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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2023-000451
Case No. 2019-CP-26-06550

Marshall Griffin, ... Respondent,
v.

Tony Giovino, Carter Tackett, Richard Aquino,
Bill West, and Shoreham Towers Homeowners Association, ... Appellants.

RECORD ON APPEAL – VOLUME II

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RICHARD AQUINO - DIRECT EXAMINATION

1 **A** Yeah, there is common elements.

2 MS. GOLDING: Thank you. No further questions.

3 THE COURT: Anything further?

4 MR. GRANTLAND: I ask that he be excused.

5 THE COURT: Have a good day.

6 THE WITNESS: Oh, okay. Thank you.

7 THE COURT: How long do you need for lunch?

8 MS. GOLDING: Up to the Court.

9 THE COURT: How long do you want to take for
10 lunch, an hour, or hour-and-a-half?

11 JUROR: Hour is fine.

12 THE COURT: See you back here at 2 o'clock.

13 (The jury exits at 1:01 p.m., and a lunch
14 recess was taken.)

15 THE COURT: All right. Let's bring in the jury.

16 (The jury enters at 2:05 p.m., and the
17 following is heard in the presence of the jury.)

18 THE COURT: Plaintiff call your next witness.

19 MR. GRANTLAND: We call Richard Aquino.

20 (RICHARD AQUINO, having been duly sworn,
21 testified as follows:)

22 MR. GRANTLAND: Your Honor, may I have Crawford
23 step over here so we can hold up an exhibit?

24 THE COURT: Oh, sure. Sure. That's fine.

25 THE WITNESS: Richard Aquino, A-Q-U-I-N-O.

RICHARD AQUINO - DIRECT EXAMINATION

DIRECT EXAMINATION

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BY MR. GRANTLAND:

Q Good afternoon.

A Yes, sir.

Q Where are you from originally?

A Memphis, Tennessee.

Q When did you move in Horry County?

A Retired in about 2001.

Q You bought your penthouse at Shoreham Towers in
1989?

A Correct.

Q When you bought your condo, Marshall's Uncle
Bobby lived in the penthouse, correct?

A Correct.

Q Your penthouse sits under the rooftop penthouse,
roof and terrace?

A That is correct.

Q So if someone moves furniture inside the
penthouse or out on the terrace, you can hear it below
in your penthouse?

A Yes, sir, I can.

Q If someone is playing music or talking out on the
terrace, you can hear it below?

A Depends where they are at.

Q But you often have heard people talking or

RICHARD AQUINO - DIRECT EXAMINATION

1 playing music outside on the rooftop?

2 **A** It's an open terrace, and when you stand up
3 there, the ocean breeze is coming in and, thus, when
4 people talk, quite often you have to shout. I mean,
5 the breeze is what carries it, yes.

6 **Q** And between the date you moved in until 1994, you
7 say you went to the rooftop terrace about six times; is
8 that correct?

9 **A** That's probably correct.

10 **Q** You said you talked to Marshall's uncle one time?

11 **A** I have talked to Bobby Griffin, yes.

12 **Q** And you were aware he was a World War II veteran,
13 POW?

14 **A** Most definitely.

15 **Q** You said you would go to the terrace to look
16 around?

17 **A** Is that a question?

18 **Q** Yes.

19 **A** Yes, sir.

20 **Q** And after Marshall inherited the penthouse in
21 1994, you did not visit the penthouse house, did you?

22 **A** Are you talking about the roof terrace, or the
23 unit?

24 **Q** The penthouse, the unit.

25 **A** Ask me that question again, please.

RICHARD AQUINO - DIRECT EXAMINATION

1 **Q** After Marshall inherited the penthouse in 1994,
2 you said -- excuse me. Back up. Sorry.

3 After Marshall inherited the penthouse in 1994,
4 you did not visit the penthouse?

5 **A** No, sir, that is incorrect. I have been in that
6 penthouse since 1994.

7 **Q** Let me show you your deposition.

8 **A** Okay.

9 MR. GRANTLAND: May I open it, Your Honor?

10 THE COURT: Yes.

11 **Q** **(MR. GRANTLAND)** This your original deposition;
12 I'll hand it to you. Turn to Page 10. Go to Page 10.
13 I'll read Line 2, the question, and then you can read
14 the answer.

15 "After Mr. Griffin inherited the penthouse, how
16 often did you visit the penthouse?"

17 **A** My answer is: "I don't think I ever visited the
18 penthouse."

19 **Q** Is that correct?

20 **A** No, sir, it is not.

21 **Q** So your testimony in your deposition is not
22 correct?

23 **A** I must have misunderstood the question. It is
24 incorrect.

25 **Q** So what is the truth? Have you visited the

RICHARD AQUINO - DIRECT EXAMINATION

1 penthouse or not?

2 **A** I have visited the penthouse, yes.

3 **Q** On social calls or board business?

4 **A** Board business. There has been occasions where
5 he had problems up there. I have met Marshall up there
6 in the past. I've met his maintenance person, Richard,
7 up there in the past primarily due to leaks from the
8 roof, from his roof. There were many occasions where
9 we had leaks, and Marshall has called me.

10 You saw Wayne White earlier, and I think Wayne
11 has asked me to do that. Every time I did that, it
12 would be either with Marshall or his maintenance guy,
13 Rich.

14 **Q** And after he inherited it in '94/'95, you went to
15 the terrace about a dozen times; is that right?

16 **A** Yes.

17 **Q** And you said that you went up there mainly to
18 look at your HVAC units?

19 **A** HVAC units.

20 **Q** Is that right?

21 **A** Yes.

22 **Q** Or you went up there to look at the planters?

23 **A** There have been many, many issues with the
24 planters, yes.

25 **Q** Did you not go up to the terrace to sit out in

RICHARD AQUINO - DIRECT EXAMINATION

1 the sun and relax?

2 **A** I only went to the terrace one time when I
3 actually sat down.

4 **Q** Now, this lawsuit is not your first dispute or
5 complaint with Marshall, is it?

6 **A** To my knowledge, it is.

7 **Q** I asked you in your deposition if you ever had a
8 complaint against Mr. Marshall or his renters. Do you
9 remember that?

10 **A** I'm sorry. Please start that question again,
11 please.

12 **Q** I asked you in your deposition if you ever had a
13 complaint against Marshall or his renters. Do you
14 remember that?

15 **A** Yes.

16 **Q** And you said you weren't sure what I meant by
17 "complaint"; is that right?

18 **A** (Witness nods head.)

19 **Q** Do you remember saying that?

20 **A** I'll take your word for it.

21 **Q** In fact, you said that if I wanted you to answer
22 the question, I would have to define "complaint" for
23 you. Do you remember telling me that?

24 **A** That's very possible, yes.

25 **Q** For your benefit, I looked up the definition. A

RICHARD AQUINO - DIRECT EXAMINATION

1 complaint is an objection or expression of
2 dissatisfaction, okay?

3 A Okay.

4 Q So with that in mind, this lawsuit is not your
5 first complaint with Marshall, is it?

6 A No.

7 Q You had an objection with when one of Marshall's
8 renters was playing corn hole?

9 A I most definitely did. My unit is right below
10 the rooftop penthouse, and that corn hole game, that
11 game they play, pitching the beanbag, that was right
12 above my head, and that is very, very noisy. I called
13 Marshall and asked him to -- actually, I asked him to
14 move it to the south end because I knew Dr. Minielly, I
15 knew he didn't have anyone in his unit, so move it down
16 there. I think the people renting, I think it was
17 probably his housekeeping, but not sure, but I think
18 what they ended up doing was they just took it down.

19 Q You called Marshall to complain, and he had it
20 stopped?

21 A Yes, sir.

22 Q You said corn hole game bugs you quite a bit, and
23 you don't like it?

24 A That's what I said, the noise from it.

25 Q You had renters -- I mean, that is what a

RICHARD AQUINO - DIRECT EXAMINATION

1 complaint is?

2 **A** I don't have renters.

3 **Q** No. He had renters playing corn hole, you
4 complained, and he had it stopped?

5 **A** I complained because the corn hole game was above
6 my living room, and they were out there on the roof
7 terrace. It was very noisy, yes.

8 **Q** And you complained to Marshall about a child
9 running up on the terrace?

10 **A** I complained more than once about that, yes.

11 **Q** You said multiple times?

12 MS. GOLDING: The witness was trying to explain
13 his answer, Mr. Grantland.

14 THE COURT: He can finish.

15 **A** Thank you. There are many, many times I called
16 -- I say "many," I have to be careful. But what I
17 mean -- but probably three, four occasions where there
18 is children out there on the roof terrace running.
19 Here again, it is right above mine and PH3's rooms. It
20 is very noisy. I mean, children -- and I have a bunch
21 of them myself, and they make a lot of noise when they
22 run. I do have a certain amount of right to -- I won't
23 say "privacy," that has been overworked, but --

24 MR. GRANTLAND: Now, he is being unresponsive,
25 Your Honor.

RICHARD AQUINO - DIRECT EXAMINATION

1 **Q** **(MR. GRANTLAND)** If you can just answer my
2 question.

3 **A** Did I answer it?

4 **Q** No.

5 **A** Did I answer your question?

6 **Q** You did. You complained about a child running --
7 or you had multiple complaints about children running,
8 right?

9 **A** Probably about three of them, yes.

10 **Q** And you also had a complaint about a renter using
11 a drone that shined on your balcony and in your
12 bedroom?

13 **A** Yes. My daughter and I were in the bedroom. I
14 use my bedroom as a living room, frankly. My daughter
15 was back there with me, and she said, Dad, what is out
16 there in front of our balcony? I looked out there, and
17 there is a drone just hovering over my balcony -- may
18 I?

19 **Q** Go ahead.

20 **A** I went out there, and I could tell there were --
21 my balcony is below what we call the "bump-out" on the
22 roof terrace, and I could tell there was people up
23 there. Apparently, one of those people was running
24 that drone, and I didn't bother calling Marshall. My
25 daughter leaned over the railing and hollered, but she

RICHARD AQUINO - DIRECT EXAMINATION

1 let them know that's not something they should be
2 doing, and they stopped.

3 Q You also said you had an issue with renters
4 dragging furniture?

5 A Yes. Yes. What happens is there is that Turtle
6 tile that was testified to earlier. That high-back
7 furniture came in about 2018. The Turtle tile went
8 down a lot earlier than that. The high-back furniture
9 is a very heavy composite type of furniture. Rather
10 than lifting it, they drag it.

11 Do you have that piece of Turtle tile? Do you
12 mind holding that up?

13 Thank you.

14 They take that, and they drag that across the
15 Turtle tile, and we're talking 15, 20 feet. It just
16 goes (indicates). Yeah, I frankly had a problem with
17 that.

18 Q And, in fact, if renters move outside or inside
19 the penthouse, you could hear it?

20 A Inside the penthouse, it was changed from carpet
21 to tile. And, here again, renters -- I'm -- nothing
22 against them, but renters do not pick things up. They
23 tend to drag. He changed it over to tile, which he had
24 a right to do that, obviously, but then, yes, I got a
25 lot of noise out of the tile dragging furniture across

RICHARD AQUINO - DIRECT EXAMINATION

1 there.

2 Q When the --

3 A I wasn't through. Sorry. I wasn't through.

4 Q Proceed.

5 A Marshall and I talked about that and --

6 Q You are not responding to my question.

7 A I think I am.

8 Q No, you're not.

9 THE COURT: Ask the question one more time.

10 Q (MR. GRANTLAND) Yeah. Yeah. So the question
11 was: When renters move furniture inside or outside of
12 the penthouse, it bothered you; is that correct?

13 A It bothers me, that's correct.

14 Q In fact, I mean, it bothers you more when they
15 move furniture inside the penthouse than outside?

16 A No. No. It is much, much, much more outside.
17 Marshall had -- I talked to Marshall about it. He had
18 his main guy put these cuffs and stuff underneath his
19 furniture, so when they moved it, it wasn't making any
20 noise on the inside. The furniture got moved quite
21 often. Marshall wanted his furniture a certain way,
22 which he has a right, but the renters, apparently,
23 liked to have it a little different way. So they
24 constantly moved furniture inside the unit, but he
25 solved the problem.

RICHARD AQUINO - DIRECT EXAMINATION

1 **Q** Page 28 of your deposition.

2 **A** Give me a second.

3 **Q** Start at Line 2. We'll read my questions and
4 your response.

5 Question: "Does the noise of the furniture being
6 moved, does that bother you?"

7 **A** Yes -- no, I'm sorry.

8 My answer to that was: "Oh, most definitely."

9 **Q** Question: "Is this -- is this -- are we
10 focusing -- are you talking about inside the penthouse,
11 or outside the penthouse?"

12 **A** At one time, it was both. They solved pretty
13 much all the problem on the inside --

14 **Q** No. What did you say in your deposition?

15 **A** My deposition says "both."

16 **Q** So you had complaints about inside and outside
17 furniture moving; inside the premises, as well as
18 outside?

19 **A** What time frame are you talking about now?

20 **Q** Mr. Aquino, I'm asking you to read your
21 deposition testimony.

22 **A** Well, you have to define that, because he fixed
23 the problem. The problem on the inside was quite some
24 time ago. If I had to put a date on it, probably eight
25 years ago.

RICHARD AQUINO - DIRECT EXAMINATION

1 **Q** Did you qualify that in your deposition?

2 **A** You didn't ask me to.

3 **Q** Okay. You had chairs in your unit, don't you?

4 **A** Yes, sir.

5 **Q** And do you think you disturb your neighbors below
6 you when you --

7 **A** No, sir. I have carpet.

8 **Q** So because Marshall doesn't have carpet, that is
9 the reason his chair moving is a nuisance?

10 **A** Because Marshall has tile. When you drag
11 furniture across tile, it makes noise in my unit, yes.

12 **Q** You considered it a nuisance when Marshall's
13 renters moved furniture?

14 **A** Not every time, no. No. If we're dealing on the
15 inside, no; if you are dealing with the outside, yes.

16 **Q** You went on to say you've had issues -- you said
17 you told Marshall about the issue with renters moving
18 furniture sometime between 2010 and 2015?

19 **A** Sounds about right.

20 **Q** And because of your complaints, Marshall put pads
21 underneath the furniture to cut down on the noise?

22 **A** That is what I just said, yes.

23 **Q** And if they were playing music too loud, you
24 complained about that?

25 **A** Music too loud, then, yes, I would -- I only

RICHARD AQUINO - DIRECT EXAMINATION

1 complained about that one time.

2 Q You also let Marshall know when debris from
3 bushes landed on your balcony?

4 A Contrary to what we've heard earlier, Rich, the
5 maintenance guy, did not do those bushes. John
6 Crossland was doing those bushes. Yes, when he trimmed
7 those bushes, they were quite high. That wall is the
8 wall right above my unit, and debris would come off of
9 the shrubs, down the balcony, yes.

10 Q And you said the plants in the planters still
11 cause debris to fall on your balcony?

12 A To this day, yes.

13 Q I'll show Exhibit 3F and G. I'll show you the
14 exhibits directly, or you can look at the monitor.

15 A Can I get up?

16 THE WITNESS: Is that okay, sir?

17 THE COURT: Yes.

18 Q (MR. GRANTLAND) So is 3F, is this your unit
19 right here?

20 A That's my unit right -- that's my unit right
21 there. The plants I'm talking about are on here. That
22 is not arborvitaes. That is a different kind of plant.
23 So on two occasions, when they are trimming, they are
24 going to fall over. You can't stop it. But the
25 maintenance guy comes in and blows off the roof terrace

RICHARD AQUINO - DIRECT EXAMINATION

1 every week, and when he blows it off, it ends up on my
2 balcony.

