each home settles.
- If we build 24 single family homes and 36 townhouses a year (which is what our contract takedown schedule is) this arrangement provides you with $174,000 in construction management fees per year.
- If you can sell 50% of this without paying a broker you can earn an additional $108,000 per year in commission.
- If you elect to hire people to fulfill these roles I want you to pay them out of the fees set forth above!

In addition to the sales and construction management fess as described, I would like to pay you an "incentive management fee" of 50% of pre-tax profits after a 1% per month interest on cash investment to Lancaster Redevelopment Corporation and 500 basis points to me individually for my guarantee. However, I am asking that 100% of cash invested by Forest Homes, Lancaster Redevelopment Corporation and/or myself be repaid prior any profit distribution.

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I would like all accounting and debt management to take place from my office so I can stay on top of things.

I believe this arrangement fairly balances the scales, makes our initial financing easier, isolates me, and the deals from any trouble that may arise from Cypress Harbour and lowers your personal risk!

I am hopeful you are not in anyway insulted or upset. I simply need to feel totally comfortable because of the level of debt exposure involved with this undertaking.

Please give my concerns and my proposed solution your immediate attention and advise your thoughts. I want to make immediate application to Jeff Heidt at National Bank of Commerce in Savannah.

Very truly yours,

Gary L. Grossman

GLG/sa
HHH/brady 2 2 04

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EXHIBIT
B

The markups in blue ink herein explain the 88% / 6% issue and the irrelevance of the LLC Assignment Document.

Lancaster Redevelopment Corp.

2138 Route 522

Selinsgrove, PA 17870

570-374-0131 (Fax 570-374-6093)

September 13, 2007 → This letter post-dates the LLC Agreements. Yet, look what they say the relevant agreement is.

James R. Brady
36 Timber Marsh Lane
Hilton Head, SC 29926-2787

Dear Rod,

Pursuant to your discussion with Mr. Grossman, I am transmitting our analysis of the Allenwood compensation to you under our February 2, 2004 letter of agreement. → This is the Agreement Brady signed over, not the July 2004 LLC agreement.

As you are aware, there are two separate entities operating at Allenwood. Our analysis isolates compensation by company.

Village Square Development Co. LLC (townhomes)	
2005 Income	$708,890
2006 Income	$247,495
Total to date	$956.385

To date there was one distribution	
Paid to you on 4/10/07	$ 36,000

This distribution was based on cash available at the time of distribution. As you know, our cash is invested in standing inventory.

Under the February 2, 2004 letter of Agreement you are scheduled to be paid a construction management fee of $1,250 per townhouse unit. According to our records we have built and delivered 26 townhouses to date. I interpret the February 2, 2004 letter of Agreement to make the construction fees payable at the time each unit settles.

It is my understanding that the expenses associated with hiring Nick Grossman and/or Dan Clore for supervisory work on your behalf are to be deducted. Mr. Grossman did advise me that expenses for Dan Clore would not be counted after a certain date, but I do not know what that date was, so I picked 5/31/07 which is when Nick went to Battery Creek.

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The February 2, 2004 letter of Agreement also provides for a $2,000 per townhouse sales commission to either you or Joy Walker depending on who actually sold the unit. I was subsequently informed that you and Joy agreed to split this commission at $1,000 each for all sales made by you or her. I made all payments and constructed all commission accounting in accordance with that directive.

The construction management fee on the 26 sold and settled townhomes totals	$32,500
The commissions on the 26 sold and Settled townhomes totals	$26,000
Less the commission paid to date	(9,415)
Less Nick Grossman salary/benefits/expenses 6/6 to 1/7	(29,845)
Less Dan Clore salary/benefits/expenses 6/6 to 1/7	(30,746)
Less Nick Grossman salary/benefits/expenses 1/1/07-5/31/07	(24,870)
Less Dan Clore salary/benefits/expenses 1/1/07-5/31/07	(25,620)
Current balance as of this date	(61,996)
There are construction management fees Due on 29 additional units @$1,250	$36,250
The net balance is a negative For your sales commissions and construction management Fees for Village Square Development Co. LLC	**(25,746)**

The net income for tax year 2005 was $708,890 and $247,495 in 2006 for a total taxable income of $956,385. The LRC allocated income on this $956,385 is 88% or $841,619.

Under the terms of the February 2, 2004 letter of Agreement, Mr. Grossman was to be paid a priority distribution of 500 basis points for his guarantee. The average debt in 2005 was $2,970,097 from January 1 until December 31, 2005 which calculates to a pro-rated guarantee fee of $148,504.85 for 2005.

The average VSD to LLC debt balance for 2006 was $5,402,733, which calculates to a guarantee fee of $270,137.

The guarantee fee totals $418,642 which reduces the LRC allocated pretax profits from $841,619 to $422,977.

Your allocated share of 50% would be $211,488.

To date I have advanced $128,000.

The balance of the 2005/2006 "incentive management fee" due to you is **$83,488.**

Brady's profits were reduced by 50% of (100-88=12). In other words, by 6%. He was still owed 6% under the separate operating agreement. We did not sue for that portion.

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Under the terms of the February 2, 2004 letter of Agreement, 100% of LRC loans or accounts receivables are to be paid as a priority distribution.

Mr. Grossman recently loaned Village Square Development Co. LLC $124,750 and forest homes has past due receivables of $173,700.

We must repay the $173,700 past due receivables as a first priority. Mr. Grossman has indicated his intentions to allow funds to be paid to you ahead of his recent loans.

As to Hilton Head Homes at Allenwood

Your construction management fees on the 44 single family homes sold and settled total	$220,000
The construction management fees on the 4 remaining single family homes total	$ 20,000
The expenses associated with Rich Raven	$(17,941)
The expenses associated with RS Davis	$(58,611)
The 10% commission on the 44 single family Homes sold and settled to date total	$192,000
Total earned as of this date	$355,475
Total paid as of this date	$335,846
Balance due on contribution fees and commissions	**$ 19,629**

Mr. Grossman advises that this amount can be paid from the very next S.F. settlement if Art Long will consent.

The 2005 net taxable income was	$1,212,191
The 2006 net taxable income was	400,592
Total taxable income of	$1,612,783
The allocated income on this $1,612,783 is 88% or	$1,419,249
The average debt balance for 2005 was	$1,993,865
The 500 basis point guarantee fee calculating to	$ 99,693
The average debt balance for 2006 was	$1,267,311
The 500 basis point guarantee fee calculating to	$ 52,244
Therefore, net taxable income after the guarantee Fees for 2005/2006 is	$1,267,312
Your 50% incentive management fee is	**$ 633,656**
Of this writing, the total amount due to you is	**$ 711,027**

($1,419,249 - 99,693 - 52,244 = 1,267,312)

The profits they allege to owe Brady were, again, reduce by half of 12%, or 6%. Brady is owed the extra 6% under the separate LLC Assignment. We did not sue over that.

Mr. Grossman directed me to access our ability to fund a $10,000 a month draw against these funds. Given the carrying costs of the inventory, and past due receivables to Forest Homes from Allenwood, the monthly carrying costs at Cypress Harbor and our massive increase in overhead associated with the new plant, LRC simply cannot fund any additional monthly expenses.

I have attached a summary of the above information. If you have any questions or need any details, please feel free to call me anytime.

Very truly yours,

Ginger Griffith
Treasurer

Cc: Gary L. Grossman

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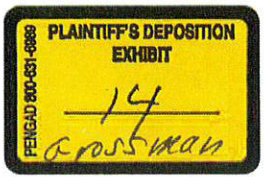
Rod Brady

From: Gary Grossman [ggrossman@foresthomes.com]
Sent: Saturday, September 15, 2007 8:01 PM
To: Rod Brady
Cc: Ginger Griffith



Hi Rod,

I finally got a chance to look at Ginger's Sept 13 letter and the worksheets. It looks to me like she has accurately accounted for the various forms of compensation as laid out in our Feb 2,2004 letter of agreement.

The long and the short of the Allenwood project is that all of our cash is tied up in standing inventory and we can no longer make the interest payments. Until we can get this inventory sold there simply is no cash to fund anything.

I have given our two hour discussion of last Saturday a great deal of thought. I think that you have clearly contributed value to the Battery Creek project, the low country line of homes, and deserve compensation for the time you spent in the capacity of the Forest Homes Business Developement Officer. The easiest item to account for is the time you spent from the Feburary Convention which started Feb 5 thru May 8th, which is the date that you stated that this was not working. In general I see that as Feb 1 thru May 15. I know you never actually agreed to this but our number for that job was $80,000 a year which is 6666 a month times 3.5 months is $23,000 for that period of time.

I have no real way of assigning the value that you contributed to the low country series (which I happen to think is a lot). I have not been able to figure out the Battery Creek issue yet, but that is only a time issue on my part.

On Monday, I will personally lend LRC $10,000 so LRC can pay you a $10,000 payment on the Business Development issue. I will also fund a similar amount next month. You can count on these two payments until we can reach an agreement on everything you are owed.

Please know I feel very badly that we have drifted this far apart. I value your friendship, I acknowledge your valuable contribution to my varied business interests thru the low country and clearly want to continue our business relationship on a fair basis going forward.

As to the franchise issue, I really need to get the business Performa's finished to see how juice is in these deals, and figure out how to bring some outside strategic investors to fund the start up. They way I now see the deal, I think it will be very difficult to get the necessary capital in the deal if your end is not a performance based earn in. I got the very real sense that you are unwilling to proceed on an "earn in" basis. I am very reluctant to have you to continue to spend time on the franchise issue until we can reach some kind of agreement. On the other hand I can not reach an agreement absent the Performa's in final form. Furthermore, I think you deserve to know the expectation and you will have to decide how achievable that expectation may be.

You can count on the $23,000 at the rate of $10,000 a month for this month and next. I hope to have sales and settlements at Allenwood by that time, and certainly expect to reach an overall accord on all compensation issues to date with in the next 30 days.

I will arrive HHI sometime WEDNESDAY evening. I have meetings all day Thursday and at this time have nothing scheduled for Friday. We are coming back to Pa on Sat or Sunday.

Gary L. Grossman
President/C.E.O.
Lancaster Redevelopment Corporation
2138 Route 522
Selinsgrove,Pa 17870
570 374 0131

ELECTRONICALLY FILED - 2022 Sep 07 9:17 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT James R. Brady, Plaintiff, vs. Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman, Defendants.	IN THE COURT OF COMMON PLEAS C/A NO.: 2015-CP-07-2047 **THE DEFENDANT'S MOTION FOR JUDGMENT NOT WITHSTANDING THE VERDICT PURSUANT TO RULE 50(b) SCRCivP**

TO: THE HONORABLE BENTLEY PRICE

YOU WILL PLACE TAKE NOTICE THAT the Defendant Gary L. Grossman, (the "Defendant")[1], hereby move this Court pursuant to Rule 50 of the South Carolina Rules of Civil Procedure for a Judgment Notwithstanding the Verdict and/or Vacation of Judgment to the extent the jury verdict and Judgment found the existence of a contract between the Plaintiff and the Defendant Gary L. Grossman where no contract was signed by Mr. Grossman and the testimony at trial clearly indicated that the only agreements in place between the Plaintiff were between him and the three Defendants which the Plaintiff dismissed at the trial of this case. Mr. Grossman admitted under oath that the three dismissed Defendants would be the parties with which Mr. Brady contracted. The only signed documents entered into the record were the Operating Agreements and Assignments of Interest signed for the entities Hilton Head Homes at Allenwood, LLC and Village Square Development Company, LLC. Those Assignments were signed by Mr. Brady and by Lancaster Redevelopment Corporation and not by Mr. Grossman individually. Pursuant to

[1] The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corporation were dismissed at the beginning of the trial of this matter on August 29, 2022.

Paragraph 9.5 of those Assignments, there was an "Entire Agreement" or merge clause setting forth the entire agreement between the parties, which the jury in this case clearly overlooked, which is an error, where there was no fraud or negligent misrepresentation pled.

Also, this motion is based upon the jury's verdict for conversion as well with the elements of which were not met as to Mr. Grossman individually as there was no testimony that Mr. Grossman had any care, custody, or control of any non-real estate belonging to the Plaintiff.

Further, this motion is based upon the South Carolina Statute of Frauds, S.C. Code § 32-3-10(5) requiring an agreement to be in writing and signed for any agreement that is not to be performed within the space of one year. Mr. Brady and Mr. Grossman both testified at trial that the work to be done by Mr. Brady in furtherance of the developments on Hilton Head Island could not be performed within the space of one (1) year and no one could produce any signed document from Mr. Grossman so that no action could be brought against him individually. At trial, Mr. Grossman stated and reiterated that the three dismissed corporate entities may have owed Mr. Brady money, but that he, individually, made no agreement with Mr. Brady.

Alternately, the Defendant moves for a new trial in this motion, too, pursuant to Rule 50(b) SCRCivP for the same reasons.

As the Defendant made a Motion for Directed Verdict pursuant to Rule 50(a) SCRCivP at the close of the Plaintiff's case, this Motion may be heard and the Defendants requests that the Court set a time and place for the hearing this matter.

This motion will be based on this notice of motion, all pleadings, papersm and records in this action; the evidence presented at trial, and the trial transcripts which have been ordered from the Court Reporters.

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Pursuant to Rule 11 SCRCivP, counsel certifies that consultation in this matter would serve no useful purpose.

September 7, 2022
Mt. Pleasant, SC

s/ G. Hamlin O'Kelley, III
BUIST BYARS & TAYLOR LLC
G. Hamlin O'Kelley, III
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
Hamlin.okelley@buistbyars.com
Attorneys for the Defendants

ELECTRONICALLY FILED - 2022 Sep 07 9:17 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT James R. Brady, Plaintiff, v. Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; Lancaster Redevelopment Corp.; and Gary L. Grossman, Defendants.	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT C.A. No. 2015-CP-07-02047 **Plaintiff's Motion to Dismiss Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; and Lancaster Redevelopment Corp.**

Plaintiff moves, pursuant to Rule 41(a)(2), SCRCP, for an order dismissing his own claims against Defendants Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; and Lancaster Redevelopment Corp. **only.** These Defendants previously filed counterclaims against Plaintiff. While those counterclaims were pending, dismissal under Rule 41(a)(2) would not have been proper. The Court has since dismissed those counterclaims though. The dismissal came from the Honorable J. Mark Hayes' Order Granting Summary Judgment as to Counterclaims. Judge Hayes' order was affirmed by the Court of Appeals in its opinion dated March 9, 2022. The Defendants' window to appeal the Court of Appeals opinion has expired.

No valid reason exists why Plaintiff cannot voluntarily dismiss his claims against those three parties. The Defendants have refused to consent or stipulate to this dismissal anyway. Gary Grossman stated via his attorney that he refused to consent to Plaintiff's dismissal of these Defendants unless the Plaintiff also dismissed Mr. Grossman himself.

If Grossman wants these parties on the verdict form, he should have filed third-party claims against them. This would have been the proper mechanism, as Plaintiff contracted with Mr. Grossman only. Plaintiff never entered into a separate agreement with these corporate entities. Mr. Grossman might have delegated the duty to pay Plaintiff to these corporate Defendants. Those corporate entities might have failed to follow through

with Mr. Grossman's obligations to Plaintiff. But the corporate entities owed their duties to Mr. Grossman, not to Plaintiff. Thus, Mr. Grossman should have filed claims against them himself if he wanted them on the verdict form.

Accordingly, Plaintiff respectfully requests that this Court enter an order granting Plaintiff's dismissal of his own claims against Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; and Lancaster Redevelopment Corp. only, without prejudice. *See* Rule 41(a)(2), SCRCP.

Respectfully submitted,

CAPELL THOMSON, LLC

s/ Charles W. Thomson
Glynn L. Capell (16552)
GCapell@CapellThomson.com
Charles W. Thomson (101471)
CThomson@CapellThomson.com
102 Wappoo Creek Dr., Unit 8
Charleston, SC 29412
(843) 501-0423
Attorneys for Plaintiff

August 30, 2022
Charleston, South Carolina

ELECTRONICALLY FILED - 2019 Feb 04 10:03 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT
James R. Brady, *Plaintiff*, v. Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; Lancaster Redevelopment Corp.; and Gary L. Grossman; *Defendants*.	C.A. No. 2015-CP-07-02047 **Memorandum in Support of Plaintiff's Motion for Summary Judgment as to Defendants' Counterclaims**

To: G. Hamlin O'Kelley, Counsel for Defendants

The Plaintiff, by and through his undersigned attorneys, submit this Memorandum in Support of Plaintiff's Motion for Summary Judgment as to Defendants' Counterclaims.

FACTUAL AND PROCEDURAL BACKGROUND

This litigation is a simple payment claim with a complicated procedural history. Plaintiff entered into a contract with Defendants in 2004. Plaintiff was to provide construction, marketing, and real estate sales services in connection with the development of the Allenwood neighborhood on Hilton Head Island. In exchange, Defendants were to pay Plaintiff for those services and to share the profits made after the residential units were sold to the public. The project continued for approximately three years. Plaintiff oversaw the construction and sale of 103 residential units. As of September 2007, Defendants admitted to owing Plaintiff $711,027 for profit sharing and for construction, marketing, and sales services. (*See* Affidavit of James Rod Brady and Exhibits A & B thereto, all of which attached as Exhibit 1 to this memo). After that, Defendants failed to pay Plaintiff any of this amount owed, and as a result, Plaintiff stopped working on the project. *Id.*

Plaintiff filed this lawsuit back in 2009, seeking payment of this debt. Despite having clearly admitted liability, Defendants filed counterclaims against Plaintiff. This case stalled for several years while Defendants were

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involved with several other federal lawsuits that impeded their ability to pay the claim. Pursuant to Rule 40(j), SCRCP, this case was dismissed and subsequently restored.

Subsequent to the restoration, Plaintiff filed an identical version of this Motion for Summary Judgment as to Counterclaims more than two years ago, on January 5, 2017. The parties then mediated this case later in January 2017, before this motion was ever heard. At mediation, the parties entered into a provisional settlement agreement. As a result of the provisional settlement agreement, Plaintiff requested that the Clerk remove the hearing for this previously-filed Motion for Summary Judgment from the motions hearings roster, under the belief that the parties had reached a settlement. Unfortunately, however, the final settlement agreement was never signed.

After discovering that Defendants would never sign any reasonable iteration of the settlement agreement, Plaintiff filed a Motion for Status Conference, on May 10, 2018. Plaintiff's purpose for requesting the status conference was to obtain a hearing for this previously-filed Motion for Summary Judgment and to place this case back on track for trial. Evidence that Plaintiffs have been requesting a hearing for this motion for quite some time is shown on the body of that motion, attached as Exhibit 2 to this memo. The Honorable Carmen T. Mullen presided over the status conference. Although Plaintiff sought a hearing date for the older version of this motion during the status conference, the parties ultimately agreed to wait until the deposition of Defendants' employee Ginger Griffith took place, after which time Plaintiff was to refile this motion. That deposition took place on December 19–20, 2018. Plaintiff wasted little time afterward and filed this present version of the motion on January 8, 2019.

Subsequent to Plaintiff filing the present version of this Motion for Summary Judgment, this case was placed on the February 11 jury trial roster. Plaintiff respectfully requests that this motion be decided prior to that trial. In over nine years of litigation, Defendants have presented no evidence in support of their counterclaims. Those counterclaims should be

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summarily dismissed. The infusion of the counterclaims into the trial would create unnecessary complications and likely confuse the jury.

LEGAL STANDARD

"When a motion for summary judgment is made and supported as provided in this rule, **an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial**. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Rule 56(e), SCRCP (emphasis added). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 597 S.E.2d 181 (Ct.App.2004). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct. App. 2005). "Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." *Id.*

ARGUMENT

Defendants' counterclaims are for breach of contract and unjust enrichment. Both causes of action rest upon two separate factual theories. The evidence in this case does not support either one of those theories.

Defendants' first factual theory is that the money Defendants paid Plaintiff were mere "loans" and "advances" rather than payments for services rendered and profit-sharing promises. Yes, Defendants did pay Plaintiff money. Per Defendants' own admission, however, this money was paid to Plaintiff for work that was already performed and for profits that had already been realized. (*See* Affidavit of James Rod Brady, including exhibits). Defendants never paid any loans or advances to Plaintiff. *Id.* More

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importantly, Defendants have not presented a single piece of evidence suggesting any of their payments to Plaintiff was a loan or an advance.

Defendants' second factual theory is that Defendants had to pay third parties for services Plaintiff had contracted to perform. The parties here did contemplate that Plaintiff would need to hire third party contractors to help complete the large volume of work. Plaintiff did do that. And Defendants did pay those third parties. But Defendants already took a full accounting of all money paid for third party contractors, and still determined that they owed Plaintiff $711,027 after deducting the money paid to third parties. (*See* Affidavit of James Rod Brady and Exhibits).

To recap, Defendants have shown evidence that they *paid* money to Plaintiff and to third parties. But they have shown no evidence whatsoever that Plaintiff *owes* Defendants anything in connection with these payments. To the contrary, Defendants submitted evidence of their own admission that *they* owe Plaintiffs money. *Id.*

Both of Defendants' factual theories of recovery consist of mere allegations. Mere allegations alone cannot defeat a motion for summary judgment. Defendants must support those allegations with some kind of testimony or affidavit. *See* Rule 56, SCRCP (quoted more fully above). Proving that Plaintiff would actually owe Defendants for the amounts that Defendants paid is a necessary element of Defendants' counterclaims. In over nine years of litigation, Defendants have not produced a single piece of evidence supporting their contention that Plaintiff owes them money for the amounts Defendants paid. Instead, Defendants produced evidence that they admitted liability to Plaintiff. (*See* Affidavit of James Rod Brady, Exhibits A & B). These counterclaims are an insult to the integrity of this Court.

CONCLUSION

Plaintiff respectfully requests that this Court issue an order granting Plaintiff's Motion for Summary Judgment as to Defendants' Counterclaims before Monday, February 11, 2019, when the trial of this case is scheduled to begin.

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Respectfully submitted,

THE CAPELL LAW FIRM, LLC

s/ Charles W. Thomson
Glynn L. Capell (16552)
GCapell@CapellLaw.com
Charles W. Thomson (101471)
CThomson@CapellLaw.com
321 East Bay St.
Charleston, SC 29401
(843) 501-0423
Attorneys for Plaintiffs

February 4, 2019
Charleston, South Carolina

ELECTRONICALLY FILED - 2019 Feb 04 10:03 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP702047

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT
James R. Brady, *Plaintiff,* v. Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; Lancaster Redevelopment Corp.; and Gary L. Grossman, *Defendants.*	C.A. No. 2015-CP-07-02047 **Affidavit of James Rod Brady**

EXHIBIT 1

Before me, the undersigned authority, personally appeared James Rod Brady, who, being duly sworn, deposes and states as follows:

1. I am over the age of 18 and give this affidavit based upon my own personal knowledge.

2. I am the Plaintiff in the above-referenced matter.

3. In or around 2004, I contracted with Defendants to construct, market, and sell residences in two separate developments within the Allenwood neighborhood on Hilton Head Island. In addition to being paid for providing these services, I was also promised a share of the profits generated from the sale of the residences.

4. As of September 2007, I had overseen the construction of a total of 103 residential units in these two developments. I also participated in the marketing and sales of those units.

AS TO DEFENDANTS' THEORY THAT AMOUNTS THEY PAID ME WERE "LOANS" OR "ADVANCES"

5. Ginger Griffith is an employee and staff accountant and treasurer of Defendants.

6. Ms. Griffith sent me a letter dated September 13, 2007. This letter is attached as Exhibit A to this Affidavit.

7. The September 13, 2007 letter demonstrates four separate amounts that, added together, represent the total amount that Defendants alleged to have paid me as of that date. Adding those four numbers together,

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Defendants allege they had paid me a total of $509,261.00 for services performed and profit sharing from the two developments.

8. All of these payments were made in connection with residential units that had already been completed and sold, not for future work or expenses.

9. After receiving Ms. Griffith's letter in September 2007, I retained an accountant, T. Gardiner Brower, to check behind the Defendants' numbers. Mr. Brower has since passed away.

10. I made a good faith effort to transmit to Mr. Brower any and all documents that would evidence any payment that Defendants made to me.

11. From the materials I gave him, Mr. Brower determined that Defendants had paid me a total of $453,411.00—an amount slightly less than the $509,261.00 that Defendants alleged to have paid me.

12. Whatever amount Defendants paid me for my services and profit sharing, the amounts paid were for work that was already complete. My construction work was complete. The houses had been sold. The single-purpose developer LLCs who owned the residential units had sold the units and made a profit, even after paying all accounts payable. None of the payments that Defendants made to me could be classified as a "loan" or an "advance."

13. I understand that Defendants alleged in this lawsuit that the amounts they paid to me constituted "loans" or "advances." This is patently not true, and Defendants' allegations in that regard constitute the utmost bad faith conduct. Defendants acknowledged at the time they made the payments that the payments were for services and profits already earned and realized. Defendants' September 13, 2007 letter corroborates the fact that these payments were not loans or advances. Ginger Griffith's testimony in this matter does as well. Ms. Griffith's testimony is attached as Exhibit B to this Affidavit.

14. If Gary L. Grossman or Lancaster Redevelopment Corp. made any "loans" or "advances" on this project, those loans or advances were not made to me. The two single-purpose developer LLC Defendants—Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC—took out loans to cover construction costs. I recall that those loans came from banks. Regardless, these two single-purpose entities had sold their

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residential units, repaid all money loaned to them for construction costs, and had made a profit even after paying all accounts payable. This is my recollection, and it is also corroborated by the testimony of Ginger Griffith.

AS TO DEFENDANTS' THEORY THAT I OWE THEM FOR MONEY THEY PAID TO THIRD PARTIES

15. Under the 2004 agreement, I was entitled to engage other contractors to assist me in constructing the residences at the two subject developments. I did end engage several contractors to assist me: Nick Grossman, Dan Clore, Rich Raven, and R.S. Davis.

16. I understand that Defendants alleged in this lawsuit that I still owe Defendants money for the reimbursement of Defendants' payments to these contractors. As demonstrated below, this is not true.

17. The September 13, 2007 letter accounts for all payments I owed Defendants for those four contractors. I did not engage these contractors subsequent to when that letter was drafted. The testimony of Ginger Griffith, attached as Exhibit B, corroborates that there are no amounts that I owe Defendants for the services of these contractors that have not already been reimbursed and accounted for.

18. Even after accounting for the $509,261.00 Defendants allege to have paid to me, and accounting for all amounts Defendants paid to the four contractors who helped me construct the subject residences, Defendants still admitted in the September 13, 2007 letter that the total unpaid amount due to me was a total of $711,027.00.

19. After that time, I never received another payment from Defendants for work completed and sold. As a result of Defendants breach of their agreement to pay me, I stopped working at the subject developments. Thus, it is not possible that I would have incurred additional expenses for which Defendants would be entitled to reimbursement after September 2007. It shocks the conscience that Defendants would allege that I owe them money.

The affiant says nothing further.

James Rod Brady

SWORN TO AND SUBSCRIBED before
me this 4th day of February, 2019.

Notary Public, State of SC
My Commission expires: _____

ANNETTE KAY MCBRIDE
Notary Public-State of South Carolina
My Commission Expires
May 19, 2026

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EXHIBIT
A

Lancaster Redevelopment Corp.

2138 Route 522

Selinsgrove, PA 17870

570-374-0131 (Fax 570-374-6093)

September 13, 2007

James R. Brady
36 Timber Marsh Lane
Hilton Head, SC 29926-2787

Dear Rod,

Pursuant to your discussion with Mr. Grossman, I am transmitting our analysis of the Allenwood compensation to you under our February 2, 2004 letter of agreement.

As you are aware, there are two separate entities operating at Allenwood. Our analysis isolates compensation by company.

Village Square Development Co. LLC (townhomes)	
2005 Income	$708,890
2006 Income	$247,495
Total to date	$956.385

To date there was one distribution	
Paid to you on 4/10/07	$ 36,000

This distribution was based on cash available at the time of distribution. As you know, our cash is invested in standing inventory.

Under the February 2, 2004 letter of Agreement you are scheduled to be paid a construction management fee of $1,250 per townhouse unit. According to our records we have built and delivered 26 townhouses to date. I interpret the February 2, 2004 letter of Agreement to make the construction fees payable at the time each unit settles.

It is my understanding that the expenses associated with hiring Nick Grossman and/or Dan Clore for supervisory work on your behalf are to be deducted. Mr. Grossman did advise me that expenses for Dan Clore would not be counted after a certain date, but I do not know what that date was, so I picked 5/31/07 which is when Nick went to Battery Creek.

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The February 2, 2004 letter of Agreement also provides for a $2,000 per townhouse sales commission to either you or Joy Walker depending on who actually sold the unit. I was subsequently informed that you and Joy agreed to split this commission at $1,000 each for all sales made by you or her. I made all payments and constructed all commission accounting in accordance with that directive.

The construction management fee on the 26 sold and settled townhomes totals	$32,500
The commissions on the 26 sold and Settled townhomes totals	$26,000
Less the commission paid to date	(9,415)
Less Nick Grossman salary/benefits/expenses 6/6 to 1/7	(29,845)
Less Dan Clore salary/benefits/expenses 6/6 to 1/7	(30,746)
Less Nick Grossman salary/benefits/expenses 1/1/07-5/31/07	(24,870)
Less Dan Clore salary/benefits/expenses 1/1/07-5/31/07	(25,620)
Current balance as of this date	(61,996)
There are construction management fees Due on 29 additional units @$1,250	$36,250
The net balance is a negative For your sales commissions and construction management Fees for Village Square Development Co. LLC	(25,746)

The net income for tax year 2005 was $708,890 and $247,495 in 2006 for a total taxable income of $956,385. The LRC allocated income on this $956,385 is 88% or $841,619.

Under the terms of the February 2, 2004 letter of Agreement, Mr. Grossman was to be paid a priority distribution of 500 basis points for his guarantee. The average debt in 2005 was $2,970,097 from January 1 until December 31, 2005 which calculates to a pro-rated guarantee fee of $148,504.85 for 2005.

The average VSD to LLC debt balance for 2006 was $5,402,733, which calculates to a guarantee fee of $270,137.

The guarantee fee totals $418,642 which reduces the LRC allocated pretax profits from $841,619 to $422,977.

Your allocated share of 50% would be $211,488.

To date I have advanced $128,000.

The balance of the 2005/2006 "incentive management fee" due to you is $83,488.

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Under the terms of the February 2, 2004 letter of Agreement, 100% of LRC loans or accounts receivables are to be paid as a priority distribution.

Mr. Grossman recently loaned Village Square Development Co. LLC $124,750 and forest homes has past due receivables of $173,700.

We must repay the $173,700 past due receivables as a first priority. Mr. Grossman has indicated his intentions to allow funds to be paid to you ahead of his recent loans.

As to Hilton Head Homes at Allenwood	
Your construction management fees on the 44 single family homes sold and settled total	$220,000
The construction management fees on the 4 remaining single family homes total	$ 20,000
The expenses associated with Rich Raven	$(17,941)
The expenses associated with RS Davis	$(58,611)
The 10% commission on the 44 single family Homes sold and settled to date total	$192,000
Total earned as of this date	$355,475
Total paid as of this date	$335,846
Balance due on contribution fees and commissions	$ 19,629

Mr. Grossman advises that this amount can be paid from the very next S.F. settlement if Art Long will consent.

The 2005 net taxable income was	$1,212,191
The 2006 net taxable income was	400,592
Total taxable income of	$1,612,783
The allocated income on this $1,612,783 is 88% or	$1,419,249
The average debt balance for 2005 was	$1,993,865
The 500 basis point guarantee fee calculating to	$ 99,693
The average debt balance for 2006 was	$1,267,311
The 500 basis point guarantee fee calculating to	$ 52,244
Therefore, net taxable income after the guarantee Fees for 2005/2006 is	$1,267,312
Your 50% incentive management fee is	$ 633,656
Of this writing, the total amount due to you is	$ 711,027

Mr. Grossman directed me to access our ability to fund a $10,000 a month draw against these funds. Given the carrying costs of the inventory, and past due receivables to Forest Homes from Allenwood, the monthly carrying costs at Cypress Harbor and our massive increase in overhead associated with the new plant, LRC simply cannot fund any additional monthly expenses.

I have attached a summary of the above information. If you have any questions or need any details, please feel free to call me anytime.

Very truly yours,

Ginger Griffith
Treasurer

Cc: Gary L. Grossman

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EXHIBIT B

Excerpts from the Depositions of Ginger Griffith,
staff accountant for Defendants

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the last paragraph I'm asking about here it starts with "This distribution was based." That group of paragraphs seems pretty straightforward to me. Do you have any additional context or any reason that part wouldn't be clear?
A. No.
Q. Next paragraph under that, it starts "Under the February 2, 2004 letter of agreement." In the middle of that paragraph, it says "I interpret February 2, 2004 letter." The "I" there, I assume that's you?
A. Yes.
Q. And all that says is "I interpret the February 2, 2004 letter of agreement to construction fees payable at the time each unit settles." I interrupt that, and correct me if I'm wrong here, all the fees, the earned fees that are laid out in this letter forthcoming, we're talking about units here that were all completed and sold, right?
A. Correct.
Q. All right. The next paragraph talks about the expenses associated with hiring Nick Grossman and Dan Clore are to be deducted. You are accounting for -- it looks like, Nick Grossman and Dan Clore did work on some of these units.
But you are accounting for the fees paid to

Page 22

them in your calculations in this letter, right?
A. If they were paid any fees. I believe that they were only paid their salary, not any additional fees.
Q. Okay. On page 2 there's a group of -- I hate to jump out of order here, but it's relevant to the last paragraph. You see "Less the commission paid to date," and then there's about four different items?
A. Yes.
Q. So it says "Salary, benefits and expenses for Nick Grossman and Dan Clore," right?
A. Right.
Q. And I don't know if you have a calculator handy, but I added up those four numbers. And it looks like $111,081 is being deducted from the amount that you are calculating that Rod is owed?
A. Yes.
Q. Back to the last paragraph on the first page, any -- would there have been anything owed to Nick Grossman or Dan Clore for work performed on these town homes that were already completed and sold that would not had been taken account for in this letter?
A. I don't believe so.
Q. Top photograph on the next page, I know this is tedious, but just any reason that it doesn't clearly

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state what it says? Is there any additional context or anything we need to understand that paragraph?
A. No.
Q. For the record, we don't have to get that detailed tomorrow. This is my one chance to flesh out everything there is to know about this letter. The paragraph after that, you start to lay out some numbers. We already went over this:
"The construction management fee on the 26 sold and settled town homes," we're talking about units that are already closed out here, right?
A. Right.
Q. There wouldn't have been any reason for Nick or Dan to have to go back out to these units to your knowledge?
A. Not to my knowledge.
Q. Okay. We added up the total monies paid to Nick and Dan for the services. This is my words, not yours. But I added them up myself. Those four numbers added to $111,081. That number exceeds what Rod is even being paid for his construction management fees, right?
A. It exceeds, is that what you said?
Q. Correct.
A. Yes.