3 Q Have you had the maintenance man come down to
4 your balcony to clean it up?

5 A I think he came down one time. I asked him to.

6 Q You asked Marshall's maintenance man to clean the
7 leaves, and he did?

8 A I'm sorry, I can't answer that.

9 Q You don't know whether Marshall's maintenance man
10 came down --

11 A It was a situation that occurred probably 20
12 years ago. My mind just isn't there, I'm sorry.

13 Q So it only happened once where you asked
14 Marshall's maintenance man to come --

15 A I would say this: If I had complained to
16 Marshall, he would send his maintenance man to clean it
17 up.

18 Q And Marshall was responsive to any problems you
19 had with his renters or his maintenance man, right?

20 A I never had any problem with response from
21 Marshall.

22 Q You never had a dispute with Marshall about
23 parking spaces over your motor home?

24 A Never.

25 Q The board never made you move your motor home

RICHARD AQUINO - DIRECT EXAMINATION

1 when it was parked in the overflow parking?

2 **A** I have a picture, photo, of my motor home and
3 where it is parked. You kind of need to see where it
4 is at.

5 Ask me the question, and I'll try to answer the
6 best I can without the picture.

7 **Q** The question is: Have you ever had a dispute
8 with Marshall or the board where you parked your motor
9 home?

10 **A** Never been a dispute where I parked my motor
11 home, no. And I parked it there for, roughly, 20 years
12 now.

13 **Q** One day in 2017, you said you were laying out in
14 the sun and water came dripping down from the
15 irrigation system above you?

16 **A** Water didn't come dripping down. The hose up
17 there on the irrigation system broke. I was laying on
18 my lounge at that time -- is the picture still up? If
19 I may? I was laying on my lounge, and my balcony is
20 PH1 -- if I can use that? I have a lounge here and
21 there, and something happened with the sprinkler
22 system. It broke, and it was flooding me down there.
23 Not just a little drip, I'm talking about flooding.

24 **Q** And correct me if I'm wrong, no one was running
25 or moving furniture that day?

RICHARD AQUINO - DIRECT EXAMINATION

1 **A** Sorry?

2 **Q** There were no renters moving or running
3 furniture, right?

4 **A** No.

5 **Q** No one was playing corn hole or playing the radio
6 loudly?

7 **A** No.

8 **Q** This day the water was coming down your balcony,
9 you called Marshall, correct?

10 **A** I'll fill in the sequence of events. I went
11 downstairs and met with our maintenance person. I said
12 I don't have Marshall's phone number, would you let me
13 use your phone, because I knew he had Marshall's
14 number. I called Marshall, and I said your sprinkler
15 system has broke -- and this is not a dribble. It is
16 flooding me downstairs. And I said, I'll go up and
17 shut the water off.

18 **Q** And you told him you were going to cut it off?

19 **A** I told him I was going to shut the irrigation
20 off. I had been in that building for a long time, so I
21 know most of the units very well. I have chased a lot
22 of leaks, so I know our plumbing and all. All I had to
23 do is go upstairs in the stairwell, and once you open
24 that door, as soon as you look up, that is where the
25 cutoff is for the irrigation.

RICHARD AQUINO - DIRECT EXAMINATION

1 I went up there, opened the stairwell. Our
2 maintenance guy went with me. I turned that thing off
3 and went down the stairwell and right back on my
4 balcony.

5 Q You called Marshall and said you were going to
6 cut his water off?

7 A I told him I would cut the water, the irrigation
8 system.

9 Q And is that what you did?

10 A That is exactly what I did.

11 Q Did Marshall ask you to let his maintenance man
12 do it?

13 A Marshall said he would call the police on me if I
14 went up there.

15 Q And you didn't ask him if you could go up there;
16 you told him --

17 A I did not ask Marshall if I could go up there,
18 no.

19 Q You told him you were going up there?

20 A I didn't feel at the time, or even today, that I
21 had a need to call Marshall and go up there to turn
22 that water off.

23 Q And do you remember if you called Marshall after
24 you cut the water off? Did you have any other
25 conversations?

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1 **A** I don't think so, huh-huh.

2 **Q** And do you know if the leak or water problem got
3 fixed after you cut it off?

4 **A** I didn't get wet until sometime later. I'm
5 talking about, oh, God -- talking about three, four
6 years later that another situation occurred with the
7 irrigation system.

8 **Q** So you and Marshall never discussed this water
9 leak again after that one incident in 2017?

10 **A** I don't think so.

11 **Q** After that accident, that is when you started
12 investigating his use of the penthouse --

13 **A** When Marshall made the statement he would call
14 the police on me, you have to understand, I'm a
15 business person. I'm retired, finally, but I kind of
16 had my share of contracts and documents, and I knew
17 what our master deed said. I don't believe at the
18 time, or now, that Marshall had the right to tell me I
19 couldn't go up there. It is a common element. I had a
20 purpose to go up there.

21 Now, ask me a question. I'm sorry.

22 **Q** You read the master deed, and you thought
23 Marshall was in violation of the master deed?

24 **A** That wasn't the question.

25 **Q** That is my new question. I get to ask questions;

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1 you get to answer.

2 **A** I know that. I don't know that I answered your
3 other question.

4 **Q** You did.

5 **A** Okay. All right.

6 **Q** You read the master deed, and you thought he was
7 in violation --

8 **A** I knew he was in violation of the deed.

9 **Q** Are you a lawyer?

10 **A** No, sir, I'm not.

11 **Q** But you say you know he's violating the deed?

12 **A** I know our master deed specifies common elements
13 and dwellings. It specifies that if you are not a
14 dwelling, it is a common element.

15 **Q** Did you ever address your concerns with Marshall
16 before your October 2018 e-mail?

17 **A** What concerns?

18 **Q** Concerns about his use of the balcony terrace?

19 **A** No.

20 **Q** Never talked to him about it?

21 **A** Let me think about that for a moment. No.

22 **Q** I can tell you what your answer was in your
23 deposition.

24 **A** Let's go to it.

25 **Q** Page 33, on Line 8. Question and answer.

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1 Question: "At what point did you -- did you
2 determine that, at least in your opinion, Marshall was
3 violating the master deed?"

4 What was your answer?

5 **A** "When I read Article 4 or 5, I believe John" --
6 oh, I'm sorry.

7 "When I read Article 4 or 5, I believe, John,
8 which is the definition of a common element."

9 **Q** "And did you address this with Marshall?"

10 **A** No.

11 **Q** And before 2018, did you ever put anything in
12 writing on how you thought Marshall was violating the
13 master deed?

14 **A** No.

15 **Q** Never even called -- picked up the phone to call
16 Marshall?

17 **A** No."

18 **Q** So let's look at Exhibit 12, which is your
19 e-mail. The exhibits are out of order.

20 This is Exhibit 12.

21 I'll ask Crawford to put it up on the screen.

22 Is that the e-mail you sent to members of the
23 board?

24 **A** This was sent to myself. The e-mail that went to
25 the board is actually -- starts at the third page of

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1 the document.

2 Q In your first complaint, it was about Marshall
3 putting Turtle tile down on the terrace; is that
4 correct?

5 A I specify that he put Turtle tile on the common
6 element, that is actually one of our roofs.

7 Q It is one of your roofs, but it's also the
8 terrace; is it not?

9 A Roof terrace, yes.

10 Q And this goes hand-in-hand with your complaint
11 about renters moving furniture?

12 A Goes hand-in-hand? Yes, because the furniture
13 issue was an issue because of that Turtle tile.

14 Q And Marshall's furniture being out on the terrace
15 was a nuisance to you when it is moved on the turtle
16 tile?

17 A When it is drug across the Turtle tile, it's very
18 noisy, yes.

19 Q Right. And you hear people run, walk, play corn
20 hole.

21 Now, do you know when Marshall put the Turtle
22 tile down?

23 A I have absolutely no idea.

24 Q Did you know he put it down in 1995?

25 A No idea.

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1 **Q** And before your complaint in 2018, do you know if
2 anyone else complained to Marshall about him putting
3 Turtle tile down on the Terence?

4 **A** I'm not aware of anything, no.

5 **Q** Do you know how much he paid for the Turtle tile?

6 **A** I have heard some numbers.

7 **Q** If the price that Marshall paid in 1995 was
8 \$20,000, would that surprise you?

9 **A** I have no idea how much he paid. I have never
10 seen a document how much he paid.

11 **Q** What happened to the Turtle tile Marshall had on
12 the terrace since 1995?

13 **A** It was removed when we had a roofing project
14 done.

15 **Q** And Marshall objected to it, didn't he?

16 **A** I don't think Marshall objected to it. He was
17 one of five board members. We unanimously agreed to
18 the contract that was awarded to Thompson Roofing,
19 which stated that the roof terrace was going to be
20 addressed -- would be addressed.

21 At that point, Quin Thompson, who owned Thompson
22 Roofing, had not come up with the appropriate product
23 to use on that area. But it was one of the line items
24 on the \$124,000 contract.

25 **Q** The Turtle tile was definitely removed, wasn't

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1 it?

2 **A** Turtle tile had been removed to put the new
3 surface on, yes.

4 **Q** And it was not put back down?

5 **A** No.

6 **Q** And the second complaint in your e-mail, you
7 complained that Marshall converted his roof to a
8 private atrium. Can you read what you wrote in that
9 e-mail, second paragraph?

10 **A** "There is a common element of the roof, of the PH
11 floor, that Marshall had converted to his private
12 atrium. I think that is what it would be called. The
13 actual property -- that is actually property of the
14 HOA. He has enhanced this area using Turtle tile, a
15 water fountain feature, furniture, and what looks to be
16 an arbor or trellis permanently attached to the
17 building structure. I don't know if Marshall had a
18 waiver or authorization to convert this common element
19 for personal use, but he is in violation of the master
20 deed and bylaw."

21 **Q** I'll show you Exhibit 13. Is this the atrium you
22 said Marshall converted to his private use?

23 **A** This is not the atrium I'm talking about in this
24 document, no.

25 **Q** What atrium are you talking about in your

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1 document?

2 **A** I don't have a picture of it here. The atrium
3 refers to the water feature, arbor or the trellis -- is
4 this picture up?

5 **Q** Yeah. This is a more recent picture. But this
6 is the area you are talking about; are you not?

7 You can stay there. I mean, you can go sit down,
8 Mr. Aquino.

9 **A** Turn it this way so I know I'm looking at the
10 same thing.

11 **Q** It is the same thing you have.

12 **A** Yes or no; is it the same picture?

13 MS. CRAWFORD: Yes.

14 **A** Ask your question now.

15 **Q** Is this the area that you said he converted into
16 his own private atrium?

17 **A** This is not what it looked like when I wrote this
18 e-mail.

19 **Q** That's not my question. This is the area you
20 said he converted to his own private atrium?

21 **A** This is the space that he converted to his own
22 private atrium.

23 **Q** And this is the space that you said was a common
24 element, and he violated the master deed by doing
25 whatever he did in this little atrium here; is that

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1 right?

2 **A** I'll specify, yes. The water feature -- most of
3 this is gone, by the way. The water feature is against
4 the rules and regulations of our master deed.
5 Marshall -- I was wrong about when I wrote the
6 document --

7 **Q** Say that again?

8 **A** Marshall does own this space as part of his
9 property, but he doesn't own the walls, nor do I own
10 the walls of my balcony. That is part of the building.
11 So the atrium is sitting on part of the building, not
12 what he owns -- excuse me, the water feature, if you
13 can see it.

14 We had a problem with that water feature leaking,
15 because behind that water feature is our south
16 stairwell. We would constantly have a leak in there,
17 and it was coming from the water feature.

18 What I don't see in here, which I know we have
19 pictures of somewhere, is on this right-hand side where
20 they have that glass wall, there was a big arbor in
21 there that had all kinds of plants and stuff growing on
22 it. That is left out of here. That is what I was
23 talking about when I said "arbor" in here.

24 Now, on our document -- or drawings, it refers to
25 this area as a "dining court." The reason I used the

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1 wording "atrium" is or "arbor" is because in Marshall's
2 VRBO website, he specifies "atrium." That's what he
3 called it. I'm just using his words.

4 Q This is an area within the square footage of the
5 penthouse; is it not?

6 A I think based on the calculations I saw, this
7 area is within the square footage of the penthouse.

8 Q How do you get into the atrium?

9 A Through the sliding glass door.

10 Q And you said you can drop from the roof; do you
11 remember saying that?

12 A I probably did, yes.

13 Q You were being sarcastic?

14 A No, I wasn't being sarcastic.

15 Q You were or weren't?

16 A Look it up and give me the definition.

17 Q Do you want to look at the definition of
18 "sarcastic"?

19 A Show me in my deposition.

20 Q Go to Page 44, Line 22, and you can read Line 25,
21 the answer.

22 Question: "How do you get into this except
23 through the rooftop penthouse itself? Is there any
24 other way to get into this atrium?"

25 A "You can drop down through the roof."

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1 I did say that.

2 Q You did say that. You were being sarcastic,
3 weren't you?

4 A All right. All right. I'll use your word.

5 Q Okay. Well, why did you report Marshall to the
6 board that he's converted this area and violating the
7 deed when it is in his -- only way you get into that is
8 through his penthouse, and it's in the square footage
9 of the penthouse?

10 A Didn't I just comment on the fact I made a
11 mistake?

12 Q You made a mistake.

13 Did you call Marshall and ask him about that
14 before you sent out this e-mail?

15 A No.

16 Q Number 3, we talked about this. It really
17 bothers you if Marshall's renters move furniture, plays
18 corn hole, and/or kids run on the terrace. In your
19 words, they are a nuisance to you; is that correct?

20 A Is that something I --

21 Q Paragraph 3 of your e-mail.

22 A Oh, I'm sorry. "Common element, which is in
23 violation of the master deed and bylaws," I said that.
24 "This has created a nuisance for owners of PH2 and PH3.
25 Articles" --

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1 **Q** Stop there. Who is PH2?

2 **A** I'm PH2.

3 **Q** So why didn't you just say yourself? Why didn't
4 you say nuisance for me?

5 **A** Because I had a complaint from PH3.

6 **Q** Who is PH3?

7 **A** Marshall Sullivan.

8 **Q** Is he coming to trial?

9 **A** No. So that's hearsay, so I don't think it is
10 admissible.

11 **Q** Right.

12 So read on. You said he put -- really, the only
13 person that we know who's complaining is PH2, that is
14 also known as Mr. Aquino?

15 **A** The only person that could be legally complaining
16 in this document to this Court would be me.

17 **Q** Right. You are PH2?

18 **A** I'm PH2.

19 **Q** And you said he was violating the master deed and
20 bylaws?

21 **A** That is what I said.

22 **Q** And nuisance -- and Marshall has installed all of
23 his furniture on a common element of the HOA?

24 **A** That's what he did. I think he testified to 23
25 pieces of furniture out there.

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1 **Q** That's right. Twenty-three pieces of furniture
2 that were moved in 2020; is that correct?

3 **A** I didn't do the count. I didn't count it, but I
4 understand it was 23 pieces.

5 **Q** We'll get back to that.

6 So he's a nuisance to you for having furniture
7 that gets moved; is that right?

8 **A** I'm going to answer that, yes.

9 **Q** When you cut off his water without his
10 permission, did you think you were a nuisance?

11 **A** I didn't need his permission.

12 **Q** I mean, Mr. Aquino, have you ever thought that
13 your actions against Marshall might be a nuisance to
14 him?

15 **A** He never complained to me about it.

16 **Q** Now, you go on in Paragraph 4. He doesn't
17 complain -- he's always been a good neighbor to you,
18 hasn't he?

19 **A** I've been a good neighbor to that whole building.

20 **Q** And Marshall was a good neighbor to you?

21 **A** He was a good neighbor to the whole building, as
22 far as I know.

23 **Q** And you said Marshall put up signs in stairwells
24 saying: "No entry. Do not enter." In your
25 deposition -- do you know when signs were put up or who

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1 put them up?

2 **A** Oh, we're on my deposition?

3 **Q** No. No. Looking at No. 4. I'm still going
4 through your e-mail. I'll let you know when we finish
5 going through your e-mail. Look at No. 4.

6 **A** I have a hard time. So I'll say, Yes, I
7 commented about the fact that Marshall put up signs on
8 his -- on the stairwell doors, which are a common
9 element, that said: "No entry. Do not enter." Call
10 such-and-such. One side of the door said: "Danger.
11 Do not enter."

12 Did Marshall put them up? I don't know if he put
13 them or not. They showed up.

14 **Q** Why did you blame him, then?

15 **A** Wording. Just plain wording.

16 **Q** What do you mean?

17 **A** I just chose to use the word "Marshall." They
18 didn't show up by themselves, so someone instituted it.

19 **Q** Do you know when the signs were put up?

20 **A** No. No. That is a guess, but it's been quite
21 some time.

22 **Q** Look at Paragraph 5 of the e-mail.

23 **A** Okay.

24 **Q** What are you saying in Paragraph 5?

25 **A** You want me to read it?

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1 **Q** Please.

2 **A** "Marshall has installed keypad locks on the north
3 and south stairwell door leading to the rooftop
4 penthouse -- or TPH for short -- which is in violation
5 of the master deed and bylaws. Here again, those doors
6 are a common element, and the staircase is a common
7 element."

8 So the doors are a common element. Originally,
9 they were regular door locks keyed to the same key as
10 the other utility doors in Shoreham Towers. That is to
11 say my key that opens the stairwell door at the bottom
12 for exiting was the same key that used to fit that lock
13 up there in the stairwell door, until the keypads were
14 put on.

15 **Q** Do you know if Marshall installed the keypad
16 locks on the --

17 **A** He was present at the time, I think. I can't say
18 that he physically did that, but I imagine he
19 instituted it.

20 **Q** This is like the signs. You have no information
21 that Marshall put up signs. You have no information
22 that he put in the keypad lock.

23 **A** I have no information to the contrary also.

24 **Q** Let me go to Page 52 of your deposition, please.
25 I'll read the question on Line 21, and you read your

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1 answer on 24.

2 Question: Okay. No. 5, Marshall has installed
3 keypad locks. Do you know for a fact that Marshall
4 installed keypad locks and when he installed them?"

5 What was your answer?

6 **A** My answer is: "I cannot tell you if Marshall
7 physically did that himself. There is some
8 documentation in our minutes that will give you the
9 history behind that, but I don't recall what all that
10 is."

11 **Q** So, again, you said -- you blamed Marshall for
12 putting in the key locks, but the truth is you don't
13 know who put in the keypad; is that correct?

14 **A** I'm going to say Marshall had to be involved in
15 it. I mean, who would have done it?

16 I shouldn't ask you questions, I'm sorry.

17 **Q** You shouldn't. But in your deposition, you said
18 you didn't know. All I'm asking for is the truth.

19 **A** I don't know who physically put those keypad
20 locks on there, no.

21 **Q** But you blamed Marshall anyway; is that right?

22 **A** Yeah. Yeah. I blamed him, because they showed
23 up.

24 **Q** Shouldn't you get your facts straight before you
25 blame someone for doing something that you think is

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1 wrong?

2 **A** I think I have my facts pretty well straight.

3 **Q** Let's go to No. 6.

4 **A** On the e-mail?

5 **Q** Of your e-mail.

6 No. 6 is a complaint that Marshall had the
7 elevator button changed to a keylock which caused the
8 HOA problems. Did I say it right?

9 **A** Keep reading.

10 **Q** No, you read it. Did I read it right?

11 **A** The problem with this is you are dealing with the
12 wrong revision of the e-mail. That has been retracted.

13 **Q** What do you mean?

14 **A** I retracted it, and I sent it back out. There is
15 another e-mail that supersedes this where I retract
16 that and told you why -- didn't tell you, but I told
17 whoever I sent it to.

18 **Q** Did you send out -- is this an e-mail with your
19 words?

20 **A** This is an original e-mail that got revised. The
21 revision is what you should look at.

22 **Q** In your original e-mail, you sent it to all of
23 the board, right?

24 **A** Yes.

25 **Q** And you sent it in October of 2018?

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1 **A** October 1st of 2018.

2 **Q** In your original e-mail that you sent to the
3 board in October of 2018, what did you say about
4 Marshall and the elevator in Paragraph 6?

5 **A** Using my wording, again, I'll read it to you:

6 "Marshall had the tenth floor elevator button
7 changed to a keylock, which has caused the HOA problems
8 on numerous occasions" -- and it has.

9 "The south elevator should flow freely to the
10 elevator lobby on the tenth floor, which is a common
11 element that has been defined.

12 The entry to the rooftop penthouse is via locked
13 entry door just like the rest of the units at Shoreham
14 Towers. On his FRBO" -- that is that site, and
15 actually it is VRBO -- Marshall's site -- "in many
16 references promotes 'your private elevator access key
17 to the entire tenth floor' -- 'your private elevator
18 access key to the entire tenth top floor.'"

19 **Q** And you were wrong about this allegation, weren't
20 you, Mr. Aquino?

21 **A** I revised this, yes.

22 **Q** You were wrong?

23 **A** I revised it.

24 **Q** Right or wrong?

25 **A** I was right when I wrote it, because that is what

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1 I thought.

2 Q But was the information you gave out to the board
3 about Marshall changing the elevator, was that correct?

4 A After I talked to my daughter, yes. My daughter
5 informed me, No, Daddy, that has been there.

6 Q The tenth floor elevator button has been in place
7 since the building was constructed in the '80s -- or
8 key.

9 A It's been there from the very beginning. The key
10 has been there since the very beginning. There also
11 has been a tenth floor button since the very beginning
12 of the building.

13 Q And you go on to say in your e-mail -- so, again,
14 this is like the signs and the keylock. You said a lot
15 of things in this e-mail that weren't correct; would
16 you agree?

17 A I said a lot of things that were correct.

18 Q But you said a lot of things that were not
19 correct?

20 A I said more things that were correct than
21 incorrect.

22 Q If you don't want to agree with what you said was
23 incorrect, that's fine.

24 A I will agree that what I said was incorrect.

25 Q You go on to say in your e-mail that you and your

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1 wife used the terrace many times in the past, your kids
2 have used it, and you think your grandchildren have a
3 right to use it.

4 Let me ask you about that. Do you see that in
5 your e-mail?

6 **A** I don't need to. I know it's in there.

7 **Q** Now, you testified in your deposition that you
8 went up to the terrace a total of six times.

9 **A** If it's in my deposition, that is probably
10 accurate.

11 **Q** And in this e-mail, you tell the board -- where
12 you're criticizing Marshall -- that you and your wife
13 have been up to the terrace "many times." Which one is
14 the truth?

15 **A** Six. Many. I mean, it is more than one.

16 **Q** So it's the same; six times, many times?

17 **A** Many.

18 **Q** You also said your kids went up there?

19 **A** Yes. They have been up there more than I have.

20 **Q** What did your kids do when they went up to the
21 terrace?

22 **A** They played around, for one thing. But let me
23 also say, Bobby Griffin, the developer of the building,
24 was a war veteran, very proud person. He was confined
25 to a wheelchair. He was getting Meals on Wheels. They

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1 would bring it to the lobby of our building, and my
2 kids would get his Meals on Wheels and take it up to
3 him. So they have been up there plenty of times.

4 In fact, my older daughter -- she's in the
5 medical field -- she would go up there on occasion to
6 just check on Bobby.

7 **Q** Go to Page 61 of your deposition. Start at
8 Line 18, the question, and your answer on Line 22.

9 Question: "So let me stop you there. Have
10 your kids -- and I assume your kids are all grown --
11 have your kids gone up to the rooftop terrace to lay
12 out in the sun?"

13 What was your answer?

14 **A** "I can't tell you what they did when they went up
15 there."

16 I can tell you the times they took Bobby's meals,
17 other than that.

18 **Q** How often have your grandchildren been up there?

19 **A** My grandchildren -- you have to understand, my
20 grandchild is now seven years old, so he was probably
21 four years old when I wrote this. So my grandchild has
22 not been up there.

23 **Q** Later on, you say that "Marshall created a
24 problem for the owners of Shoreham Towers"?

25 **A** Where are you at on that?

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1 Q Same e-mail.

2 A What part?

3 Q Towards the end. Look at the separate page. You
4 talked about your wife, and you go on to say that --

5 A You are off the numbered documents?

6 Q No. Still on the e-mail.

7 A But you are off the numbers?

8 Q Yeah.

9 MS. GOLDING: Page 4; not the second page.

10 MR. GRANTLAND: I'm sorry, Page 4.

11 Q (MR. GRANTLAND) You claim he has created a
12 problem for the owners of Shoreham Towers?

13 A I need to see that. John, will you point that
14 out to me? I'm sorry, I'm having a hard time seeing
15 that -- or can you point it out for me?

16 MS. CRAWFORD: Right there.

17 Q (MR. GRANTLAND) Fourth paragraph. Last sentence
18 of the last paragraph that starts with "in many
19 places."

20 A In many places on his" -- again, that was an
21 error, I said FRBO -- website, Marshall -- no, I'm
22 sorry.

23 "I read in many places on his website, Marshall
24 heavily advertises this common element as 'your
25 2400-square-foot outside private sundeck with

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1 wrap-around terrace.' This is not his private property
2 as claimed, and it is a common element to the HOA, and
3 thus is open to any HOA member's use.

4 By his actions, Marshall has created a problem
5 for the current owners of Shoreham Towers due to
6 restrictive access to common elements."

7 Q You said in your e-mail to the board that
8 Marshall has created problems for the owners of
9 Shoreham Towers?

10 A Correct.

11 Q And you are the only owner who has a problem with
12 Marshall?

13 A I would have to introduce hearsay, so I don't
14 think I can do that.

15 Q You're the only owner who has -- has anyone had
16 any more complaints than you?

17 A I have had complaints from owners about having to
18 call Marshall -- or the management company to get
19 permission to have a maintenance guy work on their HVAC
20 system.

21 Q Has any homeowner had more complaints against
22 Marshall than you?

23 A No.

24 Q You go on to say: "Marshall did this for his own
25 personal financial gain and enrichment at the expense

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1 of the HOA."

2 Do you want me to show you?

3 **A** Well -- I know where it's at.

4 **Q** Do you see it?

5 **A** No.

6 **Q** It's in the paragraph that begins: "The MD and
7 BL do not give Marshall a right" --

8 **A** "The master deed and bylaws do not give Marshall
9 the right to let his paying guest use a common element,
10 but at the same time prohibit a unit owner of Shoreham
11 Towers access to that common element."

12 Our master deed and bylaws spell that out pretty
13 clearly. You cannot restrict access to a common
14 element.

15 "Marshall's" -- I again give the wrong website --
16 "website states the entire private tenth floor is for
17 his renters only. Marshall did this for his own
18 personal financial gain and enrichment at the expense
19 of the HOA."

20 **Q** What has Marshall done that was an expense to the
21 HOA?

22 **A** The HOA maintains that thing up there. We've had
23 problems historically with planters up there.

24 **Q** What has Marshall done that was an expense to the
25 HOA?

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1 **A** Let's see....

2 **Q** We'll do this. If you can turn to Page 66 to
3 your deposition.

4 **A** No. No. Let me read this first.

5 This is nitpicking on this one, but, yes, we had
6 a couple times where the elevator key -- the people
7 that rented would take the elevator key and not take it
8 all the way back and shut the elevator down. But, you
9 know, I'm picking on something like that. That is not
10 Marshall's fault, just someone didn't do it right.

11 **Q** Who was being nitpicky; me or you?

12 **A** I'm being nitpicky on that one.

13 **Q** Okay. Just to be clear.

14 So go to Page 66 of your -- because you address
15 that expense question in your deposition.

16 **A** 56?

17 **Q** No, 6-6.

18 **A** All right.

19 **Q** Okay.

20 Question: "And how has that been an expense to
21 the HOA?

22 And what was your answer?

23 **A** The answer is a question.

24 "How it's been expense to the HOA? Expense may
25 be an incorrect word to use. How about the

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1 "inconvenience" of the HOA?"

2 Q And I say: "Okay."

3 A You said: "Okay."

4 "I use that word interchangeably. Expense
5 doesn't necessarily mean money. It could mean
6 inconvenience."

7 So I think I specified that on the line above it.

8 Q And after you sent this e-mail in October of
9 2018, the board did not put any restrictions on
10 Marshall's use of the balcony terrace, did they?

11 A I wasn't on the board at that time, so I'm not
12 sure. I'm going to answer: I don't think they did,
13 but I wasn't on the board at that time.

14 Q You sent an e-mail to the management company
15 asking them about what actions had been taken to make
16 Marshall comply with your request; did you not?

17 A When I did send that e-mail?

18 Q November of 2018.

19 A Let me see a copy of it.

20 Q I'll show it to you. This is Exhibit 15.

21 MS. GOLDING: John, I think that is the one that
22 was cut off.

23 Q (MR. GRANTLAND) Here you go. I'll hand you
24 Exhibit 15.

25 A This is to the management company for the

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1 Shoreham Towers Homeowners Association. I copied the
2 board of directors at that time, to include Marshall.
3 On November 14, I was on the board at that point. I
4 was not on the board when I sent the original e-mail in
5 October.

6 Q So you got on the board --

7 A Actually, the original e-mail was sent in
8 September.

9 Q I think you said you sent one to yourself, and
10 then sent it again, something like that?

11 A I had been known to send an e-mail to myself.

12 Q So in November, correct me if I'm wrong, you sent
13 an e-mail to the management company about your concerns
14 about Marshall's use of the balcony terrace?

15 A I'll read it: "The e-mail below was sent to the
16 board" -- okay, that would have been the original
17 e-mail.

18 "The e-mail below was sent to the board of
19 Shoreham Towers and to the management company, Atalaya,
20 on October 1st" -- and this is dated September 30th
21 -- "with the exception of being asked to clarify an
22 e-mail address, to date I have not received -- today I
23 have received no response or update on the status of
24 these violations. I do not have a copy of the
25 agreement between Atalaya and Shoreham Towers, but I

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1 would think that in the agreement there would be
2 wording stating that the management company would
3 enforce our governing documents.

4 To my knowledge, there has been no action taken
5 to require the owner of the rooftop penthouse to bring
6 the issue into compliance. I would appreciate a status
7 update as to where this issue stands and what actions
8 have been taken."