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Q. On the rest of this page, same question: Is there -- I mean, we can read it and see what the letter says. But is there any assistance you can offer or additional context that would clarify what's being said in there or just the letter says what it says?
A. I believe it says what it says. There's a lot of numbers to take in.
Q. The bottom, it says that "The balance of 2005/2006 incentive management fee," what does incentive management fee mean to you here? What services is it for?
A. To me, it means Rod managing the whole property and the construction of the units. He would be offered a fee.
Q. The same process on the next page, it starts with "Under the terms," and all the way down to "Balance due on contribution fees and commissions," is there anything in there that needs clarification or just the letter says what it says?
A. The letter says what it says.
Q. Okay. Below that it says "Mr. Grossman advises that this amount can be paid from the very next S.F. settlement if Art Long will consent." Do you know if that balance was ever paid to Mr. Brady?
A. I don't know without looking into further

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A. Yes.
Q. Okay. Let's go back and summarize that more distinctly in a second. But first, look at the next page, top paragraph of, I believe, that's the third page of the letter -- fourth page. I'm sorry. It says, "Mr. Grossman directed me to access our ability," right?
A. Yes.
Q. Do you see that paragraph? And what's going on here is that, if I can distinctly paraphrase that, that paragraph is, yes, Mr. Brady, you're owed money, the $711,000 and change, but Lancaster Redevelopment Corporation is having financial troubles. And we can't -- we don't have the funds to pay it all to you right now. So what we are going to do is pay you $10,000 a month.
Is that essentially what that paragraph is saying?
A. Yes.
Q. And you don't recall one way or the other whether any of those monthly payments were made to Rod after September of 2007?
A. I don't recall, no.
Q. Okay. So Rod was already owed the money, right? He'd already earned it, right?

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A. Yes.
Q. And the purpose of getting on this payment plan was because Lancaster Redevelopment Corporation had financial issues, right?
A. Yes.
Q. And the purpose of those financial -- or the source of those financial issues were projects other than the two at issue here, correct?
A. One of the issues was past due receivables from the Allenwood project.
Q. Would those past due receivables, would those have been accounted for when you calculated the net income of that LLC?
A. Yes.
Q. Okay. So we've already accounted for those past due receivables within the number owed to Rod, right?
A. Yes.
Q. Okay. And then the other reason listed, it says, it seems as if the Lancaster Redevelopment Corporation is having problems with carrying costs of Cypress Harbor. That project had nothing to do with Village Square Development, right?
A. No.
Q. And it had nothing to do with the Allenwood

Page 31

project, right?
A. No.
Q. And it had nothing to do with Rod Brady, right?
A. I don't believe so. I personally don't remember the Cypress Harbor project.
Q. Right. And it doesn't appear to be relevant to this case, I don't think, other than the fact that it seems to be the source of why Lancaster Redevelopment Corporation was having trouble paying Mr. Brady. And this was written in the letter by you, right?
A. Yes.
Q. And you just don't remember all the complete details of -- behind that -- those problems, right?
A. Correct.
Q. And it also mentions a "massive increase in overhead associated with the new plant." That didn't have anything to do with Rod Brady, right?
A. No.
Q. Okay. So to recap, the sales have been final, right, of the properties built on these two neighborhoods, right?
A. Yes.
Q. And the LLC's, that money from the

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purchasers of the homes, right?
A. Yes.
Q. And there was a profit after that, right?
A. Yes.
Q. Okay. Lancaster Redevelopment's portion of that profit got accounted for, right?
A. Right.
Q. And Mr. Grossman's individual profits from those transactions got accounted for, right?
A. Yes.
Q. And after all that, Mr. Brady was still owed a big chunk of money out of those profits, right?
A. Right.
Q. For work that has already been earned, right?
A. Right.
Q. We're not projecting future profits here, right?
A. Correct.
Q. Okay. And Mr. Brady was not paid that money because Lancaster Redevelopment Corporation had problems on other projects that had nothing to do with Rod Brady, right?
A. Some of the problems had nothing to do with Allenwood.

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Q. Okay. Okay. All right. So and let's summarize the specific numbers really quickly. So the total was 711,024 -- or 27 -- I'm sorry. Right?

A. Yes.

Q. And of that 633,656, that was owed to Rod as an incentive management fee or basically a profit sharing from the Allenwood project, right?

A. Right.

Q. Already earned, correct?

A. Correct.

Q. Homes already sold, right?

A. Right.

Q. LLCs are already paid by the home purchasers, right?

A. Yes.

Q. And the LLCs made a profit, right?

A. Yes.

Q. Okay. And then there is an amount 19,629 owed to Rod as a construction management fee at Allenwood. And that money was already earned, right?

A. Right.

Q. And the construction was already completed at those homes, too, correct?

A. Correct.

Q. All right. And the 83,488 portion was owed

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to Rod as his incentive management fee for the Village Square Development project, right?

A. Yes.

Q. And just like in Allenwood, those fees are already earned, right?

A. Yes.

Q. And the homes are already sold?

A. Yes.

Q. Okay. And to be fair, Rod owed Lancaster Redevelopment Corporation, or whoever the contracting parties were, $25,746. And that was for the difference between his construction management fees and the money he owed for the help he retained to assist him with that construction, right, at the Village Square Development project, right?

A. Correct.

Q. Okay. But the number that he owed to other people was put into the total, right?

A. Yes.

Q. And that total, again, that was owed to Rod was $711,027 as of September 13, 2007?

A. Right.

Q. And the amount accounted for for his help totalled between Nick Grossman, Dan Clore, Rich Raven and RS Davis we've accounted for $187,633 between the

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four of them if you add up all the individual numbers. Does that sound about right to you?

A. Yes, it does.

Q. Yeah. I'm not asking you to do math on the spot. But that's the numbers that I came up with anyhow. That number also took into account that Mr. Grossman was getting consideration in exchange for a personal guarantee. And he had -- we had accounted for $300,441.85 to be owed to him, right?

A. Yes.

Q. Already accounted for within the number owed to Rod?

A. Yes -- owed to Gary.

Q. Okay. Yeah, so, essentially just to drive the point home one last time, you concluded on September 13, 2007 that the contracting parties owed Rod $711,027, right?

A. Yes.

Q. And you didn't just throw that letter together, right?

A. No.

Q. And you're a professional in the accounting business, right?

A. Right.

Q. And you made a good faith effort to get

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these numbers right, didn't you?

A. Yes.

Q. And you haven't discovered any errors in here now since the time you wrote that letter?

A. No.

Q. Okay. And you do not have any evidence showing that Lancaster Redevelopment Corporation, Gary Grossman or any other affiliated entity paid any money to Rod subsequent to this September 13, 2007?

A. I don't know if anything has been paid to Rod or not.

Q. Right. But the question is, you don't have any evidence showing it, right?

A. Right.

MR. THOMSON: Okay. Those are all the questions I have. Mr. O'Kelley, if would like to interview Ms. Griffith, you have may take that opportunity now.

MR. O'KELLEY: I thought this is a deposition, not an interview.

MR. THOMSON: It's a de bene esse deposition for purpose for use at trial.

* * * * *

EXAMINATION

BY MR. O'KELLEY:

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS C/A NO.: 2015-CP-07-2047
James R. Brady, Plaintiff, vs. Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman, Defendants.	**THE DEFENDANTS MEMORANDUM IN OPPOSITION TO THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

TO: CHARLES W. THOMPSON, ESQ.

The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman, by and through undersigned counsel, submit this Memorandum in Opposition to Plaintiff's' Motion for Summary Judgment.

STANDARD OF REVIEW

Under Rule 56(c) of the South Carolina Rules of Civil Procedure, 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. *See Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005); *South Carolina Electric and Gas Co. v. Town of Awendaw*, 359 S.C. 29, 596 S.E.2d 482 (2004). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the nonmoving party. *See Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Lt. J.A. Fleming, Jr. v. Boykin Rose and James Caulder*, 350 S.C. 488, 567 S.E.2d 857 (2002). The Court in South Carolina has long recognized that summary judgment is a "…drastic remedy" that must be carefully invoked as to not improperly deprive any person of a trial of the disputed facts in a case.

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Frank Joe Baughman, et al. v. American Telephone and Telegraph Co., et al., 306 S.C. 101, 410 S.E.2d 537 (1991).

FACTS AND ARGUMENT

This matter comes before the Court upon the motion of the Plaintiff that there are no triable issue of facts in this matter regarding the Defendants Counterclaim as set forth in their motion. A copy of the Defendants' Answer and Counterclaim is attached hereto as Exhibit "A". Granting summary judgment in this matter would not be appropriate.

The Defendants Hilton Head Homes at Allenwood, LLC, and Village Square Development Company, LLC, are limited liability companies organized and existing pursuant to the laws of the State of South Carolina, which formerly developed two neighborhoods on Hilton Head. (*Id.*)

The Defendant Lancaster Redevelopment Corporation is a corporation organized and existing pursuant to the laws of the State of Pennsylvania and authorized to conduct business in South Carolina, and the Defendant Gary L. Grossman is a citizen and resident of the State of Pennsylvania.

Pursuant to the terms and conditions of an agreement with Lancaster Redevelopment Corporation, the Plaintiff was to have provided services to Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation in connection with the construction, sales, and marketing of a certain development in Beaufort County, South Carolina. The Plaintiff was given sums as loans and as advances for work that should have been performed by the Plaintiff, which work as not performed by the Plaintiff, prior to any distributions being made or prior to any commissions or payments being given to the Plaintiff. *Id.*

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The Plaintiff often informed the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation that he could not cover the workload required of him in order to receive commissions and other compensation.

While he was to have been furthering the business of Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation, the Plaintiff failed to perform work required of him and third parties had to be employed to complete the work the Plaintiff was going to allegedly complete. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation made numerous payments to the Plaintiff in spite of his inability to perform as promised and as relied upon by Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation.

Because of his failure to perform, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation seek to recover all payments made to the Plaintiff in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars. *Id.*

Ginger Griffith, who worked as the treasurer for Lancaster Redevelopment Corporation gave her deposition in this matter on December 20, 2018. (Depo., p. 7). A copy of her deposition transcript is attached hereto as Exhibit "B" and incorporated by reference herein.

Ms. Griffith testified that as of September of 2007, the housing marking was falling apart and there was standing inventory that could not be sold (Depo. p. 37). There were foreclosures against the Defendants around this time. (Depo. p. 38). There could be no payments to Mr. Brady accordingly.

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Ms. Griffith testified that Mr. Brody was advanced sums during his employment by Hilton Head Homes and by Village Square against fees earned. *Id.* He was never an employee of Lancaster Redevelopment Corporation. *Id.* at 38-39. These advances were never repaid to the Defendants. Any incentive management fees were to be paid after the initial debts from Lancaster Redevelopment or Mr. Grossman were repaid. (Depo., p. 37)

The Plaintiff's conclusory statements that the amounts claimed by the Defendants are not loans are advances are just that: his opinion. This is the ultimate issue of fact. Were these payments loans, as the Defendants contend, or were these payments due?

The Defendants have acknowledged that due to the larger economic problems, there could be no payments made to Mr. Brady.

In correspondence to Mr. Brady of September 13, 2007, Ms. Griffith wrote

> Given the carrying costs of the inventory, and past due receivables to Forest Homes from Allenwood, the monthly carrying costs at Cypress Harbor and our massive increase in overhead associated with the new plant, LRC [Lancaster Redevelopment Corporation] simply cannot fund any additional monthly expenses.

(Letter of 9/13/2007, Ex. "A" to Brady Affidavit)

There were numerous advances made include "monthly expenses" as set forth in the letter which the Defendants contend are indeed loans and advances made, for which Mr. Brady is now responsible for reimbursing the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation. A difference of opinion as to what those matters are called does not warrant the granting of judgment as a matter of law as to these Defendant's counterclaims.

The Defendants would respectfully request that this Court deny the Plaintiff's motion accordingly and allow the matter to proceed to trial instead of invoking a drastic, appealable remedy. The Plaintiff seems greatly concerned about any future delay. Should the Court grant the

Plaintiff's motion, there will have to be an appeal, which the Defendants hope will not be necessary.

Respectfully submitted,

Feb. 4, 2019
Mt. Pleasant, SC

s/ G. Hamlin O'Kelley, III
BUIST BYARS & TAYLOR LLC
G. Hamlin O'Kelley, III
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
Hamlin.okelley@buistbyars.com
Attorneys for the Defendants

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EXHIBIT "A"

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT)
) C/A NO.: 2015-CP-07-2047

James R. Brady,

Plaintiff,

vs.

Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman,

Defendants.

SUMMONS FOR THE DEFENDANTS' ANSWER AND COUNTERCLAIM

2015 SEP 14 PM 3:33
JEAN ANN ROSEMOND
BEAUFORT COUNTY, SC
CLERK OF COURT

TO: THE ABOVE-NAMED PLAINTIFF

YOU ARE HEREBY SUMMONED and required to reply to the Defendants' Answer and Counterclaim in this action a copy of which is herewith served upon you, and to serve a copy of your Reply upon the undersigned attorneys at 652 Coleman Boulevard, Suite 200, Mt. Pleasant, South Carolina 29464, within thirty (30) days from service hereof, exclusive of the day of such service; and, if you fail to reply to the Answer and Counterclaim within the time aforesaid, judgment by default will be rendered against you, and the Defendants in this action will apply to the Court for the relief demanded.

Mt. Pleasant, SC

September 1, 2015

G. Hamlin O'Kelley, III
SC Bar No. 15419
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, South Carolina 29464
(843) 856-4488
Hamlin.okelley@buistbyars.com

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2015-CP-07-2047

James R. Brady,

Plaintiff,

vs.

Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp. and Gary L. Grossman,

Defendants.

ANSWER AND COUNTERCLAIM OF THE DEFENDANTS

2015 SEP 14 PM 3:33
BEAUFORT COUNTY, SC
CLERK OF COURT

TO: GLYNN L. CAPELL, ESQ.
CHARLES W. THOMPSON, ESQ.

The Defendant(S) Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp. and Gary L. Grossman (the "Defendants") by and through their undersigned counsel, answering the Complaint of the Plaintiff James R. Brady and setting forth their Counterclaims against James R. Brady allege and state as follows:

1. Each and every allegation of the Plaintiff's Complaint not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Defendants deny same and demand strict proof thereof.

2. The Defendants admit Paragraph 1 of the Plaintiff's Complaint.

3. The Defendants admit the allegations of Paragraphs 2, 3, and 4 of the Plaintiff's Complaint.

4. The Defendants admit only so much of Paragraph 5 of the Plaintiff's Complaint that alleges the Defendant Gray L. Grossman is a resident of the State of Pennsylvania. The Defendants deny the remaining allegations of said Paragraph and would allege and show that he never conducted business in Beaufort County regarding this matter in his individual capacity.

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5. The Defendants are not required to answer the allegations contained in Paragraph 6 of the Plaintiff's Complaint as said allegations constitute legal conclusions.

6. The Defendants deny the allegations of Paragraphs 7, 8, and 9 and demand strict proof thereof.

7. The Defendants are without sufficient information to form a belief as to the allegations of Paragraph 10 of the Plaintiff's Complaint, and, therefore, denies same and demands strict proof thereof.

8. In answering Paragraph 11 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 7 above as though repeated herein verbatim.

9. The Defendants admit only so much of Paragraph 12 of the Plaintiff's Complaint that alleges the Plaintiff at one time worked for the Defendant Hilton Head Homes at Allenwood, LLC. The Defendants deny the remaining allegations of Paragraph 8 of the Plaintiff's Complaint and demand strict proof thereof.

10. The Defendants deny the allegations of Paragraphs 13, 14, and 15 of the Plaintiff's Complaint and demand strict proof thereof.

11. In answering Paragraph 16 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 10 above as though repeated herein verbatim.

12. The Defendants deny the allegations of Paragraphs 17, 18, 19, 20, and 21 of the Plaintiff's Complaint and demand strict proof thereof.

13. In answering Paragraph 22 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 10 above as though repeated herein verbatim.

14. The Defendants deny the allegations of Paragraphs 23, 24, 25, and 26 of the Plaintiff's Complaint and demand strict proof thereof.

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FOR A FURTHER ANSWER
AND BY WAY OF AN AFFIRAMTION DEFENSE AND
MOTION TO DISMISS

15. The Defendants would allege and show that the Plaintiff's Complaint fails to state facts sufficient upon which relief can be granted, and, as such, the Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) SCRCP.

FOR A FURTHER ANSWER
AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE

16. The Defendants would allege and show that the Plaintiff's own inequitable actions, including non-performance of the duties of his job, act as a complete bar to recover, and, as such, the Plaintiff's Complaint should be dismissed.

FOR A FURTHER ANSWER
AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE

17. The Defendants would allege and show that the Plaintiff's Complaint is barred by the doctrines of waiver, estoppel, and laches as the Plaintiff failed to act when he should have acted in protecting any interest he may have had regarding these claims, if any, and none of which are admitted, as set forth in his Complaint.

FOR A FURTHER ANSWER
AND BY WAY OF A FOURTH AFFIRMATIVE DEFENSE

18. The Defendants would allege and show that the Plaintiff knew or should have known that no fees, compensation, remuneration, or payment of any kind would be paid to him for work not performed by him and that he would only be paid for work in furtherance of the business of Hilton Head Homes at Allenwood, LLC.

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FOR A FURTHER ANSWER
AND BY WAY OF A FIFTH AFFIRMATIVE DEFENSE

19. The Defendants would allege and show that the Plaintiff had no reliance upon Gary L. Grossman as any employer and bases his entire baseless case on one letter from Mr. Grossman knowing that he was to further the business of Hilton Head Homes at Allenwood, LLC, and not that of Mr. Grossman, individually.

FOR A FURTHER ANSWER
AND BY WAY OF A SIXTH AFFIRMATIVE DEFENSE
AND BY WAY OF A COUNTERCLAIM

20. The Defendants repeat and reallege Paragraphs 1 through 19 above as though repeated herein verbatim.

21. The Defendants Hilton Head Homes at Allenwood, LLC, and Village Square Development Company, LLC, are limited liability companies organized and existing pursuant to the laws of the State of South Carolina.

22. The Defendant Lancaster Redevelopment Corporation is a corporation organized and existing pursuant to the laws of the State of Pennsylvania and authorized to conduct business in South Carolina.

23. The Defendant Gary L. Grossman is a citizen and resident of the State of Pennsylvania.

24. The Plaintiff James R. Brady is a resident of Beaufort County, South Carolina.

25. Pursuant to the terms and conditions of an agreement with Lancaster Redevelopment Corporation, the Plaintiff was to have provided services to Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation in connection with the construction, sales, and marketing of a certain development in Beaufort County, South Carolina.

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26. The Plaintiff was given sums as loans and as advances for work that should have been performed by the Plaintiff, which work as not performed by the Plaintiff, prior to any distributions being made or prior to any commissions or payments being given to the Plaintiff.

27. The Plaintiff often informed the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation that he could not cover the workload required of him in order to receive commissions and other compensation.

28. While he was to have been furthering the business of Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation, the Plaintiff failed to perform work required of him and third parties had to be employed to complete the work the Plaintiff was going to allegedly complete.

29. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation made numerous payments to the Plaintiff in spite of his inability to perform as promised and as relied upon by Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation.

30. Such a failure to perform constitutes a breach of contract entitling the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation to recover all payments made to the Plaintiff in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars.

31. The Plaintiff is not entitled to retain the benefit of these payments and advancements due to his breach of his agreement with Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation, and these Defendants

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are entitled to actual damages in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars in amounts to be determined at the trial of this case.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

32. The Defendants repeat and reallege Paragraphs 1 through 31 above as though repeated herein verbatim.

33. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation had valid contract with the Plaintiff for services which the Plaintiff failed to provide.

34. Such a failure constitutes a breach of contract for which the Plaintiff has no legal excuse and which breach has caused the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation to suffer damages in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars.

35. As a direct and proximate result of the Plaintiff's breach of contract, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation are entitled to actual damages in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars in amounts to be determined at trial.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)

36. The Defendants repeat and reallege Paragraphs 1 through 35 above as though repeated herein verbatim.

37. Despite receiving payments, the Plaintiff failed and refused to perform pursuant to his agreement with the Defendants Hilton Head Homes at Allenwood, LLC, Village Square

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Development Company, LLC, and Lancaster Redevelopment Corporation and was compensated in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars.

38. The Plaintiff has been unjustly enriched by having received these payments and it would be inequitable and unjust for the Plaintiff to retain the value of the payments made in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars.

39. As a direct and proximate result of this unjust enrichment, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation are entitled to recover damages against the Plaintiff in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars in amounts to be determined at trial of this case.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corporation, and Gary L. Grossman pray this Court enter its Order as follows:

1. Dismissing the Plaintiff's Complaint;
2. Awarding the Defendants all reasonable attorneys' fees and costs;
3. Awarding the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corporation, damages in the minimum amount of Six Hundred Thousand and No/100 ($600,000.00) Dollars and other amounts to be determined at trial; and
4. Awarding any and all such further relief as this Court may deem just and proper.

BUIST, BYARS & TAYLOR, LLC

Mount Pleasant, South Carolina
Sept. 1, 2015

By: _____

G. Hamlin O'Kelley, III
S.C. Bar No. 15491
652 Coleman Blvd., Suite 200
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CERTIFICATE OF MAILING

I hereby certify that on September 1, 2015, a copy of the foregoing *Summons, Answer and Counterclaim of the Defendants* was mailed, postage prepaid, to all counsel of record in this matter, as follows.

Mr. Glynn L. Capell, Esq.
The Capell Law Firm, LLC
PO Box 6628
Hilton Head, SC 29938

Amanda C. Taylor
Paralegal to G. Hamlin O'Kelley, III

EXHIBIT "B"

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STATE OF SOUTH CAROLINA	*	COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	*	FOURTEENTH CIRCUIT
	*	C.A. No. 2015-CP-07-02047
James R. Brady,	*	
Plaintiff,	*	
v.	*	
Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; Lancaster Redevelopment Corp.; and Gary L. Grossman,	*	
Defendants.	*	

* * * * *

December 20, 2018

* * * * *

Videotaped deposition of GINGER GRIFFITH, held in the offices of Premier Reporting, LLC, 112 Market Street, Suite 406, Harrisburg, Pennsylvania 17101, commencing at 9:10 a.m., on the above date, before Tracy Dominico, a Professional Court Reporter and Notary Public of the Commonwealth of Pennsylvania.

APPEARANCES:

THE CAPELL LAW FIRM, LLC
321 East Bay Street
Charleston, South Carolina 29401
BY: CHARLES W. THOMSON, ESQUIRE
(Via videoconference)
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Counsel for the Plaintiff

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BY: G. HAMLIN O'KELLEY, III, ESQUIRE
(Via telephone)
(843) 284-1408
Counsel for the Defendants

Also Present:

Kenneth Haase, Videographer

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NO.	DESCRIPTION	PAGE

(None.)

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P R O C E E D I N G S

(Proceedings commenced at 9:10 a.m.)

* * * * *

THE VIDEOGRAPHER: Time on the video monitor is 9:10 a.m. My name is Ken Haase for Clark and Associates. This begins the videotaped deposition of Ginger L. Griffith testifying in the matter of James Rod Brady versus Hilton Head Homes at Allenwood, LLC, et al. In the Court of Common Pleas, Fourteenth Circuit, Beaufort County, South Carolina, Case Number 2015-CP-07-02047, taken at Premier Reporting, 8 South Hanover Street, Suite 201, Carlisle, Pennsylvania. Today's date is December 20, 2018.

Will counsel please identify yourselves and state who you represent.

MR. THOMSON: Charles Thomson. I represent the Plaintiff James Rod Brady.

MR. O'KELLEY: And this is Hamlin O'Kelley. I represent the Defendants in this matter.

THE VIDEOGRAPHER: Will the court reporter please identify herself and swear in or affirm the witness.

THE COURT REPORTER: Tracy Dominico. Will you raise your right hand?

* * * * *

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GINGER GRIFFITH, after having been duly sworn/affirmed to tell the truth, the whole truth and nothing but the truth, testified as follows:

THE VIDEOGRAPHER: Please begin.

MR. THOMSON: Ready to go?

THE VIDEOGRAPHER: Yep.

* * * * *

EXAMINATION

BY MR. THOMSON:

Q. Ms. Griffith, as you know, I'm Charles Thomson. I represent James Rod Brady. Mr. Brady has brought suit against Gary Grossman, Lancaster Redevelopment Corporation and two other single-purpose LLCs in South Carolina for failure to pay money owed to him on two development projects down there, two neighborhood development projects.

Can you please, to start out, state your full name for the record?

A. Ginger L. Griffith.

Q. Okay. Ms. Griffith, thank you for coming today. The main purpose is there's a piece of evidence in this matter, a 2007 letter written by you. And I would like for you to authenticate that letter and educate the jury about the contents.

But before we get going on that, just a

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reminder: You're under oath subject to the penalty of perjury. This, again, the purpose is to educate the jury today, so they are our audience here. We are doing this by video because you being in Selinsgrove, Pennsylvania, this seemed to be a better option than forcing you to travel to South Carolina for -- to testify at the trial in this matter.

So we'll get started by briefly going through your background. You were born and raised in Selinsgrove, right?

A. Correct.

Q. And you went to high school there in Pennsylvania?

A. Yes.

Q. Okay. And then after high school, you went to Williamsport Community College, right?

A. That's correct.

Q. And you earned an associate degree in accounting there in 1985?

A. That is correct.

Q. Okay. And from 1985 to 1998, you worked accounting jobs for two separate companies?

A. Yes, yes.

Q. Then in 1998, you began working for Gary Grossman's company, Lancaster Redevelopment

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Corporation, right?

A. That is correct.

Q. And that was 20 years ago obviously. And both Mr. Grossman and Lancaster Redevelopment Corporation are Defendants in this matter, right?

A. Yes.

Q. And you continued to be -- you were a treasurer for Lancaster Redevelopment Corporation?

A. Yes, I held that position.

Q. Okay. And you held that position until June of 2010, right?

A. Yes.

Q. That position expired because Lancaster Redevelopment Corporation just went under?

A. Basically, yes.

Q. It's not a technical term, but it's probably parlance at least. Okay. And then after June 2010, you continued to be employed by one of Mr. Grossman's companies. But it had a new name of Building Solutions Since 1977, LLC, right?

A. That's correct.

Q. And that Since 1977 is part of the company name, not a descriptive -- not something I was saying to be descriptive, right?

A. Correct, it's part of the company name.

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Q. Right. Okay. So you're not a CPA?
A. No.
Q. Right?
A. No.
Q. But you are a professional in the accounting field?
A. Yes.
Q. And just to repeat, you've been working under the direction of Mr. Grossman since 1998 for 20 years, first under Lancaster Redevelopment Corporation, now under a different company name, right?
A. That is correct.
Q. Why did Lancaster Redevelopment Corporation go out of business?
A. The housing market had gone downhill. And the company just did not have enough income to pay debts. It just -- it was failing. And Gary felt it best to shut down that company. The property was sold by the bank that held the mortgage to another individual.

So Gary reorganized as a new company.

Q. Okay. So is it a correct summary that pretty much the debts outweighed the assets, right?
A. Correct.
Q. All right. So you were treasurer for

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Lancaster Redevelopment Corporation and also for the new company. And you do the accounting for those companies, right?

A. Yes.

Q. And as part of your job for those companies, you also serve doing the accounting for various single-purpose LLCs owned and directed by either Lancaster Redevelopment Corporation or the Building Solutions company?

A. Yes. Most of them are not under the umbrella of Building Solutions. They are Gary Grossman's individual companies that he may have other partners in.

Q. Okay. And let's clarify this for the jury: And I'm speaking in generalities here just for background purposes. When a developer develops a specific neighborhood, it might form a single-purpose company for that project. And then when that project is done, that single-purpose company might shut down.

But the parent company or other investors might own that single-purpose company. Is that --

A. That's correct, yes.

Q. -- the general?

A. Yes.

Q. Yeah. Okay. And that's what we have here

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on these two Hilton Head projects at issue in this case, right?

A. Yes.

Q. Okay. And the two LLCs there are Hilton Head Homes at Allenwood, LLC and Village Square Development Company, LLC?

A. Yes.

Q. And those companies serve no purpose other than the respected neighborhood development that they were designed to serve?

A. Correct.

Q. When those two companies were active, you did the accounting for them, right?

A. Yes, I did.

Q. And while those development projects were active, you did the accounting for Lancaster Redevelopment Corporation?

A. Yes.

Q. Is that correct?

A. Yes, that's correct.

Q. Okay. And so you specifically did the accounting on these two projects, Allenwood and Village Square?

A. Yes.

Q. All right. I would like to place two

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separate letters before you.

MR. THOMSON: And, Madam Court Reporter, these were identified as Exhibit 2 and Exhibit 4 at yesterday's deposition.

THE COURT REPORTER: Okay. She has them.

BY MR. THOMSON:

Q. Okay. For the jury, there are two of these letters. One is the September 13, 2007 letter that I will want you to authenticate. And the other letter is dated February 2, 2004. You didn't write the 2004 letter, right?

A. No, I did not.

Q. Okay. But you did reference that letter when writing the September 13, 2007 letter, right?

A. Yes.

Q. Okay. So, I guess, first, would you please verify that the September 13, 2007 letter in your possession right now, that that is a genuine copy of the letter that you wrote?

A. Yes, it is.

MR. THOMSON: And at this time I would like to formally enter that as a trial exhibit whenever we do have a judge assigned to this matter. Any objections, Hamlin?

MR. O'KELLEY: I'll reserve my objections as

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to admissibility with any judge. But she's authenticated it as it's her's. So subject to any later objection to be taken up with the Court, none at this time.

MR. THOMSON: Okay.

BY MR. THOMSON:

Q. All right. And after the 2004 letter, I know you didn't write that, so I'm not asking you to authenticate the authorship, but I do want you to please authenticate that this is indeed a genuine copy of the February 2, 2004 letter that you referenced within your 2007 letter which you just previously authenticated?

A. Yes, it is.

Q. Okay.

MR. THOMSON: And similarly, I would like to formally enter this 2004 letter as a trial exhibit.

MR. O'KELLEY: Same response as to the prior.

MR. THOMSON: Sure. Okay.

BY MR. THOMSON:

Q. Let me start with the 2004 letter. As I explained earlier, my purpose here is to get you to explain the 2007 letter. And I know you didn't write this 2004 letter. But I want to go through this

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briefly because it provides important background that I think would be helpful to the jury in understanding what's before them in the 2007 letter.

So, okay, this 2004 letter, generally the subject is about the beginning of two separate developments in the Hilton Head area, Allenwood and Village Square Development, right.

A. Yes.

Q. And Mr. Brady and Mr. Grossman are teaming up to fund the development of these neighborhoods. And I'm not asking you to verify the contracting parties from this letter. But generally that's what's going on with this letter, right?

A. Yes.

Q. Okay. And involved with the development of those neighborhoods, there's various services that need to be performed, we have construction services that need to be performed. And marketing services and real estate sales, right?

A. That's correct.

Q. On page two of the letter, there's a bunch of bullet points full of terms, right?

A. Correct.

Q. These are the terms you -- this is your reference points for the 2007 letter. You go to this

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letter to see what the terms are, and then you calculate the numbers based on these terms, right?

A. That's correct.

Q. Okay. Without getting into the details, some of these terms have to do with Rod Brady being compensated for his fees earned for his construction management work, right?

A. Yes.

Q. And Rod is to market and sell these houses, right?

A. Yes.

Q. And in exchange for those services he gets certain fees?

A. Yes.

Q. And Rod is entitled to hire others to help him with the construction of these projects. But if he does hire the help, that money comes out of his fees that he earns on the project, right?

A. Yes, that's correct.

Q. Okay. And on top of the construction and marketing and real estate services, there is also what's called an incentive management fee, which is pretty much an overall sharing of profits that these single-purpose LLCs make with Rod, right?

A. Yes, that is in here.

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Q. Okay. And some last terms on this: Before Rod is paid that profit sharing portion, and, again, that's an incentive management fee which is the profit sharing, before Rod gets paid that, Lancaster Redevelopment Corporation gets a cut, a 1 percent return per month on the money it loans to the project, right?

A. Yes.

Q. And Gary Grossman, personally in his individual capacity, gets 500 points for guaranteeing funds, right?

A. Yes.

Q. Okay. And that 500 points comes to a 15 percent per annum?

A. Yes.

Q. Okay.

A. Okay.

Q. At the top of page 3 of the letter, before we move on, it mentions the words of Gary Grossman here that says "I would like all the accounting and debt management to take place from my office so I can stay on top of things."

In that sentence when he says he would like his office to take care of accounting, that's talking about a job you would handle, right?

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A. Yes, it is.

Q. Hopefully that provides some background framework of the letter we're about to go into. So, now, looking at trial Exhibit 1, that is the September 13, 2007 letter. Please verify that this is a letter to James Rod Brady written from you?

A. Yes, that's correct.

Q. And then in the first paragraph of that letter it says "Pursuant to your discussion with Mr. Grossman, I'm transmitting our analysis of the Allenwood compensation to you under our February 2, 2004 letter of agreement."

That February 2 letter is the letter that we just went through in greater detail, right?

A. Yes, it is.

Q. Okay. And as a reminder, this is for two separate developments, right? We have the Village Square Development neighborhood and we have the Allenwood neighborhood, right?

A. Yes.

Q. Okay. And so let's just hit the main numbers on this letter real quick. So the first development, Village Square, it looks like the -- you calculated the income of those two -- of that company for the years 2005 and 2006 as 956,385, right?

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A. Yes.
Q. And that's net income?
A. Yes, I believe so.
Q. Okay. And that income means your income after you take into account money that this LLC owes to other entities, right?
A. I believe it's net profit after expenses of building the homes.
Q. Right. And the expenses of building homes, that would include money owed to vendors or other companies, right, third parties?
A. Yes. You're not including banks or anything like that, correct, in your statement?
Q. Right.
A. Okay.
Q. Correct. And then you note on the letter that Rod was paid a 36,000 distribution out of the 2005 and 2006 income, right?
A. Correct.
Q. Okay. So from looking at the paragraph that starts with "Under the February 2, 2004 letter of agreement you are scheduled to be paid" -- the end of that paragraph says -- "I interpret the February 2, 2004 letter of agreement to make the construction fees payable at the time each unit sells."

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Do you see that?

A. Yes.

Q. And so what that is telling us here is the fees discussed in this letter, we're talking about houses that the construction is already complete, right?

A. Yes.

Q. And they've been sold to the owners -- to homeowners, whoever they may be, correct?

A. Correct.

Q. And the LLC has been paid money for those homes, right?

A. Right.

Q. Okay. All right. The next paragraph it talks about, you understand that the expenses associated with hiring Nick Grossman and Dan Clore for supervisory work on your behalf are to be deducted. And we went through that on the 2004 letter, right?

A. Yes.

Q. And, again, we look on the next page, and you were taking into account funds due to Mr. Nick Grossman and Dan Clore as part of this analysis, right?

A. That's correct.

Q. Okay. And these are for houses that are already completed, right?

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A. Yes.

Q. Okay. So no need for Mr. -- for Nick Grossman or Dan Clore to incur any additional expenses, right?

A. That is correct.

Q. All right. Let's go to the numbers on -- we have a construction management fee of 32,500 for the Village Square Development. Then there is a $1,000 real estate fee per unit sold, and that comes to 26,000, right?

A. Yes.

Q. All right. It looks like Mr. Brady was paid a portion of those commissions, 9,415, right?

A. Yes.

Q. And so your -- you got parentheses here. And that means you were deducting that money that's already paid. The money that's already been paid to Rod, you're deducting that from what you are calculating to be owed to him, right?

A. Right.

Q. And that's fair, right?

A. Yes.

Q. The fees for Nick Grossman and Dan Clore, we've got four different numbers in there. I've added those numbers up, and it comes to $111,81. Any reason

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to believe that's incorrect?

A. No.

Q. So we are taking into account that Nick Grossman and Dan Clore helped Mr. Brady. Mr. Brady agrees to pay people for their help with the construction of these projects.

And so after we go through the numbers of what Mr. Brady earned on his construction management fee and what he had to pay out, and the status as of September 13, 2007, is that Mr. Brady was owing to Lancaster Redevelopment Corporation or whoever those contracting parties may be, Mr. Brady, after taking into account all of those things was owed -- or owed the company $25,746, right?

A. That's right.

Q. Okay. All right. So that portion all had to do with construction management and real estate services, right?

A. Yes.

Q. Okay. And then moving on to the next part of the letter, the next few paragraphs, that has to do with the incentive management fee, basically profit sharing type fees and calculations, right?

A. Yes.

Q. Okay. And just as a remainder, Rod gets a

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-- is to receive an incentive management fee profit sharing in the tune of 50 percent of the profits of the LLCs, right?

A. Yes.

Q. Okay. And but before Rod gets paid, Lancaster Redevelopment Corporation gets a cut, right?

A. Yes.

Q. And then Gary Grossman individually also gets a cut, right?

A. Yes.

Q. And so the next three paragraphs, that's what's going on here, right? We're calculating what the profit is. We're seeing what Mr. Grossman's is. We're seeing what Lancaster Redevelopment Corporation's cut is. And then finally from there we're seeing what portion would be due to Mr. Brady, correct?

A. Correct.

Q. Okay. All right. And it looks like Lancaster Redevelopment Corporation's cut under this section we were just talking about is 841,619. Is that correct? The paragraph starts with the net income. Take the time to read it if you need to.

Do you need me to repeat the question?

A. I'm just trying to follow our calculations on this letter. It was a long time ago that I wrote

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it, so I don't remember everything. Okay. So what was your question again now?

Q. You know what, can you just strike that question there? I think that's not LRC's cut. That would be the allocated income.

A. Okay. Correct.

Q. Let's move on to Mr. Grossman's cut of this profit sharing. The next paragraph where it starts "Under the terms of the February 2, 2004 letter" --

A. Yes.

Q. -- okay, the last portion of the sentence says "which calculates to a prorated guarantee fee of 148,504.85 for 2005."

A. Yes.

Q. That -- that is what is due to Mr. Grossman personally, right?

A. Yes.

Q. And if we could, please, connect the dots back to the 2004 letter, I just want to connect this calculation and where it pertains to on the 2004 letter. So this 148,504.84 due to Gary Grossman, if we want to see how Mr. Grossman is justified to that fee, we go to page 2 at the bottom paragraph, is that right --

A. That's correct.

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Q. -- in the 2004 letter? And this is basically he's earning this fee in exchange for him giving a personal guarantee, right?

A. Right.

Q. All right. And so that fee, we're still just talking about the Village Square neighborhood, right?

A. Yes.

Q. Okay. And we're separately going to go through what that fee is for Allenwood, right?

A. Correct.

Q. Just a remainder: We can get lost in the weeds here. Sometimes we need a reminder of where we are locally. Okay. And then the next few paragraphs, you're starting to calculate what Rod's incentive management fee is. And he's already been paid a certain amount of money on his incentive management fee.

But after you take into consideration all that he's earned versus all that he's been paid, the net balance due to Rod for an incentive management fee, which is profit sharing on the Village Square Development project only, is $83,488. Is that correct?

A. That is correct.

Q. And -- and -- and that money has already

been earned, right?

A. Yes.

Q. As of September 13, 2007?

A. Yes.

Q. And the LLCs have already been paid the money that generated the profits from which this calculation was made, right?

A. Yes.

Q. Okay. And you've already accounted for Lancaster Redevelopment Corporation's portion of profits out of that, right?

A. In the calculation, yes.

Q. Yes. And you had already accounted for Mr. Grossman's individual cut of that, right?

A. Yes.

Q. And so in the end Rod's incentive management fee is exactly what it says; it's money due and owing to him after accounting for everything that needs to be accounted for. And that amount due to him is 83,488, right?

A. Yes.

Q. Okay. All right. That is -- we've gone through the calculations of the Village Square Development neighborhood. And I would like to move on to the second neighborhood here, the Allenwood

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neighborhood. So if we go through, it's kind of the same process again, right?

A. Yes.

Q. Different neighborhood, different numbers to calculate, but the -- and the fees under the agreement might be slightly different, but it's generally the same type of calculations, right?

A. That's correct.

Q. Okay. All right. So first, looking at the construction management fees for Allenwood, it appears that Mr. Brady has earned about $240,000 in some fees before taking out other things that you might need to take out, right?

A. Yes.

Q. Okay. And, again, Mr. Brady was entitled hire help. And it looks like that money just had to come out of his fees, and it looks like he has done that here again with the Allenwood project, right?

A. Yes.

Q. And he had Rich Raven and RS Davis to help him, right?

A. Correct.

Q. Okay. And if you add up the two numbers owing to them, and they're both in parentheses there, I'm coming up with $76,552, correct?

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A. Correct.

Q. And those numbers are in parentheses because we're saying Rod owes money back for that, right?

A. Yes.

Q. So it's to be subtracted from the end result of whatever money Rod is owed, right?

A. Right.

Q. Okay. So after we take all of that into account, and we also add in the real estate fees, and we also take into account money that has already been paid to Rod, we are left with a balance of $19,629, right?

A. Yes.

Q. And that is money that is owed to Mr. Brady after accounting for all of these other amounts he owes, right?

A. Yes.

Q. Okay. And this is just for construction management fees and real estate services, right?

A. Correct.

Q. And it's just for the Allenwood project, right?

A. Correct.

Q. Okay. All right. Let's move on to the next set of calculations. We're moving on here to the

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calculations for the incentive management fee and the more profit sharing portion of the fees are, right?

A. Yes.

Q. Okay. And let's go to the line that says "The 500 basis point guarantee fee calculating to," and it says 99,693, right?

A. Yes.

Q. Again, we connected the dots on this 500 basis point fee. We previously connected the dots to the last paragraph of page 2 of the 2004 letter, right?

A. Yes.

Q. And that's the same thing we're doing here, right?

A. Yes.

Q. Okay. And this is for 2005 only. And it's for the Allenwood project only, right?

A. Right.

Q. And Mr. Grossman is being paid $99,693 for that portion, right?

A. Yes.

Q. In exchange for his personal guarantee, correct?

A. Correct.

Q. Okay. Let's move on down. The 2006, where it says "The 500 basis point guarantee fee," same set

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of scenarios, right? We don't need to go back and connect the dots again. But it is the same principle here, right? It's just for 2006 incentive?

A. Yes.

Q. Okay. And Mr. Grossman's fee in exchange for personally guaranteeing the funds in 2006 for the Allenwood neighborhood is 52,244?

A. Yes.

Q. Okay. So after taking into account the money owed to Lancaster Redevelopment Corporation, and the money owed to Mr. Grossman individually, we would could then calculate what Mr. Brady's incentive management fee is for the Allenwood project, right?

A. Yes.

Q. And that number comes to 633,656, right?

A. Yes.

Q. Owed to Mr. Brady, right?

A. Correct.

Q. Okay. So now we've -- after we gotten to that point, we made all the preliminary calculations that we need to make to determine the total amount that is owed to Mr. Brady as of September 13, 2007, correct?

A. Correct.

Q. And that number owed to Mr. Brady as of September 13, 2007 is $711,027, right?

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A. Yes.

Q. Okay. Let's go back and summarize that more distinctly in a second. But first, look at the next page, top paragraph of, I believe, that's the third page of the letter -- fourth page. I'm sorry. It says, "Mr. Grossman directed me to access our ability," right?

A. Yes.

Q. Do you see that paragraph? And what's going on here is that, if I can distinctly paraphrase that, that paragraph is, yes, Mr. Brady, you're owed money, the $711,000 and change, but Lancaster Redevelopment Corporation is having financial troubles. And we can't -- we don't have the funds to pay it all to you right now. So what we are going to do is pay you $10,000 a month.

Is that essentially what that paragraph is saying?

A. Yes.

Q. And you don't recall one way or the other whether any of those monthly payments were made to Rod after September of 2007?

A. I don't recall, no.

Q. Okay. So Rod was already owed the money, right? He'd already earned it, right?

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A. Yes.

Q. And the purpose of getting on this payment plan was because Lancaster Redevelopment Corporation had financial issues, right?

A. Yes.

Q. And the purpose of those financial -- or the source of those financial issues were projects other than the two at issue here, correct?

A. One of the issues was past due receivables from the Allenwood project.

Q. Would those past due receivables, would those have been accounted for when you calculated the net income of that LLC?

A. Yes.

Q. Okay. So we've already accounted for those past due receivables within the number owed to Rod, right?

A. Yes.

Q. Okay. And then the other reason listed, it says, it seems as if the Lancaster Redevelopment Corporation is having problems with carrying costs of Cypress Harbor. That project had nothing to do with Village Square Development, right?

A. No.

Q. And it had nothing to do with the Allenwood

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project, right?

A. No.

Q. And it had nothing to do with Rod Brady, right?

A. I don't believe so. I personally don't remember the Cypress Harbor project.

Q. Right. And it doesn't appear to be relevant to this case, I don't think, other than the fact that it seems to be the source of why Lancaster Redevelopment Corporation was having trouble paying Mr. Brady. And this was written in the letter by you, right?

A. Yes.

Q. And you just don't remember all the complete details of -- behind that -- those problems, right?

A. Correct.

Q. And it also mentions a "massive increase in overhead associated with the new plant." That didn't have anything to do with Rod Brady, right?

A. No.

Q. Okay. So to recap, the sales have been final, right, of the properties built on these two neighborhoods, right?

A. Yes.

Q. And the LLC's, that money from the

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purchasers of the homes, right?

A. Yes.

Q. And there was a profit after that, right?

A. Yes.

Q. Okay. Lancaster Redevelopment's portion of that profit got accounted for, right?

A. Right.

Q. And Mr. Grossman's individual profits from those transactions got accounted for, right?

A. Yes.

Q. And after all that, Mr. Brady was still owed a big chunk of money out of those profits, right?

A. Right.

Q. For work that has already been earned, right?

A. Right.

Q. We're not projecting future profits here, right?

A. Correct.

Q. Okay. And Mr. Brady was not paid that money because Lancaster Redevelopment Corporation had problems on other projects that had nothing to do with Rod Brady, right?

A. Some of the problems had nothing to do with Allenwood.

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Q. Okay. Okay. All right. So and let's summarize the specific numbers really quickly. So the total was 711,024 -- or 27 -- I'm sorry. Right?

A. Yes.

Q. And of that 633,656, that was owed to Rod as an incentive management fee or basically a profit sharing from the Allenwood project, right?

A. Right.

Q. Already earned, correct?

A. Correct.

Q. Homes already sold, right?

A. Right.

Q. LLCs are already paid by the home purchasers, right?

A. Yes.

Q. And the LLCs made a profit, right?

A. Yes.

Q. Okay. And then there is an amount 19,629 owed to Rod as a construction management fee at Allenwood. And that money was already earned, right?

A. Right.

Q. And the construction was already completed at those homes, too, correct?

A. Correct.

Q. All right. And the 83,488 portion was owed

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to Rod as his incentive management fee for the Village Square Development project, right?

A. Yes.

Q. And just like in Allenwood, those fees are already earned, right?

A. Yes.

Q. And the homes are already sold?

A. Yes.

Q. Okay. And to be fair, Rod owed Lancaster Redevelopment Corporation, or whoever the contracting parties were, $25,746. And that was for the difference between his construction management fees and the money he owed for the help he retained to assist him with that construction, right, at the Village Square Development project, right?

A. Correct.

Q. Okay. But the number that he owed to other people was put into the total, right?

A. Yes.

Q. And that total, again, that was owed to Rod was $711,027 as of September 13, 2007?

A. Right.

Q. And the amount accounted for for his help totalled between Nick Grossman, Dan Clore, Rich Raven and RS Davis we've accounted for $187,633 between the

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four of them if you add up all the individual numbers. Does that sound about right to you?

A. Yes, it does.

Q. Yeah. I'm not asking you to do math on the spot. But that's the numbers that I came up with anyhow. That number also took into account that Mr. Grossman was getting consideration in exchange for a personal guarantee. And he had -- we had accounted for $300,441.85 to be owed to him, right?

A. Yes.

Q. Already accounted for within the number owed to Rod?

A. Yes -- owed to Gary.

Q. Okay. Yeah, so, essentially just to drive the point home one last time, you concluded on September 13, 2007 that the contracting parties owed Rod $711,027, right?

A. Yes.

Q. And you didn't just throw that letter together, right?

A. No.

Q. And you're a professional in the accounting business, right?

A. Right.

Q. And you made a good faith effort to get

these numbers right, didn't you?

A. Yes.

Q. And you haven't discovered any errors in here now since the time you wrote that letter?

A. No.

Q. Okay. And you do not have any evidence showing that Lancaster Redevelopment Corporation, Gary Grossman or any other affiliated entity paid any money to Rod subsequent to this September 13, 2007?

A. I don't know if anything has been paid to Rod or not.

Q. Right. But the question is, you don't have any evidence showing it, right?

A. Right.

MR. THOMSON: Okay. Those are all the questions I have. Mr. O'Kelley, if would like to interview Ms. Griffith, you have may take that opportunity now.

MR. O'KELLEY: I thought this is a deposition, not an interview.

MR. THOMSON: It's a de bene esse deposition for purpose for use at trial.

* * * * *

EXAMINATION

BY MR. O'KELLEY:

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Q. Ms. Griffith, you have the exhibits that Mr. Thomson was asking you about in front of you, correct?

A. Yes, I do.

Q. All right. What was the arrangement as to how Mr. Brady was to be paid? Mr. Thomson asked you earlier about that, but it's my understanding that Mr. Brady was to be paid after all the debts of the company were to be paid, correct?

A. The incentive management fees were to be after the initial debts from Lancaster Redevelopment or Mr. Grossman were repaid.

Q. And remind the folks who are listening to you what was going on with the greater economy in 2007?

A. I believe that's when the housing market started to take a nose dive.

Q. And was Lancaster Redevelopment company in September of the fall of 2007, was it suffering from the falling apart of the housing market?

A. Yes. We --

Q. And was --

A. Go ahead.

Q. Go ahead, explain.

A. In some of the developments, we had standing inventory that we couldn't sell.

Q. And were banks threatening foreclosure

against these developments in the fall of 2007 or had foreclosures actually been filed, if you remember?

A. I don't remember exactly when. I know that that came shortly into that time period into early 2008.

Q. And you're aware that there was a foreclosure against Village Square Development Company, correct?

A. Correct.

Q. And there was a foreclosure against Hilton Head Homes at Allenwood, correct?

A. That's correct.

Q. And Mr. Rod Brady had nothing to lose in those foreclosures, did he?

A. I don't believe he was a guarantee -- or a guarantor on any debt.

Q. And was Mr. Grossman a guarantor on debt?

A. Yes, he was.

Q. And Mr. Brady was advanced sums during his employment by Hilton Head Homes and by Village Square, correct?

A. Yes, against his fees earned.

Q. That's correct. And then was he ever an employee of Lancaster Redevelopment Corporation to your knowledge?

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A. I'm trying to remember. I know Gary and Rod talked about it, but I don't recall if he ever became an actual employee.

Q. And if I were to represent to you that he was never an employee of Lancaster Redevelopment Corporation, do you have any reason to doubt that?

A. No, no.

MR. O'KELLEY: Thank you, ma'am. That's all I've got.

THE WITNESS: Okay.

THE VIDEOGRAPHER: Anything else?

MR. THOMSON: Just some quick follow-up.

* * * * *

EXAMINATION (CONT'D.)

BY MR. THOMSON:

Q. Ms. Griffith, Mr. O'Kelley was just talking to you about how Mr. Brady was to be paid after everyone else got paid, correct?

A. For the incentive management fee, yes.

Q. Right. I think I've just got that question backwards. I'll re-ask so it's clear for the record. Hamlin asked you about how Lancaster Redevelopment Corporation and Mr. Grossman were to be paid prior to Mr. Brady being paid for the incentive management fee, right?

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A. For their initial investment in the development companies.

Q. Right. And Mr. O'Kelley asked you a series of questions that basically go into the fact that the company didn't have the funds to pay, right?

A. Correct.

Q. And we went through this during my direct examination, but the last paragraph -- or on the last page of your 2007 letter on the top paragraph, it talks about some of Lancaster Redevelopment's financial issues, right?

A. Yes.

Q. And some of those troubles have nothing to do with the two projects at issue here, right?

A. That's correct.

Q. So even though there might have been an agreement for Mr. Grossman and the Lancaster Redevelopment Corporation to be paid first, that wouldn't necessary excuse some excuse of outside forces taking precedence over payments to Mr. Brady, right?

A. Can you repeat that?

Q. That wasn't the best-worded question. So even though Lancaster Redevelopment Corporation and Mr. Grossman were to be paid before Rod was to be paid, the confusion of outside economic forces has no bearing

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on the amount owed to Mr. Brady, right?

A. That's correct.

MR. THOMSON: Okay. That's the last question I have. Any more Hamlin?

MR. O'KELLEY: That's all.

THE VIDEOGRAPHER: This concludes today's deposition. The time on the monitor is 10:00 a.m.

THE COURT REPORTER: Do you both want PDFs like yesterday?

MR. O'KELLEY: Yes.

MR. THOMSON: Yes.

(Whereas, the deposition concluded at 10:00 a.m.)

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COMMONWEALTH OF PENNSYLVANIA)
) SS.
COUNTY OF CUMBERLAND)

I, Tracy Dominico, a Court Reporter-Notary Public authorized to administer oaths and take depositions in the trial of causes and having an office in Mechanicsburg, Pennsylvania, do hereby certify that the foregoing is a true record to the testimony given; that before the taking of said deposition, the witness was duly sworn/affirmed; that the questions and answers were taken down stenotype by said Reporter-Notary and afterwards reduced to computer printout under the direction of said Reporter.

I further certify that the proceedings and evidence are contained fully and accurately in the notes taken by me of the within deposition to the best of my ability; and that this copy is a correct transcript of the same.

In testimony whereof, I have hereunto inscribed my hand this 20th day of December, 2018.

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
TRACY DOMINICO
Notary Public
HAMPDEN TWP, CUMBERLAND COUNTY
My Commission Expires Nov 12, 2019

Tracy Dominico
Court Reporter-Notary Public

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ELECTRONICALLY FILED - 2019 Jan 23 8:24 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT James R. Brady, Plaintiff, vs. Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman, Defendants.	IN THE COURT OF COMMON PLEAS C/A NO.: 2015-CP-07-2047 **CONSENT MOTION FOR AN ORDER OF PROTECTION AND FOR A STATUS CONFERENCE TO SET A TRIAL DATE CERTAIN**

Plaintiff James R. Brady and Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman, by and through undersigned counsel, hereby jointly move this Honorable Court for an Order granting protection for Defendants' counsel, G. Hamlin O'Kelley, III, on the grounds that he has long-standing plans to be out of town from February 11, 2019 through February 15, 2019.

Counsel also hereby move for a status conference for a day certain trial in March 2019 or later, in the above-captioned case.

Respectfully submitted,

WE SO MOVE:

s/ Charles W. Thomson, Esq.
THE CAPELL LAW FIRM LLC
Charles W. Thomson, PE, Esq.
The Blake House
321 East Bay Street
Charleston, South Carolina 29401
cthomson@capelllaw.cm
Attorney for Plaintiff

WE CONSENT:

s/ G. Hamlin O'Kelley, III
BUIST BYARS & TAYLOR LLC
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Mt. Pleasant, SC 29464
Hamlin.okelley@buistbyars.com
Attorney for Defendants

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ELECTRONICALLY FILED - 2019 Jan 08 10:16 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP702047

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT James R. Brady, *Plaintiff*, v. Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; Lancaster Redevelopment Corp.; and Gary L. Grossman, *Defendants*.	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT C.A. No. 2015-CP-07-02047 **Motion for Summary Judgment as to Defendants' Counterclaims**

To: All Defendants above-named

Plaintiff James R. Brady, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and any other applicable South Carolina law, will move before this Honorable Court for an order granting summary judgment as to Defendants' counterclaims against Plaintiff. Plaintiff will so move ten days after the date of service hereof or at such time as counsel may be heard.

This matter is a payment claim. Defendants retained Plaintiff to construct, sale, and market many single-family residences. Plaintiff began to perform under the contract, but Defendants failed to pay for all of the work Plaintiff performed, leaving a balance in excess of $700,000. Plaintiff brought claims against Defendants for breach of contract, unjust enrichment, and conversion. In response, Defendants filed counterclaims of breach of contract and unjust enrichment against Plaintiff, alleging that Plaintiff did not fully perform its contractual duties and that Defendants had to hire third parties to complete the work.

The evidence that has been discovered in this matter casts serious doubt upon Defendants' counterclaim allegations. But more importantly as to this motion, after a full and fair opportunity to complete discovery, Defendants have failed to produce any evidence in support of the allegations asserted in their counterclaims. Thus, there are no genuine issues as to any

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material fact that Plaintiff is entitled to summary judgment as to those counterclaims

Plaintiff prays that the Court issue an order holding Plaintiffs are entitled to judgment as a matter of law as to each and every counterclaim asserted by each and every Defendant, and for such further relief as the Court sees fit.

Respectfully submitted,

THE CAPELL LAW FIRM, LLC

s/ Charles W. Thomson
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Charles W. Thomson (101471)
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(843) 501-0423
Attorneys for Plaintiff

January 8, 2019
Charleston, South Carolina

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CERTIFICATE OF SERVICE

The undersigned certifies having served a copy of the foregoing **Motion for Summary Judgment as to Defendants' Counterclaims** to all counsel of record on **January 5, 2017** by eFiling a copy of same, with the following attorney being on the eFiling service list:

G. Hamlin O'Kelley, III, Esq.
BUIST, BYARS & TAYLOR, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464

Per explicit instructions from G. Hamlin O'Kelley, attorney for Defendants, Plaintiff is not serving Gary L. Grossman directly with this notice, despite that the Clerk lists Mr. Grossman as *pro se* counsel.

s/ Charles W. Thomson
Charles W. Thomson

Charleston, South Carolina

ELECTRONICALLY FILED - 2017 Jan 05 4:14 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT
James R. Brady, Plaintiff, v. Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; Lancaster Redevelopment Corp.; and Gary L. Grossman, Defendants.	C.A. No. 2015-CP-07-02047 **Motion for Summary Judgment as to Defendants' Counterclaims**

To: G. Hamlin O'Kelley, III, Attorney for Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; and Lancaster Redevelopment Corp.

Gary L. Grossman, *Pro Se*

Plaintiff James R. Brady, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and any other applicable South Carolina law, will move before this Honorable Court for an order granting summary judgment as to Defendants' counterclaims against Plaintiff. Plaintiff will so move ten (10) days after the date of service hereof or at such time as counsel may be heard.

This matter is a payment claim. Defendants retained Plaintiff to construct, sale, and market many single-family residences. Plaintiff began to perform under the contract, but Defendants failed to pay for all of the work Plaintiff performed, leaving a balance in excess of $700,000. Plaintiff brought claims against Defendants for breach of contract, unjust enrichment, and conversion. In response, Defendants filed counterclaims of breach of contract and unjust enrichment against Plaintiff, alleging that Plaintiff did not fully perform its contractual duties and that Defendants had to hire third parties to complete the work.

The basis of this motion is that Defendants have failed to produce evidence in support of the allegations asserted in their counterclaims. As

ELECTRONICALLY FILED - 2017 Jan 05 4:14 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

such, there are no genuine issues as to any material fact that Plaintiff is entitled to summary judgment as to those counterclaims

Plaintiff prays that the Court issue an order holding Plaintiffs are entitled to judgment as a matter of law as to each and every counterclaim asserted by each and every Defendant, and for such further relief as the Court sees fit.

Respectfully submitted,

THE CAPELL LAW FIRM, LLC

s/ Charles W. Thomson
Glynn L. Capell (16552)
GCapell@CapellLaw.com
Charles W. Thomson (101471)
CThomson@CapellLaw.com
174 Meeting Street, Suite 200
Charleston, SC 29401
(843) 689-4280
Attorneys for Plaintiff

January 5, 2017
Hilton Head Island, South Carolina

ELECTRONICALLY FILED - 2017 Jan 05 4:14 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

CERTIFICATE OF SERVICE

The undersigned certifies having served a copy of the foregoing **Motion for Summary Judgment as to Defendants' Counterclaims** to all counsel of record on **January 5, 2017** by mailing a copy of same, electronically or with proper postage affixed thereto as follows:

G. Hamlin O'Kelley, III, Esq.
BUIST, BYARS & TAYLOR, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464

Gary L. Grossman
2138 Route 522
Selinsgrove, PA 17870

s/ Charles W. Thomson
Charles W. Thomson

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Mark J. Hayes, II

Case No. 2015-CP-07-02047

RECEIVED
FEB 11 2019
SC Court of Appeals

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company, LLC,
Lancaster Redevelopment Corp. and
Gary Grossman .....Appellants,

v.

James R. Brady, is the .....Respondent.

NOTICE OF APPEAL

Hilton Head Homes at Allenwood, LLC, Village Square Development, LLC, Lancaster Redevelopment Corp. and Gary Grossman appeal the Order of the Honorable Mark J. Hayes, II, copies of which are attached hereto, dated February 8, 2019, which the Appellants received written notice of on February 8, 2019.

Mt. Pleasant, South Carolina
February 8, 2019

G. Hamlin O'Kelley, III
S.C. Bar No. 15491
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Attorneys for the Appellants

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP0702047

James R Brady
PLAINTIFF(S)

Hilton Head Homes At Allenwood Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

See Additional Order Information.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case.

☑ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/08/2019 .

Gary L Grossman for Gary L Grossman
Gary L Grossman for Gary L Grossman

RECEIVED
FEB 11 2019
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 Feb 08 1:36 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

ELECTRONICALLY FILED - 2019 Feb 08 1:36 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

Court Reporter:

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

This matter came before the Court on the Plaintiff's motion for summary judgment as to the counterclaim asserted against the Plaintiff by the Defendants. According to SCRCP 56, summary judgment shall be granted when there is no genuine issue as to any material of fact. Once the moving party has come forth with evidence to support its motion, the non-moving party must offer some evidence that a genuine issue of material fact exists as to each element of the claim. It is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.

In ruling on this summary judgment motion, the court has viewed all of the evidence offered to it and viewed that evidence, and the inferences therefrom, in a light most favorable to the non-moving party. Having reviewed all of the evidence and considering the arguments presented, this Court will grant the Plaintiff's motion for summary judgment as to the counterclaims asserted by the Defendant. Plaintiff's counsel is asked to prepare a formal order granting the motion. The formal Order, once signed and filed with the clerk's office, will be final order of this Court on this motion. This email will be incorporated into a form 4 for filing with the Clerk's office.

The Defendants rely solely upon the deposition testimony of Ginger Griffith. In their memorandum opposing the motion, the Defendants make general references to the Answer and Counterclaim. The Counterclaims seeks damages in an amount "in excess of $600,000.00" based on assertions that the plaintiff, generally, failed to perform services he should have, invokes equitable theories against the plaintiff, that plaintiff breached a valid a contract for services he failed to provide, and asserts that the plaintiff should not have relied upon a letter from a Mr. Grossman to support his claim. Again, the defendant submitted only the deposition of Ms. Griffith. The Plaintiff also relied upon the deposition of Ms. Griffith but also submitted the affidavit testimony of the plaintiff, Rod Brady.

The Defendants make reference in its memorandum to only pages 7, 37, and 38 to 39, of Ms. Griffith's deposition. The references do not support the assertions made in the counterclaims. Ms. Griffith's testimony was secured as de bene esse deposition for use at trial. After being examined by Plaintiff's attorney, her cross examination simply dealt with issues involving the arrangement of how fees were paid, the difficult housing market in 2007, the housing inventory, the banks threatening foreclosures, actual foreclosures, Mr. Grossman's being a guarantor, the plaintiff not being a guarantor, and the plaintiff's not being an employee of Lancaster Redevelopment. Nowhere in her deposition are the issues raised in the counterclaims mentioned. When viewed in a light most favorable to the defendants, her deposition, at best for the defendants, may explain why the Plaintiff was not paid. No affidavit was submitted to counter Mr. Brady's affidavit.

With respect to an issue upon which the non-moving party has the burden of proof, the moving party may meets its initial responsibility of demonstrating that the absent of a genuine issue of material fact by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case. As referenced in Hedgepath v. AT&T, 348 S.C. 340, 559 S.E.2d 327 (Ct App. 2001), once the moving party carriers its initial burden, the opposing party must, under Rule 56, do more than simply show a metaphysical doubt as to the material facts but must come forward with specific facts showing a genuine issue for trial. The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings.

Based on the documents and arguments presented to this Court and applying the required standard of review, the present motion for summary judgment is granted.

Again, this email will be incorporated into a form 4 for filing with the Clerk's office and this Court requests a formal order be submitted to the Court for signing.

ELECTRONICALLY FILED - 2019 Feb 08 1:36 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

Beaufort Common Pleas

Case Caption: James R Brady VS Hilton Head Homes At Allenwood Llc , defendant, et al

Case Number: 2015CP0702047

Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Mark J. Hayes, II

Case No. 2015-CP-07-02047

RECEIVED
FEB 11 2019
SC Court of Appeals

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company, LLC,
Lancaster Redevelopment Corp. and
Gary Grossman .....Appellants,

v.

James R. Brady.....Respondent.

PROOF OF SERVICE

I certify that I have served the Appellant's Notice of Appeal by depositing a copy of same in the U.S. Mail, postage prepaid, along with overnight delivery, addressed to Charles W. Thompson, Esquire, and Glynn L. Capell, Esquire, 321 East Bay Street, Charleston, SC 29401.

The Appellant received a copy of the Order on February 8, 2019

Mt. Pleasant, South Carolina
February 8, 2019

G. Hamlin O'Kelley, III
S.C. Bar No. 15491
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Attorneys for the Appellants

RECEIVED
Feb 10 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price

Case No. 2015-CP-07-02047

James R. Brady.,.....Respondent,

v.

Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman.....Appellants.

NOTICE OF APPEAL

Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman appeal the Orders of The Honorable Bentley D. Price, copies of which are attached hereto, dated September 1, 2022 and January 13, 2023, which the Appellants received on January 13, 2023.

BUIST BYARS & TAYLOR, LLC

Mount Pleasant, South Carolina

February 10, 2023

G. Hamlin O'Kelley, III,
SC Bar No. 15491
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
T: (843) 856-4488
F: (843) 856-0613
Hamlin.okelley@buistbyars.com
Attorney for Appellants

Cc: Charles W. Thomson, Esq.
Glynn L. Cappell, Esq.
The Honorable Bentley D. Price
The Honorable Jerri Ann Roseneau (Via SC E Filing Portal)

RECEIVED
Feb 10 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price

Case No. 2015-CP-07-02047

James R. Brady.,.....Respondent,

v.

Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman.....Appellants.

PROOF OF SERVICE

I certify that I have served the Appellants' Notice of Appeal by depositing a copy of same in Via Overnight Delivery, addressed to The Honorable Bentley D. Price, Presiding Judge for Beaufort County, 100 Broad Street, Suite 432, Charleston, SC 29401, Charles W. Thomson, Esq. and Glynn L. Cappell, Esq, Capell Thomson, LLC,102 Wappoo Creek Drive, Unit 8, Charleston, SC 29412. I certify that I have also served the Appellants' Notice of Appeal on The Honorable Jerri Ann Roseneau, Clerk of Court for Beaufort County, by depositing a copy of same Via SC E Filing Portal.

The Appellants received a copy of the Order on Defendants' Motion for Judgment Not Withstanding the Verdict Pursuant to Rule 50(b) SCRCivP on January 13, 2023.

SIGNATURE BLOCK ON FOLLOWING PAGE

Mt. Pleasant, South Carolina
February 10, 2023

BUIST BYARS & TAYLOR, LLC

G. Hamlin O'Kelley, III
SC Bar No. 15491
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
T: (843) 856-4488
F: (843) 856-0613
Hamlin.okelley@buistbyars.com
Attorney for Appellants

BUIST BYARS & TAYLOR LLC
ATTORNEYS AT LAW

652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
Direct Dial 843.284.1408
Main 843.856.4488

G. Hamlin O'Kelley, III
Attorney At Law
Hamlin.okelley@buistbyars.com

February 10, 2023

RECEIVED
Feb 10 2023
SC Court of Appeals

VIA EMAIL: ctappfilings@sccourts.org
AND OVERNIGHT DELIVERY
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29211

RE: James R. Brady v Hilton Head Homes at Allenwood, LLC, et al.,
C/A No.: 2015-CP-07-02047
Client File No.: 1115.0001

Dear Ms. Kitchings:

Enclosed please find an original and one (1) copy of the following in the above-referenced matter:

1. Notice of Appeal with attached Orders of the Honorable Bentley D. Price.
2. Proof of Service; and
3. Our firm's check in the amount of $250.00 for the filing fee.

Please file the original and return the filed-stamped copies to me in the enclosed envelope. By copy of this letter, I am serving same upon The Honorable Bentley D. Price, Presiding Judge for Beaufort County, The Honorable Jerri Ann Roseneau Clerk of Court for Beaufort County, and opposing counsel, Charles W. Thomson, Esq. and Glynn L. Cappell, Esq.

Should you have any questions, please feel free to contact me. With kindest regards, I remain

Yours very truly,

G. Hamlin O'Kelley, III

GHOIII/atd
Enclosures

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-07-02047

RECEIVED
Feb 10 2023
SC Court of Appeals

James R. Brady,	Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; Lancaster Redevelopment Corp.; and Gary L. Grossman
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: Charles W. Thomson	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant Gary L. Grossman's Motion for Judgment Notwithstanding the Verdict, filed on September 7, 2022 and heard on November 2, 2022, is respectfully DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

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

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

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

ELECTRONICALLY FILED - 2023 Jan 13 4:19 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

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

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

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

ELECTRONICALLY FILED - 2023 Jan 13 4:19 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

ELECTRONICALLY FILED - 2023 Jan 13 4:19 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

****

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

ELECTRONICALLY FILED - 2023 Jan 13 4:19 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

ELECTRONICALLY FILED - 2022-Sep-01 11:53 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP0702047

James R Brady		**Hilton Head Homes At Allenwood Llc** **Lancaster Redevelopment Corp**	**Village Square Development Company Llc** **Gary L Grossman**
PLAINTIFF(S)		**DEFENDANT(S)**	
Submitted by:		**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

RECEIVED
Feb 10 2023
SC Court of Appeals

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

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

ORDER INFORMATION

See Verdict Form

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
James R. Brady	**Gary L. Grossman**	**$711,027.00**

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge Bentley Price	2766	8/30/2022
	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on **the day of August 2022**, and a copy mailed first class or placed in the appropriate attorney's box on **the day of August 2022**, to attorneys of record or to parties (when appearing pro se) as follows:

Glynn Lindsey Capell PO Box 1559 Bluffton, SC 29910
Charles Whaley Thomson 102 Wappoo Creek Drive, Unit 8 Charleston, SC 29412

George Hamlin O'Kelley III 652 Coleman Blvd., Ste.200 Mt. Pleasant, SC 29464
Gary L Grossman 2138 Route 522 Selinsgrove, PA 17870

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Cathy Young

Jerri Ann Roseneau - Clerk of Court

Court Reporter: Cathy Young
P.O. Box 4604
Beaufort, SC 29903
clyoung@sccourts.org

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

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

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

ELECTRONICALLY FILED - 2022 Sep 01 11:53 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
James R. Brady,	)	Civil Action No. 2015-CP-07-2047
Plaintiff,	)	
vs.	)	**VERDICT FORM**
Gary L. Grossman,	)	
Defendant.	)	

RECEIVED
Feb 10 2023
SC Court of Appeals

ELECTRONICALLY FILED - 2022 Sep 01 11:53 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

BREACH OF CONTRACT CLAIM AGAINST GARY L. GROSSMAN

1. Do you find, by a preponderance of the evidence, that the Defendant Gary L. Grossman breached a contract with the Plaintiff James R. Brady?