9 Q So why did you send this e-mail to the management
10 company?

11 A Because no one responded to my original e-mail.

12 Q And you wanted them to take action against
13 Marshall?

14 A I wanted to know if there was any progress. I
15 think I stated there was no response.

16 Q You wanted the management company in '18 to
17 take -- to remove the Turtle tile, remove his
18 furniture, take down the signs, remove the keylock, all
19 of that; is that correct?

20 A I don't think I said that anywhere.

21 Q You just said that you wanted --

22 MS. GOLDING: Your Honor, Mr. Grantland is
23 interrupting the witness.

24 THE COURT: Let him answer.

25 A Thank you. I think what I'm asking here -- I

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1 don't think, I know -- is has there been any progress
2 made on the issues that I put before the management
3 company.

4 **Q** (MR. GRANTLAND) And you also said: "I do not
5 have a copy of the agreement, but the wording would
6 state that the management company will enforce our
7 governing documents."

8 I mean, you're asking the management company to
9 do -- to follow up on the complaints you made and take
10 action; isn't that right?

11 **A** No. I'm asking for a status update. I'm asking
12 has anything been done? Atalaya, have you done
13 anything about the complaints? I don't use the word
14 "complaint."

15 **Q** But that is what it was, right?

16 **A** I don't use that word. I had a different word,
17 John.

18 **Q** Let's --

19 **A** The issues.

20 **Q** I'll call you Mr. Aquino, and you call me
21 Mr. Grantland, okay.

22 After the lawsuit was filed in 2019, I'll ask you
23 about things that was done -- do you remember the
24 lawsuit being filed in 2019?

25 **A** Talking about the summons?

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1 **Q** Yes.

2 **A** Yes.

3 **Q** And, as you know, the issue in this case is
4 Marshall's use of the balcony terrace, correct?

5 **A** Correct.

6 **Q** Is it common, or is it private, right?

7 **A** That's what we're here to determine, I think.

8 **Q** Right.

9 Now, in 2020, while this lawsuit was pending, you
10 and your board had Marshall's furniture taken off of
11 the terrace, didn't you?

12 **A** When?

13 **Q** May of 2020.

14 **A** May 2020? Let's see, I have to think about the
15 dates here. May 2020. Furniture was taken off of that
16 rooftop more than once. I'm sorry I'm stumbling, but
17 we're going back quite a few years, and a lot of things
18 have happened.

19 It was taken off that time -- I think it was --
20 was that the time it was taken off? I have to ask you
21 a question.

22 **Q** No.

23 **A** I need to know the time frame that we put this in
24 storage, because it has a basis on what you are asking
25 me.

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1 **Q** Again, you just answered part of my question.
2 You removed this furniture more than once?

3 **A** Yes.

4 **Q** And in May of 2020 is when you removed it all? I
5 think you first removed the high-back chairs, and then
6 you later removed all of the furniture; is that
7 correct?

8 **A** I can only speak as best my mind will recollect.
9 It was three times the furniture was taken off. We
10 took the furniture the first time after the gentleman
11 from the safety consult, Brian -- I forget the name,
12 but a big safety consulting firm that deals all over
13 the U.S. and primarily the southeast. He was doing a
14 project at Dolly Parton's place, Pirateland, or
15 venture, or whatever. He was doing a project there.
16 He is an OSHA specialist. We got him to come in and
17 look at the rooftop.

18 **Q** Let me ask you --

19 MS. GOLDING: The witness is trying to finish.

20 THE COURT: He can finish.

21 THE WITNESS: Thank you.

22 **A** We brought him in. We got -- it was suggested,
23 because we had a safety issue up there at that point.
24 It was suggested we bring a safety consultant in. Our
25 counsel gave us his name and phone number. I was on

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1 the board. I placed the initial call to Brian. I
2 can't remember his last name. I placed the initial
3 call and asked him could he survey our building. He
4 didn't have time to do the building, but he said I'm
5 doing a project down at Pirateland, or whatever it is
6 -- it's not Pirateland -- Pirate Voyage or something --
7 Dolly Parton's place. He said you guys are just right
8 up the road. I can come down there, and I can do the
9 inspection of the rooftop.

10 So Brian came in there. Based on what he gave
11 us, the results he gave us, we removed that high-back
12 furniture.

13 Q Let me stop you there.

14 A Yeah. You can stop me there, as long as I can
15 finish.

16 Q Yeah. This is after the lawsuit was filed?

17 A I don't know, I'm sorry.

18 Q Do you need me to show you his report?

19 A If you say it was after the lawsuit was filed,
20 then, yes.

21 MS. GOLDING: Go ahead and show him Mr. Doland's
22 report.

23 MR. GRANTLAND: He's your witness, but....

24 A I'll take your word for it, but show it to me.
25 There was so many delays with this Covid thing. I'm

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1 getting old.

2 Q Do you recall Mr. Doland coming to Shoreham
3 Towers in December of 2019?

4 A I was on the road, actually. Tony Giovino held
5 the interface with Doland.

6 Q And that was in December 2019, and that's after
7 we filed the lawsuit in October of 2019?

8 A I don't have a copy, so I don't know.

9 Q If I tell you we filed the lawsuit in October of
10 2019, would you disagree with me?

11 A I'll take your word for it.

12 Q And if Mr. Doland said he came to Shoreham Towers
13 in December of 2019, would you have any reason to
14 disagree with that?

15 A What now?

16 Q Would you disagree with the date that Mr. Doland
17 came?

18 A I'll take your word for it. I don't think I
19 will.

20 MS. GOLDING: Here you go.

21 Q In fact, he did a report December 17, 2019?

22 A Okay.

23 Q And we filed our lawsuit in October of 2019?

24 A That report came afterwards.

25 Q That's right.

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1 MS. GOLDING: Are you going to show him the
2 report?

3 MR. GRANTLAND: No.

4 A I'm sorry. I had two people talking.

5 Q His inspection came before the first of --
6 correct me if I'm wrong, his inspection was in December
7 of 2019?

8 A Okay.

9 Q Is that right?

10 MS. GOLDING: If you would show him the report,
11 he can agree with you.

12 MR. GRANTLAND: I have Mr. Doland's deposition
13 saying he came on December 4, 2019.

14 A And your question?

15 Q I'm making sure we're on the same page.

16 A Did Mr. Doland come on that date? If he said he
17 did, he did, but I wasn't here. I was traveling.

18 Q But all of this happened after the lawsuit
19 happened?

20 A The dates you are giving me is after the lawsuit
21 was filed.

22 Q You asked him to survey the whole building?

23 A When I called Brian, I asked him that question.
24 He said he didn't have time to do that. He could come
25 by. He said I have enough time to carve out to do the

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1 rooftop.

2 Q And the reason you had him do the rooftop is
3 because the rooftop owner filed a lawsuit against you?

4 A No. Because our counsel said we need to get --
5 use the right word here -- a safety consultant.

6 Q So Ms. Golding told you to?

7 A She gave us the number.

8 Q This was after we filed suit?

9 A I'm assuming, yes. Yes.

10 Q That was in December of 2019. A lot of water
11 passed under the bridge. Has Mr. Doland come back to
12 do any other surveys of the building?

13 A He gave us the report. I don't know the date.
14 What is the date?

15 Q December 17.

16 A He gave us a report the date that Mr. Grantland
17 just mentioned. And in that report, he was -- the
18 high-back furniture was an issue because it violated
19 OSHA law. What it amounts to is this high-back
20 furniture was brought in in 2018. That was new
21 furniture. It was high furniture, too. What the issue
22 was, according to Mr. Doland, is that --

23 MR. GRANTLAND: I object to him testifying what
24 he said Mr. Doland said. He has been deposed, and his
25 deposition will be played.

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1 THE COURT: I agree. Right. Just ask another
2 question.

3 Q So you removed the high-back furniture when?

4 A We removed the high-back furniture based on
5 Mr. Doland's letter -- I don't know.

6 Q Okay. But you all removed it?

7 A We removed it based on the fact Mr. Doland said
8 it needed to be moved.

9 Q You didn't tote it off the balcony, but it was --

10 A It was contracted out.

11 Q You supervised the removal of the furniture?

12 A I don't remember if I did that or the management
13 company did it.

14 Q But in May 2020 -- I'm trying to move along. In
15 May 2020, you removed it all?

16 A What?

17 Q Removed all of the furniture.

18 A The furniture was removed, and then in the middle
19 of the night, it was put back up there. And there was
20 a time when, yes, we removed all of the furniture.

21 Q All 23 pieces?

22 A I didn't count, but that's what I heard.

23 Q Were you present when the furniture was being
24 removed?

25 A I was there for that instance, yes.

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1 **Q** And did you pick up chairs?

2 **A** No.

3 **Q** But you were directing all of the furniture --
4 all of Marshall's furniture to be removed off the
5 balcony?

6 **A** There were six gentlemen that came in from a
7 service company. We went up the stairwells, went out
8 on the roof terrace, I pointed to the furniture, this
9 is the furniture that needs to be removed. At that
10 point, they already brought up -- you saw the picture
11 of that yellow-looking pool furniture, those were
12 already sitting there. I said, That's the furniture
13 that needs to be removed, and this furniture needs to
14 be put over there.

15 **Q** Let me make sure we're clear. You didn't own any
16 of this furniture that was removed?

17 **A** No. No. No.

18 **Q** The board did not own any of the furniture that
19 was removed?

20 **A** No.

21 **Q** All of the furniture that was removed, 23 pieces,
22 was owned by Marshall?

23 **A** I'm going to have to assume he owned it. We
24 didn't own it.

25 **Q** Right. It got there somehow?

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1 **A** It got there somehow.

2 **Q** And how many years -- you said the high-back
3 chairs got there in '18. Do you know how many years
4 each of those 23 pieces had been out on the terrace?

5 **A** I can tell you it was a lot less than 23.
6 Initially -- the first time I ever went up there is
7 when Bobby Griffin moved there, and I think it was
8 about two pieces of furniture out there. When Marshall
9 took it over, early on the most I saw was four, five
10 pieces, and it started to grow year after year. That
11 was part of the reason -- I'll use your word -- a
12 "complaint."

13 At what point -- at what point does the liability
14 of that issue up there -- because it is a liability to
15 the HOA. It is a common element. At what point does
16 he stop making changes up there? He didn't own it.

17 **Q** That is your opinion, isn't it?

18 **A** That's the opinion of our master deed.

19 **Q** That is your opinion.

20 **A** That's the opinion of the master deed.

21 **Q** The master deed doesn't speak.

22 MS. GOLDING: Your Honor, arguing with the
23 witness.

24 **Q** Did -- your lawyer didn't even tell you to remove
25 the furniture --

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1 MS. GOLDING: Your Honor, that is highly
2 inappropriate.

3 THE COURT: You can't ask that. Move on.

4 MR. GRANTLAND: I know Mr. Roy will speak to it.

5 Q In May of 2020, when you all were there having
6 the furniture removed, Marshall had renters out there;
7 did he not?

8 A I think he had renters at that point, yes.

9 Q And you told the renters that this furniture was
10 being removed; is that right?

11 A I don't remember my exact words, sorry, but, yes,
12 I'll allude to that.

13 Q You made the renters get up off the furniture
14 they were sitting in because you were all taking it
15 away?

16 A I wouldn't use the word "made." I don't make
17 people do stuff.

18 Q But the renters had to get up so you can remove
19 furniture from the terrace?

20 A Remove furniture from the terrace and put the
21 furniture that was going to be out there back. Someone
22 probably had to get up, yes.

23 Q Mr. Aquino, in May of 2020 -- we filed a lawsuit
24 October of 2019. We had Covid in 2020. Why in May of
25 2020 did you and the board decide to take Marshall's

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1 furniture away like you won the case?

2 **A** That's an easy one to answer. We -- we -- the
3 high-back furniture had to come back into play now. I
4 tried this earlier, so stop me if I'm wrong. The
5 high-back furniture was against the OSHA laws.

6 If you could envision this is the railing of that
7 balcony. Could you put that picture up, because it is
8 going to really help, the one that has a picture of the
9 balcony?

10 MR. KREBS: (No verbal response.)

11 **A** Mr. Grantland, can you put that picture back up?

12 **Q** The one of your balcony?

13 **A** No. No. Just shows the rooftop balcony.

14 **Q** Which one do you want, Mr. Aquino?

15 **A** Something that will show the bump-out.

16 **Q** How about 3A?

17 **A** No, sir. I'm sorry. I need to see this area
18 here.

19 There is a very valid reason why that furniture
20 was removed. You had a picture with the high-back
21 furniture against that railing that the lady is
22 sitting --

23 **Q** No, that was not my picture. That was the
24 defendants' picture, but I know what you are talking
25 about.

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1 **A** Are we allowed to see that?

2 **Q** It is not one of my exhibits, so I'm not sure.

3 **A** I'll give you an example.

4 **Q** Just tell me your point so I can move on.

5 **A** I'll stand up. That picture you saw, it had that
6 railing and that bump-out. These high-back chairs were
7 sitting up about this high, and this will get to the
8 OSHA laws, and the railing is 42 inches. To get into
9 those chairs, you had to climb up this way and put your
10 center of gravity way above that railing. If you had
11 slipped at all, believe me, you could go over that
12 railing, and you are 10 stories up and the bottom is
13 concrete.

14 Not only that, sitting like this, if you were to
15 lean up and someone came in behind you and kind of
16 jerked that chair like that, you could have the
17 potential of going over that railing because your
18 center of gravity is so much higher than the railing,
19 and that is against the OSHA laws.

20 MR. GRANTLAND: Your honor, I'm going to ask that
21 he stop talking about the OSHA laws. He's not a
22 lawyer. That is not what the expert even said.

23 **A** We started to see that every time his maintenance
24 guy would move the furniture back to the tables, his
25 renters moved the furniture back to the railing. That

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1 was spotted many, many times. In fact, we have
2 pictures of those. They kept moving it to the rails.
3 I asked the maintenance guy, Rich, Can't you keep that
4 furniture back there. He said, There's no way we could
5 keep this furniture off this railing. And I think --

6 **Q** I ask you not to give any hearsay of anybody
7 else.

8 MS. GOLDING: He's a witness. Mr. Jones is a
9 witness.

10 MR. GRANTLAND: But it's hearsay right now.

11 MS. GOLDING: No, Your Honor.

12 **A** Okay. We have many pictures --

13 THE COURT: You can answer the question, just
14 don't say what somebody else said.

15 **A** Sorry. We had pictures of that furniture and
16 people sitting up there next to the railing. That was
17 a danger. The board made a decision at that time that
18 if we couldn't keep the furniture off of the railing,
19 because of the liability issue -- understand, now, our
20 position is that we are liable for that area up there,
21 insurance wise. I don't know the Mr. Griffin has a
22 separate policy.

23 The decision was made at that point if they can't
24 keep the furniture off there, we're going to remove the
25 furniture. That is the reason why the furniture was

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1 removed that time.

2 Q I understand your concern about the safety of
3 others. Are there high-back chairs on balconies on any
4 of the other 39 units?

5 A Yes.

6 Q Are you concerned about the safety of the people
7 that use the high-back chairs in the other 39 units?

8 A Very concerned. I'm going to use the wrong word
9 here, but we're kind of under a gag order. We're not
10 supposed to be talking about this.

11 Two issues come to play. One, those are private
12 balconies. We have no control over those private
13 balconies.

14 The other issue is we are under a gag order. My
15 preference would be to, frankly, have distributed this
16 state report to the organization and let these people
17 know, because I think there are two or three of them
18 that have high-back furniture. But we're not allowed
19 to tell them, and it is private property anyway.

20 Q And since 2019, you haven't invited Mr. Doland
21 back to do any other safety reports for the benefit of
22 everyone else?

23 A No, sir.

24 Q And so -- I appreciate your concern about safety
25 of others with high-back chairs, but what about the

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1 rocking chairs?

2 **A** I sat in the high-back chair. I had a lot of
3 concern for that, and so did he.

4 **Q** What about the rocking chairs you had removed?

5 **A** Can't speak for it. What is your question?

6 **Q** What is the safety reason of removing the rocking
7 chairs?

8 **A** We removed the rocking chairs, we removed the
9 table, we removed the lounge -- we removed all of it.

10 **Q** I know. What was the safety reason for removing
11 the rocking chairs?

12 **A** That wasn't a safety issue. That was an issue of
13 who owns that furniture. It was not the HOA furniture
14 like our pool is. Our pool has HOA furniture. This
15 was his private furniture on, what we consider, common
16 elements. We're liable for that.

17 **Q** You considered that in 2019 or 2020?

18 **A** Considered what?

19 **Q** Marshall's balcony as a common element?

20 **A** I'm sorry?

21 **Q** You made that decision in 2019/2020, that
22 Marshall's balcony was a common element?

23 **A** That Marshall?

24 **Q** That the balcony terrace was a common element?

25 **A** I made that decision long before then.

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1 **Q** Okay. It's a good thing -- make sure we got that
2 straight.

3 **A** Per the master deed, I had determined it is a
4 common element.

5 **Q** And the tables, were they unsafe?

6 **A** No.

7 **Q** You removed those because they are Marshall's and
8 they were on, what you believed, to be a common
9 element?

10 **A** All of that furniture did not belong to the
11 homeowners association, no.

12 **Q** In October of 2020, your board told Marshall that
13 his furniture would be disposed of if he didn't pay a
14 storage fee?

15 **A** We took the furniture off, put it in storage.
16 Marshall was informed various times that it is in
17 storage, go pick it up.

18 **Q** Did Marshall consent to you removing his
19 furniture?

20 **A** I don't think Marshall had an option at that
21 point.

22 **Q** He had no consent, did he?

23 **A** He wasn't consulted, if that's what you're
24 asking.

25 **Q** You took it. You didn't ask for his permission?

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1 **A** Please understand, we took it for a reason.

2 Those chairs kept ending up on that railing, and we are
3 liable for that. We have the insurance policy for that
4 area. I don't think he has a separate policy for that.

5 **Q** And how about the rocking chairs and the tables,
6 lounge chairs, all the other 20-something pieces?

7 **A** That's a different liability. It didn't belong
8 to the HOA. That's private property, and that would be
9 a liability.

10 **Q** And you all didn't consider private property
11 until 2019/2020; is that correct?

12 **A** 2019/2020? Correct. When you say "you all," I'm
13 not sure --

14 **Q** Your board.

15 **A** Ask your question again.

16 **Q** The board did not consider this -- Marshall's
17 penthouse balcony and terrace a common element until
18 2019/2020; is that correct?

19 **A** I think we're here to decide whether this is a
20 common element or not.

21 **Q** But the board never called it a common element
22 until 2019/2020; is that correct?

23 **A** I don't know what the board called it.

24 **Q** No one ever removed his furniture before 2019 or
25 2020, have they?

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1 **A** Can't answer that.

2 **Q** You also threatened to remove his plants from the
3 planters?

4 **A** Threatened?

5 **Q** Yeah.

6 **A** Okay.

7 **Q** Do you remember that letter that your manager
8 sent to Marshall telling him he was going to remove all
9 the arborvitaes -- Marshall had to go to court and get
10 a judge order you to put Marshall's furniture back; did
11 he not?

12 **A** You were just talking about plants.

13 **Q** Yeah, and I'm trying to move this along.

14 **A** I would like to have your plant question.

15 **Q** Marshall had to go to court to get you from --
16 get you -- your board from removing his plants; did
17 they not?

18 **A** Marshall's got a temporary restraining order to
19 keep us -- to make status quo.

20 **Q** And one of the things you wanted to do was remove
21 all of the plants from the planters?

22 **A** That is not something we wanted to do. We had a
23 problem with those plants. I'm not a horticulturist,
24 so please understand that, but I know enough that the
25 salt air we have down here is very detrimental to

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1 certain plants; arborvitaes being one of them.

2 They were dying. The needles were getting into
3 all the drains. There was more than the issue of
4 hurricanes. They were causing issues with our draining
5 system.

6 Q Have you lost any of these plants to a hurricane
7 or storm?

8 A Lost them to bagworms and the elements of the
9 beach. When they do that, they turn brown and the
10 needles fall off and go in the drain system.

11 Q But Marshall had to go to court to get you to
12 stop from removing his plants?

13 A He got a temporary restraining order for status
14 quo.

15 Q My question is: To stop you from removing the
16 plants?

17 A The temporary restraining order was removing
18 plants.

19 Q And he -- the restraining order also required you
20 to bring back his furniture?

21 A Which we did.

22 Q Did you charge a maintenance fee -- I mean a
23 storage fee?

24 A No.

25 Q Marshall was without his furniture from May 2020

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1 to November 2020; is that correct?

2 **A** May until when?

3 **Q** November of 2020.

4 **A** There was furniture on that roof terrace during
5 that time frame.

6 **Q** Marshall was without his furniture?

7 **A** Oh, yeah. Without his furniture, yes.

8 **Q** That was in storage, and you all were threatening
9 to get rid of it if he didn't pay the storage fee; is
10 that correct?

11 **A** I really don't know what that said.

12 **Q** Do you need us to read it to you?

13 **A** If you will tell me, I will probably agree with
14 you.

15 **Q** Okay. Your property manager in October of 2020
16 told Mr. Griffin that if he didn't pay the storage fee
17 for his -- for the furniture, it would be forfeited; do
18 you dispute that?

19 **A** I don't think I actually saw the document, but I
20 won't dispute it.

21 **Q** Were you aware that your property manager sent
22 this letter to Marshall in October of 2020?

23 **A** That definitely came from our management company.
24 Was I involved in sending that? I don't think so,
25 because I'm pretty sure -- in May, I can pretty well

RICHARD AQUINO - DIRECT EXAMINATION

1 assure you I was traveling and wasn't here.

2 Q But you were on the board?

3 A I was on the board.

4 Q And your board basically said if he didn't pay
5 his storage fee, his contents would be forfeited; is
6 that correct?

7 A I'm going to say that is logical, yes.

8 Q You have furniture on your balcony?

9 A I have my own personal furniture, yes.

10 Q How would you feel if someone took your furniture
11 away?

12 A I probably would object.

13 Q Do you have any plants on your balcony?

14 A I have.

15 Q How would you feel if someone is taking your
16 plants away?

17 A I would thank them because most of them always
18 died.

19 Q There is a discussion about the roofer and Turtle
20 title on Exhibit 38. Do you recognize Exhibit 38?

21 A (Witness examines document.) Now, what is your
22 question?

23 Q My question is this: Your roofer removed the
24 Turtle tile from the roof, right?

25 A Yes, the roofer removed the Turtle tile.

RICHARD AQUINO - DIRECT EXAMINATION

1 **Q** And you did not want it to be reinstalled?

2 **A** Due to the facts of the noise, yes, I did not
3 want it reinstalled.

4 **Q** There is no question -- in this first sentence:
5 "Our desire would be that the Turtle tile not be
6 reinstalled." Who is the "our," other than you?

7 **A** That would be is PH-3, Marshall Sullivan.

8 **Q** And he won't be testifying in this case; is that
9 correct?

10 **A** No, he will not be.

11 **Q** So all we have -- you, for sure, told -- let it
12 be known that you did not want the Turtle tile to be
13 reinstalled?

14 **A** Yes, sir.

15 **Q** And --

16 **A** Our desire, you know. "Our desire would be that
17 the Turtle tile not be reinstalled and have Quin" --
18 that's Quin Thompson, Thompson Roofing -- "add some
19 sort of surface suitable for walking on that roof
20 area."

21 **Q** It wasn't Marshall's desire not to have the
22 Turtle tile be reinstalled; was it?

23 **A** I don't know what Marshall's desire was.

24 **Q** Oh, you think he wanted it hauled away and never
25 brought back?

RICHARD AQUINO - DIRECT EXAMINATION

1 **A** You know, Mr. Grantland, I'm not sure. I can say
2 this: I think he has ended up with a better product
3 out there. There is carpet out there now.

4 **Q** You said: "There's pros and cons, and an
5 argument can be made for each"?

6 **A** I don't know why I said that, I'm sorry.

7 **Q** There is no question this all hinges from --

8 **A** Oh, I'm sorry. I know what that is. To add some
9 type of surface area suitable for walking the roof
10 area.

11 Pros and cons -- pro and con, what kind of
12 surface to go back with. There is pros and cons to
13 anything you put on there.

14 **Q** But there is no question you were communicating
15 to everyone you wanted the Turtle tile not to be
16 reinstalled?

17 **A** I was communicating to -- I don't know why --
18 Carter Tackett.

19 **Q** Now, you said that there were no complaints when
20 you took the furniture in May of 2020, and it was
21 Marshall's, and you put out some pool furniture; is
22 that correct?

23 **A** That's correct.

24 **Q** You said there were no complaints from any
25 renters about the furniture being removed?

RICHARD AQUINO - DIRECT EXAMINATION

1 **A** Based on the information I had available to me,
2 which is his website, VRBO website, there was about 15
3 responses and there was no complaints in there,
4 whatsoever.

5 **Q** Did you interview any of Marshall's renters?

6 **A** No. I don't talk to his renters.

7 **Q** Did you interview Ms. Mansion --

8 MR. GRANTLAND: Show Plaintiff's 25.

9 **Q** Did you interview Ms. Mansion (phonetic) who
10 complained of the deck being like an ice rink when the
11 Turtle tile was removed?

12 **A** I'm not aware of any communication, no.

13 **Q** Okay.

14 **A** My statement was based on the fact that on his
15 website, all of the responses, the comments, were
16 positive. In fact, I think one of the people had been
17 there five times and left a positive response.

18 **Q** Did you interview Ms. Pearlmere, Exhibit 26, who
19 stayed in the penthouse in 2019?

20 **A** No.

21 **Q** Were you aware of her complaint that the deck was
22 treacherous without the tile and lack of furniture?

23 **A** There was a time there when the roofing
24 contractor had to come back in and add some coating to
25 the surface. Prior to that, it was treacherous.

RICHARD AQUINO - DIRECT EXAMINATION

1 **Q** And treacherous, meaning difficult to walk on?

2 **A** Slippery when wet.

3 **Q** I'll show you Exhibit 39. We're on the subject
4 of renters being happy or renters not having any
5 complaints.

6 Do you remember talking to Ms. Perry, who was one
7 of Marshall's renters?

8 **A** I don't remember the name, no.

9 **Q** Did you -- do you remember going up on the
10 terrace in May of 2020 and confronting Ms. Perry?

11 **A** Confronting?

12 **Q** Or having an encounter with Ms. Perry.

13 **A** Encounter? I don't remember any confrontation or
14 encounter.

15 **Q** In this e-mail you say: "I don't think the
16 people up there are very happy at this moment." Why
17 did you say that, Mr. Aquino?

18 **A** Let me read and see why I said that.

19 MR. GRANTLAND: Can you all see?

20 THE JURY: Yes.

21 **A** I want to read this, if you don't mind.

22 **Q** Please do.

23 **A** "I don't think the people up there are very happy
24 at this moment, so someone may get a call from
25 Marshall."

RICHARD AQUINO - DIRECT EXAMINATION

1 This was sent to the board. So someone may call
2 Marshall, okay.

3 "I was very polite when answering the barrage of
4 questions: Who are you? When are you coming back up?
5 Can we get a text first? Can someone notify us? Are
6 they coming on Tuesday to repair the railing? And more
7 in the area of, Why the tape?

8 I did explain to the owner that his attorney" --
9 you, Mr. Grantland -- "had sent a letter to the board"
10 -- actually, I think it went to Roger Roy --
11 "concerning safety issues with the railing, and another
12 area that our attorney said if there is a safety
13 concern, to close that area off. I told them this is a
14 compromise in closing the roof off."

15 Our attorney suggested -- because you had sent a
16 letter to him saying there is a safety issue with that
17 railing.

18 "Our attorney has suggested we take that whole
19 thing off."

20 I talked to the board about let's just put tape
21 in front of that railing, two rows of tape, until we
22 can get that railing fixed. That way they can walk out
23 on the bump-out.

24 Our attorney said shut the whole thing down. I
25 thought that was probably overkill, so I said let's

RICHARD AQUINO - DIRECT EXAMINATION

1 just put tape up there. I physically put the tape up
2 there. There was not any confrontation or anything,
3 but I did put the tape up there.

4 Again, based on your letter, and shortly
5 thereafter, we had that railing fixed. The association
6 paid, I think, about \$1,800 to have that rail -- that
7 is really not the property of the rooftop penthouse.

8 Q What did you do to make Ms. Perry unhappy, Mr.
9 Aquino?

10 A I think she -- if I can read this correctly, she
11 was probably unhappy with the fact that I came up there
12 and she wasn't called.

13 Q You just said there was no complaints of any
14 renters. This is clearly a complaint, would you agree?

15 A She wasn't happy.

16 Q I mean, you were there --

17 A Did she call Marshall?

18 Q I mean, you were up there while this lady is
19 laying out in the sun, and you say this renter -- I
20 mean, can you blame her for being unhappy?

21 A I don't think she was laying out in the sun. I
22 don't remember that. I think someone was sitting at
23 the high-back table drinking. But we had a safety
24 concern. You had a safety concern that we addressed.

25 Q So there is no question that you at least

RICHARD AQUINO - DIRECT EXAMINATION

1 encountered one of Marshall's renters, who was not very
2 happy with the encounter, regardless of what you call
3 it?

4 **A** Regardless what you call it, I don't think she
5 was happy. But I will tell you that I was very polite.

6 **Q** Of course you were.

7 **A** I was doing what I was asked to do. And I was
8 trying to help Marshall out by not closing it off
9 totally.

10 **Q** Did you interview a renter named Sue Peck?

11 **A** No. I don't know her.

12 **Q** Were you aware of her complaints?

13 **A** No.

14 **Q** Now, the elevator key. We talked about it. It's
15 been a key since the '80s?

16 **A** Correct.

17 **Q** You all had it disconnected?

18 **A** That's wrong.

19 **Q** What do you mean it's wrong? Did Marshall have
20 it disconnected?

21 **A** That key was never disconnected.

22 **Q** Who disconnected it?

23 **A** It was never disconnected.

24 **Q** No. You were present -- correct me if I'm
25 wrong -- let's go to Page 76 of your deposition. You

RICHARD AQUINO - DIRECT EXAMINATION

1 just said that the elevator key was never disconnected,
2 right?

3 **A** Yes.

4 **Q** And you are under oath?

5 **A** I'm under oath.

6 **Q** Page 76, Line 5.