✓ YES: **If you answer yes, go to Question No. 2.**

_____ NO: **If you answer no, then stop here.**

2. Do you find, by a preponderance of the evidence, that the Plaintiff James R. Brady was damaged by this breach?

✓ YES: **If you answer yes, go to Question No. 3.**

_____ NO: **If you answer no, then stop here.**

3. What damages are owed to Plaintiff James R. Brady as a result of the breach?

$ 711,027.00

ELECTRONICALLY FILED - 2022 Sep 01 11:53 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

CONVERSION CLAIM AGAINST GARY L. GROSSMAN

1. Do you find, by a preponderance of the evidence, that the Defendant Gary L. Grossman converted the Plaintiff James R. Brady's personal property, prevented Plaintiff from using the property, and did so without Plaintiff's permission?

__✓__ YES: **If you answer yes, go to Question No. 2.**

_____ NO: **If you answer no, then stop here.**

2. What damages are owed to Plaintiff James R. Brady as a result of this conversion?

$ 711,027.00

FOREMAN

August 30, 2022.
Beaufort, South Carolina

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE, NOTIFY THE BAILIFF.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

v.

Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC; Lancaster Redevelopment Corp.; and Gary L. Grossman,

Defendants.

COURT OF COMMON PLEAS
FOURTEENTH CIRCUIT
C.A. No. 2015-CP-07-02047

REPLY TO COUNTERCLAIM

2016 JUL 27 PM 2:15

To: G. Hamlin O'Kelley, III, Esq.

The Plaintiff James R. Brady replies to the Counterclaims asserted by Defendants as follows:

FOR A FIRST DEFENSE
(Reply to Counterclaim)

1. Each and every allegation as to Plaintiff in the Answer and Counterclaim of Defendants (hereinafter "Answer & Counterclaim") is denied, unless hereinafter admitted, qualified or explained.

2. The allegations contained in Paragraphs 1 to 20 of Answer & Counterclaim are not directed toward Plaintiff and, therefore, do not require a response. To the extent a response is required, Plaintiff denies the allegations.

3. Plaintiff admits the allegations in Paragraphs 21, 22, 23, & 24 of the Answer & Counterclaim.

4. Regarding the allegations contained in Paragraph 25, Plaintiff craves referene to the terms of the Agreement referred to therein.

5. Plaintiff denies the allegations in Paragraphs 26, 27, 28, 29, 30, & 31 of the Answer & Counterclaim.

6. Regarding the allegations contained in Paragraph 32, each and every allegation set forth above is fully incorporated here.

7. Plaintiff denies the allegations in Paragraphs 33, 34, & 35 of the Answer & Counterclaim.

8. Regarding the allegations contained in Paragraph 36, each and every allegation set forth above is fully incorporated here.

9. Plaintiff denies the allegations in Paragraphs 37, 38, & 39 of the Answer & Counterclaim.

FOR A SECOND DEFENSE
(Reply to Counterclaim)

10. Defendants failed to state claims upon which relief can be granted pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Laches)

11. Plaintiff would show, upon information and belief, that there was an unreasonable delay by Defendants in asserting their claims and such claims are therefore barred by laches.

FOR A FOURTH DEFENSE
(Unclean Hands)

12. Upon information and belief, Defendants' claims are barred by the doctrine of unclean hands.

FOR A FIFTH DEFENSE
(Waiver)

13. Plaintiff would show, upon information and belief, that Defendants waived any known right and are therefore barred from any recovery from Plaintiff.

FOR A SIXTH DEFENSE
(Estoppel)

14. Plaintiff would show, upon information and belief, that Defendants are estopped from all claims against Plaintiff.

FOR A SEVENTH DEFENSE
(Mistake)

15. Upon information and belief, a unilateral and/or mutual mistake occurred regarding the terms of the alleged Agreeement and, therefore, Defendants are not entitled to recovery.

FOR A EIGHTH DEFENSE
(Statute of Limitations)

16. Defendants are barred from recovery against Plaintiff based upon the applicable statute of limitations.

FOR A NINTH DEFENSE
(Failure to Mitigate)

17. Defendants failed to mitigate their alleged damages and therefore are barred from recovery.

FOR A TENTH DEFENSE
(Breach of Agreement)

18. To the extent there was any Agreement, Defendants breached such Agreement to such a degreee that Plaintiff was excused from performance under such Agreeement.

FOR A ELEVENTH DEFENSE
(Failure to Comply with Condition Precedent)

19. Defendants failed to comply with conditions precedent in the Agreement and, therefore, are barred from asserting their claims.

FOR A TWELFTH DEFENSE
(Set-Off)

20. Plaintiff is entitled to a set-off for any amounts paid against Defendants' alleged claims.

FOR A THIRTEENTH DEFENSE
(Acceptance)

21. Defendants accepted performance by Plaintiff and therefore are denied recovery from Plaintiff.

FOR A FOURTEENTH DEFENSE
(Intervening Cause or Action by Third Party)

22. The amounts Defendants are allegedly owed, if true, are owed by third parties and/or other parties not a party to this lawsuit and are not owed by Plaintiff.

FOR A FIFTEENTH DEFENSE
(Sole Neglegence)

23. Plaintiff will show that the damages alleged by Defendants, which damages are specifically denied, were the sole and proximate result fo the intervening and/or superseding negligence and/or superseding willful acts and/or recklessness of third persons or parties, which intervening and/or superseding negligence and/or willful acts and/or other actions are a bar to the causes of action asserted by Plaintiff.

FOR A SIXTEENTH DEFENSE
(Contributory Negligence)

24. Plaintiff would show that the damages alleged by Defendants, which are specifically denied, were due to and caused by the reckless, willful, wanton, negligent, careless and grossly negligent acts and conduct of Defendants, which actions combined and concurred with any negligence on the part of Plaintiff, which negligence is hereby specifically denied, to produce such damages, without which the same would not have occurred.

FOR A SEVENTEENTH DEFENSE
(Comparative Negligence)

25. Plaintiff would show that the injuries and/or damages alleged by Defendants, which injuries and damages are hereby specifically denied, were due to and caused by the reckless, willful, wanton, negligent careless and grossly negligent acts and conduct of Defendants, which acts were greater than any acts of negligence on the part of Plaintiff, which acts on the part of Plaintiff are hereby specifically denied, to produce such injury and/or damages, and without which the same would not have occurred.

FOR A EIGHTEENTH DEFENSE
(Assumption of the Risk)

26. Plaintiff would show that Defendants, by and through their actions and/or inactions with regard to the subject alleged in the Counterclaim, have assumed the risk and/or accepted all portions of any damages alleged by Defendants and such assumption of risk and/or acceptance is a bar to claims against Plaintiff.

FOR A NINETEENTH DEFENSE
(Economic Loss Rule)

27. Plaintiff would show that the claims of Defendants are barred by the economic loss rule.

FOR A TWENTIETH DEFENSE
(Reservation and Non-waiver)

28. Plaintiff does not waive, and hereby specifically reserves, any additional and/or further defenses, the propriety of which may be indicated by additional information which may be acquired by Plaintiff or its counsel during the course of discovery or otherwise.

FOR A TWENTY-FIRST DEFENSE
(Statute of Repose)

29. Plaintiff would show that Defendants' claims are barred by the applicable statute and/or statutes of repose.

Wherefore, Plaintiff prays all claims against him be dismissed with prejudice and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

THE CAPELL LAW FIRM, LLC

Glynn L. Capell (16552)
GCapell@CapellLaw.com
Charles W. Thomson (101471)
CThomson@CapellLaw.com
Post Office Box 6628
Hilton Head Island, SC 29938
(843) 689-4280
Attorneys for Plaintiff

July 25, 2016
Hilton Head Island, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies having served a copy of the foregoing **Reply to Counterclaim** to all counsel of record on **July 25, 2016** by mailing a copy of same, electronically or with proper postage affixed thereto as follows:

G. Hamlin O'Kelley, III, Esq.
BUIST, BYARS & TAYLOR, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464

Bobbie S. Fertig

Hilton Head Island, South Carolina

The Capell Law Firm, LLC

17 Executive Park Road, Suite 5B (29928)
Post Office Box 6628
Hilton Head Island, SC 29938

2016 JUL 27 PM 2:15

Glynn L. Capell
Licensed also in NC & FL
Email: gcapell@capelllaw.com

Charles W. Thomson
Email: cthomson@capelllaw.com

www.capelllaw.com
Phone: 843.689.4280
Facsimile: 843.689.4281

July 25, 2016

The Honorable Jerri Ann Roseneau
Clerk of Court, Beaufort County
P.O. Drawer 1128
Beaufort, South Carolina 29901

RE: ***James R. Brady v. Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp. and Gary L. Grossman***
C.A. 2015-CP-072047

Dear Ms. Roseneau:

Enclosed please find an original and (1) copy of a Reply to Counterclaim in the above-referenced matter. Please file the original and return a stamped copy in the self-addressed, stamped envelope.

With kind regards, I remain

Very truly yours,

THE CAPELL LAW FIRM, LLC

Charles W. Thomson

CWT/bsf
Enclosures
cc: Hamlin O'Kelley via U.S. Mail

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2015-CP-07-2047
James R. Brady,	)	
Plaintiff,	)	**ANSWER AND COUNTERCLAIM OF THE DEFENDANTS**
vs.	)	
Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp. and Gary L. Grossman,	)	
Defendants.	)	

2015 SEP 14 PM 3:33

TO: GLYNN L. CAPELL, ESQ.
CHARLES W. THOMPSON, ESQ.

The Defendant(S) Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp. and Gary L. Grossman (the "Defendants") by and through their undersigned counsel, answering the Complaint of the Plaintiff James R. Brady and setting forth their Counterclaims against James R. Brady allege and state as follows:

1. Each and every allegation of the Plaintiff's Complaint not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Defendants deny same and demand strict proof thereof.

2. The Defendants admit Paragraph 1 of the Plaintiff's Complaint.

3. The Defendants admit the allegations of Paragraphs 2, 3, and 4 of the Plaintiff's Complaint.

4. The Defendants admit only so much of Paragraph 5 of the Plaintiff's Complaint that alleges the Defendant Gray L. Grossman is a resident of the State of Pennsylvania. The Defendants deny the remaining allegations of said Paragraph and would allege and show that he never conducted business in Beaufort County regarding this matter in his individual capacity.

5. The Defendants are not required to answer the allegations contained in Paragraph 6 of the Plaintiff's Complaint as said allegations constitute legal conclusions.

6. The Defendants deny the allegations of Paragraphs 7, 8, and 9 and demand strict proof thereof.

7. The Defendants are without sufficient information to form a belief as to the allegations of Paragraph 10 of the Plaintiff's Complaint, and, therefore, denies same and demands strict proof thereof.

8. In answering Paragraph 11 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 7 above as though repeated herein verbatim.

9. The Defendants admit only so much of Paragraph 12 of the Plaintiff's Complaint that alleges the Plaintiff at one time worked for the Defendant Hilton Head Homes at Allenwood, LLC. The Defendants deny the remaining allegations of Paragraph 8 of the Plaintiff's Complaint and demand strict proof thereof.

10. The Defendants deny the allegations of Paragraphs 13, 14, and 15 of the Plaintiff's Complaint and demand strict proof thereof.

11. In answering Paragraph 16 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 10 above as though repeated herein verbatim.

12. The Defendants deny the allegations of Paragraphs 17, 18, 19, 20, and 21 of the Plaintiff's Complaint and demand strict proof thereof.

13. In answering Paragraph 22 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 10 above as though repeated herein verbatim.

14. The Defendants deny the allegations of Paragraphs 23, 24, 25, and 26 of the Plaintiff's Complaint and demand strict proof thereof.

FOR A FURTHER ANSWER
AND BY WAY OF AN AFFIRAMTION DEFENSE AND
MOTION TO DISMISS

15. The Defendants would allege and show that the Plaintiff's Complaint fails to state facts sufficient upon which relief can be granted, and, as such, the Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) SCRCP.

FOR A FURTHER ANSWER
AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE

16. The Defendants would allege and show that the Plaintiff's own inequitable actions, including non-performance of the duties of his job, act as a complete bar to recover, and, as such, the Plaintiff's Complaint should be dismissed.

FOR A FURTHER ANSWER
AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE

17. The Defendants would allege and show that the Plaintiff's Complaint is barred by the doctrines of waiver, estoppel, and laches as the Plaintiff failed to act when he should have acted in protecting any interest he may have had regarding these claims, if any, and none of which are admitted, as set forth in his Complaint.

FOR A FURTHER ANSWER
AND BY WAY OF A FOURTH AFFIRMATIVE DEFENSE

18. The Defendants would allege and show that the Plaintiff knew or should have known that no fees, compensation, remuneration, or payment of any kind would be paid to him for work not performed by him and that he would only be paid for work in furtherance of the business of Hilton Head Homes at Allenwood, LLC.

FOR A FURTHER ANSWER
AND BY WAY OF A FIFTH AFFIRMATIVE DEFENSE

19. The Defendants would allege and show that the Plaintiff had no reliance upon Gary L. Grossman as any employer and bases his entire baseless case on one letter from Mr. Grossman knowing that he was to further the business of Hilton Head Homes at Allenwood, LLC, and not that of Mr. Grossman, individually.

FOR A FURTHER ANSWER
AND BY WAY OF A SIXTH AFFIRMATIVE DEFENSE
AND BY WAY OF A COUNTERCLAIM

20. The Defendants repeat and reallege Paragraphs 1 through 19 above as though repeated herein verbatim.

21. The Defendants Hilton Head Homes at Allenwood, LLC, and Village Square Development Company, LLC, are limited liability companies organized and existing pursuant to the laws of the State of South Carolina.

22. The Defendant Lancaster Redevelopment Corporation is a corporation organized and existing pursuant to the laws of the State of Pennsylvania and authorized to conduct business in South Carolina.

23. The Defendant Gary L. Grossman is a citizen and resident of the State of Pennsylvania.

24. The Plaintiff James R. Brady is a resident of Beaufort County, South Carolina.

25. Pursuant to the terms and conditions of an agreement with Lancaster Redevelopment Corporation, the Plaintiff was to have provided services to Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation in connection with the construction, sales, and marketing of a certain development in Beaufort County, South Carolina.

26. The Plaintiff was given sums as loans and as advances for work that should have been performed by the Plaintiff, which work as not performed by the Plaintiff, prior to any distributions being made or prior to any commissions or payments being given to the Plaintiff.

27. The Plaintiff often informed the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation that he could not cover the workload required of him in order to receive commissions and other compensation.

28. While he was to have been furthering the business of Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation, the Plaintiff failed to perform work required of him and third parties had to be employed to complete the work the Plaintiff was going to allegedly complete.

29. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation made numerous payments to the Plaintiff in spite of his inability to perform as promised and as relied upon by Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation.

30. Such a failure to perform constitutes a breach of contract entitling the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation to recover all payments made to the Plaintiff in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars.

31. The Plaintiff is not entitled to retain the benefit of these payments and advancements due to his breach of his agreement with Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation, and these Defendants

are entitled to actual damages in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars in amounts to be determined at the trial of this case.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

32. The Defendants repeat and reallege Paragraphs 1 through 31 above as though repeated herein verbatim.

33. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation had valid contract with the Plaintiff for services which the Plaintiff failed to provide.

34. Such a failure constitutes a breach of contract for which the Plaintiff has no legal excuse and which breach has caused the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation to suffer damages in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars.

35. As a direct and proximate result of the Plaintiff's breach of contract, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation are entitled to actual damages in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars in amounts to be determined at trial.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)

36. The Defendants repeat and reallege Paragraphs 1 through 35 above as though repeated herein verbatim.

37. Despite receiving payments, the Plaintiff failed and refused to perform pursuant to his agreement with the Defendants Hilton Head Homes at Allenwood, LLC, Village Square

Development Company, LLC, and Lancaster Redevelopment Corporation and was compensated in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars.

38. The Plaintiff has been unjustly enriched by having received these payments and it would be inequitable and unjust for the Plaintiff to retain the value of the payments made in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars.

39. As a direct and proximate result of this unjust enrichment, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation are entitled to recover damages against the Plaintiff in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars in amounts to be determined at trial of this case.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corporation, and Gary L. Grossman pray this Court enter its Order as follows:

1. Dismissing the Plaintiff's Complaint;
2. Awarding the Defendants all reasonable attorneys' fees and costs;
3. Awarding the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corporation, damages in the minimum amount of Six Hundred Thousand and No/100 ($600,000.00) Dollars and other amounts to be determined at trial; and
4. Awarding any and all such further relief as this Court may deem just and proper.

BUIST, BYARS & TAYLOR, LLC

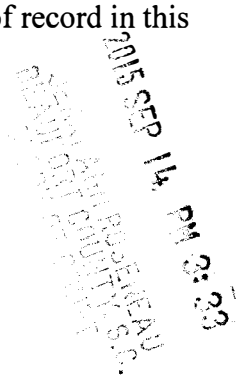
Mount Pleasant, South Carolina
Sept. 1, 2015

By: _____

G. Hamlin O'Kelley, III
S.C. Bar No. 15491
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Hamlin.okelley@buistbyars.com

CERTIFICATE OF MAILING

I hereby certify that on September 1, 2015, a copy of the foregoing *Summons, Answer and Counterclaim of the Defendants* was mailed, postage prepaid, to all counsel of record in this matter, as follows.



Mr. Glynn L. Capell, Esq.
The Capell Law Firm, LLC
PO Box 6628
Hilton Head, SC 29938

Amanda C. Taylor
Paralegal to G. Hamlin O'Kelley, III

BUIST BYARS & TAYLOR LLC
ATTORNEYS AT LAW

652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
T 843.856.4488 F 843.856.0613 W buistbyars.com

G. HAMLIN O'KELLEY III
ATTORNEY AT LAW
Hamlin.okelley@buistbyars.com

September 1, 2015

The Honorable Jerri Ann Roseneau
Beaufort County Clerk of Court
102 Ribaut Road, Suite 208

Re: James R. Brady v. Hilton Head Homes at Allenwood, LLC, et al.
Case No. 2015-CP-07-2047
File No.: 1115.0001

Dear Ms. Roseneau:

Enclosed please find an original and one (1) copy of the Summons, Answer and Counterclaim of the Defendants in the above-referenced matter. By copy of this letter, we are serving all counsel of record.

Kindly file the original and return the file-stamped copy to us in the return envelope provided. Should you have any questions, feel free to contact me directly at 843.284.1461.

Sincerely,

Amanda C. Taylor
Paralegal to G. Hamlin O'Kelley, III

/act
Enclosures

Cc: (w/ Encl.)
Glynn L. Capell, Esq.

{00664198.DOC}

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	C.A. No.: 2015-CP-07-2047
JAMES R. BRADY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**SUMMONS**
	)	(Jury Trial Demanded)
HILTON HEAD HOMES AT ALLENWOOD, LLC, VILLAGE SQUARE DEVELOPMENT COMPANY, LLC, LANCASTER REDEVELOPMENT CORP. and GARY L. GROSSMAN	)	
	)	
Defendants.	)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscriber at his office, Post Office Box 6628, Hilton Head Island, South Carolina 29938, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to appear and defend the action as required by law, judgment by default will be rendered against you for the relief demanded in the Complaint.

THE CAPELL LAW FIRM, LLC

Glynn L. Capell, Esq.
SC Bar #: 16552
Email: gcapell@capelllaw.com

with permission
Charles W. Thomson, Esq.
SC Bar #: 101471
Email: cthomson@capelllaw.com

Post Office Box 6628
Hilton Head Island, SC 29938
Telephone: (843) 689-4280
Facsimile: (843) 689-4281
Attorneys for Plaintiffs

August_____, 2015
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	C.A. No.: 2015-CP-07-207
JAMES R. BRADY,	)	
Plaintiff,	)	
vs.	)	**COMPLAINT**
	)	(Jury Trial Demanded)
HILTON HEAD HOMES AT ALLENWOOD, LLC, VILLAGE SQUARE DEVELOPMENT COMPANY, LLC, LANCASTER REDEVELOPMENT CORP. and GARY L. GROSSMAN	)	
Defendants.	)	

2015 AUG 26 PM 4:00

The Plaintiff, James R. Brady ("Plaintiff"), complaining of the Defendants above-named, would respectfully show unto the Court as follows:

PARTIES AND JURISDICTION

1. The Plaintiff is a citizen and resident of Beaufort County, South Carolina.

2. Defendant Hilton Head Homes at Allenwood, LLC ("Hilton Head Homes") is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

3. Defendant Village Square Development Company, LLC ("Village Square") is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

4. Defendant Lancaster Redevelopment Corporation ("Lancaster") is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of Pennsylvania and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

5. Defendant Gary L. Grossman ("Grossman") is a citizen and resident the State of Pennsylvania and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina

6. This Court has jurisdiction over the subject matter and parties to this action.

FACTUAL ALLEGATIONS

7. On or about February 2, 2004, Grossman entered into a "Letter of Agreement" with Plaintiff wherein Hilton Head Homes, Village Square, Lancaster and Grossman engaged Plaintiff as an independent contractor to perform sales and marketing and construction management services and agreed to compensate Brady as set forth herein.

8. Over the course of the next several years, Brady performed the work as set forth in the February 2, 2004 "Letter of Agreement".

9. On or about September 13, 2007, Plaintiff received a letter from Lancaster setting forth the Defendants' calculations of the amount of money due to Plaintiff for the services he provided to the Defendants since the February 2, 2004 "Letter of Agreement". The September 13, 2007 letter states Plaintiff is due the total amount of $711,027.00.

10. Plaintiff has retained an accountant to analyze the September 13, 2007 letter and has determined that the actual amount of monies due Plaintiff is $724,114.00.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract)

11. Each and every allegation set forth above is fully incorporated herein.

12. As set forth more fully above, Plaintiff and Defendants entered into an Agreement wherein Defendants agreed to provide compensation to Plaintiff for providing sales and marketing and construction management services in the construction and sale of single family homes and townhouses in the Allenwood Development ("Allenwood") on Hilton Head Island.

13. Plaintiff performed his obligations of the Agreement and is entitled to compensation for such services as set forth herein.

14. Defendants have breached the Agreement by failing to compensate Plaintiff the amounts admittedly owed.

15. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of $724,114.00, consequential damages, plus costs, prejudgment interest and postjudgment interest.

FOR A SECOND CAUSE OF ACTION
(Quantum Meruit)

16. Each and every allegation set forth above is fully incorporated herein.

17. As set forth above, Plaintiff provided valuable services to the Defendants in the form of sales and marketing activities as well as construction management services.

18. Defendants accepted, used and enjoyed the services provided by Plaintiff.

19. Defendants were aware Plaintiff expected to be compensated for such services and Defendants have valued such services at $711,027.00.

20. In light of the above, it would be inequitable for Defendants to retain the value of the services provided by Plaintiff without just compensation to Plaintiff in the amount of at least $711,027.00.

21. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of $724,114.00, consequential damages, plus costs, prejudgment interest and postjudgment interest.

FOR A THIRD CAUSE OF ACTION
(Conversion)

22. Each and every allegation set forth above is fully incorporated herein.

23. As set forth above, Defendants have exercised the unauthorized assumption and right of ownership over $711,027.00 to the exclusion of Plaintiff's rights of such amount.

24. Plaintiff has an interest in the $711,027.00 and Defendants converted the property to their own use without the permission of Plaintiff.

25. Upon information and belief, Defendants knowingly or with reckless intent converted the $711,027.00 to their own use.

26. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of $724,114.00, consequential damages, plus costs, punitive damages where applicable, prejudgment interest and postjudgment interest.

WHEREFORE, the Plaintiff prays for judgment against Defendants in the amount of $724,114.00, plus consequential damages, costs, punitive damages where applicable, and prejudgment interest and postjudgment interest, and for such other and further relief as this Court may deem just and proper.

THE CAPELL LAW FIRM, LLC

Glynn L. Capell, Esq.
SC Bar #: 16552
Email: gcapell@capelllaw.com

Charles W. Thomson, Esq.
SC Bar #: 101471
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Post Office Box 6628
Hilton Head Island, SC 29938
Telephone: (843) 689-4280
Facsimile: (843) 689-4281
Attorneys for Plaintiffs

August 21, 2015
Hilton Head Island, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 **CP**-07-02690

James R. Brady

PLAINTIFF(S)

Hilton Head Homes at Allenwood LLC et al

DEFENDANT(S)

Submitted by: Megan White	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** *(CHECK REASON):* ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON):* ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX):* ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: After a hearing on May 15, 2015, Plaintiff's Motion to Refer to a Special Referee is denied. Upon the consent of counse, this case shall be dismissed pursuant to 40(j) and immediately refiled with a new case number.

2015 JUN 16 AM 10:33

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2142
Judge Code

6/15/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the 16th day of June, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 23rd day of June, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Glynn Lindsey Capell, Esq

ATTORNEY(S) FOR THE PLAINTIFF(S)

George Hamlin O'Kelly, III
Gary L. Grossman

ATTORNEY(S) FOR THE DEFENDANT(S)

Dana S. Hyesia Staff
CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2009-CP-27-2690

James R. Brady,

Plaintiff,

vs.

Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman,

Defendants.

ANSWER AND COUNTERCLAIM OF THE DEFENDANTS

2009 AUG 24 PM 3:37
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

TO: GLYNN L. CAPELL
MULLEN WYLIE, LLC
ATTORNEYS FOR THE PLAINTIFF

The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman (collectively, the "Defendants") by and through their undersigned counsel, answering the Complaint of the Plaintiff James R. Brady, allege and state as follows:

1. Each and every allegation of the Plaintiff's Complaint not admitted, denied, or otherwise qualified herein is hereby deemed denied, and these Defendants deny same and demand strict proof thereof.

2. The Defendants admit the allegations of Paragraph 1 of the Plaintiff's Complaint.

3. The Defendants admit the allegations of Paragraphs 2, 3, 4, 5 and 6 of the Plaintiff's Complaint.

4. The Defendants admits only so much of the allegations of Paragraph 7 of the Plaintiff's Complaint that alleges there was in Agreement by and between himself and some of these Defendants. The Defendants deny any agreement by and between the Plaintiff and Mr. Grossman, individually. Further, to the extent the allegations of said Paragraph in any

way differ from the terms and conditions of the agreement, the Defendants deny the remaining allegations of said Paragraph and demand strict proof thereof.

5. The Defendants admit only so much of Paragraph 8 of the Plaintiff's Complaint that alleges the Plaintiff claims to have performed work for the Defendants other than Mr. Grossman individually. To extent the work was performed in any way other than that set forth in the agreement between Mr. Brady and the Defendants other than Mr. Grossman, the Defendants deny the allegations of said Paragraph and demand strict proof thereof.

6. The Defendants deny the allegations of Paragraph 9 of the Plaintiff's Complaint and demand strict proof thereof.

7. The Defendants are without sufficient information to form a belief as to the allegations of Paragraph 10 of the Plaintiff's Complaint, and, therefore, deny same and demand strict proof thereof.

8. In answering Paragraph 11 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 7 above as though repeated herein verbatim.

9. The Defendants deny the allegations of Paragraphs 12, 13, 14, and 15 of the Plaintiff's Complaint and demand strict proof thereof.

10. In answering Paragraph 16 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 9 above as though repeated herein verbatim.

11. The Defendants deny the allegations of Paragraphs 17, 18, 19, 20 and 21 of the Plaintiff's Complaint and demand strict proof thereof.

12. In answering Paragraph 22 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 11 above as though repeated herein verbatim.

13. The Defendants deny the allegations of Paragraphs 23, 24, 25, and 26 of the Plaintiff's Complaint and demand strict proof thereof.

FOR A FURTHER ANSWER
AND BY WAY OF AN AFFIRMATIVE DEFENSE
AND MOTION TO DISMISS

14. The Defendants would allege and show that the Plaintiff's Complaint fails to state facts sufficient upon which relief could be granted, and, as such, the Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) SCRCP.

FOR A FURTHER ANSWER
AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE

15. The Defendants would allege and show that the Plaintiffs' own inequitable actions regarding the facts and circumstances giving rise to his claims, if any, and none of which are admitted, act as a bar to the Plaintiff's recovery, and, as such, the Plaintiff's Complaint should be dismissed.

FOR A FURTHER ANSWER
AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE

16. The Defendants would allege and show that the Plaintiff's Complaint are barred by the doctrines of waiver, estoppel and laches in that the Plaintiff failed to act when he should have to protect any interest he may have regarding his claims, if any, and none of which are admitted, set forth in his Complaint.

FOR A FURTHER ANSWER
AND BY WAY OF A FOURTH AFFIRMATIVE DEFENSE

17. The Defendants would allege and show that the Plaintiff knew or should have know that no fees or compensation for his services would be paid to him only if any work were actually

performed by him and which work the Plaintiff could not provide and, as such, the Plaintiff's Complaint should be dismissed.

FOR A FURTHER ANSWER
AND BY WAY OF A FIFTH AFFIRMATIVE DEFENSE

19. The Defendants would allege and show that the Plaintiff had no contract with the Defendant Gary L. Grossman, individually, and, as such, this Defendant should be dismissed from this suit.

FOR A FURTHER ANSWER
AND BY WAY OF A SIXTH AFFIRMATIVE DEFENSE
AND BY WAY OF A COUNTERCLAIM

20. The Defendants repeat and reallege Paragraphs 1 through 19 above as though repeated herein verbatim.

21. The Defendants Hilton Head Homes at Allenwood, LLC, and Village Square Development Company, LLC, are limited liability companies organized and existing under the laws of the State of South Carolina.

22. The Defendant Lancaster Redevelopment Corporation is a company organized and existing under the laws of the State of Pennsylvania.

23. The Defendant Gary L. Grossman is a citizen and resident of the State of Pennsylvania.

24. The Plaintiff James R. Brady is a resident of Beaufort County, South Carolina.

25. Pursuant to the terms of his agreement with Lancaster Redevelopment Corporation, the Plaintiff was to have provided certain services to Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation in connection with the constructions, sales and marketing of a certain development in Beaufort County.

26. The Plaintiff knew that sums were to be repaid to entities and individuals that loaned money to the development prior to any distributions being made and prior to his receiving any commissions or payments.

27. The Plaintiff informed the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation that he could not cover the workload required of him in order to receive the compensation he now claims he is due.

28. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation had to employ third parties to complete the work that the Plaintiff warranted and promised that he could complete.

29. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation have made payments to the Plaintiff despite his inability to perform as promised.

30. Such a failure to perform constitutes a breach of contract entitling the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation to recover all payments made to the Plaintiff in amounts in excess of Six Hundred Thousand ($600,000.00) Dollars.

31. The Plaintiff is not entitled to retain these payments due to his breach of his agreement with the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation, and these Defendants are entitled to actual damages in excess of Six Hundred Thousand ($600,000.00) in an amount to be determined at the trial of this case.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

32. The Defendants repeat and reallege Paragraph 1 through 31 above as though repeated herein verbatim.

33. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation had a contract with the Plaintiff for services which the Plaintiff failed to provide.

34. Such failure constitutes a breach of contract for which the Plaintiff has no legal excuse and which breach has caused the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation to suffer damages in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars.

35. As a direct and proximate result of the Plaintiff's breach of contact, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation are entitled to actual damages in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars in amounts to be determined at trial.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)

36. The Defendants repeat and reallege Paragraphs 1 through 35 above as though repeated herein verbatim.

37. Despite receiving payment, the Plaintiff failed to perform pursuant to his agreement with the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation and was compensated in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars.

38. The Plaintiff has been unjustly enriched by having received these payments and it would be inequitable and unjust for the Plaintiff to retain the value of the payments made in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars.

39. As a direct and proximate result of the Plaintiff's actions in being unjustly enriched, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation are entitled to damages in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars in amounts to be determined at trial.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corporation and Gary L. Grossman pray that this Court enter its Order as follows:

1. Dismissing the Plaintiff's Complaint;
2. Awarding these Defendants all costs and fees associated with the defense of this matter;
3. Awarding the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation damages in excess of Six Hundred Thousand and No/100 ($600,000.00) Dollars in amounts to be determined at trial; and
4. Awarding any and all such further relief as this Court may deem just and proper.

BUIST, BYARS & TAYLOR, LLC

Mount Pleasant, South Carolina
Aug. 19, 2009

By: _____

Gray B. Taylor
S.C. Bar No. 10795
G. Hamlin O'Kelley, III
S.C. Bar No. 15491
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MULLEN WYLIE
ATTORNEYS

70 Arrow Road
P.O. Box 5969
Hilton Head Island, SC 29938
Phone: (843) 785-6969
Fax: (843) 785-6711

June 16, 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RESTRICTED DELIVERY
Mr. Gary L. Grossman
2138 Route 522
Selinsgrove, PA 17870

RE: ***James R. Brady v. Hilton Head Homes at Allenwood, LLC, et al***
C.A. No. 2009-CP-07-02690

Dear Mr. Grossman:

Please find enclosed for service upon you a Summons and Complaint which has been filed regarding the above-referenced matter.

With kind regards, I remain

Very truly yours,

MULLEN WYLIE, LLC

Glynn L. Capell

GLC/pm
Enclosures

George E. Mullen
Robert L. Wylie, IV
Francis E. Grimball
James E. Lady
Glynn L. Capell
Arthur T. Meeder
Mark A. Brunty
Amy W. Wates

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	C.A. No.: 2009-CP-07-02690
JAMES R. BRADY,	)	
Plaintiff,	)	
vs.	)	**SUMMONS**
	)	(Jury Trial Demanded)
HILTON HEAD HOMES AT ALLENWOOD, LLC, VILLAGE SQUARE DEVELOPMENT COMPANY, LLC, LANCASTER REDEVELOPMENT CORP. and GARY L. GROSSMAN	)	
Defendants.	)	

2009 JUN -5 AM 11:46
ELIZABETH W. SMITH
BEAUFORT COUNTY S.C.
CLERK OF COURT

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscriber at his office, 70 Arrow Road, Ste. 1, Post Office Box 5969, Hilton Head Island, South Carolina 29938, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to appear and defend the action as required by law, judgment by default will be rendered against you for the relief demanded in the Complaint.