7 Question: "Were you involved in any way
8 disconnecting the elevator key in 2020?"

9 What is your answer?

10 **A** "If I was asked to comment on that, I would be
11 involved, yes."

12 **Q** Question: "Were you present when the elevator
13 key was disconnected?"

14 **A** "There was a time when the elevator key was
15 disconnected that I was there."

16 **Q** Question: "Is it your testimony that you don't
17 know whether that was 2020 or sometime -- other some
18 other time in the past?"

19 **A** "I want to say that happened twice, but I don't
20 really know for sure. 2020 is probably the time frame.
21 2020 is the one where I think I was there when he
22 disconnected it."

23 **Q** So which is the truth, Mr. Aquino?

24 **A** It was never disconnected.

25 **Q** So you didn't tell the truth in your deposition?

RICHARD AQUINO - DIRECT EXAMINATION

1 **A** I made a mistake.

2 **Q** So the keys -- why did you have an elevator
3 company come to the -- why were you there when the
4 elevator company --

5 **A** The original decision by the board was the tenth
6 floor elevator lobby was a common element. I think
7 that is even documented in our documents. Thus, you
8 cannot restrict access to the tenth floor.

9 The board made the decision to have the elevator
10 key disconnected, and I think the management company
11 may have been informed of that also, that that was our
12 decision.

13 There has always been an elevator key and a tenth
14 floor button. Don't ask me why. It has always been
15 there, and it's in one of the pictures. I remember
16 when the technician came out -- and I don't know if I
17 cleared this with the board or not, you'll have to
18 help -- but when the technician came out, I was leaving
19 the building, and I saw him. I know the technicians
20 pretty well. He said --

21 **Q** Don't say what he said.

22 **A** I'm sorry. I found out that you didn't need to
23 disconnect the key in order to activate the tenth floor
24 button. So the decision was made to leave the tenth
25 key alone, just activate the tenth floor button, and

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1 that is the way it existed until the status quo
2 restraining order.

3 Q And when we got the restraining order, you had to
4 return the key?

5 A The key was never disconnected. They came back
6 out and opened the panel up, hit that switch,
7 deactivated the tenth floor button. The key was never
8 disconnected.

9 Q And I don't know enough about elevators, but it
10 was messed with in 2020, and then you had to go back
11 and have it fixed? You all did something to it in
12 2020, and then after the restraining order you had to
13 go back --

14 A The technician flipped a switch and activated the
15 tenth floor button. And when he came back, he flipped
16 the switch and deactivated it.

17 Q You were not going to do anything to that
18 elevator unless you had the restraining order?

19 A The position is that the tenth floor lobby was a
20 common element, based on our documents; thus, you could
21 not restrict access.

22 Q And, currently, because the court order, the
23 elevator works the same as it has since the 1980s; is
24 that right?

25 A Status quo.

RICHARD AQUINO - DIRECT EXAMINATION

1 Q Since the 1980's?

2 A I can't speak of the elevator button. I'm not
3 sure why we had a key and a button. Something didn't
4 make sense.

5 Q You weren't going to reconnect it until you got
6 that court order telling you to, right?

7 A We could not limit access to a common element.

8 Q My question is: You were not going to reconnect
9 it until you got a court order telling you to; is that
10 correct?

11 A That's correct.

12 Q That is the only reason you did it?

13 A I didn't do it.

14 Q Well, you were there?

15 A No, I wasn't even there when it was done.

16 Q You just said --

17 A You are talking about connecting, or
18 disconnecting?

19 Q You were there for the disconnect?

20 A The disconnect.

21 Q Okay. So let's move on from elevators.

22 Your board came out for rules for the penthouse
23 in May of 2019, rules for the rooftop penthouse and
24 terrace; is that correct?

25 A There was rules and regulations developed in

RICHARD AQUINO - DIRECT EXAMINATION

1 2019.

2 Q Let's pull up Exhibit 17. We can look at Exhibit
3 17, if I can find it for you.

4 A These are the rooftop terrace rules and
5 regulations, filed draft 5/25/19. It is a draft.

6 Q Prior to 2019, no board had ever published rules
7 about the terrace outside Marshall's penthouse; is that
8 right?

9 A No, nobody had.

10 Q One of the rules restricts when he can go outside
11 on the terrace; is that correct?

12 A Please understand, I didn't have anything to do
13 with developing the rules. I was not involved in this.

14 Q Wait a minute. Wait a minute. You were on the
15 board, right?

16 A Yes, I was. Marshall was on the board, too.

17 Q And you had complaints about Marshall's use of
18 the terrace?

19 A Right.

20 Q And you say you had nothing to do with these
21 rules?

22 A I had nothing in the development. I had -- when
23 it came time to vote, and Marshall was involved on
24 that, and I voted on them. I didn't develop any of the
25 rules.

RICHARD AQUINO - DIRECT EXAMINATION

1 **Q** You had nothing to do with these rules?

2 **A** That was strictly between three of our board
3 members and our attorney.

4 **Q** But you are the only who on the board that had a
5 complaint against Marshall; is that correct?

6 **A** Not sure how that goes hand-in-hand, but I'll
7 say, yes.

8 **Q** Okay. Well, so, let's look at the rules.
9 Correct me if I'm wrong, looking at No. 8 -- excuse me,
10 look at No. 7. What does Rule 7 say?

11 **A** "The rooftop terrace shall be closed and
12 off-limits to all, including occupants of the rooftop
13 penthouse, from 10 p.m. to 8 a.m."

14 **Q** So no one can go on the terrace between
15 10:00 p.m. and 8:00 a.m.?

16 **A** When I was shown a copy of the draft, and I think
17 Marshall got it at the same time, I think the comment I
18 heard was they tried to mirror our swimming pool rules
19 and regulations on the time frame. This is really
20 done, frankly, to benefit Marshall.

21 **Q** How does it benefit Marshall if he can't --

22 MS. GOLDING: Your Honor, he was interrupting.

23 MR. GRANTLAND: He's not being responsive, and
24 we've allowed it.

25 THE COURT: He appeared to be finished with his

RICHARD AQUINO - DIRECT EXAMINATION

1 answer.

2 **A** Ask me your question.

3 **Q** You said it benefited Marshall. So how does it
4 benefit Marshall if he can't go out on his balcony
5 before 8:00 a.m.?

6 **A** This was really written -- my understanding is it
7 was added in there to limit the other 39 owners from
8 going up there at that time frame. I think that is a
9 benefit for Marshall.

10 **Q** Would it also be a benefit to tell him he can't
11 go out on his terrace at 8:00 a.m.?

12 **A** When you put rules in effect, rules are rules.

13 **Q** Do you have any rules when you can go out on your
14 balcony?

15 **A** Mine is a private balcony.

16 **Q** And Marshall's used to be private until 2019,
17 wasn't it?

18 **A** Only private in his mind. Nowhere in our
19 documentation does it show that he has private balcony.

20 **Q** You said if you heard him or found out that
21 Marshall was outside of his terrace before 8:00 a.m.,
22 you would have a meeting with the board to discuss what
23 to do.

24 **A** Is that in here?

25 **Q** That's in your deposition.

RICHARD AQUINO - DIRECT EXAMINATION

1 **A** Oh, okay. Read it again.

2 **Q** My question is: If you heard Marshall was
3 outside on his terrace before 8:00 a.m. -- or I think I
4 said at 7:00 a.m. -- you would have a meeting with the
5 board to discuss what to do?

6 **A** The board has been very responsive to any issues
7 that have been brought before it.

8 **Q** So, again, if you got wind that Marshall was out
9 there before 8:00 a.m., you all would have a meeting
10 about it?

11 **A** I probably would need some proof of that. But,
12 yes, if someone complained to the board, the board has
13 always been very responsive to the HOA members.

14 **Q** Who would complain about him being out on his
15 balcony before 8:00 a.m.?

16 **A** I don't know. I'm just saying if we had a
17 complaint, we would respond. If we didn't have a
18 complaint, we probably wouldn't do anything.

19 **Q** If you heard him before 8:00 a.m., what would you
20 do?

21 **A** Me? Depends how much noise he is making,
22 frankly. If he wasn't making any noise, I wouldn't say
23 anything.

24 **Q** So why have these rules against him?

25 **A** Why?

RICHARD AQUINO - DIRECT EXAMINATION

1 Q Against Marshall.

2 A I would say the rule benefits Marshall because it
3 keeps 39 other units from going up there at those
4 times.

5 Q Besides you, what other unit owners have gone up
6 on the terrace?

7 A I can't answer a question like that,
8 Mr. Grantland.

9 Q Before 2019, did anyone -- any board put any
10 rules on Marshall as to when he could go out on the
11 terrace or when he had to come inside?

12 A Not to my knowledge.

13 Q From '95, when he and his wife became owners,
14 until 2019, he could go out on his terrace whenever he
15 wanted?

16 A I think I would answer that, yeah.

17 Q Do you think it is fair to Marshall to limit him
18 on when he can go outside on his private dwelling?

19 A If we're going to limit 39 other unit owners,
20 then, yes, we have to limit Marshall. If that is a
21 common element, you cannot restrict access. You can
22 put rules and regulations in place, per our attorney,
23 but cannot really limit access.

24 So the rules and regulations that these guys put
25 together looks like it mimics our pool hours, and that

RICHARD AQUINO - DIRECT EXAMINATION

1 was primarily for the benefit of Marshall.

2 Q Before 2019, no one ever said that this terrace
3 was common for other people to come and visit in the
4 first place?

5 A I brought the issue up of the rooftop being
6 common based on the stuff we talked about earlier, his
7 actions towards me.

8 Q That was in 2018. That is when this began?

9 A It began back with the sprinkler system issue,
10 and that was around 2016, 2017.

11 Q Do you have any information that the board
12 restricted his uncle's access to his terrace when Uncle
13 Bobby would go out on the terrace?

14 A I was not as active with the board back then. I
15 was living in Rock Hill, so I don't really know what
16 transpired back then.

17 Q Do you think the board told Uncle Bobby when he
18 could go outside and when he had to go inside?

19 A That would be an assumption on my part, I'm
20 sorry.

21 Q Your rules limit Marshall when he can go outside
22 and when he has to come inside, but do your rules limit
23 how many people can be out on the terrace?

24 A Okay.

25 Q Do they?

RICHARD AQUINO - DIRECT EXAMINATION

1 **A** I don't know. Do you want me to read it? Tell
2 me where it's at and I'll read it.

3 **Q** Does anywhere in your rules does it say how many
4 -- limit the number of people who can be up there?

5 **A** Can you give me a number?

6 **Q** I'm looking at, like, No. 8.

7 You've read these rules before, haven't you?

8 **A** Quite a few years ago, yeah. I'm not even sure
9 -- is this the one that is published and filed with the
10 Clerk of Court of Horry County?

11 **Q** What does it say at the top?

12 **A** It says "final draft."

13 **Q** That is what I received from your attorney.

14 **A** I'll make the assumption this is the one that is
15 filed with the Clerk of Court with Horry County.

16 **Q** So my question is: Do your rules limit how many
17 people can be out on the terrace?

18 **A** "Occupants of the rooftop penthouse should at all
19 times be limited to no more than 12." That's
20 occupants.

21 I don't see anything that limits the number of
22 people that can be on the roof terrace. If I'm reading
23 this right, the occupants of the rooftop penthouse
24 shall at all times be limited to no more than 12
25 people.

RICHARD AQUINO - DIRECT EXAMINATION

1 **Q** Under your rules, you can have 20, 30 people up
2 on the terrace?

3 **A** I don't see anything restricting it.

4 **Q** And under your rules there is no restrictions on
5 drinking or smoking outside the penthouse, is there?

6 **A** There is fixing to be smoking, because we just
7 changed that.

8 Drinking? Drinking goes on out there now.

9 **Q** But there is no restriction -- you're putting
10 rules out there to benefit Marshall?

11 **A** I think -- if I may add to it, I ended up voting
12 for this. It was a four to one vote. obviously,
13 Marshall voted no. I did object to a certain area
14 here. There is an area in here that said -- I'll give
15 you an example. Bill West, he rent 5E. There is a
16 rule in here that says Bill's renters cannot go on that
17 rooftop. Bill can go on the rooftop, and his guests
18 with him can go on the rooftop, but Bill's renters
19 cannot go on the rooftop.

20 Marshall Griffin's renters can go on the rooftop.
21 I thought that was very fair to Marshall, for one
22 thing. I objected to it, but I did approve the rules,
23 because you are restricting the 39 other units -- if
24 they rent their unit -- their people from going up
25 there, and I understand the logic behind it.

RICHARD AQUINO - DIRECT EXAMINATION

1 **Q** If you think Marshall's renters are a nuisance if
2 they play corn hole or music, what are you going to do
3 when you have 20 or 30 people up there, Mr. Aquino,
4 drinking and having a good time?

5 **A** I can go up there and say stop. And I will do
6 it, too, I can assure you.

7 **Q** Let me move on. You also have the ability to go
8 back to your unit, don't you?

9 **A** Sorry?

10 **Q** You have the ability to go back on the ninth
11 floor where you live, don't you?

12 You don't live in that penthouse, in the
13 all-glass penthouse?

14 **A** I see what you're getting at. Yes, I have the
15 ability to do that. The same way with the pool. Let
16 me tell you, I've drifted a few people down at the pool
17 for what they're doing, and I don't have to go to the
18 owner --

19 **Q** I bet you do.

20 **A** I don't have to go to the owner of the unit and
21 speak to them first.

22 **Q** Now, who pays for the electricity out on the
23 terrace?

24 **A** I really don't know that. I've seen
25 documentation that it goes to his power box. I can

RICHARD AQUINO - DIRECT EXAMINATION

1 tell you from the line of construction I've done in the
2 past, unless you trace it back to the source, you
3 really don't know. But I'll make the assumption it
4 comes out of his unit.

5 Q You've seen the lights on the terrace at night.
6 There are quite a few lights; are there not?

7 A Blue lights. They are actually on the --

8 Q The planters?

9 A No, not even on the planters.

10 The blue ones are on the roof of the rooftop
11 penthouse.

12 Q And the power runs from a box, the same power
13 box, that has the penthouse; does it not?

14 A I don't know.

15 Q Come on. You haven't looked at the electric box
16 at the rooftop penthouse?

17 A You are asking me if I have?

18 Q Yes.

19 A No.

20 Q If I tell you that Mr. Griffin pays the
21 electricity for the lights on the terrace, are you
22 going to disagree?

23 A I'm going to say I 90 percent agree because you
24 never really know until you trace it back where that
25 power is coming from.

RICHARD AQUINO - DIRECT EXAMINATION

1 **Q** How long has Marshall been paying the electric
2 bill?

3 **A** His electric bill?

4 **Q** Yeah.

5 **A** I assume since he's owned the place.

6 **Q** If you are calling this balcony terrace area
7 common, why are you all sticking him with the electric
8 bill?

9 **A** Can't answer that. Been that way since day one,
10 I guess.

11 **Q** Who pays for the maintenance of the plants and
12 the planters?

13 **A** Ask that again.

14 **Q** Who pays for the maintenance of the plants and
15 the planters?

16 **A** HOA pays for the maintenance of the planters, and
17 Marshall pays for the plants.

18 **Q** And the plants and the dirt and irrigation, that
19 is all Marshall's expense; is that correct?

20 **A** I think Marshall typically has paid that, where
21 the HOA has paid for all the maintenance on the
22 planter. I can tell you that we've paid a lot, too.