MULLEN WYLIE, LLC

By:_____
Glynn L. Capell (S.C. Bar No. 16552)
70 Arrow Road, Suite 1
P.O. Box 5969
Hilton Head Island, SC 29938
(843) 785-6969
Attorneys for the Plaintiff

June 4, 2009
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT JAMES R. BRADY, Plaintiff, vs. HILTON HEAD HOMES AT ALLENWOOD, LLC, VILLAGE SQUARE DEVELOPMENT COMPANY, LLC, LANCASTER REDEVELOPMENT CORP. and GARY L. GROSSMAN Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT C.A. No.: 2009-CP-07-02690 **COMPLAINT** (Jury Trial Demanded)

2009 JUN -5 AM 11:46
ELIZABETH SMITH
BEAUFORT COUNTY S.C.
CLERK OF COURT

The Plaintiff, James R. Brady ("Plaintiff"), complaining of the Defendants above-named, would respectfully show unto the Court as follows:

PARTIES AND JURISDICTION

1. The Plaintiff is a citizen and resident of Beaufort County, South Carolina.

2. Defendant Hilton Head Homes at Allenwood, LLC ("Hilton Head Homes") is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

3. Defendant Village Square Development Company, LLC ("Village Square") is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

4. Defendant Lancaster Redevelopment Corporation ("Lancaster") is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of Pennsylvania and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

5. Defendant Gary L. Grossman ("Grossman") is a citizen and resident the State of Pennsylvania and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina

6. This Court has jurisdiction over the subject matter and parties to this action.

FACTUAL ALLEGATIONS

7. On or about February 2, 2004, Grossman entered into a "Letter of Agreement" with Plaintiff wherein Hilton Head Homes, Village Square, Lancaster and Grossman engaged Plaintiff as an independent contractor to perform sales and marketing and construction management services and agreed to compensate Brady as set forth herein.

8. Over the course of the next several years, Brady performed the work as set forth in the February 2, 2004 "Letter of Agreement".

9. On or about September 13, 2007, Plaintiff received a letter from Lancaster setting forth the Defendants' calculations of the amount of money due to Plaintiff for the services he provided to the Defendants since the February 2, 2004 "Letter of Agreement". The September 13, 2007 letter states Plaintiff is due the total amount of $711,027.00.

10. Plaintiff has retained an accountant to analyze the September 13, 2007 letter and has determined that the actual amount of monies due Plaintiff is $724,114.00.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

11. Each and every allegation set forth above is fully incorporated herein.

12. As set forth more fully above, Plaintiff and Defendants entered into an Agreement wherein Defendants agreed to provide compensation to Plaintiff for providing sales and marketing and construction management services in the construction and sale of single family homes and townhouses in the Allenwood Development ("Allenwood") on Hilton Head Island.

13. Plaintiff performed his obligations of the Agreement and is entitled to compensation for such services as set forth herein.

14. Defendants have breached the Agreement by failing to compensate Plaintiff the amounts admittedly owed.

15. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of $724,114.00, consequential damages, plus costs, prejudgment interest and postjudgment interest.

FOR A SECOND CAUSE OF ACTION
(Quantum Meruit)

16. Each and every allegation set forth above is fully incorporated herein.

17. As set forth above, Plaintiff provided valuable services to the Defendants in the form of sales and marketing activities as well as construction management services.

18. Defendants accepted, used and enjoyed the services provided by Plaintiff.

19. Defendants were aware Plaintiff expected to be compensated for such services and Defendants have valued such services at $711,027.00.

20. In light of the above, it would be inequitable for Defendants to retain the value of the services provided by Plaintiff without just compensation to Plaintiff in the amount of at least $711,027.00.

21. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of $724,114.00, consequential damages, plus costs, prejudgment interest and postjudgment interest.

FOR A THIRD CAUSE OF ACTION
(Conversion)

22. Each and every allegation set forth above is fully incorporated herein.

23. As set forth above, Defendants have exercised the unauthorized assumption and right of ownership over $711,027.00 to the exclusion of Plaintiff's rights of such amount.

24. Plaintiff has an interest in the $711,027.00 and Defendants converted the property to their own use without the permission of Plaintiff.

25. Upon information and belief, Defendants knowingly or with reckless intent converted the $711,027.00 to their own use.

26. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of $724,114.00, consequential damages, plus costs, punitive damages where applicable, prejudgment interest and postjudgment interest.

WHEREFORE, the Plaintiff prays for judgment against Defendants in the amount of $724,114.00, plus consequential damages, costs, punitive damages where applicable, and

prejudgment interest and postjudgment interest, and for such other and further relief as this Court may deem just and proper.

MULLEN WYLIE, LLC

By:_____

Glynn L. Capell (S.C. Bar No. 16552)
70 Arrow Road, Suite 1
P.O. Box 5969
Hilton Head Island, SC 29938
(843) 785-6969
Attorneys for the Plaintiff

June 4, 2008
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	TENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	2015-CP-07-02047

James R. Brady,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	TRANSCRIPT OF HEARING
	)	VOLUME II
Hilton Head Homes, et al.,	)	PAGES 1 - 159
	)	
Defendants.	)	
----------	)	

August 30, 2022
Beaufort, South Carolina

B E F O R E:

The Honorable Bentley Price, Judge Presiding

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

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Cathy L. Young, CVR-M
Official Circuit Court Reporter
Post Office Box 4604
Beaufort, South Carolina 29903

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
VD of Ginger Griffith	08			
Gary Grossman				
By Mr. Capell	10			
By Mr. O'Kelley		43		
By Mr. Capell			79	
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P R O C E E D I N G S

*** * * * ***

THE COURT: All right, so your next witness will be --

MR. THOMSON: Video of Ginger Griffith.

THE COURT: Do you want to do the video first?

MR. THOMSON: Yes, Your Honor.

THE COURT: All right, good, let's do that. And while we're doing this, I'm just going to look over these real quickly, but, obviously, all your jury charges are standard. I mean they're all in our standard jury charges.

MR. THOMSON: Well, there is a little bit of case law I put in there.

THE COURT: Uncontradicted testimony.

MR. O'KELLEY: I think those are mine, Your Honor.

THE COURT: It's backwards. All yours are standard?

MR. O'KELLEY: Mine are absolutely standard. I just lifted most of them from --

THE COURT: Yeah.

MR. O'KELLEY: -- the perspective charge book and --

THE COURT: So we'll do the same one that we

always do. I'll just take a look at it. Yours --

MR. THOMSON: I'll tell you which ones.

THE COURT: All right, hit me. Obviously, witness credibility all that's very standard.

MR. THOMSON: Yeah, that part's standard. Witness credibility standard.

MR. O'KELLEY: I've got that one.

MR. THOMSON: Converge elements, standard. Converge the money, standard.

THE COURT: It'll all be in my conversion charge. We have a standard conversion charge.

MR. THOMSON: I've got -- here's -- the one I drafted myself is -- I was beyond very careful with the wording.

MR. O'KELLEY: Which one is it?

MR. THOMSON: It's number four, or I don't have them labeled at the top. It's called -- it's labeled conversion of corporate funds, Your Honor, and by all means -- it's in your --

THE COURT: I've got it.

MR. THOMSON: -- it's in your second.

THE COURT: All right.

MR. THOMSON: By all means look behind me, make sure it's right.

THE COURT: I'll do it, yeah. I've got 45

minutes to do it, so let me do it all right now, and --

MR. THOMSON: Okay.

THE COURT: -- Haley has the standard jury charges. All right, anybody need anything before we get started?

MR. O'KELLEY: Your Honor, you were taking under advisement whether these four exhibits would be admitted or not. I didn't know if you've made a --

THE COURT: Let's wait to see what he says.

MR. O'KELLEY: Perfect.

THE COURT: All right. Y'all ready?

MR. O'KELLEY: Yes, sir

MR. THOMSON: Yes, sir.

MR. O'KELLEY: We'll wait to see what you have to say about our document.

THE COURT: All right.

MR. THOMSON: Judge Price --

THE COURT: Yeah.

MR. THOMSON: This is another one.

THE COURT: All right.

MR. THOMSON: I drafted it myself.

THE COURT: Which one?

MR. THOMSON: It's called burden of proof on claims and defendants' defenses.

THE COURT: All right, grab that for me real quick.

MR. THOMSON: It just says -- it's number seven in your stack.

THE COURT: All right.

MR. THOMSON: They're not labeled yet.

THE COURT: Burden of proof on claims and defenses.

MR. THOMSON: Yeah.

THE COURT: I think that's already --

MR. THOMSON: I -- I didn't -- I didn't see one in our library that was burden of proof on defenses, so --

THE COURT: All right, again --

MR. THOMSON: -- I just copied --

THE COURT: -- I look on preponderance of the evidence, but I think he has it in there.

MR. THOMSON: Okay.

THE COURT: All right.

THE BAILIFF: Are you ready for the Jury?

THE COURT: Yes, ma'am, bring them out.

MR. THOMSON: Judge Price, the other thing on my jury charge, some of them are standard from a book, but I believe portions that were at issue, like an explanation and consideration, I don't think there's

any mention about consideration, so I took that out.

THE COURT: We'll have to do it again.

MR. THOMSON: Those jury charges, the standard ones from the King book, it just --

THE COURT: I --

MR. THOMSON: -- they're so long and confusing.

THE COURT: I haven't used it -- I've never used it one time. We've got a jury charge book that was done by the Circuit --

THE BAILIFF: All ready?

THE COURT: Bring them out.

THE BAILIFF: All right, bring them in.

(Whereupon, Jury enters courtroom.)

THE COURT: All right, good morning, I hope y'all had a wonderful evening. Thank you for being on time. At this point in time, as we indicated previously, we are going to have a virtual witness. They have taken a video deposition. All that means is that what you saw yesterday has been videoed. They get to put on their direct, they get to have cross, and they just go back and forth, and everybody has the same opportunity to examine the witness, it's just that that witness was not able to be here, so they video-recorded it, so that's very, very common. It's to be considered just as if they

were sitting right there. Fair enough? All right, it's 45 minutes, if anybody needs a break during that time, just let us know, but we'll just run the video, if you need to stop for any reason, just tell us and we'll stop it. All right. If you can't see and you want to stand up, you want to sit over here, you want to sit in the chair back here, if it hurts your neck, wherever you want to go that's comfortable for you to see the video, feel free to move around. Yeah, if you want to sit back there, or you need a chair, whatever's convenient. All right, y'all ready?

MR. CAPELL: We did this back before Zoom, so it looks antiquated. Your Honor, whenever --

THE COURT: We ready to go?

MR. THOMSON: Yeah.

THE COURT: We'll turn the lights down whenever it gets going. Hold on, we're going to have to turn it up, I can't even hear it. Hold on.

THE BAILIFF: All right, go ahead and play it.

(Video testimony of Ginger Griffith is played for the Jury.)

THE COURT: All right, ladies and gentlemen, I mean I know not all testimony is, you know, Tom Cruise and Jack Nicholson going at it in, you know,

A Few Good Men, but, obviously, that's important information that we need to digest, but let's go ahead and take a quick break, because I think the next one is going to be fairly lengthy, okay? And we'll get a little coffee, stretch your legs, and we'll come right back here. Fair enough?

(Whereupon, jury exits courtroom.)

(Whereupon, a brief recess is taken.)

THE COURT: All right, anything before we bring them back out?

MR. THOMSON: In pre-trial, I gave the sheets showing there were no foreclosures filed before 2009 and asked you to take judicial notice.

THE COURT: They didn't have any objection to it? It's public record.

MR. THOMSON: Yeah, and you heard her testimony. She said I think there's some foreclosures right after that in 2008 or so. And there were no foreclosures on either one of those LLCs until two years after the fact. I don't know how they're going to try to use that, but I think it needs to be -- if they do try to use it, it needs to be clarified.

THE COURT: Wait, you were the one that produced it to me.

MR. THOMSON: Yes, the 2009 foreclosures. I produced that to establish there were no foreclosures prior to 2009. And all the houses that were at issue here are houses that have been sold by 2007.

THE COURT: Right. And the only issue that we had was I said that I would certainly take judicial notice if it's fine or Jerri could just come up and testify that that's an actual, you know, true and accurate --

MR. THOMSON: Yeah, I'm just trying to save time. I mean that's the whole reason I asked to avoid the coffer and mechanics of --

THE COURT: I'll take judicial notice of it, that's fine.

You can bring them out.

(Whereupon, jury enters courtroom.)

THE COURT: All right, now we're awake, because that last joke was funny, all right? Only one person laughed, all right, so are y'all pepped up now ready to go?

JUROR: Yep.

THE COURT: All right, so proud. All right, call your next witness.

MR. CAPELL: Your Honor, the Plaintiff calls

Gary Grossman to the stand.

GARY GROSSMAN,

being first duly sworn, testified as follow:

DIRECT EXAMINATION

BY MR. CAPELL:

Q. All right, good afternoon -- or, good morning, Mr. Grossman; how are you doing today?

A. I'm well, thank you.

Q. Okay. We first met when I took your deposition in this case; do you remember that?

A. Not particularly, sir.

Q. Your deposition was on October 17, 2012; does that sound about right to you?

A. If you say so, I'll accept that as fact.

Q. Do you recall meeting me at all?

A. I think it was on Hilton Head Island.

Q. Mr. Grossman, you've lived in Pennsylvania most of your life, right?

A. As my primary residence, yes.

Q. During your career you have primarily been involved in the areas of real estate development and construction, right?

MR. O'KELLEY: Your Honor, Mr. Capell is leading the witness, this is not --

MR. CAPELL: I can lead a hostile witness, it's

in the rules.

THE COURT: I understand, but --

MR. CAPELL: If I call them, it's in the rules, I'll find it.

THE COURT: No, it's 607, but my point is, is that's fine, but just to expedite for the purposes of this, I'll allow it.

BY MR. CAPELL:

Q. You did the first land development in 1979, right?

A. That sounds about right.

Q. And since then you have developed and delivered over 11,000 lots; is that right?

A. That's about right.

Q. And since then you have constructed over 7,500 homes?

A. Yes.

Q. Lancaster Redevelopment Company, or LRC, is what I've been calling it for short, that started around 1981 in Pennsylvania, correct?

A. It sounds about right.

Q. And you were one of the original owners of LRC?

A. No, I was not one of the original founding stockholders, I was not. I came in about six months

after it was formed.

Q. Okay. And LRC has had an ownership interest in over 60 different companies through its life, right?

A. Here in North America?

Q. Yes, sir.

A. That sounds about right.

Q. And as of today, most of those 60 plus companies are either out of business or dissolved, correct?

A. Most all companies are formed for a specific project purpose, and when those projects conclude themselves, the companies are concluded, yes.

Q. All right, Mr. Grossman, let's look at the February 2, 2004, letter. You have that letter in front of you, I believe that's exhibit --

MR. THOMSON: Our exhibit notebook, it's the white binder right up there.

MR. CAPELL: May I approach, Your Honor?

THE COURT: Absolutely.

BY MR. CAPELL:

Q. Mr. Grossman, I'm going to hand you what's -- this binder called Trial Exhibit Notebook, and it has exhibits in there by number, and you'll see the tabs on there. I'm going to open it up, and you can

see the index page there, right here. And if you'll turn to Exhibit 1, Mr. Grossman, you'll see that's a February 2, 2004, letter; is that right?

A. (Reviews document.) Yes.

Q. Mr. Grossman, you saw us do this yesterday, but I want to make sure I'm doing it with you again. Exhibit 1, the first page is Exhibit 1A, this posterboard, the exact same page as the first page in Exhibit 1 in your witness notebook? Can you see this is --

A. Are you asking me or telling me?

Q. I'm asking you, if it's the same page.

A. (Reviews document.) It appears to be, yes.

Q. Okay. And I just have to go through this exercise to make sure we're looking at the same thing, Mr. Grossman, so I apologize for this, but the second page, is this the exact page?

A. (Reviews document.) It appears to be the same.

Q. And third page, is this the exact page?

A. (Reviews document.) It appears to be the same.

Q. This is your personal address at the top of this letter, right?

A. (Reviews document.) It is.

Q. And on this February 2, 2004, letter it lists your name, Gary L. Grossman, as the author at the end of the letter on page three, right?

A. It is.

Q. And it has your initials GLG under your name on the bottom of page three; is that right?

A. (Reviews document.) That is correct.

Q. I'm going to stand up a little bit closer to here, so I can point to this letter. And then it has, after your initials GLG, it has a slash, and it has an SA there. Do you see that?

A. (Reviews document.) I do.

Q. Okay, and that SA initials, those stand for Suzanne (ph) Aumiller (ph), right?

A. That is correct.

Q. And Suzanne Aumiller was your personal assistant; is that right?

A. That's correct.

Q. And her initials on this letter indicated that Suzanne Aumiller would have been the one to type up this letter; is that right?

A. Most likely, yes.

Q. And under those initials it has HHH/Brady2.2.04. Do you see that?

A. (Reviews document.) I do.

Q. That refers to an electronic file name on your computer, right?

A. That's what it would indicate to me, sir.

Q. So this February 2, 2004, letter is from an electronic file on your computer?

A. That would be my assumption.

Q. And, Mr. Grossman, I would like for you to read a sentence from this letter, if you would, to the Jury, and I want to ask you some questions about it. If you'll please read the first sentence of the last paragraph on page two?

A. You -- you want what read, sir?

Q. The first sentence, if you'll turn to page two of that letter, I think on the bottom you'll see some page numbers there.

A. (Complies.)

Q. Do you see it? Are you on page two, sir? And then if you'll go to the last paragraph on page two. It starts, "In addition to."

A. "In addition to sales and construction" --

THE COURT: Hold on, hold on. If you're going to read, you've got to slow down a lot, because she has to take down every word that you say, okay?

WITNESS: Sorry, Your Honor.

THE COURT: That's okay.

BY WITNESS:

A. "In addition to the sales and construction management fees as described, I would like to pay you a set management fee of 50 percent of free tax profits after a one percent per month of cash investment to Langsford Development Corporation, and 500 basis points to me, individually, for my guarantee. However, I'm asking that a hundred percent of the cash invested by Forest, Stone, Blanchard and Belk Corporation and/or myself be repaid prior to any profit distribution."

Q. Okay, and I just asked you to read the first sentence, not the second sentence, but that's okay. Let's look at that first sentence though that you did read. That first sentence has the words, "to me, individually," in there. Do you see those words, "to me, individually"?

A. Yes.

Q. In that sentence the words me, individually, means Gary L. Grossman, individually, right? Is that right?

A. I think that's open to interpretation, but I'm not sure what the question is.

Q. The question is, this letter has your name, Gary L. Grossman, as the author on page three,

correct?

A. Are we referring to his unsigned letter that I don't recall sending? It was found in discovery in a file.

Q. If you'll just answer the questions that I ask that'd --

A. I'm sorry.

Q. -- be great, Mr. Grossman. This letter has your name listed as the author on page three, correct?

A. Yes.

Q. Okay. And the word me in this letter -- this letter came from your computer, right?

A. No, it came from the computer of Suzanne Aumiller.

Q. Who's your personal assistant, right?

A. Susan?

Q. Who's your personal assistant, right?

A. Not strictly, she's an employee of Langsford Development Corporation.

Q. You just testified that she was your personal assistant.

A. Among many other duties, yes.

Q. And so this letter came off her computer?

A. I assume so.

Q. And the word "me, individually," means Gary L. Grossman, individually, correct? That's a question, Mr. Grossman. And you can explain it all if you want to, I would just like a yes or no answer before you explain it.

A. I -- I would say on the face of that sentence, yes.

Q. And in the first part of that sentence says the phrase, "I would like to pay." The word "I" refers to Gary Grossman, right?

A. In the context of the overall letter, which clearly states in two limited LLCs, a qualified yes. It clearly states in two limited liability companies.

Q. Those two limited liability companies did not write this letter, did they?

A. I'm sorry, sir, I didn't hear that.

Q. Those two limited liability companies did not write this letter, did they? Your name is shown as the author of this letter, correct?

A. Unsigned, yes.

Q. Okay. But your name is shown as the author?

A. Obviously.

Q. Okay, and we've established this letter is on your personal letterhead, haven't we?

A. I'm not sure if that's established because it was found in a computer file of someone who works for me.

Q. That someone who works for you is your personal assistant?

A. Among many other duties.

Q. And that computer file was from your computer, right?

A. No, sir, not my computer.

Q. It's from your personal assistant's computer?

A. From a massive network of computers. There's 30 people who work in that office.

Q. You know what that HHH/Brady2.2.04 means, don't you?

A. As the CEO of the company, I have an obligation to understand its basic operations, yes.

Q. And are you testifying under oath to this jury, that the word "I" and the word "me," individually, those two words in this letter do not mean Gary Grossman, individually? Is that what you're testifying to this jury?

A. My testimony is, taken in the context of the overall letter, not picking out something, sir, that serves your immediate purpose, it means what it

says.

Q. And you agree with me, Mr. Grossman, that on page three of this letter beside your name, Gary L. Grossman -- you agree with me on page three of this letter, beside your name, Gary L. Grossman, there is no corporate designation, nor any kind of designation whatsoever beside, under or above your name, is there?

A. On an unsigned letter that I don't believe was ever sent, there was no need to put a designation.

Q. Well, Mr. Grossman, it is possible that you actually signed this letter, isn't it?

A. I'm sorry, sir?

Q. Mr. Grossman, it is possible that you actually did sign this letter, isn't it?

A. We've asked a number of times for a signed letter, nobody's been able to produce one.

Q. Do you remember in your deposition when I asked you that question?

A. No, sir.

Q. Okay, let me read it for you. And let me first talk about this so the jury understands what's going on with the deposition. You testified in the deposition of this case, right?

A. Yes, I did testify.
Q. You were under oath in that deposition, correct?
A. Yes.
Q. Okay. And you swore to tell the truth in that deposition, correct?
A. I did.
Q. And you had your lawyer there, right?
A. Yes, I did.
Q. And did you tell the truth in that deposition?
A. To the best of my knowledge and belief, I did.
Q. All right, I'm going to read an excerpt from your deposition.
THE COURT: Read slow.
MR. CAPELL: Okay. Thank you.
BY MR. CAPELL:
Q. And I'm going to read page 133, lines 23 to 25. And this is -- the first line is a question from me, question, "Is it possible you signed this letter?" Answer, "It is possible, I'm not -- I'm not disputing I may have." Does that refresh your memory, Mr. Grossman, that it is possible you signed this letter?

A. Admitting that I may have is different than saying I did not.

Q. And regardless of whether or not you signed this letter, you did assume that Rod accepted the terms of this letter as laid out by you, right?

A. I assumed that when he signed the assignment of partnership agreement, that's when I assume we have a deal. Also, based on our past business practices, which were many, and he signed a number of similar documents, that's when he should assume we had a deal.

Q. Let me ask that question again just so we're not confused. You assumed Rod accepted the terms of this letter, didn't you?

A. I never assumed that.

Q. I'll remind you of your deposition again, and I'll read you another quote from your deposition, okay? I'm going to read you from page 134, lines three through seven. Mr. Grossman, the question that I asked you on that day back in 2012 was, "And did Mr. Brady pretty much accept how you laid out the terms of this letter? Did he pretty much accept that?" Answer, "He didn't beat me up, or tell me to go pound sand, so I assume he did." Do you recall testifying to that, Mr. Grossman?

A. Using identical terms that are in the operating agreement.

Q. That's not my question. Do you recall testifying --

A. Fair enough.

Q. Was that a true statement when you made it?

A. It was.

Q. Okay. So you did assume that Rod Grady accepted the terms as you laid out in this letter, correct?

A. When he signed the operating agreement.

Q. That's not my question. You assumed that he accepted the terms of this letter, correct?

A. (No response.)

Q. Are you going to answer that question, Mr. Grossman?

A. I'm sorry, sir?

Q. Are you going to answer that question for me?

A. My answer is, my associate when he signed the operating agreement.

Q. And at the time this 2004 letter was drafted, LRC was in existence, weren't they?

A. I'm sorry, repeat the question, sir.

Q. At the time this 2004 letter was drafted on

your personal letterhead, LRC was in existence, weren't they?

A. It was.

Q. In 2004 -- around 2004, when this letter was written, you were the sole owner of LRC at that time, weren't you?

A. I was not.

Q. Who else was the owner then?

A. In 2004 there were five other shareholders.

Q. Who were they? Because your sons didn't come in until 2007, right?

A. To the best of my knowledge and belief, at that time it was John R. Hoffer, Jay Garaneff (ph), Michael Gary Grossman, Matthew Robert Grossman, and Henry Wofford.

Q. I thought you said Hoffer left in the '90s, didn't he?

A. Excuse me?

Q. I thought you said Hoffer left in the '90s -- 1990s, didn't he?

A. Hoffer was out in '94, and then came back in sometime in the early 2000s.

Q. You could have chosen to put this 2004 letter from your personal letterhead on LRC letterhead, couldn't you?

A. Theoretically, yes.
Q. Okay, but you didn't, Mr. Grossman, you purposely chose to put this 2004 letter on your personal letterhead rather than LRC letterhead; isn't that right?
A. I don't know that I made a conscious decision, but from your point of view I can't say you're wrong.
Q. All right. Now, Mr. Grossman, we're going to look at the 2007 letter, the September 13th, 2007, letter from Ginger Griffith to Mr. Brady, and that's going to be Exhibit 2 in your binder, so I'd like for you to turn to that, please, while I change these out.
A. (Complies.)
Q. All right, Mr. Grossman, have you turned to this September 13th, 2007, letter in your exhibit notebook?
A. I have.
Q. Okay. And this letter is on LRC letterhead, isn't it?
A. (Reviews document.) It is.
Q. So if you would have chosen to put the 2004 letter that's on your personal letterhead on LRC letterhead, it would have had this letterhead on top

of it; is that right?

A. Yes.

Q. And if you look at the last page of this letter, it's got Ginger Griffith listed as the author of this letter; is that right?

A. (Reviews document.) That's correct.

Q. And she's listed as the treasurer at the end of it; is that right?

A. That's correct.

Q. Okay, and you were copied on this letter; is that right?

A. She says I was, so I presume I was.

Q. And at the time of this letter, 2007, you agree with me that Ginger would have had more knowledge or would have been more knowledgeable about the accuracy of the numbers than you, right?

A. Yes.

Q. And in this letter the phrase February 2, 2004, letter of agreement, it's mentioned six times in here, isn't it?

A. I'm sorry, sir, I didn't hear the question.

Q. The phrase, February 2, 2004, letter of agreement, that's mentioned six times in this letter, isn't it?

A. I didn't count --

Q. Okay.
A. -- but if you say it is, it is.
Q. Let's count them for -- just real quick, for the record, let's count them, so we have a clear record of this. If you'll go to the first page, in the first paragraph we see February 2, 2004, letter of agreement; do you see that?
A. (Reviews document.)
Q. Do you see that, Mr. Grossman?
A. In the interest of everybody's time I'll agree, if you say six times, it's six times.
Q. All right, well, if you agree with that, then we'll move on, that'll make this a little bit quicker. Thank you, Mr. Grossman, for agreeing to that, I appreciate that. All right, would you please read the last sentence of page two to the jury? Let me get page two up here.
A. The last sentence of page two you want it read, sir?
Q. Yes, sir.
A. "The balance of the 2005, 2006, incentive management fee due to you is $83,488."
THE COURT: Hold on, you've got to read one-tenth of that speed.
WITNESS: Sorry.

THE COURT: She, again, is trying to take everything down at the same speed.

BY WITNESS:

A. The balance of the 2005, 2006, incentive management fee due to you is $83,488."

Q. All right, and if you'll read the second to last line on page three of this letter?

A. "Your 50 percent incentive management fee is, as of this writing, the total amount due to you $711,027."

Q. Okay, I just -- I'm sorry about that, maybe my question was confusing. I want you to read just the second to the last line of the letter. The second to the last line.

A. "Your 50 percent management fee is $633,656."

Q. Okay, and if you'll read the very last line of that letter.

A. "As of this writing, the total amount due to you is $711,027."

Q. And if you'll turn to page four, let's read that first sentence on -- on page four to the jury, would you please?

A. "Mr. Grossman, you're going to need access our ability to fund a $10,000 a month draw against

those funds."

Q. And one more sentence, Mr. Grossman, I'd like for you to read to the jury from this letter.

A. "Given the carrying cost of the inventory against the receivables," is that the --

Q. That's not the sentence I asked you to read, no.

A. Huh?

Q. That's not the sentence I asked you to read.

A. I'm sorry.

Q. I asked you to read the very first sentence of page four, and you did that, so now I'm moving on to the next question. So my next question, there's one more sentence I'd like for you to read in this letter to the jury, and if you'll go to page three for that sentence.

THE COURT: And, if you would, tell him what it starts with, so he'll know where to begin.

MR. CAPELL: Yeah, all right, thank you, Your Honor.

BY MR. CAPELL:

Q. Page three, third paragraph, it starts with -- it is the second sentence in that, it starts with, "Mr. Grossman has."

A. "Mr. Grossman recently" --

Q. I'm sorry, that's the wrong sentence. Third paragraph on page three, second sentence.

A. So it starts with --

THE COURT: Just show him.

MR. CAPELL: Okay.

THE COURT: You see it on the top right?

BY MR. CAPELL:

Q. Right there.

A. "Mr. Grossman has indicated his intentions to allow the funds to be paid to you ahead of his recent loans."

Q. Oh, and one more thing about this letter I want to ask you, Mr. Grossman, before we move on with this is, we countered this letter, and you agreed with me, graciously, that this letter says February 2, 2004, letter of agreement six times, but this letter doesn't contain the phrase operating agreement anywhere in it, does it? You can take a moment to look if you want to.

A. (Reviews document.) It doesn't appear to, no.

Q. And this 2007 letter does not contain the word "assignment" anywhere in it, does it?

A. (Reviews document.) No.

Q. All right. Mr. Grossman, the next document

I would like for you to look at is Exhibit 3 in your binder. That's an email from you to Rod Brady dated September 15, 2007; is that right?

A. I'm sorry, sir, I didn't hear the question.

Q. I'm sorry. Exhibit 3 in your binder, that is an email from you to Rod Brady, dated September 15, 2007, right?

A. (Reviews document.) Yes.

Q. Okay.

MR. CAPELL: And I apologize to the jury, we thought we had a post board, this one doesn't, so I'm going to put it up on the big screen on the projector here, it makes it a little bit easier. And I know, ladies and gentlemen, that may be a little bit hard to see, that's as big as I can make it.

BY MR. CAPELL:

Q. All right, your email address on this email is listed as ggrossman@foresthomes.com, right?

A. (Reviews document.) Yes, sir.

Q. So you chose to use a Forest Homes email address rather than an LRC email address to send this, right?

A. I don't understand the question.

Q. You chose -- the email address that you sent

this from, that's a Forest Homes email address, it's not a LRC email address, is it?

A. That's right.

Q. Okay. You don't have an LRC email address, do you?

A. I do.

Q. Okay. Why didn't you use it in this letter?

A. No particular reason.

Q. Now, this email is dated two days after the September 13th, 2007, letter from Ginger Griffith that we just looked at, right?

A. It appears so.

Q. Okay. And you copied Ginger Griffith on this email; is that right?

A. I did.

Q. Please read the first paragraph of this email you wrote to the jury.

A. "I finally got a chance to look at Ginger's September 13th letter and the worksheets. It looks to me like she has accurately accounted for the various forms of compensation as laid out in the February 2, 2004, letter of agreement."

Q. And the last sentence in the first paragraph, where you say, "It looks to me like she has accurately accounted for the various forms of

compensation as laid out in our February 2, 2004, letter of agreement," where you say that in that -- that email -- now, you were telling the truth when you wrote that sentence in this email, weren't you?

A. Simply using the language that she characterized that letter as. Again, it's an unsigned letter.

Q. Was it a true statement that you made in this email, or a false statement?

A. Just characterizing what she put in her letter.

Q. All right. Are you saying -- Mr. Grossman, are you testifying to this jury that the sentence you wrote in this email, you don't know if it was true or false; is that what you're saying?

A. That's not what I'm saying. I'm saying my memo to Rod starts out by characterizing the language that she used in her September 13th letter, as simple as that.

Q. I'm going to ask you one more time, Mr. Grossman, so that the record's clear and the jury can understand your answer. Is the second sentence in this email a true statement made by you?

MR. O'KELLEY: Objection, Your Honor, he's already answered this question.

MR. CAPELL: But he hasn't answered it, that's why we're here. That's why I'm asking it, because he hasn't answered.

MR. O'KELLEY: Your Honor, the answer that he said he is quoting from the September 13th letter. That Mr. Capell doesn't like his answer is a different story, he's -- it's been asked and answered.

MR. CAPELL: I never got my answer, is it true or false?

THE COURT: All right, let's start again. Ask the question, Mr. Grossman, you have to say yes or no, and then I'll give you as much time as you'd like to explain.

WITNESS: Okay.

BY MR. CAPELL:

Q. Mr. Grossman, the last sentence in the first paragraph of this email, where it says, "It looks to me like she has accurately accounted for the various forms of compensation, as laid out in our February 2, 2004, letter of agreement." You were telling the truth when you wrote that sentence, correct?

A. Yes, to the extent of her characterization of that statement in her response to Rod.

Q. So on September 15th, 2007, you acknowledge

the February 2, 2004, letter of agreement existed, right?

A. As far as I know, it only existed in our internal thoughts.

Q. But, again, in 2007 you acknowledged that this February 2, 2004, letter of agreement was in existence?

THE COURT: Yes, no, and then I'll let you explain.

BY WITNESS:

A. Yes, as an internal document.

Q. And on September 15th, 2007, you acknowledged that Rod Brady is due $711,027 under that agreement, right?

A. (Reviews document.) Yes, owed by the LLCs of which he was a participant, subject to all the qualifying standards of those operating agreements.

Q. You used the words "accurately accounted for," those are your words, right?

A. (No response.)

Q. In your -- in your email you used the words "accurately accounted for"?

A. It appears so, yes.

Q. Okay. And in your email here in 2007 you used the words, "our," O-U-R, "February 2, 2004,

letter of agreement," right?

A. Yes, but on reflecting what was in her underlying response to Rod Brady.

Q. And you said something about it referred back to some kind of operating agreement, or assignment, or something like that. I don't see anywhere in this email, Mr. Grossman, where it uses the phrase "operating agreement" or "operating agreements," do you?

A. Rod's not a child, he's highly educated, he's fully of aware of what he signed. I didn't feel the need to remind him of that.

Q. Can you answer yes or no, and then explain your answer? I don't see anywhere in your email where you reference or refer to the operating agreements of any LLC; is that right?

A. Your observation is correct. By way of further explanation, Rod is not a child, he's highly educated. I didn't feel the need to remind him of that.

Q. Why did you feel the need to remind him of the February 2, 2004, letter of agreement then?

A. I didn't remind him, I was simply regurgitating, basically, what Ginger put in her response to Rod.

Q. Now, we talked about those operating agreements that you've brought up, and then you brought up an assignment, too, it's something that signed by Rod. I don't see the word "assignment" or "assignments" at all in this email, do you?

A. No.

Q. So your email to Rod two days after Ginger Griffith's letter saying how much Rod was owed does not mention the words "operating agreements" or "assignments" at all, does it?

A. It does not.

Q. But it does mention the -- the words, our February 2, 2004, agreement, doesn't it?

A. As a characterization of Ginger's response to Rod, it does.

Q. Okay. Would you go to paragraph five of your email? If you'll count them down, it says, "Hi, Rod," in the first paragraph, what you're talking about?

A. Yes.

Q. Okay, and if you'll read on paragraph five, if you'll please read the first sentence of that paragraph to the jury?

A. "I will personally lend LRC $10,000 so that LRC can pay you $10,000 payment on the business

development issue."

Q. So here, Gary Grossman, individually, is giving personal money to LRC to give to Rod Brady; is that right?

A. On the business development issue, which had nothing to do with any of these other claims. He did business development work for Lancaster Redevelopment Corporation, for it's Forest Homes franchise network, that is completely unrelated to the rest of this claim.

Q. And if we look at Ginger Griffith's letter, you might have to go back to Exhibit 2 for this, on page four of this letter, the first sentence there, it says, "Mr. Grossman directed me to access our ability to fund a $10,000 a month draw against these funds." Is that the same 10,000 you we're talking about in your email, or is that a different 10,000?