23 **Q** Do you know how much Marshall has paid for those
24 planters?

25 **A** No. But I can tell you we've paid on those

RICHARD AQUINO - DIRECT EXAMINATION

1 planters probably in excess of \$25,000.

2 Q Do you know how much Marshall has paid for
3 maintenance of those planters?

4 A I really don't know, to be honest. I know he
5 swapped plants out a few times. Back when I had my
6 house, I swapped mine out a few times, so I really
7 don't know.

8 Q When the board came up with the rules for the
9 terrace, Marshall was on the board?

10 A Yes.

11 Q And you had meetings without Marshall to discuss
12 rules?

13 A That is correct -- well, I didn't. I was not
14 involved, but there were meetings, yes.

15 Q That excluded Marshall?

16 A Meetings that excluded Marshall based on the fact
17 that our attorney said since he's gotten a lawyer --
18 I'm not sure, Mr. Grantland, whether he had a lawyer or
19 talking to a lawyer, but our HOA attorney said you have
20 to exclude Marshall from any conversation about this,
21 and that's when I backed out.

22 Q And your board met more than once without
23 Marshall?

24 A I don't know.

25 Q I think you do.

RICHARD AQUINO - DIRECT EXAMINATION

1 **A** Maybe I do. What page?

2 **Q** Page 128, Line 13.

3 **A** Yes -- well, wait a minute. Ask me your question
4 again.

5 **Q** I want you to read your deposition. Page 128,
6 Line 13. I'll read 13; you read 14.

7 Question: "Did you meet more than once?"

8 **A** And this is in regards to above that where your
9 question says: "So how many meetings did you have
10 regarding the common elements?

11 I don't know.

12 Did you meet more than once?

13 Yes.

14 Did you meet more than five times?

15 I can't answer that."

16 So what I'm telling you is I cannot tell you how
17 many times we met without Marshall about common
18 elements.

19 **Q** But it was more than once?

20 **A** I'm pretty sure it would be, yeah.

21 **Q** You also had a conference call one time to talk
22 about the penthouse rules, and you asked Marshall to
23 get off the call?

24 **A** I didn't ask him, no. I didn't ask him.

25 **Q** Well, someone did?

RICHARD AQUINO - DIRECT EXAMINATION

1 **A** Rephrase your question then.

2 **Q** Let me just go to Page 129 in your deposition.

3 Let me know when you are there.

4 **A** I'm there.

5 **Q** I'll read Line 14; you read Line 17.

6 Question: "Okay. Do you recall a conference
7 call where Marshall was asked to get off the call
8 because he was not allowed to be on the call?"

9 **A** That wasn't your question. Your question is did
10 I.

11 I said: "No, I didn't. But, yes, I do remember
12 that call. I think that was the time that we were on
13 line with our attorney."

14 I think that's the time that Marshall came in to
15 a board meeting -- he is a member of the board -- and
16 identified to us, stated to us, that he has contacted
17 an attorney. That might have been the time when he
18 said he hired an attorney or filed suit, I don't know.
19 It was a long time ago.

20 I do know that one of the board members was on a
21 call to our attorney, and our attorney said Marshall is
22 going to have to leave that call. I think I've got
23 that right, Mr. Grantland.

24 **Q** Okay. Anyway, he wasn't permitted to listen in
25 on the conversation about the rules?

RICHARD AQUINO - DIRECT EXAMINATION

1 **A** Our attorney told whoever was talking to him that
2 Marshall couldn't be involved in that call.

3 **Q** Before 2019, no board ever put rules like this in
4 place for the rooftop penthouse and terrace?

5 **A** Not to my knowledge.

6 **Q** You've read the master deed?

7 **A** Have I read the master deed?

8 **Q** Yes.

9 **A** Yes.

10 **Q** You read it a lot?

11 **A** I've read the master deed.

12 **Q** Does it say the terrace is common?

13 **A** Yes. It doesn't use the exact words "the terrace
14 is common." The fact that it defines dwelling and
15 common elements, defines the fact that the terrace is
16 common.

17 **Q** Is the word "terrace" anywhere in the deed?

18 **A** Deed?

19 **Q** In the master deed.

20 **A** Oh, sorry. I don't know. Can you kind of
21 qualify why you are asking that question?

22 **Q** No.

23 **A** Okay. Then don't.

24 **Q** We talked about words. Did you know that
25 "balcony" and "terrace" are synonymous?

RICHARD AQUINO - DIRECT EXAMINATION

1 **A** In a legal sense?

2 **Q** In the dictionary.

3 **A** Can't answer that. I can tell you that the word
4 "balcony" exists. I can tell you the word "terrace"
5 exists.

6 **Q** Did you know they are synonyms?

7 **A** I do know that terrace -- fairly certain that
8 "terrace" does not show up in our master deed, but
9 "balcony" does.

10 **Q** And do you know that "balcony" and "terrace" are
11 synonyms?

12 **A** No. I'm not an English major, I'm sorry.

13 **Q** The deed says planters are common?

14 **A** You mean in the master deed?

15 **Q** Yeah.

16 **A** Yeah, the master deed says the planters are
17 common.

18 **Q** And since 1995, Marshall has had some involvement
19 in maintenance of those planters, plants and the dirt?

20 **A** I don't go back that far with that history, John.

21 **Q** As long as you've known Marshall, he's been
22 involved in those planters?

23 **A** I do know that we've had controversies and
24 problems with those planters for quite some time, yes.

25 **Q** Who has been responsible for the plants and the

RICHARD AQUINO - DIRECT EXAMINATION

1 dirt in the planters?

2 **A** Marshall has always been responsible for the dirt
3 and the planters.

4 **Q** Okay. And --

5 **A** I might point out that, no, I don't think in the
6 master deed it does say that the roof terrace is a
7 common element. I don't think it is in there.

8 It is in there in the fact that it defines
9 "common element" and "dwelling." But at the same time,
10 it doesn't say that our pool is a common element. It
11 doesn't say our parking lot is a common lot. It
12 doesn't say our domestic water pump is a common
13 element. It doesn't say our emergency generator is a
14 common element. It doesn't say our fire pumping system
15 is a common element.

16 If you are a dwelling, you are a common element.
17 It explicitly talks about a dwelling and what it is.

18 **Q** It does say that the balconies adjacent to the
19 dwelling's railing are not common?

20 **A** The balconies of the 39 unit owners are not
21 common.

22 **Q** It doesn't say "39 unit owners." It says the
23 balconies adjacent to the dwellings are not common.

24 **A** We don't see anywhere in any of our documentation
25 that the rooftop penthouse has a balcony.

RICHARD AQUINO - DIRECT EXAMINATION

1 **Q** Did you know "balcony" and "terrace" are
2 synonymous?

3 **A** You asked me that earlier, and I said I don't
4 know that.

5 MR. GRANTLAND: No further questions, Your Honor.

6 THE COURT: Do you want to do cross-examination
7 tomorrow?

8 MS. GOLDING: Yes, sir.

9 THE COURT: So, ladies and gentlemen, I have a 4
10 o'clock hearing I have on another case, so I'll excuse
11 you for today.

12 If you will, be back at 9:30, and we'll resume.
13 Do not research or discuss the case.

14 (The jury exits at 4:01 p.m., and the
15 following is heard out of the presence of the jury.)

16 THE COURT: Mr. Aquino, you can step down, but
17 you cannot talk with any of your co-defendants, any of
18 the lawyers or anybody about this case when you leave
19 this courtroom or when you are in this courtroom until
20 you are done.

21 MR. AQUINO: Okay.

22 THE COURT: Don't talk with your lawyers. Don't
23 talk with the co-defendants. Don't talk to anyone
24 about this case. Come back in the morning at 9:30 and
25 have a seat right there.

RICHARD AQUINO - CROSS-EXAMINATION

1 MR. AQUINO: Thank you. By the way, I've never
2 been through this, but --

3 MS. GOLDING: Richard.

4 MR. AQUINO: I'm sorry, Henri. I can't talk to
5 you.

6 (WHEREUPON, THE PROCEEDINGS FOR JANUARY 31, 2023
7 CONCLUDED AT 4:05 P.M.

8 THE FOLLOWING WAS HAD ON FEBRUARY 1, 2023 OUT OF
9 THE PRESENCE OF THE JURY.)

10 THE COURT: Good morning. Everyone ready?

11 MS. GOLDING: Yes, sir.

12 THE COURT: Go ahead and bring the jury in.

13 MS. GOLDING: As a matter of course, I conferred
14 with plaintiff's counsel, and we have agreed to the
15 admissions of Defendants' Exhibit 37, and also 43,
16 which is a new document that is not in your Exhibit
17 book.

18 THE COURT: So 37 and 43 are in evidence?

19 MS. GOLDING: Yes, both defendants'.

20 THE COURT: Thank you.

21 (Defendants' Exhibits 37 and 43 admitted.)

22 (The jury enters at 9:56 a.m., and the
23 following is heard in the presence of the jury.)

24 THE COURT: Your witness.
25

RICHARD AQUINO - CROSS-EXAMINATION

CROSS-EXAMINATION

BY MS. GOLDING:

Q I'll show you Exhibit No. 43. It's been admitted into evidence on direct. You testified you sent a correction e-mail. Does Exhibit 43 set forth the correction?

A Let me look at it.

Q Yes, sir. I'm sorry, I would have showed it to you earlier.

A That's all right. That's all right. (Witness examines document.) Yes, ma'am.

Q And what was the purpose of sending Exhibit 43 to your board members, including Marshall Griffin?

A There was an error I had made -- I forgot what number it was on the original e-mail -- where I said that the plaintiff added a keylock to the elevator. Daughter corrected me on that, so I revised this and took that particular element out and re-sent it.

Q Also on direct examination you were asked about a safety report. Plaintiff's Exhibit 19 is a letter to Marshall Griffin, dated January 7, 2020, from the association direct. Is this the document attached to this letter, the safety report?

A Yes. This is the document that was produced by our management company at that time, Cams, informing

RICHARD AQUINO - CROSS-EXAMINATION

1 the plaintiff that he had to remove his furniture. The
2 reason behind it was the consultant from Frontier Loss
3 Control found a violation up there, which was a safety
4 hazard, and had requested that the furniture be
5 removed.

6 Q What is the date of that document, Plaintiff's
7 19?

8 A Are you asking about the letter from the
9 management company or --

10 Q The letter. The letter to Mr. --

11 A January 7, 2020.

12 Q In that letter, Mr. Marshall was provided with
13 the safety consultant's report?

14 A Yes, ma'am, he was.

15 Q And at that time, Mr. Griffin was a member of the
16 board of directors; is that correct?

17 A Yes, he was a member of the board of the
18 directors at that point.

19 Q It was many months after that letter was sent
20 that there was -- that the board of directors had to
21 take steps to remove the furniture?

22 A Yes, ma'am.

23 MR. GRANTLAND: Objection; leading.

24 THE COURT: She can lead. You called her
25 witness.

RICHARD AQUINO - CROSS-EXAMINATION

1 **A** I'm sorry. Can I answer?

2 **Q** (MS. GOLDING) Yes, sir, please.

3 **A** In here he was given, I think, 60 days in the
4 letter to remove it. And, no, it wasn't removed, so
5 the board of directors had it removed -- actually, the
6 board of directors had the management company get it
7 removed.

8 **Q** But it was many months after that?

9 **A** Oh, yes, ma'am, many months.

10 **Q** And, finally, you referred on direct examination
11 to an advertising of Mr. Griffin's VRBO. Is this
12 Exhibit 43 Mr. Griffin's advertising on VRBO?

13 **A** Yes, ma'am. This would be -- this would be one
14 of the -- one of the items that would be on the website
15 for the rooftop penthouse where it says "private
16 tenth-floor penthouse, wrap-around terrace, planters."

17 **Q** Okay. Thank you.

18 MS. GOLDING: Your Honor, I have no further
19 questions.

20 THE COURT: Any follow-up?

21 **REDIRECT-EXAMINATION**

22 **BY MR. GRANTLAND:**

23 **Q** This letter from January of 2020?

24 **A** Which one?

25 **Q** That Ms. Golding just talked to you about.

RICHARD AQUINO - REDIRECT EXAMINATION

1 **A** Thank you.

2 **Q** That was sent to Mr. Griffin in January of 2020,
3 correct?

4 **A** This letter is dated January 7 of 2020.

5 **Q** And the lawsuit was filed when?

6 **A** I have no idea.

7 **Q** You were -- when did I sue you?

8 **A** I don't know.

9 **Q** I sued you in October 2019; is that correct?

10 **A** I'll take your word for that.

11 **Q** So this letter was sent after the lawsuit was
12 filed?

13 **A** It was sent January 20, 2020, after the date you
14 just gave me.

15 **Q** Yes, sir. And Mr. -- Marshall has been
16 advertising on VRBO about his rooftop penthouse for a
17 number of years, hasn't he?

18 **A** Based on what date?

19 **Q** Based on your knowledge.

20 **A** Oh, yeah. He had been on VRBO, to my knowledge,
21 ever since he put that property on VRBO. That website
22 changes constantly.

23 **Q** And you've gone on VRBO to see what Marshall has
24 said about the rooftop penthouse, haven' you?

25 **A** Ask me again.

RICHARD AQUINO - RECROSS EXAMINATION

1 **Q** You have gone on VRBO to see what Marshall has
2 said about the penthouse?

3 **A** I've looked at his website. Very impressive.
4 Yes.

5 MR. GRANTLAND: Nothing further.

6 MS. GOLDING: I meant to ask you a question.

7 MR. GRANTLAND: Objection. I mean, this is -- I
8 mean, this is -- I don't think this is proper for her
9 to recross.

10 THE COURT: If it's following up to anything you
11 brought up --

12 MS. GOLDING: Yes, it is.

13 THE COURT: And you can do the same.

14 **RECROSS-EXAMINATION**

15 **BY MS. GOLDING:**

16 **Q** When Mr. Grantland sued you, personally, wasn't
17 that the first time, and only time, you've ever been
18 sued personally?

19 **A** I've never been sued in my life. This is an
20 experience.

21 **Q** Thank you.

22 MS. GOLDING: Thank you. Nothing further.

23 THE COURT: Anything you want to add?

24 MR. GRANTLAND: No.

25 The plaintiff calls Sue Peck.

RICHARD AQUINO - RECROSS EXAMINATION

1 (SUE PECK, having been duly sworn, testified
2 as follows:)

3 THE WITNESS: I'm Caroline Sue Peck, P-E-C-K.

4 **DIRECT EXAMINATION**

5 **BY MR. GRANTLAND:**

6 **Q** Good morning, Dr. Peck.

7 **A** Good morning.

8 **Q** Tell the jury about yourself. You just gave them
9 your name. Tell them who you are, where you are from.

10 **A** I grew up in North Carolina, born there. I still
11 live in Charlotte. I've been coming to the beach with
12 a group of friends for 40 years. If you can believe
13 that, still friends. Every year we go some place, and
14 for the past 20, we've been at the penthouse.

15 **Q** What do you do for a living?

16 **A** I'm gratefully retired now from Winthrop
17 University in Rock Hill. I was in administration in
18 the College of Education.

19 **Q** And you know Marshall Griffin?

20 **A** Yes.

21 **Q** How long have you know Marshall?

22 **A** At least 20 years.

23 **Q** Have you rented the rooftop terrace before?