A. I don't -- I don't recall.

Q. But either way, in -- in this email, the fifth paragraph, the bottom line of this sentence that you read, the bottom line is that money is being moved from you personally to Rod personally through LRC?

A. I don't necessarily agree with your characterization, sir.

Q. Okay.
A. In a single instance, for a specific purpose, I'll stipulate to that.
Q. Okay. Thank you, I'll move on with that. All right, Mr. Grossman, will you please read the sixth paragraph, the next paragraph? Will you please read that paragraph in your email to the jury?
A. "Please note that I feel very badly that we have drifted this far apart. I value your friendship, I acknowledge your valuable contribution to my varied business interest in the Lowcountry, and, clearly, want to continue our business relationship on a fair basis going forward."
Q. You consider Rod a valued friend, right?
A. The biggest tragedy of this whole dispute is where we now are.
Q. And now after this you and Rod had a heated conversation about money being owed, didn't you?
A. I'll classify them as unpleasant conversations.
Q. You physically threatened him in a heated conversation, didn't you?
A. That is absolutely untrue.
Q. In fact, you had one very heated argument,

where had he got up, you would have hurt him, right?

A. I -- I don't understand the question or the basis for the ask.

Q. Okay. You had -- let me just repeat it, and let's see if -- if you can answer it that way. In fact, you had one very heated argument where had Mr. Brady gotten up, you would have hurt him, right?

A. I'm a highly trained combat Marine, I'm not going to let anybody hurt me, is the best way I can answer that; but I never threatened Mr. Brady, and he would have to physically assault me to get me to defend myself.

Q. I asked you that question in your deposition. You gave an answer to that. I'm going to read it, and let you tell me if it's a truthful statement. I am going to read from page 203, lines 11 through 13. "By this time," this is your testimony, Mr. Grossman, "by this time I don't recall the exact date of it, but we had one very heated argument where had he got up, I would have hurt him." Is that a truthful statement in your deposition under sworn testimony?

A. I guess if I made -- if -- if you're asking me is it true that I made the statement? I made it under oath, I apparently made that statement.

Q. So, Mr. Grossman, are you willing to physically hurt one of your valued friends because he's asking for money he's owed?

A. I'm willing to defend myself when the need arises is my answer.

Q. Now -- now, Mr. Grossman, you know that the Bank foreclosed on Rod's house after this, don't you?

A. I learned that for the first time listening to his testimony yesterday.

Q. Okay. Now, Mr. Grossman, I want to shift gears a little bit, and talk about this lawsuit, and I'm almost done. When you first got sued in this case, you filed a counterclaim against Rod Brady, didn't you.

A. I did.

Q. And you claimed that Rod owed you over $600,000 in that countersuit, didn't you?

A. We made 600,000 plus in payments to Rod.

Q. And a judge found that you did not produce any evidence of your counterclaim against Rod, and he dismissed your counterclaim, right?

A. In the end -- that's -- that's not true. In the end it was overturned on appeal.

Q. Then let me ask you that again, Mr.

Grossman.

A. At -- at least that's my understanding.

Q. Okay. You -- you filed an appeal to the South Carolina Court of Appeals, right?

A. Yes.

Q. And that appeal took years, didn't it?

A. You -- you are correct. I was mistaken in my answer.

Q. And -- and so you filed an appeal to the South Carolina Court of Appeals, and that appeal took years, didn't it?

A. It did.

Q. Okay. And you lost that appeal, right?

A. We did.

Q. And as part of losing that appeal, in fact, you were ordered by the South Carolina Court of Appeals to pay the cost of that appeal to Rod Brady, weren't you?

A. I believe that is correct.

Q. And to date, you have not paid those costs, have you?

A. I'm unaware one way or the other.

MR. CAPELL: That's all the questions I have, Your Honor.

THE COURT: Thank you very much. Anybody need a

break? If so, raise your hand. All right.

MR. O'KELLEY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. O'KELLEY:

Q. Mr. Grossman, we're going to walk through a number of the documents that Mr. Capell just walked you through. Do you still have that folder in front of you?

A. This one?

Q. Yes, sir. Mr. Grossman, turn to Exhibit 1, sir, Plaintiff's Exhibit 1. Mr. Capell just asked you if this case has been going on a long time, and you've answered yes, correct?

A. Yes.

Q. And in the whole time this case has been going on, have you seen a signed copy anywhere of this letter from February 2nd, 2004?

A. I have not.

Q. Has anyone on God's green earth been able to produce a signed copy of this letter; to your knowledge?

A. To -- to the best of my knowledge and belief, they have not.

Q. All right, sir, and this letter that has been called a letter of agreement, among other

things, Ms. Griffith, who worked for you, we're going to walk through it kind of paragraph-by-paragraph. I asked Mr. -- and you were in the courtroom yesterday, of course?

A. Yes.

Q. And I asked Mr. Brady, "Who's Chris Gannon," who is mentioned in the first paragraph of this letter?"

A. I'm sorry?

Q. I said, "Who is Chris Gannon who is listed in the first paragraph of this letter?" I asked Mr. Brady about Mr. Gannon yesterday.

A. Chris Gannon is a -- sort of an office developer who lives on Hilton Head Island, who had some form of approvals on what ultimately became known as Allenwood. He did not have the ability to get himself financed, without the rest of the financing and financial guarantees, could not get to a final plan, which is the status of Allenwood when I learned of its availability.

Q. And when you say approval, do you mean from the Town of Hilton Head or Beaufort County, something of that nature?

A. Correct.

Q. All right, sir. And you state in here that

it's a -- there's going to be a single-family lot takedown transaction by agreeing to purchase the 92 townhouse lots in a three-phase bulk buy. I read that correctly, did I not?

A. I'm sorry.

MR. THOMSON: Objection, leading.

THE COURT: Hold -- hold on, hold on.

MR. THOMSON: That's --

THE COURT: What's the objection?

MR. THOMSON: Leading. It's -- we've been letting it go a little bit, but it's --

THE COURT: I let it go for y'all, so I'm going to let it go for them.

MR. O'KELLEY: It's cross-examination. Thank you, Your Honor.

BY MR. O'KELLEY:

Q. So I'm going to ask you again, tell me if I read this correctly, "As you know, I have been in direct negotiations with Chris Gannon, to keep us in the single-family lot takedown transaction by agreeing to purchase the 92 townhouse lots in a three-phase bulk buy." Did I read that correctly?

A. (Reviews document.) Yes.

Q. And what is a single-family lot takedown transaction? Explain that to the jury.

A. If my memory serves, there were about 64 single family lots, and about a 100 townhouse -- or 92 townhouse lots, and in order to get Chris where he needed to be, I had to, basically, buy the townhouse lots in its entirety. And I was trying to break up the 64, 65 lots into 20 lots -- then 20 lots, and maybe 24 lots. In the end, he couldn't work with that, so we wound up buying the whole thing in a single settlement.

Q. All right, sir, look at the next paragraph; if you would. That paragraph states --

A. (Reviews document.) I then convinced him to let us buy it in two separate transactions, where I would cause one company to buy the townhomes, and a separate company to buy single-family lots.

Q. And you state in that paragraph, or it's stated rather in that paragraph that there would be separate transactions using Lancaster Redevelopment Corporation.

MR. O'KELLEY: Bless you, Your Honor.

THE COURT: Thank you.

MR. O'KELLEY: Yes, sir.

Juror 1: Bless you.

Juror 2: Bless you.

Juror 3: God bless you.

THE COURT: Finally I got some cooperation, geez, again, it's a tough crowd.

BY MR. O'KELLEY:

Q. But I'll ask it again since we were all blessing His Honor for his sneeze.

THE COURT: Sure, thanks.

BY MR. O'KELLEY:

Q. Lancaster Redevelopment Corporation was going to be the purchaser of the townhouse lots, according to this letter, correct?

A. That's correct.

Q. All right, sir. And then in the next paragraph you say that you and Mr. Gannon went back and forth all weekend by email, which resulted in the enclosed contracts. Have you seen any enclosure to this letter?

A. Repeat the question, please?

Q. Yes, sir. You -- it states here that there were contracts enclosed. I've not seen any -- I'll represent to you I've not seen any enclosed contracts attached to this document.

MR. THOMSON: Object to the form.

THE COURT: All right.

MR. THOMSON: He's asking for a legal conclusion.

MR. O'KELLEY: I'm asking if there were enclosures. It's a question of fact, Your Honor.

THE COURT: Okay.

BY WITNESS:

A. And I don't believe this letter ever left my office. It's an internal memorandum that I believe was circulated during the discovery process.

Q. All right.

THE COURT: All right, I'll overrule the objection.

MR. O'KELLEY: Thank you, Your Honor.

BY MR. O'KELLEY:

Q. Let's go to the next paragraph, please, sir. That states that, "Please make note that the 64 -- and, I'm sorry, Madam Reporter, I slow down -- that the 64 single-family lot agreement has Hilton Head Homes, LLC, not Hilton Head Homes, Inc., as the purchaser." To your knowledge, what was Hilton Head Homes, Inc.?

A. Hilton Head Homes, Inc., was a Forest Homes authorized builder, that was co-owned by Mr. Brady and myself, subject to any license agreement, which is a standard format agreement. I had about 80 other operations on the Mid-Atlantic Eastern Seaboard in play, and that was the initial

deal with Rod when I met him at a builder show, and a number of homes were built in that entity.

Q. And you testified when Mr. Capell was asking you questions that Forest Homes was a franchisee of Lancaster Redevelopment Corporation; is that correct; or how did that work between Forest Homes and Lancaster --

A. Forest Homes, Inc., was a franchisor, so to speak. It didn't technically franchise and enter into any licensing agreements. There's a very finite difference under federal franchise law.

Q. All right, sir. So Hilton Head Homes, Inc., was not going to be purchaser of the lots at issue in this letter, correct?

A. Correct.

Q. And, in fact, you were going to form Hilton Head Homes, LLC, right?

A. A specific purpose LLC which is my normal business practice.

Q. All right, sir. And in the next paragraph it states, "I do not want any creditor of Hilton Head Homes, Inc., to be able to take hostile action against the Allenwood project, i.e., subcontractor vendors." Were you aware of any issues at the time that Mr. Brady was having with his creditors, or any

of his companies?

A. He was involved in some unpleasantry, a project at that time known as Cypress Harbor with a guy named Bill Ryan. I was initially not involved in that. I, subsequently, made a deal with that underlying lender, I bought their note. I took Bill Ryan out of it in an effort to try to help Rod. Then we embarked on a totally different transaction out there. I arranged for some financing out there. The Bank wanted equity in the deal, so I lent Rod 100 grand personally for his end of it, my son Michael put 200 grand in it, I put 200 grand in it. That was one of the things that that bank took as part of the workout, so to speak, in Allenwood.

Q. At Allenwood or at Cypress Harbor?

A. At Allenwood, it was cross-collateralized.

Q. And when you say the workout, are you talking about 2008, '09, '10?

A. Prior -- prior to the 2009 foreclosure, there was a series of hostile actions taken there that started in about September of 2007 when we missed our sales projection. We were in technical default.

Q. With your lender at the time, correct?

A. It was with Sea Island Bank.

Q. All right. We'll get to that in a minute, but let's go back to this agreement. You state in this letter also that the two Allenwood transactions required an absolute minimum of 110,000 in cash equity, probably more, and recourse positions on a minimum of three million in debt. Did you have to personally guarantee that debt?

A. Every dime of it.

Q. All right. Did Mr. Brady ever guarantee a dime of debt owed by any of the LLCs he was involved in?

A. He did not.

Q. All right, sir. And then the next paragraph you talk about the unresolved problem at Cypress Harbor; do you not?

A. I'm sorry?

Q. I'm sorry. Following along, going down to the second to the last paragraph, you stated you had some concern about the unresolved problem at Cypress Harbor. You just told the jury about that; did you not?

A. Well, again, at the time this was offered, this was an internal memorandum, so in all fairness to Mr. Brady, I don't know that this was ever communicated to him, but the simple fact is, is that

the start-up debt was started at the three million, where it, ultimately, wound up with at Allenwood was ten million bucks.

Q. Go the next paragraph, Mr. Grossman. You stated in here, or someone stated in here, "I believe there's a high probability that the bank will pursue an efficiency action against you." Do you know if Mr. Brady, at one point, was a personal guarantor of some debt at Cypress Harbor?

A. (Reviews document.) To not confuse the issue, Cypress Harbor was a standalone deal, he and Bill Ryan, I think his last name was, were already in technical default and conceded at the time to move the loan, they couldn't get approvals. The bank was in the early stages of foreclosure. They had entered into a forbearance agreement, and I didn't see that between the two of them they had the knowledge, expertise, or the capital to get out of that mess, and I didn't think that, given the complexity of the approval process, anybody real knowledgeable was going to let them out of it once it became public that the bank was leaning on them.

Q. And when you say "leaning on them," do you mean starting the foreclosure process or putting them in default?

A. A knowledgeable developer would just wait it out and go buy it from the bank.

Q. But instead, y'all negotiated some workout with the bank where you took over Cypress Harbor, and then you were going to develop Allenwood and Hilton Head Homes, Village Square rather?

A. So I, basically, went to BB&T, and said, "I'll take you guys out of this, but Brady gets a free walk."

Q. And let's look at the next -- turn to the next page, the top of the page, and we'll read this -- and I'll read this in conjunction. "Unless and until this threat is resolved, I do not believe it in my best interest to be 'joined at the hip' on a three-year -- three or four-year project that involves three million plus dollars of debt." Do you see that sentence?

A. (Reviews document.) Yes.

Q. And the three million plus dollars of debt, did that refer to Cypress Harbor, Village Square, and Allenwood, or just Cypress Harbor?

A. Just Allenwood.

Q. Just Allenwood, all right, sir. And then the next paragraph states, "Having said all this, I value our friendship highly. I want to work through

these difficult issues and move onto better times." And you testified earlier today that the biggest tragedy of all this is losing a friend, correct? What -- what's your -- is that a yes, sir?

THE COURT: You have to say yes or no.

BY WITNESS:

A. Yes, I'm sorry.

Q. And -- and we can all see you nodding your head yes, but this lady's got to have a yes or no. So at one point you and Mr. Brady were very close friends, correct?

A. Best of friends. Our families were friends. My wife and I were very attached to his children.

Q. And Mr. Brady testified yesterday y'all would stay at each other's houses and visit, things of that nature?

A. Yes.

Q. Y'all recreational activities together, correct?

A. He taught me a lot about boating. Was on my yacht when I sank it. Interesting day.

Q. That's -- so y'all have been through a lot of personal relationship and business relationship --

A. Absolutely.

Q. And you heard him testify how you met yesterday. And when I say "him," I mean Mr. Brady, correct?

A. Yes.

Q. And that jives with your memory of how you met and the circumstances at the National Association of Home Builders conference?

A. Yes.

Q. And just tell the jury about that a little bit.

A. I was extremely involved in the National Association of Home Builders National Leadership for 35 years. I'm still a Life Director there. I was the longest running Chairman of its only for profit subsidiary for nine years. Mr. Brady had more involvement in the local scene here in the Lowcountry, worked his way through the chairs, was the President of the Home Builders Association, had a lot of local contacts that I never took the time to build. So there was a lot of synergy common interest there, but as we got to know each other, there was just a lot of common interest, a common ideal, if you will, about our families, our children, what we wanted for our children. My wife and I have seven children, and my children were

quite a bit older than his children, had not yet had our grandchildren, so it was a good fit. My wife was suffering from the empty nest syndrome, so to speak, and she was very bonded to his children. The wives did a lot of things together. We did a lot of social things together, and life in those days for my wife and I where we spent 12 days a month at our farm in Pennsylvania. I own a couple of airplanes, I'm a high-time pilot, so it was three hours kitchen to kitchen. We almost lived two lives, friends, networks, clothes, wardrobe. You know you're getting old when the only thing you have to pile on your airplane is your dog and your meds, and that's how we lived our life for 12 years. And Rod would come to our meetings up north, and he would stay at my home, and he knew a lot of my friends up there, and it was everything that Mr. Brady described in his testimony.

Q. Let's go back to the letter, please. The third paragraph on the second page, you were asked about the liability -- limited liability companies in Lancaster Redevelopment Corporation by Mr. Capell, but I'm going to read this paragraph into the record, and you tell me if I read it right. "I would like to proceed with both transactions and

separate limited liability companies, wherein, Lancaster Redevelopment Corporation own 100 percent of the companies, but engages you and Joy Walker as independent contractors under the following terms and conditions." Did I read that correct?

A. (Reviews document.) Yes.

Q. All right, sir, and I want to show you what was marked yesterday, as Defendant's Exhibit 1, Defendant's Exhibit 3, and ask if you recognize those documents, sir?

A. (Reviews documents.) I do.

Q. And what are these -- what are these two documents?

A. They are the operating agreements for Hilton Head Homes at Allenwood, LLC, and Village Square Development Company, LLC, which are limited liability companies created for the sole and specific purpose of undertaking the projects at the Allenwood development; one of which was to build single-family homes, the owner of which was to build the townhomes. And the specific reason for two companies was, if it became necessary, and provided the legal infrastructure for me to seek financing from two separate sources, because if the deal sold like we anticipated it would -- that might be a bit

more exposure to a single institution than they may have the appetite for. So I laid the groundwork from the beginning to be able to get one line of credit from one institution for the townhomes, and a different line of credit from a different institution for the single-family homes, because both of which in today's society you more or less have to build a turn-key product so that the underlying buyer can go to any mortgage source and not have to get construction to permanent financing, which is a little bit too complicated for the instant gratification young people market that we all raised.

Q. Okay.

A. People like things easy.

Q. And, Mr. Grossman, on page 23 of the operating agreement, it states that the member is Lancaster Redevelopment Corporation, and the manager was Lancaster Redevelopment Corporation. And then on page 24 it says that Lancaster Redevelopment Corporation owned 100 percent of the voting rights.

A. (Review document.) Yes.

Q. Is that -- is that a correct statement?

A. That was the ability to be the vehicle to get the entity formed, and then the idea was to

admit Mr. Brady, if the deal went hard, but I had to have the entity formed to go apply for the financing, to get the deal settled, and into an entity's name.

Q. And I'm going to show you Exhibits 2 and 4, and ask you if you recognize those documents?

A. (Reviews documents.) I do.

Q. And tell the jury what those documents are, sir.

A. As I see, they're more or less identical documents, with the exception of one is an assignment of interest and written consent in lieu of special meeting. One is for Hilton Head Homes at Allenwood, LLC, the other one is for Village Square Development Company, LLC, and they are fairly technical documents that are multiple pages in length, five such pages. The long and the short of it is, it admits new members, one, Arthur F. Long, and one James R. Brady, into both entities, subject to four pages of conditions, whereby, they're acknowledging that they read and understood the operating agreement, they're accepting the terms of those operating agreements, and it imposes some additional duties and disclosures upon each of those new members. You know, all -- all of which were

binding on them, and their heirs and successors in interest should there sometime be one by devise of law.

Q. And turn to page four of those assignments, please, Mr. Grossman.

A. I'm sorry, sir?

Q. Turn to page four.

A. Of the assignment?

Q. Of the two assignments, yes, sir.

A. Okay.

Q. And what -- what was the ownership and voting percentage after these agreements were executed and signed?

A. (Reviews documents.) Lancaster Redevelopment Corporation was 88 percent, Arthur F. Long, Jr., was six percent, James R. Brady was six percent, for a total membership of 100 percent.

Q. And on the last page of these two documents, there's signatures of Arthur F. Long, Jr., and James R. Brady; are there not?

A. There are.

Q. And then there are two pages fives, I'll represent to you, because on the first page five there's a signature of Gary L. Grossman as President of Lancaster Redevelopment Corporation, correct?

A. That is correct.

Q. All right, sir. And yesterday I asked Mr. Brady about paragraph 9.5 of these agreements. Do you remember my asking him that?

A. Yes.

Q. And you read this agreement before you signed it; did you not?

A. I did.

Q. And are you aware that these assignments that relate back to these operating agreements contain the entire agreement between you and Mr. Brady, and when I say you, I mean Lancaster Redevelopment Corporation, not you, Gary Grossman? Between Lancaster Redevelopment Corporation and Rod Brady for the two LLCs, Village Square Development Company, LLC, and Hilton Head Homes at Allenwood, LLC?

A. That is correct.

Q. Tell me if I read this correctly, "9.5, Entire Agreement. This assignment constitutes the entire agreement between the parties pertaining to its subject matter, and it supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this assignment will

be binding unless executed in writing by all parties." Did I read that correctly?

A. Yes, sir.

MR. O'KELLEY: Your Honor, at this time, we would like to move Defendant's 1 through 4 into evidence.

(Move Defendant's 1 through 4 into evidence.)

MR. CAPELL: Your Honor, I object. We had the standing objection, and I still have to cross-examine him on these documents.

THE COURT: All right, I'll still --

MR. O'KELLEY: And, Your Honor, I've been -- I've been very lenient, but do I have two opposing counsel, or one opposing counsel? I'm not --

MR. CAPELL: I'm sorry, Hamlet, I meant to --

MR. O'KELLEY: That's all right. That's all right, I just want to make sure I'm not --

MR. CAPELL: That's my fault, I --

MR. O'KELLEY: -- being outgunned, Your Honor.

BY MR. O'KELLEY:

Q. Mr. Grossman, let's go back to Plaintiff's Exhibit 1. These assignments were dated July of 2004, correct?

A. (Reviews documents.) Yes.

Q. And that's five months after February of

2004; is it not?

A. That's correct.

Q. All right, sir. Looking back at Exhibit 1, you were asked some questions by Mr. Capell where he made some emphasis about a statement, "Me, individually," on the bottom of the second page; do you remember that testimony?

A. Yes.

Q. All right, sir, tell me if I read this correctly. "In addition to the sales and construction management fees," well, it says fess, we've established that but it should probably say, "fees as described, I would like to pay you an incentive management fee of 50 percent of free tax profits, after a one percent per month interest on cash investment to Lancaster Redevelopment Corporation, and 500 basis points to me, individually, for my guarantee." The individually aspect that Mr. Capell was asking about, he didn't ask you about that guarantee, did he?

A. He did not.

Q. So what were you doing here vis-a-vis a guarantee for debt, Mr. Grossman, or debts of rather Lancaster Redevelopment Corporation, who is the member of the LLC?

A. I'm not sure I understand the exact question, but in --

Q. Well, let me rephrase it. Why would you put this in your -- why -- what did you, personally, have to guarantee, me, individually?

A. Well, I had to guarantee all the debt, but in the end it's a moot point, because I never took a dime for my exposure at any time from any entity. I was never actually paid a dime.

Q. And let's go to the next sentence of that paragraph. It states, "However, I'm asking that 100 percent of cash invested by Forest Homes, Lancaster Redevelopment Corporation, and/or myself be repaid prior any profit distribution." I read that correctly, did I not?

A. (Reviews document.) Yes.

Q. And tell the jury why you would want that to be paid first in terms of the way developing property works? Or we can go through it with Ms. Griffith's letter, either way, but just tell --

A. In all fairness, I'd have to answer that question with the same qualification I gave Mr. Capell. My answer would have to be in the total context of this -- that characterizes as a letter, but it was, actually, a internal document. I made

it perfectly clear I wanted to proceed with the transactions in separate limited liability companies. Everything contained in these four pieces of paper comes back to my statement, I want to proceed with both transactions in separate limited liability companies.

Q. Okay.

A. I've been clear about that from the outset, no matter how this memo's characterized.

Q. And the limited -- I mean limited liability companies are governed by those operating agreements and assignments; are they not?

A. They are the limited liability companies, and they're the companies that I set up to close on the land. I never took them in my individual name. Lancaster Redevelopment Corporation never closed on them, they're -- they took claim to them.

Q. And Lancaster Redevelopment Corporation, at one point, was a 100 percent number of those LLCs, and then became an 88 percent member of those LLCs, correct?

A. Correct.

Q. Turn to the Exhibit 2 of the Plaintiff's, please, sir, it's the letter from September 13th, 2007. Tell the jury what was going on with the

development of property in the summer of 2007. How was that working out for Lancaster Redevelopment Corporation, or Forest Homes, or Village Square, or -- or Hilton Head Homes at Allenwood, how was that -- what was going on?

A. In Village Square or --

Q. No, sir.

A. -- the market, in general?

Q. In the market, in general, in the summer of 2007, when this letter was written in late summer, September 13 of 2007.

A. Well, we closed out the year in 2006 where my development sales for the first in my life exceeded 100 million dollars in any single year, which I started in 1977 with a $100 pickup truck, that I still owed 60 bucks on, so that was a major milestone achievement in my life. By May of 2007, the market began its so-called correction, which I naively believe what the Feds were publishing, it was going to be a correction, probably the biggest, single biggest mistake in my life. We got our first notice of technical default from Sea Island Bank on about July the 10th, because we missed our second quarter sales projection at Allenwood. I got similar notices in the northeast on projects. Banks

evaluate your sales performance on a quarterly basis, and in about 70 percent of our developments, we missed our second quarter sales projections, and we report on notices, not at 100 percent of the places we missed it but a very high percentage of them, and had to remove the plan, had to take corrective action which mostly resulted in price reductions. Sea Island Bank took the most aggressive stance. They laid out a response to our plan, and made it very clear if we didn't hit the revised projections and implement the new marketing plan correctly, the first thing that would happen is they were going to cancel our interest reserve.

Q. And what's an interest reserve? Explain that to the jury.

A. So when we booked a development cost, we booked an interest reserve, which was a certain amount of money allocated in the development cost schedule, that they would debit interest carry against the gross amount of the loan. So on one hand, it guarantees that they have a performing loan from an interest payment standpoint of view; but on the other hand, they're advancing more money, which you pay points on, and you pay interest on the interest, which was a common practice in the 2000s,

because just like there was a bunch of cheap money that consumers couldn't afford, which led to the implosion, in all fairness, they shouldn't have been doing that for developers, but every developer was doing it.

Q. And when you --

A. So they ended the interest reserves when we missed the projections at the end of September, that's when the screws really started tightening.

Q. And that was after the September 13th letter from Ms. Griffith, correct?

A. That's correct.

Q. And just so we can be sure about this, Mr. Capell went over this letter in great detail with you; did he not?

A. He did.

Q. All right, and I want you to go to the third page, please, and look at the second and third paragraphs, please. And I'll ask it this way, why did you have to loan Village Square Development $124,750 at the time?

A. (Reviews document.) These houses that were built took packages from a factory owned by Lancaster Redevelopment Corporation, which was probably 85 percent of the materials coming from a

single source. And there were receivables that were severely past due, and part of the operating capital from the Company, at that time, was a line of credit financed by Pennsylvania Bank, and, you know, essentially hot receivables. And on the 90th day of the receivable, you buy back that receivable off your line of credit. So the line of credit for that factory was about a 7.5 million dollar line of credit, and when you have 83 retail operations open, and you're buying millions of dollars' worth of lumber all the time, and you have a 90-day past due of 124,750 from one customer, and then you multiply that by a bunch of guys that are getting beat up by their lines of credit, it starts to take its toll after a bit. So one of the things where I have some level of control, I personally lent Village Square Development Company a 124,750, so it could pay its past due receivable back to LRC.

Q. LRC being Lancaster Redevelopment Corporation, correct?

A. Yes.

Q. All right, sir. Because Lancaster Redevelopment Corporation had its own debts it had to pay, correct?

A. That's correct.

Q. And then the next paragraph states -- that says -- excuse me, the second part of that sentence states, "And Forest Homes has past due receivables of $173,700." The next paragraph states, "We must repay the 173,700 past due receivables as a first priority." Why would that be a first priority, sir?

A. Well, what I indicated was just somewhat misstated in Ms. Griffith's statement here, is that Rod had a monthly note, if you will, to keep his household afloat of ten grand a month. Under the operating agreement, all these funds had to be repaid ahead of his. I said, "Look, you can't starve, Rod," he has a family to feed, "as long as we're able send Rod ten grand a month, even if that violates the operating agreement.

Q. And you state that -- that Ms. Griffith stated that on page four; did she not?

A. So that's where she said, "Mr. Grossman has indicated his intentions to allow funds to be paid to you ahead of his recent loan." She didn't qualify that.

Q. But turn to page four of the letter, sir, and read the first paragraph. Let me -- I'll read it in the record, and you tell me I read this correct. "Mr. Grossman directed me to access our

ability to fund a 10,000 a month draw against these funds." Is that the $10,000 you were just talking about?

A. Yes.

Q. And, Mr. Grossman, ultimately, Mr. Capell asked you, you had to shut down Lancaster Redevelopment Corporation, correct?

A. In the end.

Q. In the end. Sometime in 2010 you closed it, shut it down, correct?

A. Maybe I'll start with the big picture, and we can back into it.

Q. Absolutely. Explain it to the jury.

A. December 31st, 2006, my personal net worth was 55 million dollars. By July of 2010, my net worth was give or take about $900,000, and all that was the equity in my personal residence.

Q. And, ultimately, your companies ended up -- and I say companies, I'm talking about Village Square, Allenwood, Lancaster Redevelopment, all had to go through, basically, a foreclosure process, or reorganization process, something of that nature; did they not?

A. A lot of them were what's known as friendly workouts. I'm morally opposed to the concept of

bankruptcy, although I -- as a legal tactic with a team of very talented lawyers we threatened a number of bankruptcies, but we never -- we -- we put one company into an active bankruptcy, just to get their attention, but what the deal was, is we were going to move them to the Eastern District of New York, because I had a very troubled project in New York, and, therefore, qualified. And when we did that, Sea Island Bank suddenly got some religion, so I bought back my ten-million-dollar guarantee for a million bucks in cash, agreed to the friendly foreclosure, which did, in fact, start taking place in 2009. But to Counsel's point, when they said, "Well the first foreclosures didn't take until 2009," that's because between 2007 and 2009 they were tightening the screws where they first cancelled the interest reserve, and I was struggling to make the interest payments out-of-pocket. Then they froze the bank accounts, took the cash that was in there. Couldn't do anything. Then they launched judgments, which meant that nobody else would touch us. Then we have intense negotiations. Then I put LRC Ridgeland into bankruptcy to get their attention, then I brought a new team of experts in. So, finally, on or about December the 9th of 2009 we

cut a deal.

Q. And as part of that deal, did you have to agree to repay things over time, or what's the situation with any of those companies' debt as we stand here today or your personal debt as we stand here today?

A. I gave them a million bucks in cash. I agreed to pay them another million over time. I agreed not to seek bankruptcy protection for the companies or myself. And I wrapped up everything that they were cross-collaterized on in one nice, neat package, and that deal closed on December the 30th, 2009.

Q. And as we stand here today in 2022, tell us about what debts you, Mr. Grossman, owe, or any of your entities owe. Because -- let me -- let me ask it this way. So were you -- was there debt forgiveness that is attributed to these companies --

A. Oh --

Q. -- as income?

A. -- the unfortunate part of this is, the only difference between the book value of the debt and what they settled it for, there's the delta.

Q. And delta meaning a difference, correct?

A. The difference. All of that difference is

fully taxable to me.

Q. As income, correct?

A. As income. So there's currently judgments still against me, individually, for 2.4 million dollars owed to the IRS. In addition to that, there's an officer assessment pending against me for 1.2 million. I never had problems like that before, so what -- I've learned a new trick late in life is it's bad to have creditors with hostile judgments. The ones you don't want to have is the IRS in any form or fashion. They have a lot of rights nobody else has. I asked them today -- well, recently to defeat three of the four officer assessments.

Q. And what are officer assessments? Explain that to the jury.

A. Well, the IRS has, under certain circumstances, the right to reach through a corporation and go after specific officers.

Q. To pierce the corporate veil in other words, correct?

A. (Nods head.)

Q. Is that a yes? Just for the record.

A. And as part of that they also seized my passport.

Q. Mr. -- Mr. Grossman, we need -- we need a

yes or no to my last question. I asked is it basically like piercing the corporate veil?

A. Yes.

MR. THOMSON: Objection, that's a leading -- a legal question.

THE COURT: It's all right. He understands what piercing the corporate veil is.

MR. O'KELLEY: And he's asked and answered.

BY MR. O'KELLEY:

Q. So in terms of -- I want you to look at Exhibit Number 2 again, the last page.

A. This is Exhibit 2 --

Q. The last -- the last page, page four, sir.

A. Oh, the September 13th letter?

Q. Yes, sir. And I'm going to read this into the record. "Given the carrying cost of the inventory and past due receivables to Forest Homes from Allenwood, the monthly carrying cost at Cypress Harbor, and our massive increase and the overhead associated with the new plant, LRC simply cannot fund any additional monthly expenses." Did I read that correctly?

A. (Reviews document.)

Q. Did I read that correctly, Mr. Grossman?

A. This was written by Ginger Griffith in

September.

Q. Right. And did I just read that correctly?

A. Yes.

Q. And have you explained to the jury sitting here in this early afternoon why you simply cannot fund any additional monthly expenses as to what was going on with your business and the housing market in 2007?

A. Well, for starters, Allenwood, Cypress Harbor, and the new plant were all part of debt structures at Sea Island Bank. The new plant cost me 11 million dollars to build. It was in Ridgeland, South Carolina. I put six million in cash in, and I took a five-million-dollar industrial development bond, and Sea Island Bank was the sponsor/originator of that bond, so they had credit exposure on that. Part of that credit exposure, it was cross-collaterized under my personal guarantee. So when they moved on those assets as technical defaults, it affected the credit rating of the underlying bond. The day they seized the cash in the accounts of the two LLCs, they seized all the cash at LRC Ridgeland.

Q. And was LRC Ridgeland -- what entity was that? Was that the factory?

A. That was the entity that was operating the plant --

Q. The plant.

A. -- which is what led to the officer assessments, because there was payroll taxes, checks written, sales tax checks written, and when they seized the cash, those checks bounced. Those entities came back against me individually.

Q. And besides the Village Square, and Hilton Head Homes at Allenwood, Cypress Harbor, you had other LRC related entities around the Lowcountry; did you not?

A. Yes.

Q. You have one in Battery Creek, correct?

A. Yes.

Q. And that development, ultimately, went belly-up, as well; did it not?

A. That one, as part of the package, cost me 650 in cash as part of my structured guarantee deal with the bank.

Q. And you had --

A. In -- in addition to the cash I put in when I bought it.

Q. All right. And tell the jury about any other entities you have in the local area. I think

you have one called LRC Linebeck; if I'm not mistaken?

A. I'm sorry?

Q. Did you have another entity called LRC Linebeck (ph), if you recall that in --

A. No, Linbeck (ph) --

Q. Linbeck.

A. -- Universal Trust is a family trust that voluntarily liquidated some assets to finance all this mess.

Q. So the statement, "LRC simply cannot fund any additional monthly expenses," have you told the jury all the reasons why LRC could not fund any additional monthly expenses?

A. That's correct.

Q. Thank you, Mr. Grossman.

MR. O'KELLEY: And, again, Your Honor, just want to make for the record that we have proffered those. I know Your Honor's considering them, but they are our four exhibits.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. CAPELL:

Q. Mr. Grossman, I'm a little bit confused on some of your last testimony that you were talking

about with the IRS, and -- and things going on there. This IRS stuff happened in --

A. May I ask a question, sir?

Q. Yes, sir.

A. I'm a pretty severe diabetic --

Q. Oh, yeah.

A. -- may I get --

THE COURT: Yeah.

BY WITNESS:

A. -- a glass of water, please?

Q. Certainly.

THE COURT: Y'all want to take a break?

MR. O'KELLY: Do you need a five-minute to get a snack or something?

THE WITNESS: A glass of water will be fine, sir.

THE COURT: Okay.

BY MR. CAPELL:

Q. And, Mr. Grossman, you tell me when you're ready.

A. I'm fine, sir, thank you.

Q. All right, so, Mr. Grossman, I'm a little bit confused about some of the things you were talking about with the IRS, and -- and what was going on there. That happened in late 2009?

A. It actually started in 2009, '10, the assessments.

Q. So everything you're -- you're talking about with the IRS happened a couple years after this 2007 letter from Ginger; is that right?

A. I don't recall the first flows, but it was in full swing -- it was in full swing by the late 2009, 2010.

Q. And did you say -- did I hear you say that somebody had to pay Sea Island Bank a million dollars to -- to get out of this?

A. I did.

Q. Okay. What -- when you say I did, who paid Sea Island Bank a million dollars?

A. I personally did.

Q. Okay. And Sea Island Bank, what was their involvement in all of this?

A. We started out in the beginning with a three-million-dollar line of credit, and then when -- the first thing that took off was the single-family homes, and we exceeded the credit capacity of the initial loan.

Q. And -- and let me stop you there, because my -- my question may be a lot more simpler than that. Sea Island Bank, they were a bank that funded loans

for the Allenwood development, right?

A. And other projects, but, yes.

Q. Okay, all right. The million dollars that you paid to Sea Island Bank personally, was that for relief from the Allenwood project or other projects?

A. Just the Allenwood.

Q. Okay. And so -- so for just the Allenwood project, you paid, personally, a million dollars to the bank to get out of any kind of deficiency judgments from the bank; is that right?

A. By the time the whole thing collapsed, we went back multiple times for increases in the line of credit, and I don't know the exact number, but it was somewhere between nine and ten million; and when consumers realized that the market was unraveling and prices were declining, then we had a contract cancellation problem. So in addition to what was built and we thought was sold, we had a significant contract cancellation issue, so stuff even Sea Island Bank counted as sold all of a sudden was unsold. So the line of credit was pretty big, prices crashed, we made a deal, they took a big bath, I -- they knew they were going to take a big bath, and I beat them down to a million dollars on the walk.

Q. And -- and that beat them down to a million dollars was in late December of 2009, right?

A. That's right.

Q. Okay, so as of December of 2009, you personally had at least a million dollars in your bank account, right?

A. I had -- I had to liquidate multi-family assets I owned to raise the cash.

Q. And then Battery Creek you talked about, that was another 650,000 cash you came up with?

A. Correct. All -- all of which was raised by selling multi-family assets in the County I live in at significant discounts.

Q. All right, Mr. Grossman, let's talk about the assignments and the operating agreement. You've got those both in front of you.

A. I do.

Q. I've got a copy of those with me as well. And we talked about it briefly, but Hamlin went over that in a lot more detail than I did, so I've got some follow-up questions with -- with those documents for you. Let's start with the assignment -- or the assignments. Those are the only two documents that are signed by Mr. Brady, right?

A. That's correct.

Q. Okay. Now, the purpose of those assignments is to allow new members to make an investment in the Company in return for an ownership share, right?

A. Yes.

Q. So for $100,000 Rod got a six percent ownership in Hilton Head -- Hilton Head Homes at Allenwood; is that right?

A. Yes.

Q. And the same for Village Square, for $100,000 Rod got a six percent ownership interest in -- in Village Square?

A. Yes.

Q. Okay. These assignments, and you can take a minute to look at them if you want to, but they don't say anything about who is going to get paid for managing construction, do they?

A. The operating agreements do.

Q. Okay. We'll get to that in a minute. These assignments do not say anything about who is going to get paid to do the sales and marketing, do they?

A. It's in the operating agreement.

Q. And, in fact, these assignments don't even mention construction management or sales, do they?

A. Not on the assignments.

Q. These assignments do not contain the phrase

incentive management fee anywhere in them, do they?

A. They do not.

Q. Okay. And, in fact, let's look at cause 9.5, Mr. Hamlin read this to you.

MR. O'KELLEY: Just for the record, it's O'Kelley.

MR. CAPELL: Ham, I'm sorry.

MR. O'KELLEY: That's quite all right.

MR. CAPELL: I'm so sorry.

MR. O'KELLY: It's quite all right.

BY MR. CAPELL:

Q. Mr. Grossman, have you turned to 9.5?

A. Yes, sir.

Q. Okay. Hamlin read this paragraph to you, the entire agreement. And if you look in there, you will see the phrase, "Pertaining to a subject matter," right?

A. (Reviews document.) Yeah.

Q. Do you see that phrase in there?

A. Uh-huh.

Q. Okay. And I think you just testified that the subject matter of this assignment is paying $100,000 to get a six percent interest, right? And, now, that's one of the first questions I asked you, and I think you said yes.

A. Well, I didn't say it was the subject matter. You said what's the emphasis of the agreement? You characterized it, and I didn't disagree with it. I think you're asking me to reach a conclusion of law, which I'm not qualified to do.

Q. I -- one of the first questions I asked you about the assignments was, the purpose of these assignments is to allow new members to make an investment in the company in return for an ownership share, right, and you said yes, right?

A. That's generally what it does, yes.

Q. Okay. So construction management, sales, incentive management fees, they're not the subject of this assignment, are they?

A. I don't have an answer to that. It's -- it -- it admits -- it admits people to a limited liability company.

Q. And these assignments were done in 2004, right?

A. Yes.

Q. Do you have --

A. Prior -- prior to the closing of the deal.

Q. Do you have a date on those assignments anywhere? We know 2004, but have you got any kind of specific date, or month?

A. All I know is it preceded the closing of the deal, because, if not, I wouldn't have done the deal.

Q. May we look at your copy real quick? My copy may say something different than yours at the top of it. Okay, yeah, at the very top, Mr. Grossman, there's a date up there, it looks like a fax when we used to use faxes. What's that date on that fax up there?

A. (Reviews document.) The date on the copy of this is August the 20th, 2004.

Q. Okay, and if we look at Ginger's letter, which I put up here on the -- the easel, it's stating that Rod is due the $711,000. That letter's dated September 13th, 2007, right?

A. Yes.

Q. Okay. That's, roughly, three years after these assignments, right?

A. Yes.

Q. Okay. And these assignments -- I asked you this before, these assignments are not mentioned in Ginger's letter, correct?

A. They don't appear to be.

Q. Okay. And Ginger's letter mentions the February 2, 2004, letter of agreement six times,

right?

A. It says what it says, yeah.

Q. And Ginger's calculations in this letter, you watched her deposition, or her -- her testimony on -- on the TV there, her calculations in this letter are based on the February 2, 2004, letter of agreement, right?

A. I -- I don't know what she based it on. I can't speak for her.

Q. Will you turn back in your -- your exhibit book, please, Exhibit 2? And the -- the first sentence of the letter says, "Pursuant to your discussion with Mr. Grossman, I am transmitting our analysis of the Allenwood conversation to you under our February 2, 2004, letter of agreement"; that's what it says, right?

A. (Reviews document.) Yes.

Q. So the reason why you can't tell me or you can't answer whether or not her letter is basing this calculation on the February 2, 2004, agreement is because you didn't write it?

A. Excuse me?

Q. Why can't you tell me whether or not her letter is basing the calculations in her letter on the February 2, 2004, letter of agreement?

A. I can agree to what the letter says.
Q. Okay.
A. I -- I -- I don't know what these calculations are based on that letter, or otherwise, I don't know what she based it on.
Q. In your September 15th email, too, that we've got still pulled up here on the screen there, that letter refers to the February -- or refers to the February 2, 2004, letter of agreement, right?
A. Yes.
Q. And I want to be clear, Mr. Grossman, for the jury. I want you to -- to make sure I understand your testimony clearly, what your testimony to the jury is. Are you testifying that these assignments dated in 2004 somehow supersedes the February 2, 2004, letter of agreement?
Q. You keep characterizing this as a letter of agreement. It's not signed. I never do business in my personal name. You're trying to create the illusion that I somehow personally guaranteed all this letter of agreement.
THE COURT: Hold on, hold on, hold on. Just answer the question, please.
BY WITNESS:
A. What's the question, sir?

Q. I said -- and I'll -- let me ask it again. Just to be clear, Mr. Grossman, are you testifying that this assignment -- these assignments, these two assignments you're looking at up here, dated in 2004, somehow supersedes the February 2, 2004, letter of agreement?

A. Absolutely, that's my testimony.

Q. So even though both you and Ginger refer to the February 2, 2004, letter of agreement, in 2007, both of y'all do that, even though you do three years after the agreement, you believe the February 2, 2004, letter of agreement no longer applies?

A. As I previously testified, sir, I didn't opine to that. I told you I referenced her letter.

Q. Isn't it true, Mr. Grossman, that there would be no way for Ginger to make the calculations that she makes in that letter, that 2007 letter, there'd be no way for her to make those calculations without referring to the terms of the 2002 -- or the February 2000 -- February 2, 2004, letter of agreement?

A. No. And to my -- the answer to that question, sir, is no.

Q. So -- so she could not have written and made the calculations she made in her September 13, 2007,

letter without referring to the February 2, 2004, letter, right?

A. I don't know that that's true.

Q. All right, well, let's look at the operating agreements then. You've got those two in front of you. And so operating agreements are dated July 8th, 2004, right?

A. (Reviews document.) Yes.

Q. The -- these operating agreements do not say anything about who's going to get paid for managing the construction, do they?

A. (Reviews document.)

THE COURT: While he's doing that, how much longer do you think you'll have for this? At some point, I've got to give them a break.

MR. CAPELL: Almost done, almost.

THE COURT: Okay.

MR. CAPELL: I'll be quick, Your Honor.

THE COURT: Cathy, are you okay?

COURT REPORTER: Yes, sir.

THE COURT: All right.

BY WITNESS:

A. Yes, it touches on some of the duties and responsibilities starting in Article 10.

Q. Article 10, page 12. The -- the title of

Article 10 is Fiduciary Duties, Right to Rely Indemnification; is that correct?

A. "Specifically, James R. Brady of Hilton Head Homes holds a South Carolina contractor's license and may act as the permit holder for and on behalf of the Company. In the event he doesn't, shall be reimbursed for all costs related to this including but not insurance costs attributable to the project."

Q. And let me -- let me clear up one thing while you're still looking at it. I just want to make sure that Article 10 that you referred to, the title of that Article is Fiduciary Duties, Right to Rely Indemnification; is that correct?

A. Yes.

Q. All right. So you're free to have as much time as you need to to look, but these operating agreements don't say anything about who is going to get paid for managing construction, do they?

A. No, it doesn't.

Q. And these operating agreements do not say anything about who is going to get paid, or do the sales and marketing for Allenwood, do they?

A. No, it doesn't.

Q. And these operating agreements -- take time

to look if you need this -- to -- to look for this too, but these operating agreements do not contain the phrase incentive management fee anywhere in there, do they?

A. They do not. But -- but I'm not disputing the compensation.

Q. I'm -- I'm sorry?

A. I don't dispute the compensation. I've stipulated that he's owed the money. He's owed by these entities.

Q. So you --

A. I don't owe the money individually.

Q. So you stipulate in open court today in front of this jury that Rod Brady is owed $711,000?

A. Yes, sir.

Q. And -- and you've stipulated that what entities owe that money?

A. A combination of Village Square Development Company, LLC; Hilton Head Homes at Allenwood, LLC; and/or Lancaster Redevelopment Corporation, one of those three entities owes some certain line owner the total of $711,000. I'll stipulate to that, I have all along.

Q. And if you're wanting to stipulate to that, can you show me, or this jury, any document that you

have, or produced ever, that shows an agreement between those three companies and Mr. Brady for the terms of the $711,000?

A. Likewise, y'all have nothing that binds me to that concept.

Q. I just went through the assignment with you, there's nothing in there. I just went through the operating agreements, there's nothing in there. And so you're saying, likewise, we have nothing that binds you individually to paying Rod or owing Rod $711,000; is that right?

A. Well, I -- I've been asking for ten years to show me a signed copy of that letter. Nobody can produce it.

Q. Now, we asked you for a copy of the letter, right, in discovery; do you recall that?

A. Yeah.

Q. You were supposed to turn over all the documents that you could find to us in discovery; is that right?

A. We did, yeah.

Q. This -- this case has been going on for 13 years, right?

A. I think so, yeah.

Q. And in all those 13 years you haven't been

able to find any other copy of this letter other than the one you gave us?

A. That's correct.

Q. And you told me in your deposition and today, it's possible you signed that letter, didn't you?

A. It's possible. I don't have a copy of it. I can assure you, if we did, I would have surrendered it.

Q. All right, a couple more things, and then I'll be done, Mr. -- Mr. Grossman. The September 13th, 2007, letter, I just want to touch on this real quick, from Ginger Griffith. That is about houses that have already been completed -- the construction's been completed, and they've been sold, right?

A. It depends on your definition of completed.

Q. They -- let me just say this, let me rephrase. The -- the houses that are referred to in the Ginger Griffith 2007 letter are houses that have already been sold, right?

A. Which had customer punch lists, warranties, etcetera, all of which had to be serviced by Mr. Culour (ph) or Nick Grossman at an additional expense to the company.

Q. But the houses that were -- were sold were not seized in any type of foreclosure action, right?

A. That were sold and settled, actually transferred.

Q. Okay, all right. So -- so at the time of this September 2013 letter, every house that was sold was not foreclosed on later by Sea Island Bank or any other entity, right?

A. If they were sold and settled, as in transferred by deed to the third party, your answer -- your question, sir, is that is correct; but there was a significant cancellation rate.

Q. And these foreclosures that you've referred to in this trial all started in 2009 or later?

A. The foreclosures were actually initiated sometime in 2008.

MR. CAPELL: Thank you, Mr. Grossman, that's all the questions I have.

MR. O'KELLEY: And, Your Honor, I know we have to take a break, but I have two quick questions.

RECROSS-EXAMINATION

BY MR. O'KELLEY:

Q. Mr. Grossman, put in front of you the Assignment of Interest and Written Consent in Lieu of a Special Meeting, Exhibits 2 and 4 that are

right over there, sir. Have you got those in front of you?

A. I do.

Q. Tell me if I read this correctly, sir, it's on the first page, paragraph two, "Acceptance. By signing this assignment and making the investment in the company as set forth herein, each new member accepts the assignment and transfer of interest from the company and agrees to be bound by the terms and provisions of the operating agreement." Did I read that correctly?

A. Yes, sir.

Q. And in the operating agreements, Mr. Capell just asked you about an article. Turn to Article 12 that's on page 15, sir. Does that Article 12 set forth the way calculations of profits and losses and distributions are going to be done for these LLCs?

A. (Reviews document.) Article 12 in its entirety?

Q. Yes, sir.

A. Yes.

Q. All right. And the only signed document we've seen so far in the trial of this case signed by Gary L. Grossman for Lancaster Redevelopment Corporation, by Arthur F. Long, Jr., and James R.

Brady are these assignments; isn't that correct, Mr. Grossman?

A. That is correct.

Q. Thank you, sir.

MR. O'KELLEY: Thank you, Your Honor.

THE COURT: All right. Have you got anything further?

MR. CAPELL: Nothing further, Your Honor.

THE COURT: All right. So do you want to call your next witness, or did you want to rest?

MR. CAPELL: We're resting, Your Honor.

THE COURT: All right. Ladies and gentlemen of the jury, the Plaintiffs have rested. Give me one second to confer with Counsel, and I will tell you what we're going to do the remaining balance of the day.

(Whereupon, we go briefly off the record.)

THE COURT: It's nothing secret, we're just talking scheduling.

THE COURT: All right, I'll allow the Defense to call its first witness.

MR. O'KELLEY: And, Your Honor, at this time, you've -- the -- the jury has heard from Mr. Grossman and anything he would have put up in defense, so the Defense rests at this time.

THE COURT: All right. So that's what we were going to work out, so, ladies and gentlemen of the jury, that concludes that portion of the case. So what I'm going to allow us to is we're going to stay and work. We've got to go over some legal issues that need to be resolved prior to giving you all the charge on the -- the legal charge and allowing them to give their closing arguments. So what I'm going to do is, I'm going to give you about an hour and 20 minutes, and then when we come back, I'm going to charge you on -- well, we're going to stay and work, but I'm going to charge you on the law, let them give their closing arguments, and I'm going to give you case, and let y'all begin your deliberations, so we should be done today, all right? All right, I can't see what time it is. It is 12:40, so come back at 2 o'clock, right? Isn't that right, it's an hour and 20 minutes?

THE BAILIFF: Yes.

THE COURT: Okay. All right, well, I hope you enjoy your lunch, and we'll see you then.

(Whereupon, the jury exits courtroom.)

(Whereupon, a lunch recess is taken.)

THE COURT: All right, before we do the request for summary judgment, let's go ahead and go over the

-- the jury charges and verdict forms, if there's anything that needs to be changed, be working on it.

MR. O'KELLEY: Your Honor, briefly, I've told your clerk this, I -- I think we can do them all in one fell swoop, because I'm going to have motions for a directed verdict as to -- well, first of all I want to move to amend our answer, under Rule 15(b) to a certain defense of statute of frauds. You heard yesterday from Mr. Brady that -- and from Mr. Grossman, and from Ms. Griffith that this letter that is a letter of agreement, as we've called it, has not been signed. You also heard from Mr. Brady yesterday that the document, the acts to perform, under that letter of agreement was going to take longer than a year, so I think under 15(b) we're allowed to assert these statute of frauds at this time. Of course, amendments are freely given, especially under 15(b), so we have that motion.

I'm also going to move, at this time, Your Honor, for a directed verdict on breach of contract, quantum meruit, and conversion, and punitive damages. The only contracts that we have in this case, Your Honor, are the signed operating agreement assignments, which, Your Honor, has not admitted yet as evidence, but every witness that has been alive

has testified about them and admitted that they are the signatures of Mr. Brady on that document. Mr. Grossman admitted that his signatures were also on that document on behalf of Lancaster Redevelopment Corporation. The only Defendant left in this case is Gary L. Grossman, and, Your Honor, we, frankly, don't think the proof is there that there was an actual contract with Gary L. Grossman. The letter agreement actually states that there are going to be two LLCs to be formed, and, again, the only contract that has been presented is not yet admitted are the assignments. Your Honor, we also are moving for a directed verdict on hearing quantum meruit, that is not something for the jury to decide. The law on quantum meruit is that it is an equitable doctrine, and as Your Honor knows equitable doctrines are for the Court to decide as a matter of law.

We also are moving for a directed verdict as to punitive damages. We've not heard of willful, wanton and reckless behavior. In fact, Ms. Griffith's letter for the former Defendant, Lancaster Redevelopment Corporation, states, "We simply could not pay." Mr. Grossman was on the stand for a long time today, and he never testified, "Well, I took this money. I had this money in my

pocket, that I'm taking away from Mr. Brady." The -- the evidence has shown that the money wasn't there, for whatever reason, mainly as a result of the housing market. Again, Your Honor, I don't think anything's been proven to the degree required for punitive damages, so we'd ask, Your Honor, for a directed verdict as to punitive damages, because if there's no conversion, there's no punitive damage, Your Honor. So I -- I know Your Honor's general thoughts on directed verdict motions, but I've made it now for the record. If Your Honor is inclined to grant any of those, then some of these jury charges will come out. And, frankly, I think that some of these -- if any of those are granted, Your Honor, then the jury form, as to conversion and quantum meruit and breach of contract, if granted on all of it, we don't go to the jury, but I think the one most likely to remain will be breach of contract, Your Honor, and we'll just need to change the form, depending on how Your Honor rules on that.

THE COURT: All right.

MR. CAPELL: Your Honor, I was waiting on -- let me grab this letter over here. I was waiting on Charlie. We didn't go to lunch with him because he wanted to practice his evidence. I don't know where

he is. I'm trying to contact him now. He was in charge of doing these arguments, but I think I can get through it pretty quickly.

THE COURT: No problem.

MR. CAPELL: The statute of frauds argument, that's an affirmative defense, Rule 8(c) requires you to plead that as an affirmative defense, Hamlin didn't plead it, so --

THE COURT: Got you.

MR. CAPELL: -- so I think that's gone. And even if it was pled, part performance is an exemption to the statute of frauds, and we have all the evidence in the world that part -- in fact, whole performance was done, and everybody recognized that, Ginger did, and so did Rod. So I think part performance is an exemption, even if it's not -- even if it was affirmatively pled. So that's the statute of frauds issue. The quantum meruit issue, we produced a lot -- and I understand it's an equitable claim for Your Honor, we produced a lot of evidence that showed the elements of quantum meruit, and one of them was the email that I just went up there and got where I had Mr. Grossman read, "I acknowledge their valuable contribution to my varied business interest throughout the Lowcountry." And

this was referencing to the February 2, 2004, letter of agreement, and we have a -- a definite sum of money, $711,000, which, as you know, is a definite sum of money. It can't be the subject of quantum meruit and -- and conversion on that. So -- and I think we've proven conversion as well, the elements of conversion. Whether or not the conduct is willful or wanton, I believe that's a question for the jury to decide, it's a question of fact on whether some of the comments that Mr. Grossman made rise to that level of behavior. I would say no. Having that million dollars cash to throw out to a bank instead of paying Rod, that could be something that could be willful and wanton that the jury can decide, but there's many evidences of that, as well. As far as the breach of contract goes, we all know you don't have to have a signed document to have a contract formation, so we have evidence of performance on the contract. We have Mr. Grossman had said that Mr. Brady accepted the terms of that contract. I have that direct testimony that I asked him about, and so we have a contract form with both parties accepting it. Mr. Brady performed it. Mr. Griffith said -- or Ms. Ginger Griffith said Mr. Brady fully performed all of his work for Homesern

(ph), and we've shown the breach of the contract and the damages, so --

MR. O'KELLEY: Your Honor, just to mention, quantum meruit is an equitable claim for Your Honor, so I think at least that one is gone from the verdict form and from the charges, at the very minimum.

MR. CAPELL: Yeah, that's right, Your Honor.

MR. O'KELLEY: Yeah.

MR. CAPELL: I believe it's --

THE COURT: I'm sorry, say that again?

MR. CAPELL: Hamlin said that the quantum meruit is an equitable claim for you to decide, so I don't believe that's on the jury charges.

THE COURT: Gotcha, gotcha.

MR. O'KELLEY: Or on the verdict form.

MR. CAPELL: Yeah.

MR. O'KELLEY: So I guess that's --

THE COURT: So would that need to be determined by myself at the close of the case?

MR. CAPELL: Yes, sir, Your Honor.

THE COURT: All right. All right, so I'll take it out, and we'll take it off the verdict form. All right, as to the breach of contract claim, obviously, there's been testimony on behalf of

Mr. Grossman that there may have potentially been a signed copy, and just for the record, the copy that was produced during the discovery was not signed. Certainly, it does not mean that there's not a contract between the parties, so I will deny the breach of contract motion as to quantum meruit. Again, I think you just indicated that's for the Court to determine at the end, which of course would be at the punitive damages stage, so I'm not going to charge the punitive damages, obviously, at this time. And as to conversion, obviously, that's one of the major issues in the case is, did he convert the money that was owed to Mr. Brady to his own use, and toward him -- and for any other abuses potentially with one of his companies, so I will deny those claims as well. All right, so I'll take out quantum meruit and punitive damages, I'll take it off the verdict form.

MR. O'KELLEY: And, Your Honor, I don't think punitives was on the verdict form.

THE COURT: No. I'm talking about taking it out of the jury charge.

MR. O'KELLEY: Yes, sir.

Your Honor, just before we go, I hope -- we would again move the four exhibits we have into evidence.

They've not been officially admitted. Your Honor had them under advisement. Mr. Grossman testified to them. Mr. Brady testified to them. They are relevant, because they've completed all issues about which of the deed was involved, who, what, where, when and why. So again, we'd move those into evidence, Your Honor.

MR. CAPELL: We obviously object, Your Honor, because they don't have anything to do with anything.

THE COURT: I agree. That's the basis of the case. I think it's a fact question for the jury whether it does have any affect basis on the contractual obligation. So I'm going to allow them in.

MR. O'KELLEY: Thank you, Your Honor.

MR. CAPELL: Thank you, Your Honor.

MR. O'KELLEY: I just wanted to make sure we did that before --

THE COURT: Yeah, before we forget.

MR. O'KELLEY: We'd say we don't forget and then we go, gosh, we forgot to do that.

THE COURT: I agree, if that's -- that's the basis of the case, I think it's a fair question for the Jury, whether it does have any effective basis on the question of obligation, so I'm going to allow

them in.

MR. HAMLIN: Thank you, Your Honor.

MR. CAPELL: Thank you, Your Honor.

(Whereupon, court is in recess.)

THE BAILIFF: All rise, the Court is back in session.

THE COURT: All right, thank you very much.

MR. CAPELL: Your Honor, now we're missing Hamlin, but --

THE COURT: All right.

MR. CAPELL: -- I've got a couple things. Charlie's back, and so I've got a couple of things I want to add, when Charlie's back, but we'll wait until Hamlin gets here.

MR. THOMSON: Your Honor, we have a proposed verdict form, well, I'll wait.

MR. CAPELL: Hamlin, I want to bring a couple things up now that Charlie's back.

One, Your Honor, the quantum meruit, I got confused on the fly, the punitive damages go with the conversion cause of action, not with the quantum meruit cause of action.

MR. THOMSON: Right, and they don't go with breach of contract, we recognize that, but you can receive punitives for conversion.

MR. CAPELL: That -- that -- and I got confused about you taking the conversion charges with quantum meruit -- I mean you taking the punitive damages with quantum meruit, they go with conversion, which means they should be read by --

MR. THOMSON: Right, I --

MR. CAPELL: -- the Jury, so I -- I apologize for that.

MR. THOMSON: We agree you should rule the quantum meruit, not the Jury, but conversion definitely has punitive damage component.

MR. CAPELL: And --

THE COURT: Is it a statutory requirement, or is this still --

MR. HAMLIN: Yeah.

THE COURT: -- I determine whether it's reckless or wanton based on the testimony given?

MR. HAMLIN: That's -- that's for you to determine.

THE COURT: Right, that's what I thought.

MR. CAPELL: And -- and then, Your Honor, the other thing that -- that Hamlin and I talked about right after you left was, the accountant letter, was that ever -- do you remember the accountant that passed away that Rod had on there? Was that ever

admitted?

MR. HAMLIN: It was.

THE COURT: Cathy, that wasn't admitted, was it?

MR. HAMLIN: It wasn't, Your Honor, and we still have our hearsay objection to it.

She was not here yesterday, Judge, so she wouldn't know.

COURT REPORTER: Oh, I'm sorry, there's -- so I -- I don't know from looking at this.

MR. HAMLIN: It was not admitted.

THE COURT: Yeah.

MR. HAMLIN: It was one of the ones, Your Honor --

COURT REPORTER: What number was it?

MR. CAPELL: Exhibit 4.

MR. HAMLIN: It was one of the ones Your Honor took under advisement.

COURT REPORTER: Oh, the one in your book?

MR. CAPELL: Yeah.

COURT REPORTER: That you just took out?

MR. CAPELL: Yeah, that's it. That's -- that's what I --

THE COURT: She was -- the -- the lady that testified utilized --

MR. CAPELL: No, Rod utilized it. His -- his

accountant gave it to him, and he -- his accountant passed away. And -- and what we decided to do with it, Your Honor, remember was, we would stipulate to the 7/11 instead of the 7/24 in this letter, so --

THE COURT: Okay, well, that's fine.

MR. CAPELL: Okay.

THE COURT: It's excluded at this time.

MR. CAPELL: Okay.

(Jury enters courtroom.)

MR. HAMLIN: Are these the new ones, Your Honor?

THE COURT: We're about to find out.

MR. HAMLIN: Okay, all right.

THE COURT: Yeah, so here's the verdict form. Do you have a proposed one?

MR. THOMSON: Yes, Your Honor. It's got the punitive damages on there.

THE COURT: I'm going to -- I'm going to hold off on the punitive damages at this point in time. I'm going to wait to see if, in fact, if there is a verdict in the case, and then I will make a determination, obviously, as to quantum meruit determination and the punitives, and if I decide so, then I can send it back to the Jury to review this, okay?

MR. THOMSON: Okay.

THE COURT: All right? All right, bring them out.

(Jury enters courtroom.)

JUDGE'S INSTRUCTIONS TO JURY

THE COURT: All right. All right. What we're going to do is, as I indicated before, is I'm going to charge you on the law. As I indicated at the beginning of the trial, and I am the sole judge of the law, and you are the sole judge of the facts. So what I'm going to do now is, don't worry, it's going to be a lot of information for you to digest, but I'm going to allow you to have this in the back, but the law states I have to read it to you into the record, okay? So don't ignore me, because I'm put a lot of emphasis on things -- I just read it. But anyway, with that being said, at the close of that, I'm going to obviously let the lawyers make a closing argument. And what they're going to argue is that what they believed the evidence was going to show at the beginning, they now are going to argue that what has been shown to mirror the law which I have charged you on, all right? So we'll let the Plaintiff go first, the Defense goes, and the Plaintiff will say a very, very, very short rebuttal, and then we'll give you the case, fair

enough? All right.

I'll remind you that during this trial you and I have certain duties to perform. As the trial judge it is my responsibility to preside over the trial of this case. And I also have the duty to rule on the admissibility of the evidence offered during this trial. You are to consider only the evidence before you. If there was any testimony ordered stricken from the record during this trial, you must disregard that testimony. You are to consider only the testimony which has been presented from the witness stand, any exhibits which have been made a part of the record in this case, and any stipulations made by counsel. I have the additional duty to charge you the law applicable to this case. It is your duty as jurors to accept and apply the law as I now state it to you. If you think you have any idea as to what the law is or what the law ought to be and does not agree with what I tell you the law actually is, you must forget that idea, because you are sworn to accept the law and apply the law exactly as I state it to you. In every case tried in this Court before a jury, the jury becomes the sole and exclusive judge of the facts. A Trial Judge cannot comment on or make any statement about

the facts in the case. Since you are the sole judges of the facts, do not think by anything I have said during this trial that I have any opinion about the facts of this case. The law does not allow me to have any opinion about the facts of this case. There are two types of evidence generally presented during a trial, direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proven. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. It is proof that does not actually establish the fact in question, but that a search has described something else from which you may either reasonably infer the truth of the fact, or at least reasonably infer an increase in the probability that the fact is true. For circumstantial evidence to be sufficient to warrant the finding of a fact, the circumstances must lead

to that fact with reasonable certainty. The facts and circumstances should be considered in light of ordinary experience and common sense. The existence of a fact cannot be based on speculation, surmise or conjecture. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. The burden of proof in this case is by preponderance of the evidence. By preponderance of the evidence simply means the greater weight of the evidence. It is evidence which, as a whole, shows that the fact sought to be proven is more likely true than not true. This can be illustrated by imagining a set of scales. When the case begins, the scales are even. After all the evidence has been presented, if the scales remain even, or if they tip even slightly in favor of the Defendant, then the Plaintiff has failed to meet the burden of proof, and would not be entitled to recover in this case. If on the other hand, the scales tip even slightly in favor of the Plaintiff, the Plaintiff will have met the burden of proof, and you should return a verdict for the Plaintiff. The preponderance of the evidence is not

determined by the number of witnesses; instead, it must be determined by the greater weight of all the evidence presented.

Necessarily, you must determine the credibility of the witnesses you -- who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to evaluate the evidence and determine which evidence convinces you it is true. In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses. Several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety, or you may reject the testimony of a witness in its entirety. You may consider whether the witness has an interest in the result of the trial, whether the witness is prejudiced for either the Plaintiff or the Defendant. The opportunity for the witness to have seen the matters, and things about which the witness may testify, and the way the witness acts on the witness stand.

In this case, the Plaintiff claims that the Defendant breached a contract that existed between

the parties. In order to recover for a breach of contract, the Plaintiff must prove the claim by a preponderance of the evidence, or, as I indicated, the greater weight of the evidence. The first thing that the Plaintiff must prove by a preponderance or greater weight of the evidence is that the parties intended to enter into a binding contract. A contract is an agreement entered into by two or more parties in which each party agrees to perform or not to perform certain acts. It may be shown by words, written or oral, or by conduct. However, a contract is more than the mere exchange of promises. For the agreement to be considered a contract, the parties must have intended to enter into a contract and must have reached a mutual understanding of the terms of that contract. This is sometimes called a meeting of the minds. The parties must intend to be mutually bound by the agreement. To make a contract there must be an offer and an acceptance. An offer is a proposal, which is definite and certain in its terms. The offer must be communicated to the other party. The mere intention to do an act is not an offer. In addition, preliminary negotiations are not offers. An offer may be withdrawn at any time before it -- it is accepted. If you find that an

offer was made, you must next decide whether the offer was accepted. An offer can only be accepted by the person to whom it was made. The acceptance must be communicated to the person who made the offer. Unless the offer specifically states that the acceptance must be made at a certain place or time, or in a certain way, an offer may be accepted in any way, which lets the person making the offer know that it has been accepted. An acceptance does not have to be expressed. It may be inferred from the acts or conduct of a party accepting the offer. However, there must be some expression of the intent to accept the offer, either by words, signing, or some act communicated to the person making the offer, or that person's agent.

In order to have a valid contract, it is not always necessary that it is signed by both parties. It may be sufficient if it is signed by one party and is accepted and acted on by the other party. If you find that offer was rejected or was not accepted, then there was no contract, and you must return a verdict for the Defendant. In addition, each party to the contract must give some valuable consideration to the offer. This means that there must be something that benefits each party.

Consideration may be some right, interest or benefit given to a party. It -- it may also be the failure to do an act, a loss, or a responsibility which is undertaken by a party. Consideration may be money, an act, a service, or a promise to do something, or not to do something in the future. Mutual promises may constitute consideration. For example, if I buy a loaf of bread from a grocery store, the consideration the grocery store gives to me is the bread. The consideration I give to the grocery store is the money.

In making your decision, as to whether a valid contract exists, you should only be concerned with whether there was -- was any consideration, not the value of the consideration. You should not weigh the value of the consideration given by one party against the value of the other party's consideration. You are to decide only whether there was consideration to support the agreement, not whether the agreement was an actually -- was an actual good one. In interpreting contracts, you must determine the intention of the parties, and put those intentions into effect. In doing this, you must consider only the outward expressions of the parties. You cannot consider any undisclosed or

secret intentions of the parties. Contracts should be liberally construed to carry out the intentions of the parties. It's the substance of the agreement, not the form, which must control the construction of the contract. When you're interpreting a contract, you are not limited to the literal meaning of any term of the contract if you decide that the literal meaning would defeat the parties true intentions. The contract is to be considered by looking at its subject matter, nature and purpose. When you have determined the general purpose of the contract, you should look at the language of the contract in light of its purpose.

The person who received the offer may also choose to reject it, by words or acts, which indicates that the offer has thus been rejected. The Plaintiff claims that the Defendant in this case breached the contract by refusing to acknowledge the contract as a valid agreement. This is called repudiation. The Plaintiff must first show that there was a valid contract, then the Plaintiff must show that the Defendant rejected the contract. The absolute rejection of a valid contract is a breach of the contract. If the Defendant refuses to recognize the existence of the contract, or is not

-- or does something inconsistent with the existence of the contract, the Defendant may be found to have breached the contract if it happens after the time the contract was to have been performed. Repudiation of a contract which has expired is not a breach of contract. If you find that a valid contract existed, and that the Defendant rejected the contract, you should return a verdict for the Plaintiff. Next, the Plaintiff must show by preponderance or greater weight of the evidence that the Defendant unjustifiably breached the contract. The word breach means the failure, without legal excuse, to perform any promise that forms the whole, or a part of the contract. This includes the refusal of the party to recognize the existence of the contract, or the doing of something inconsistent with the existence of the contract. A party breaches a contract when that party does not perform as agreed under the contract by failing to carry out a term, promise, or condition of that contract.

Finally, the Plaintiff must prove by a preponderance of the evidence or greater weight of that evidence that the Plaintiff suffered damages, which were proximally caused by the Defendant's breach of the contract. The Plaintiff must prove

damages, by the preponderance or greater weight of the evidence. This does not mean that the Plaintiff must prove damages to a mathematical certainty, or produce evidence of the exact amount of damages suffered; however, the amount of damages cannot be left to guess work or speculation. Instead, the evidence presented by the Plaintiff must be enough to allow you to determine the amount of damages, with reasonable certainty and accuracy. Damages or breach of contract are those that may fairly and reasonably be construed to arise naturally from the breach of the contract itself, or those that may be reasonably supposed to have been in the minds of the parties at the time the contract was made. The Plaintiff may not recover damages for breach of contract unless the Plaintiff shows that he has performed his part of the contract, or at least was able, ready and willing to perform at the appropriate time. Actual damages are damages to compensate the Plaintiff and put him as closely as possible in the same position he was before the breach of the contract. In other words, actual damages are the actual losses and expenses which the Plaintiff has suffered because the Defendant breached the contract. Generally, actual damages

are the out-of-pocket costs actually paid by the Plaintiff, as a result -- as a result of the breach of contract, and the gain above the costs that would have been realized if the contract had been performed. Also, the Plaintiff has the duty to minimize the damages caused by the Defendant's breach of contract. The test is whether the Plaintiff has done what an ordinarily prudent person would have done under like circumstances. If the Plaintiff has used reasonable care to reduce the losses, the Plaintiff may recover the full amount. If the Plaintiff has not done so, then you would reduce the damages accordingly. The Plaintiff has also claimed conversion, that the Defendant converted the Plaintiff's personal property. Personal property is anything that is not real estate. Conversion is the unauthorized exercise of control over personal property belonging to another person, which either changes or excludes the owner's right to that property. In order to prove conversion, the Plaintiff must first prove that the Plaintiff owned or had a right to possess a certain piece of personal property. The Plaintiff must then show that the Defendant gained control and possession of the property or prevented the

Plaintiff from using the property. Finally, the Plaintiff must show that the Defendant did this without the Plaintiff's permission. If the Plaintiff expressly or impliedly agreed to or approved the Defendant's taking, use, retention, or disposition of the property, the Plaintiff cannot recover for conversion of the property. Conversion can arise in three different ways. First, there is a conversion if the Defendant wrongfully gets the property. In this case, the conversion takes place when the Defendant gets the property. Second, conversion can occur when the Defendant legally got the property, then improperly disposed of it. In this case, the conversion takes -- I'm not talking about this actual case, I'm saying this instance. In this instance, the conversion takes place when the Defendant gets the property. Oh, that was the first one, I shouldn't have looked up. In this case, or in this instance, the one I just described, the conversion takes place when the Defendant improperly disposes of that said property. A conversion can also take place when the Defendant legally got the property, then to refuse to give it back when asked. In this instance, the conversion takes place when the Defendant refused to give the

property back to the Plaintiff after the Plaintiff asked the Defendant to return the property. If you find that a conversion did take place, you should return a verdict for the Plaintiff for the value of the property taken with interest. You may award the Plaintiff up to the highest value for the property up until the time of the trial. Damages for conversion may be reduced if the Defendant returns the property, and the Plaintiff accepts it back. If that happens, the damages should be reduced to a small sum, or to an amount equal to the reduction value of the property between the time of the conversion, and the return of the property. If you find that the Plaintiff is entitled to damages for conversion of the property, you must then decide whether the Defendant's acts were willful, reckless and/or committed with conscious indifference to the rights of others. If so, then you may award the Plaintiff damages.

No, you have to strike that last one, that wasn't supposed to be in there. So disregard -- if I say if you find that the Plaintiff is entitled to damages for conversion of the property, you must then decide whether -- you not need to determine that whatsoever, all right? That's a misprint, it

shouldn't have been in there.

Ladies and gentlemen, that is the charge. Haley will correct that, and I will give you a copy of this in the back. I know it's a lot to digest. If y'all certainly understood when I was saying in this, when it kept saying in this specific case, I wasn't telling you that was the facts of the case, I was talking about the same instance, okay? Good. That's poorly written, we'll have to change that. So -- all right, I think we've got that cleared up.

Mr. Foreman, at the close of their closing arguments, I will give you your final duties at that time, and I will go over the verdict form with you, and then as soon as we have all the evidence put together, we'll let y'all begin your deliberation. All right?

MR. O'KELLEY: Your Honor, if it remained, also have the charge about unanimity of the verdict, I think that was in -- in the charge.

THE COURT: I'll go over all that.

MR. O'KELLEY: Thank you, Your Honor.

THE COURT: Yeah. So I'll go over the verdict form, and go over how we're going to proceed forward and everything, but let's just go ahead and let them give the closing arguments while it's fresh in their

mind. We're ready.

MR. THOMSON: May it please the Court?

THE COURT: Yes, sir.

MR. THOMSON: Mr. O'Kelley?

MR. O'KELLEY: Yes, sir.

CLOSING ARGUMENTS BY MR. THOMSON

MR. THOMSON: Ladies and gentlemen of the Jury, thank you for your time these past couple days. Your job here is very important. Mr. Brady has been waiting for this day for a very long time. You might have heard one reason it took so long earlier today, and that's because when we filed this lawsuit Mr. Grossman's company said, "Hey, not only do we not owe you the money, but you owe us in excess of $600,000." He had a few years to produce evidence of those claims, he failed to do so. The Court recognized that he failed to do so. They went to the Court of Appeals, they said -- they -- they gave an opinion in Mr. Brady's favor, saying, "No, Mr. Grossman, you did not produce any evidence in support of these counterclaims." Judge Price charged you on credibility. I'm not here to speak about Mr. Grossman's credibility outside of the confines of this litigation, but I can tell you within this litigation he has not been credible. He

started off by -- he's denied he's owed the money. He claimed that Rod owed him money instead. He gave answer, after answer, after answer today that was squirrely and evasive. He didn't concede or admit much. He did concede or admit some. But how much weight do you think you should give his testimony? On the other hand, Mr. Brady -- I hope you believe he came across like the honest, fair dealing person that he is, and he did. I'll tell you who else is credible, Ginger Griffith. She conceded that Mr. Brady was owed the money. Mr. Grossman's argument here, it is that it's not him who owes the money, it's these LLCs. He is wrong on that on two different tracks. The first track is breach of contract. He contracted individually with Mr. Brady. The second is called conversion, you heard the charge on that, put a bookmark on that, I'll get to it later. How do you resolve the breach of contract claim? I'll submit to you that there's only one question that you need to ask in your own mind as to resolving that. That question is who was the offeror in 2004? In other words, who is making an offer in this letter? Mr. Grossman drafted this letter. He had full control over its contents. That has a legal impact. To the extent you can't

understand some of the language, it's appropriate to view that ambiguity in Mr. Brady's favor, but it's not even ambiguous as to who was the offeror in 2004. First, the letterhead, Mr. Grossman had full control over what letterhead he put on that letter, and he freely chose to use this one. He might testify as to his secret intent, or whatever, but that does not matter. All that matters is the outward expressions. What outward expressions did he make to Mr. Brady? This is an expression that he is making an offer in his individual capacity. Same with the signature block. This is the wrong letter. Same with the signature block here, he put Gary L. Grossman. When somebody sends a letter on behalf of a company, the proper way to communicate, again, it's the outward expressions that matter, right? The proper way to communicate, I'm sending you an offer on behalf of a company is to put the company name either in the signature block on behalf of, put it in the letterhead, he chose -- freely chose not to do that. The word I appears in this letter 21 times. Who is I? You can't tell me that I is not Gary L. Grossman in his individual capacity. Who is making promises and offers in this letter? Gary L. Grossman is, he was the offeror in 2004. Let's look

at those promises. This says, "I would like to pay you an incentive management fee of 50 percent of pretax profits." Is that ambiguous? Is Gary Grossman making an offer there in his individual capacity? You heard reference to other companies. He did mention those companies but those companies are not making any promises in this letter. They cannot be the promisor. They cannot be the offeror. Where he references these companies, the beginning of that sentence starts with, "I would like." So what's he offering there? I'll tell you what he's offering. He's offering to set up a deal where he agrees to puppeteer his companies such as those -- those companies will pay Mr. Brady. Is he allowed to delegate the performance payment? Sure, of course, but that delegation does not excuse him for being liable for his promises. And we're giving him credit for the money the LLCs paid. They might tell you, "Well," and it's a false flag. You can tell who contracted this, 'cause who paid Mr. Brady? It was the LLCs, that is a false flag. He delegated his duty to pay to the LLCs, and that's what we interpret from this letter. That's why those companies are mentioned. He is still the offeror. None of those LLCs are making any offer in this

letter. Another false flag, there were other agreements. You heard the testimony on those other agreements. They want to confuse you. They're going to give you these big operating agreements. They're going to give you documents about six percent owner of the company. Those were separate deals. They are being disingenuous by claiming this was a contract we're litigating today. They don't get to tell us what contract we are suing them over. A separate deal. We are suing over this contract. They can see the February 2nd, 2004, letter of agreement. This letter is what governed their entire deal. Mr. Grossman admitted that in an email in 2007. Now he comes back in this litigation because he wants to pull a fast one on you, and he says these other agreements are what Clyde [sic] said. Those other agreements were from July 2007. These are from February -- or, I'm sorry, those other agreements were from July of 2004, and around that time the letter of agreement that they continually refer to as governing the deal when the facts were still present is the February 2nd, 2004, letter. They cannot run from that. It's insulting that they tried. Again, because it's so important, "I would like to pay you an incentive management fee

of 50 percent pretax profits." Who was the offeror in 2004? There's no ambiguity. To the extent there is, you are permitted to construe that ambiguity in Mr. Brady's favor because Mr. Grossman drafted this letter. The next component of breach of contract is the actual breach. It's pretty easy. There's been admissions that Mr. Brady is owed the 711,027. You don't have to think too hard about that. It's in this letter. The bottom line right here, both bottom line of the letter and the bottom line of this litigation, "Of this writing the total amount due to you is 711,027." So don't let them come in here and say, "We're excused from paying you because we had all these other deals go bad, deals that had nothing to do with Rod Brady, or nothing to do with the projects we're litigating here today. All complicated accounting aside, and you can get in the weeds with this accounting letter, if you want, some of you might have done that. If you haven't, all you've got to do is read this conclusion of this writing, "You are owed 711,027," so that's breach.

Conversion, I remind you earlier there's two tracks to hold Mr. Grossman liable in his individual capacity. The second track is conversion. What is conversion? It essentially means using somebody

else's property to the exclusion of their rights. Is it a conversion when there's money sitting in a corporate bank account, and somebody's owed profits from that money that is sitting in those accounts, and an offset company takes that money away and use it to pay his other unrelated debts? Yes, that is a conversion. And you can hold Mr. Grossman, individually, liable for that conversion. So did we prove that Mr. Brady's profits were sitting in the LLC's accounts and were used for other purposes? Yes, we absolutely did. I'm going to read you some testimony from the deposition of Ginger Griffith that you heard earlier today. I'll go slow. "And so what that is telling us here is the fees discussed in this letter, we're talking about houses that the construction is already complete, right?" "Yes." "And they've already been sold to homeowners, whoever they may be, correct? And the LLC has been paid money for those homes, right?" "Right." What does that tell us? They have Rod's money. It is sitting in their accounts, it is owed to him, it is due to him, they used it for unrelated debts, that is conversion. Let me drive this home even further. There are two more clips from this deposition that are very important to pay attention

to. The first clip is for the Village Square Development portion of the debts, and this isn't the whole debt, but it says, or I asked Ms. Griffith, "But after you take into consideration all that he's earned versus all that he's been paid, the net balance due to Rod due for an incentive management fee, which is profit sharing on the Village Square Development project only, is 83,488; is that correct?" "That is correct." "And this money has already been earned, right?" "Yes." "As of September 13th, 2007?" "Yes." "And the LLCs have already been paid the money that generated the profits from which that calculation was made?" "Yes." I'll say it again. "And the LLCs have already been paid the money that generated the profits from which that calculation was made?" They had Rod's money sitting in their bank account, they didn't give it to him. It's a sad story. Two and a half years of his life's work, and they think he isn't owed the money because I lost money on other deals. You know what deal they didn't lose money on? This one, Rod paid them a lot of money.

Final clip that says the same thing again, but it ties in to -- ties it into the entire amount of the 711,027. "Okay. And Mr. Grossman's fee in

exchange for personally guaranteeing the funds in 2006 for the Allenwood neighborhood is 52,244?" "Yes." "Okay, so taking into account the money owed to reclaim Lancaster Redevelopment Corporation, and the money owed to Mr. Grossman, individually, we could then calculate Mr. Brady's incentive management fee for the Allenwood project, right?" "Yes." Let me pause there. What does that mean? It means Mr. Grossman's claiming throughout this litigation, I don't know if he'll drop it, or if he'll tell it to you in closing, but he's saying he doesn't have to pay Rod because he was to be paid first. That testimony shows that he was paid first. Back into this testimony again, "And that number, it ended as we could then calculate what Mr. Brady's incentive management fee for the Allenwood project, right?" "Yes." "And that's after we take out the money that was paid to Mr. Grossman and his companies. And that number comes to 633,656, right?" "Yes." "Owed to Mr. Brady, right?" "Correct." "Okay. So now after we've gotten to that point, we make all the prelamination calculations that we need to make to determine the total amount to Mr. Brady as of September 13, 2007, correct?" "Correct." "They deducted all money that

they were entitled to deduct, and that number owed to Mr. Brady as of September 13th, 2007, is 711,027, right?" Ginger Griffith says, "Yes." Again, all of those were clips from Ms. Griffith's testimony today. You might fallen to him, you would be forgiven if you didn't at the time, but they establish Mr. Brady's conversion cause -- cause of action against Mr. Grossman.

I want to talk about the verdict form real quick. Here's how I want you to fill it out. First question says, "Do you find by a preponderance of evidence that Defendant -- that Gary L. Grossman breached a contract with the Plaintiff, James R. Brady?" Of course, the answer is yes because Mr. Grossman was an offeror in 2004. "Do you find by preponderance of the evidence that Plaintiff James R. Brady, was damaged by this breach?" You know the answer to that. "What damages are owed to James R. Brady as a result of this breach?" Right there I would like you to put the 711,027.

The next question is under conversion. It says, "Do you find by a preponderance of the evidence that Defendant Gary L. Grossman converted the Plaintiff James R. Brady's personal property," meaning money, "prevented Plaintiff from using the property,"

meaning money, "and did so without Plaintiff's permission?" You've heard plenty of testimony that they didn't have Rod's permission to not pay him his money, so, of course, you check yes to that question. "What damages are owed to Plaintiff -- Plaintiff James R. Brady as a result of this conversion?" You know that number, it's the 711,027. Now, just because you write the 711,027 on here twice, or three times, actually, because there's quantum meruit that I'm about to get to at the end, that does not mean that Mr. Brady gets to double recover. You collect your actual damages one time. So I want you to fill it out on all three causes of action in case something happens on appeal, we can have a backdrop, but Mr. Brady's entitled on all three of these claims to the 711,027 in actual damages. The last --

THE COURT: You are in your -- I've determined that quantum meruit is a decision, and it's a legal decision, and as I've indicated, I am the only sole decision maker as to legal claims, and so post-verdict, I will decide as to quantum meruit, so that's not on your -- it will not be on your verdict form, okay? Fair enough?

MR. THOMSON: All right. Well, I told you there

was two tracks, but I didn't think that was going to be on there, and it's not, so anyhow, it's been a long road for Mr. Brady. Mr. Grossman thinks he's entitled to avoid his debts and do so with impunity because he lost money on other deals. He does not. He needs to be disabused of thinking he can do that. All while contracting under separate LLCs, no, you didn't, you did not. Gary L. Grossman made an offer in his individual capacity. "And on this writing, you are due 711,027." It says it is due, which means him losing money on other deals does not excuse his obligation to pay Mr. Brady. Thank you.

THE COURT: All right.

MR. O'KELLEY: May it please the Court?

THE COURT: Yes, sir.

CLOSING ARGUMENTS BY MR. O'KELLEY

MR. O'KELLEY: Ladies and gentlemen, as I said during my opening statement, and as Mr. Thomson just said, thank you very much for your service. Congratulations, you now don't have to do this for at least another year.

COURT REPORTER: Can you speak up, please?

MR. O'KELLEY: Say it again?

COURT REPORTER: Can you speak up?

MR. O'KELLEY: I'm sorry, what I said was,

congratulations, they don't have to do this for another year.

THE COURT: Or, potentially, on Thursday and Friday.

MR. O'KELLEY: So -- so what have we heard over the last two days? Remember I told you while no good deed goes unpunished? What you heard was that this man was in a real financial hole involving a little project called Cypress Harbor. He then talks to his friend Gary Grossman, his dear friend, that he had met at the National Association of Homebuilders Convention, and they talk about doing a development, two developments, Hilton Head Homes at Allenwood, Village Square Development, LLC, which would be separate limited liability companies, wherein, Lancaster Redevelopment Corporation owns 100 percent of the companies, the same Lancaster Redevelopment Corporation, and this is their exhibit, ladies and gentlemen, of course, the same one he ties to Redevelopment Corporation, that sent this letter in 2007 that stated -- and you heard Mr. Grossman state in his testimony about the housing market. Where's the last page? And this is the key. "LRC simply cannot fund any additional monthly expenses." And before this case started

yesterday, Mr. Brady got very cute because he had a lawsuit against Village Square, Hilton Head Homes at Allenwood, and Lancaster Redevelopment, and yesterday he dismissed them. You heard Mr. Grossman on the stand earlier today say, "Hilton Head Homes at Allenwood, Village Square Development, and Lancaster Redevelopment Corporation did indeed owe the Plaintiff the money he claimed." But what these people want you to believe is that an unsigned letter in February of 2004, that we don't even have proof was actually transmitted, somehow creates a contractual obligation, and who are we talking about? Mr. Brady testified before you that he's a pretty sophisticated guy. He's developed all kinds of things. He was the head of the Hilton Head branch of the National Association of Builders. Then we're talking about Gary Grossman, who has built thousands of developments in this country, and around the world. He talked about his businesses there in Pennsylvania. He talked about his businesses here. And what he also talked about was how the housing market turned south in 2007. No one saw that coming. Well, I take that back, Michael Lewis might have seen it coming in The Big Short. With that being said, ladies and gentlemen, what

contracts do you really have to look at here? There are four of them. It's the operating agreements and the assignments, in which Mr. Brady and his friend became members of those LLCs, six percent members each. And those are the only signed documents before you, the only admitted contracts in this case. The only documents that say in paragraph 9.5, and Your Honor's going to give them to you so y'all can review them at your leisure when you go back to the jury room, that the entire agreement between the parties is contained in those two operating agreements. I'm going to say that again, the entire agreement. It's not, well, we'll look at something else, well, we'll do X, Y and Z, the entire agreement is in those two documents, and that's important, Your Honor, I mean ladies and gentlemen, not Your Honor, but I think of you all as judges in a way, because, of course, your judging the facts in this case. That letter from 2007 and Mr. Grossman's testimony today make it very clear that any of the entities that could potentially owe Mr. Brady money, are not here. And what has two days of testimony also taught you about what's going on in this case? Mr. Brady testified that he worked some 90 hours on this case, didn't see a single proof of the hours he

had worked on this case. He didn't bring anything showing you how his, quote, unquote, "Blood, sweat and tears had been poured into this project." If anyone's blood, sweat and tears were poured into this project it was Mr. Grossman's. Mr. Grossman testified before you that he was liable personally for all the debt at both of these companies. Mr. Grossman testified today that he had to sign personal guarantees. In fact, one of the -- one of the allegations that they keep harping on is, "That in addition to sales and construction management fess," again, the fees, typo, as described, "I would like payments in a management fee of 50 percent pre-tax profits, after one percent month interest on cash investment to Lancaster Redevelopment." They leave that point -- part out, "And 500 basis points to me, individually, for my guarantee." So who's really on the hook for these developments that, ultimately, failed? It's not Mr. Brady, it's Mr. Grossman, but, yet, here he is with his hand out saying, "Give me $711,000," money that he simply cannot pay, according to Ms. Griffith.

And what -- what's here before you? A breach of contract. Again, show me the contracts. The only signed contracts that show a clear meeting of the

minds are the operating agreements and the assignments. These other cause of actions for conversion, there was no testimony that Mr. Grossman took this money and did anything with it, except try and keep these companies going in September of 2007, when the housing market was failing. In fact, Mr. Grossman's testimony, and it's proven by this exhibit, was actually loaning personal money to Village Square Development Company, LLC. He wasn't trying to take money that was owed to Mr. Brady, personally, and go to Europe, or live some lavish lifestyle. In fact, what did he tell you today? He thinks this case is a tragedy because he's lost his former best friend. He also testified that he is the one who's had to work out over 3.6 million dollars with the banks to get the ox out of the ditch. Mr. Brady didn't have to do that. In fact, Mr. Brady got out scot-free. I just heard Mr. Thomson say that our entire case is disingenuous and insulting. My client certainly doesn't think he's being disingenuous or insulting. My client takes this very seriously. I also heard Mr. Thomson say something, but I guess he was not in the same courtroom I was in. Because Mr. Grossman testified he lost money all around on these projects. That

hasn't been refuted by anybody. Mr. Brady understood that these projects -- no one had any money on these projects. Like a typical developer, they were robbing Peter to pay Paul, and then the music stopped back in the summer of 2007. Again, ladies and gentlemen, there is a verdict form, the Judge is going to give it to you. And we think, based on the testimony you've heard over the last two days, you're going to find a verdict in favor of my client. Thank you.

THE COURT: All right. Briefly as to his closing.

MR. THOMSON: Thank you.

REBUTTAL CLOSING BY MR. THOMSON

MR. THOMSON: A few points of clarification. Mr. O'Kelley just got up here and said they didn't dismiss those parties until yesterday. Do you know why we didn't do that? Because they didn't let us do it. They wouldn't stipulate to it. They want to confuse you. They wanted these other companies on the verdict form. Mr. -- Mr. Brady contracted with Mr. Grossman. Mr. Grossman was the offeror in 2004. He misled you in another way, that the no signature on this document means somehow this document is not the contract. Did you hear in your jury charges

that a contract does not have to be any kind of certain formal document, it can even be oral. You can say, "I'll cut your grass for $10," the other person says, "I accept," offer acceptance, bam, contract, it can be oral. But here we have a writing that tells you what the terms of that agreement are. They say that this -- these operating agreements constitute the agreement. Look in there for a term that says 500 basis points. You notice over here Mr. Grossman is paying himself 500 basis points, that's not a term in the -- in the document that they claimed to be the applicable contract. So they want to have their cake and eat it too. They are the ones who told us, not in this courtroom, because they just couldn't exceed it, but they are the ones who told us in 2007 that this is the agreement, it's the contract. Thank you.

THE COURT: All right, ladies and gentlemen of the jury, that will conclude the trial of this case. I have already charged you on the law. Just so you know, I wasn't trying to be funny about y'all being here for the next three days in this case, you have to come back tomorrow, if -- once you're done with this, because you have to serve the whole week. Just to shore that up, I certainly don't believe

y'all are going to be here tomorrow on this case. So anyway, with that being said, this is the verdict form, and they have already gone over it with you. Just so you understand, when you begin your deliberations, Mr. Foreman, I charge you with these duties. First of all, everyone must participate. You'll find that some may participate a bunch, you may find that some will participate very, very little, and that's okay. They just have the -- have to have the opportunity to participate. Now, whether they choose to or not, that's their decision, all right? And the reason I say that is, this is supposed to be a unanimous decision. All 12 members must agree, all right? And so in doing so, I'd just ask that if anyone takes a break, if anyone needs to have an emergency, maybe somebody has a flat tire, may need to use the phone real quickly, that's okay, but stop the deliberations immediately, all right? Because it must be a unanimous decision, all right?

The verdict form I have already printed out for you. I will go back into the back with you, and once you have your verdict, Mr. Foreman, if you'll simply just sign where it says, Foreman, if you'll just date it, and you'll knock on the door and tell

the Bailiffs that you have a verdict, we will bring you out, and we will read your verdict. All right.

I also charge you, Mr. Foreman, if there's any questions that you may have, simply just reduce it to writing, and give it to the Bailiff, knock on the door, and he'll bring it out to me. And by any questions, I mean anybody. Now, mind you that I will answer every single one of your questions, okay, but you may not like the answer, all right? Fair enough? All right. All right, so if there's nothing further -- anything further from the Plaintiff or the Defense?

MR. CAPELL: No, Your Honor.

MR. THOMSON: No, Your Honor. And, Your Honor, and two people get to go home if they want to.

THE COURT: That's correct, we'll bring them out in a second. So I would ask that you go back, please don't begin deliberating until I bring you all of the evidence, and that will be in about three to four minutes. And so if you'll just retire to the jury room, once the Foreman comes back, and brings the evidence back, and tells y'all to begin deliberation, if Mrs. Muckelvaney and Mrs. Hatchell, if you'll please come back out, your service will be completed at that time. All right, y'all may be

excused.

(Jury leaves the courtroom.)

BAILIFF: The Jury is cleared, Your Honor.

THE COURT: All right. For the record, I did give them -- or charge them to disregard that portion of that last three sentences that I was going to -- it talked about punitive damages. Haley has since taken it out, and I have since put it back in, so that's what -- I'll make that determination if, in fact, when we get a verdict as to this case. Anything further from the Plaintiff?

MR. CAPELL: No, Your Honor.

THE COURT: From the Defense?

MR. THOMSON: I have -- I -- I've printed out copies of the test transcript I read, it's from the de bene esse deposition. I think it will aid them in the deliberation of this case. If -- if you are inclined, and they want to see it, I think it would help them.

THE COURT: Well, they'll have the original back there, so if they want to find it, they can find it. If they have any questions about the pages and lines, they can send us the question, and come back out and we'll refer to it, but right now let's just leave it --

MR. THOMSON: Okay.

THE COURT: -- in evidence. All right, anything further from the Defense?

MR. HAMLIN: No, sir, Your Honor.

THE COURT: All right, y'all hang tight close and let's see what happens, because, of course, the first question is how much money is the lawyer going to get?

MR. CAPELL: That's right. Thank you, Your Honor.

THE COURT: Yeah. I'm going to release the alternates now.

MR. O'KELLEY: Do we need to do anything on the record with that, Your Honor?

MR. CAPELL: Yeah, we're okay with that.

THE COURT: No. I'll bring them back and tell them they can get their stuff and go.

MR. O'KELLEY: Thank you.

(Recess while the Jury deliberates.)

(Jury enters courtroom.)

THE BAILIFF: All rise. This court is back in session.

THE COURT: Thank you very much. Please be seated. All right. Let's bring them out.

THE BAILIFF: The Jury's entering the courtroom,

Your Honor.

(Jury enters the courtroom.)

THE BAILIFF: The Jury's seated, Your Honor.

THE COURT: All right. Do you -- Mr. Foreman, do you have the verdict?

FOREMAN: We do, Your Honor.

THE COURT: All right, is it unanimous?

FOREMAN: It is unanimous.

THE COURT: All right, if you'll give it to Mr. Rick.

FOREMAN: (Complies.)

THE VERDICT

THE COURT: All right. James Brady v. Gary Grossman, Civil action number 2015-CP-07-2047, "Do you find by a preponderance of the evidence that the Defendant Gary Grossman breached a contract with the Plaintiff, James R. Brady? If, yes, answer -- if you answer yes, go to question number two." The answer's yes. "Do you find by a preponderance of the evidence that Plaintiff James R. Brady was damaged by this breach?" "Yes." If so, go to number three. "What damages are owed to the Plaintiff James R. Brady as a result of the breach?" "711,027.00". "Do you find by a preponderance of the evidence that the Defendant Gary Grossman

converted the Plaintiff James Brady's personal property, prevented the Plaintiff from using the property, and did so without Plaintiff's permission?" The answer, "Yes." What damages are owed to Plaintiff James Brady as a result of this conversion?" "$711,027." Signed, is that your signature, Mr. Foreman?

FOREMAN: Yes.

THE COURT: Signed this 30th day of August in Beaufort, South Carolina. Is this your verdict?

FOREMAN: Yes, it is, Your Honor.

THE COURT: All right, everyone raise your right hand. If it's still your verdict, please remove your hand, or take it down. Did you change your mind the 30 second when you went from there to here?

JURY IN UNISON: No.

THE COURT: All right, then it's unanimous. Any further polling of the Jury?

MR. CAPELL: No, Your Honor.

MR. HAMLIN: No, sir.

THE COURT: All right, ladies and gentlemen, this is a rarity, but I would normally say that's it for the week, but it's not, so that's what I meant earlier when I said that we may have to serve on Wednesday, Thursday or Friday. We have two other

cases that need to be heard this week. They are one witness cases. As I indicated, or may have told you before, they're pro se cases, which means they don't have lawyers. And so one case my understanding is it's just one witness, and the other case is just two witnesses, and so they won't last much longer than a couple hours, all right, probably from start to finish. So those are going to go Wednesday and Thursday. Friday I know we're not going to have trials. All right? So you will not be here on Friday, regardless, because I've got other things I've got to do on Friday. So with all that being said, I want to thank you so very much for your services today, and, hopefully, you will get to see me again tomorrow. So be here tomorrow morning at 9:30. All right? Thank you all so very much, and have a wonderful rest of your day.

(Jury exits courtroom.)

THE COURT: Are you all still seeking to go forward on anything else?

MR. O'KELLEY: Give us a minute.

THE COURT: All right. Rick, hold them back there, please.

THE BAILIFF: Yes, sir, I will.

BAILIFF: The Jury's clear, Your Honor.

THE COURT: All right, let me hear from the Plaintiff.

MR. THOMSON: Your Honor, it's a clear case for punitive damages, converted to allow them, willful, wanton and reckless. Mr. Grossman knew exactly what he was doing. He knew that Rod's money was in his corporate checking accounts, and he used it to pay unrelated debts, and it's -- it's complete disregard to Mr. Brady's rights.

THE COURT: Okay.

MR. O'KELLEY: Your Honor, the testimony was, and it's from the letter from Ms. Griffith and her -- her statement, "We simply cannot pay." There was nothing willful about this. You heard from Mr. Grossman that it was three entities. It was his thought that they should always pay. We haven't heard anything willful, wanton, reckless. What you heard was that the companies were circling the drain, and they were doing the best they can to keep things afloat. He was even loaning money to the Village Square, LLC, so that they could keep it afloat. If anything, Mr. Grossman went above and beyond in terms of trying to make -- make it, so they could pay him. Said, "That I will pay you $10,000 a month going forward to try and make this

right." So anything he was trying to do the right thing, but willful, wanton and recklessness I just don't think was before the Court, or before the Jury at any time. It appears, Your Honor, that Mr. Brady has now elected his remedy of conversion, but we don't see that there was any willfulness, wantonness or recklessness giving rise to this going to the Jury, Your Honor.

THE COURT: All right, I agree. This is an unfortunate set of facts, and I also believe, based on the testimony, that at the time that this was kind of all falling apart between Mr. Brady and Mr. Grossman, I believe it was both of their intentions to try to see what they could do to salvage this relationship, this friendship, and this financial burden that they somewhat placed on each other, to some extent, so I don't find, at this point in time there's any willful, wanton, or reckless behavior, so, therefore, I'm not going to move forward with punitive damages. Is there any reason to move forward as to quantum meruit?

MR. THOMSON: Yes, Your Honor, I would like you to rule on it, just in case on appeal.

THE COURT: All right.

MR. THOMSON: And the law -- I've signed a

pretrial brief, it's Erstame's (ph) case, it -- it -- they're alternative remedies.

MR. O'KELLEY: And, Your Honor, again, are they going to elect a remedy? I mean they got what they wanted. They've got conversion, they've got their full duties, I think quantum meruit is there when the law doesn't provide a remedy. The law has provided a remedy. Equity doesn't need to, because equity follows law.

THE COURT: I agree with that.

MR. THOMSON: Your Honor, we'd like to move for pretrial interest.

MR. CAPELL: Pre-judgment interest.

THE COURT: Did you file a confession of judgment?

MR. THOMSON: We --

MR. O'KELLEY: No, sir.

MR. THOMSON: We liquidated the damages in the complaint.

THE COURT: Yeah, but you have to file a confession of judgment for an offer to say you're accepting an offer before you receive any of your costs.

MR. THOMSON: Your Honor, that's not the law to my knowledge.

MR. O'KELLEY: There's -- there's got to be an offer of judgment or confession , something of that nature, that we have ten days to respond to before trial; otherwise, I don't -- they didn't put a specific amount --

THE COURT: Because you have to have a date it has to start from, and the start date is the day that you offer -- file an offer of judgment.

MR. THOMSON: The start date is the day the money becomes due.

MR. O'KELLEY: Your Honor --

MR. THOMSON: You're -- he's talking about Rule 68 costs. I'm talking about prejudgment instruments when you liquidate your damages in your complaint. There's -- there's citations up there.

MR. O'KELLEY: Your Honor, and, again, that's if there's a sum certain set forth in the complaint.

MR. THOMSON: Let me see if I have the case in here.

MR. O'KELLEY: And, Your Honor, just --

MR. THOMSON: I can pull up the case right now.

MR. O'KELLEY: -- since you've ruled about the punitives, I guess --

THE COURT: That's fine, you can release them now.

BAILIFF: Go ahead and release them?

THE COURT: That's fine.

MR. THOMSON: Section 33-34-31-20(a) of the South Carolina Code provides in cases of accounts stated, "And in all cases wherein any sum or sums of money shall be ascertained and being due shall draw interest, according to law, the legal interest shall be at the rate of 8 and three-fourths percent per annum." It's not only permissible, it's obligatory. It's per statute.

THE COURT: Can I see it? You can just hand it here.

MR. THOMSON: Your Honor, if you need to take it under advisement, we can send you a case, another case and the statute.

MR. O'KELLEY: And we can, Your Honor, I'm happy for you to take it under advisement, but I'd also ask to be given the ten days that I get under Rule 50(b) for any of those trial motions.

THE COURT: Yeah, let's just give everybody ten days to go ahead and file their motions. Fair enough?

MR. THOMSON: Yes, sir.

MR. O'KELLEY: Thank you, Your Honor.

MR. CAPELL: Thank you, Your Honor.

MR. THOMSON: Thank you, Your Honor.

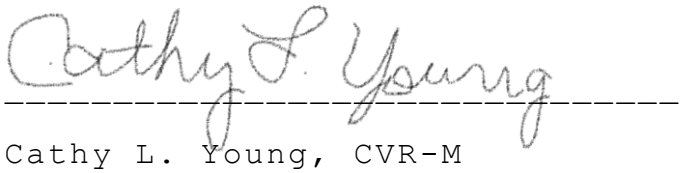
THE COURT: All right.

- - -END OF TRANSCRIPT- - -

CERTIFICATE OF REPORTER

I, Cathy L. Young, CVR-M, for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appear, in the Circuit Court for Beaufort County, South Carolina, on the 30th day of August, 2022.

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



Cathy L. Young, CVR-M
Court Reporter and Notary
Public in and for South Carolina
My Commission expires: 3-28-2029