24 **A** Yes. For 20 years. Five years, I think, it was
25 with a realty company, and then Marshall took it over

RICHARD AQUINO - RECROSS EXAMINATION

1 with the VRBO organization.

2 Q So a total of how many years you have rented the
3 rooftop?

4 A About 25. Five from the realty, and 15 from
5 Marshall, something like that.

6 Q When during the year would you typically rent?

7 A Usually, in April.

8 Q How many days would you rent the condo?

9 A We typically rented it for a week. There was
10 about five years we did it for two weeks. Starting in
11 2015, we had it for two weeks.

12 Q What did you like about -- so you've been renting
13 the same condo for 20 years. Why did you rent this
14 condo for so many years?

15 A It suits our needs. It's beautiful. The inside
16 is spacious. It is nice. The outside is -- we can't
17 beat it. We've looked for other places because,
18 frankly, we would like a fourth bathroom, but we can't
19 find that with that kind of balcony that we've liked so
20 much.

21 Q What are some of the things that attracted you to
22 this condo?

23 A Well, I mean, it's in the proper location in
24 terms of being a nice spot in North Myrtle Beach.
25 There is adequate parking. It's secured having the

RICHARD AQUINO - RECROSS EXAMINATION

1 elevator that goes up to the tenth floor. The key is
2 very comforting for people who are in and out like we
3 are. I've spent the night by myself some of those two
4 week times when I had one group leaving on Saturday and
5 another coming on Sunday. I would be there by myself,
6 and I liked the fact the elevator was locked. But
7 that's, you know, not often -- I mean, that I'm there
8 like that.

9 Q What did you like about the balcony or terrace?

10 A It's spacious. I've never seen another one like
11 that. See, that's the thing. It has -- I haven't seen
12 anything like that at all. It can't be duplicated in
13 my experience in looking at penthouses, and we have
14 looked at a lot of them. Or finding some with rooms
15 that are five, six bedrooms, because that might be
16 helpful some years for us. We can't find that kind of
17 meeting/gathering place like that balcony.

18 Q What did you like about the furniture?

19 A Well, it was comfortable.

20 Q What furniture did Marshall bring up there for
21 you?

22 A Oh, I harassed him. When we first rented the
23 place, it probably had six rocking chairs outside,
24 wooden, gray rockers. They got old and dilapidated,
25 and they weren't replaced like I hope they would be.

RICHARD AQUINO - RECROSS EXAMINATION

1 So I started harassing Marshall about the rocking
2 chairs. We probably got an e-mail list this long of "I
3 really want a rocking chair," so he did get a couple,
4 which was nice and I appreciated that. Those were on
5 the terrace as well, on the balcony area.

6 Q In 2020, after things opened up, did you rent
7 from Marshall? Was it spring, that spring?

8 A We had it for spring -- you know, time is a
9 strange thing. Is that when we closed down everything
10 from Covid, the spring of 2020? I think we ended up
11 taking two weeks in October. Is that right the year?

12 Q Yes, ma'am. Yes, ma'am. According to your
13 letter, that's right.

14 So in 2020, you went down in October?

15 A Uh-huh.

16 Q And how many days did you stay in October?

17 A That was a two-week period.

18 Q And how was that experience?

19 A Well, I mean, our friends were good. The place
20 was nice, it just no longer had some of the amenities
21 that we were used to, that we expected and, frankly,
22 thought that we were renting.

23 Q So what was different in 2020 compared to prior
24 years?

25 A The furniture was now -- was no longer

RICHARD AQUINO - RECROSS EXAMINATION

1 comfortable. It was the same chase loungers around the
2 pool downstairs, the yellow ones.

3 Q How did you feel about that?

4 A They are not comfortable. The table was gone.

5 There was no place to even set a drink on or suntan
6 location or anything. It was kind of bare, frankly.

7 No umbrella, you know. There was no way to gather and
8 have lunch out there, for instance.

9 Q Was your rocking chair gone?

10 A Yeah, it sure was.

11 Q How about the elevator?

12 A Key was gone from that, and that was pretty
13 concerning to several of the folks in my group.

14 Q And when you were -- so it was different?

15 A It was different. It was different and not what
16 we expected, and not what we had in the past. So in
17 that regard, I wasn't happy about it.

18 Q Now, while you were there, did anyone from the
19 board come up on the terrace?

20 A That happens often at that spot, just because all
21 the mechanical things are up there. I think the air
22 conditioning units and all of that for the whole
23 building are on the top there. So having workmen there
24 is not all that unusual. We just roll with it. We
25 know what they are doing.

RICHARD AQUINO - RECROSS EXAMINATION

1 I guess that's the year that two folks came up on
2 the elevator and I heard the elevator doors open, and I
3 was like, Wow, hello, and went to the door, but they
4 weren't off the elevator, just standing there.

5 Q Do you recognize any of those folks?

6 A I think it is the person in the white shirt, I
7 think (indicates).

8 Q Mr. Tackett.

9 A There was a lady there, also. There were other
10 times where Mr. Aquino, who lives on the ninth floor,
11 was in the penthouse one time when I came through.

12 Q He was inside?

13 A Inside. And it surprised me, because usually
14 when anyone is coming, whether it is the plumber or
15 someone for the heat, the beds, whatever it might be,
16 the TV, Marshall will call me and tell me that someone
17 is going to come up. He'll be there between 10 and 30
18 minutes, his name is so-and-so, and I know to expect
19 someone.

20 So that was not the case with this. But, you
21 know, it was kind of disconcerting. I mean, I wasn't
22 frightened, but it surprised me. He said there was a
23 leak in his apartment so he was there trying to find
24 it, perhaps in the laundry room area. So, I mean, that
25 was just the way it was. I didn't know he was coming,

RICHARD AQUINO - RECROSS EXAMINATION

1 though.

2 **Q** How often has Mr. Aquino been up on the terrace
3 while you've been there?

4 **A** I couldn't tell you a specific number. The one
5 that is most recent, I guess is the right way to put
6 it, is when he came up with a couple, two other people,
7 woman and a man.

8 She was very -- all right, so I had decided I'm
9 going to take a nap. I decided it is enough. It is
10 3:30, 4 o'clock in the afternoon. The curtains are
11 apart a little bit. But, anyway, I see movement
12 outside of those curtains. I was like, Wow, is that my
13 people? I go up and I look. It is Mr. Aquiono, and he
14 and the gentleman who was there had lifted the lady up
15 on the planter area so she could see what it looks like
16 south, you know, which is a beautiful view all the way
17 down Myrtle Beach.

18 She's very professionally dressed, and so was the
19 other gentleman. My thought was probably making a new
20 brochure, going to take some pictures from this angle
21 eventually, but that is all I thought.

22 But I didn't know they were coming, so I went to
23 ask about that. They had already gone around the other
24 end, I suppose by the stairwell.

25 **Q** How did you feel about having these people

RICHARD AQUINO - RECROSS EXAMINATION

1 outside?

2 **A** It is disconcerting. Again, I knew him and
3 didn't frighten me, but it surprised me. The idea that
4 they are out there when I don't know if someone is
5 coming. I mean, I don't like when you rent a place,
6 you think you are renting the whole place.

7 **Q** And when you rented the place, you assumed you
8 are renting to privacy of that balcony?

9 **A** Certainly. Yes. Yes.

10 **Q** And in October of 2020, did you e-mail Marshall
11 and tell him about your recent rental experience?

12 **A** Yes. I had complained verbally to him a couple
13 of times that week, and he just said put it in writing,
14 Sue. Put it in writing. So I did.

15 MS. GOLDING: 28.

16 MR. GRANTLAND: I'm getting there.

17 **Q** (MR. GRANTLAND) I'll hand you Exhibit 28, which
18 is in evidence.

19 **A** I don't have my glasses, but okay.

20 **Q** I should have told you to wear your glasses.

21 **A** They are here.

22 **Q** Is that the letter you wrote to Marshall?

23 **A** It looks right.

24 **Q** Do you outline in your letter the issues you had
25 with the unit compared to the prior years?

RICHARD AQUINO - RECROSS EXAMINATION

1 **A** Yes. And I'm sure it mentions -- I can see I
2 verified how long I've been coming and all of that.

3 The drawbacks are the elevator key, the security
4 with that. Whether that renders much or not, it
5 renders it with my mind and with my group. The
6 furniture missing and replaced with something that is
7 not very nice.

8 **Q** Right.

9 **A** I'm sure that is the bulk of this. And I wanted
10 people to call ahead of time so we don't have
11 surprises, and there was a surprise or two over that
12 two weeks I was there.

13 **Q** Have you been back since 2020?

14 **A** Yes. Yes.

15 **Q** How was your time in 2021? Did you go in 2021
16 and 2022?

17 **A** Yes.

18 **Q** How was your experience in 2021 and 2022?

19 **A** At some point, the furniture got replaced and the
20 key in the elevator. I couldn't tell you when that was
21 specifically.

22 **Q** Was it there when you got there in 2021?

23 **A** That sounds right. It was there last year, in
24 2022, I know, and probably '21.

25 **Q** How was your experience last year?

RICHARD AQUINO - RECROSS EXAMINATION

1 **A** Very fine. Not a problem with those kinds of
2 things.

3 **Q** Did you have the elevator key and the furniture?

4 **A** Yes.

5 **Q** Did you have any strangers out on the terrace?

6 **A** I don't remember that happening in 2022. You
7 know, one year we had a big crane sitting out there.
8 We've seen it all.

9 **Q** How about 2023, this year, are you planning on
10 coming back?

11 **A** If it's the same way it was last year, yes.

12 **Q** What if the access key is removed and the rocking
13 chair is removed from the terrace?

14 **A** I might get along with the rocking chairs, but
15 the nice furniture would be -- that is a real
16 distraction. It devalues one of the things that we
17 look for. It's not the same.

18 **Q** What if in 2023 the terrace is deemed a common
19 element, and any owner or guests can come up and sit?

20 **A** We will not be there if that's the way it is.

21 **Q** Why is that?

22 **A** Because there is no privacy. There is people
23 walking all the time, and that would be very
24 distracting.

25 **Q** How do you describe the penthouse?

SUE PECK - CROSS EXAMINATION

1 **A** Well, like living in a fish bowl, really, because
2 it is all glass. If you have to keep the curtains
3 closed all the time, then it is like living in a cave,
4 and we're not interested in renting a place and living
5 in a cave.

6 **Q** Thank you.

7 MR. GRANTLAND: Answer any questions Ms. Golding
8 may have.

CROSS-EXAMINATION

9
10 **BY MS. GOLDING:**

11 **Q** Good morning.

12 **A** Good morning. Good morning.

13 **Q** I think I took your deposition not too long ago.
14 I think it was December?

15 **A** Right. Right.

16 **Q** You were recently listed as a witness?

17 **A** Uh-huh.

18 **Q** Is that a yes?

19 **A** Yes, excuse me.

20 **Q** Thank you. And with respect to the master deed
21 for Shoreham Towers, you are not familiar with that
22 document, are you?

23 **A** No. No.

24 **Q** And Marshall Griffin has never given you that
25 document to review or see in any way, has he?

SUE PECK - CROSS EXAMINATION

1 **A** No.

2 **Q** And isn't it a fact that you assumed that
3 Marshall Griffin owned the roof terrace?

4 **A** Yes.

5 **Q** And you assumed that Marshall Griffin owned this
6 elevator lobby area?

7 **A** Yes.

8 **Q** Did you stay at this penthouse before Marshall
9 Griffin took out a wall and removed some doors in the
10 elevator lobby; do you recall that? Any changes in the
11 elevator lobby?

12 **A** When it opens on the tenth floor?

13 **Q** Yes, ma'am.

14 **A** I do not recall that.

15 **Q** Okay. Now, with respect to this elevator key,
16 when it was removed, the elevator use was never denied
17 to you, was it?

18 **A** No.

19 **Q** You assumed that Marshall paid assessments on the
20 roof terrace?

21 **A** I suppose. I don't know how homeowners
22 associations work.

23 MR. GRANTLAND: Objection; outside --

24 THE COURT: Sustained.

25 **Q** (MS. GOLDING) You testified in your -- strike

SUE PECK - CROSS EXAMINATION

1 that, Your Honor.

2 Now, I think you also said that that is not
3 unusual to have activity on the rooftop?

4 A Correct.

5 Q And the activity includes people being there and
6 workers being there?

7 A Workmen. People who have a specific purpose,
8 yes.

9 Q And with respect to -- I think in your deposition
10 you said there is always something going on on the roof
11 terrace; do you recall saying that?

12 A Well, I mean, there's always people happening to
13 need to be there, whether it is something on the roof
14 or the air conditioning units on each side. I don't
15 mean to be daily, please don't misunderstand me.

16 Q Now, Mr. Marshall Griffin got a safety report in
17 January of 2020. That safety report said some of the
18 furnishings that he recently put out there in 2018 were
19 unsafe?

20 MR. GRANTLAND: Objection; hearsay. She's asking
21 for hearsay statements of this witness.

22 THE COURT: Is there anything in evidence to back
23 it up?

24 MS. GOLDING: Yes, sir. Exhibit No. 19, the
25 safety report.

SUE PECK - CROSS EXAMINATION

1 THE COURT: All right.

2 Q (MS. GOLDING) And Mr. Griffin never provided you
3 that safety report, did he?

4 A No.

5 Q And he never mentioned anything to you about
6 safety issues on that high-back furniture that he got
7 in 2018, did he?

8 A No.

9 Q And that concerns you, doesn't it, that there is
10 a safety report about the furnishings on this roof
11 terrace? That concerns you, doesn't it?

12 A Well, I mean, I didn't have it to look at, so I
13 don't know.

14 Q Let me ask you to read your deposition, Ms. Peck,
15 and I'll give you my copy to make it quick.

16 A Can you give me your glasses (laughing)?

17 Q Okay.

18 THE COURT: Do you have your glasses?

19 THE WITNESS: They are in there.

20 THE COURT: Oh, you can get them.

21 A I'll get my glasses.

22 Q (MS. GOLDING) Your deposition was taken
23 December 12, 2020. I want you to -- I'm going to read
24 the question to you, and then I'll let you look at it,
25 and then I'm going to read the answer. But you can

SUE PECK - REDIRECT EXAMINATION

1 first look at it so you'll note the question I asked
2 you at your deposition and the answer you gave me at
3 your deposition.

4 **A** Okay. (Witness examines document.)

5 **Q** My question was: "Well, if a safety expert
6 informed you that something, a piece of furniture, was
7 a safety hazard, would that concern you, would it not?"

8 What was your answer?

9 **A** I said: "Certainly."

10 MS. GOLDING: No further questions.

11 **REDIRECT EXAMINATION**

12 **BY MR. GRANTLAND:**

13 **Q** The safety report we're talking about, the
14 high-back chairs, do you remember the high-back chairs
15 and the table?

16 **A** Yes. They are very heavy.

17 **Q** Did you sit in them?

18 **A** Not really. They are hard for me to get up and
19 out of.

20 **Q** You think there is anything about these chairs
21 that was unsafe?

22 **A** No. Some of my folks sat in them.

23 **Q** Did they have any problems sitting in these
24 chairs?

25 **A** No. No. They are very heavy and right there

SUE PECK - REDIRECT EXAMINATION

1 with a heavy table with the umbrella.

2 Q Did you see anything unsafe out on the balcony
3 terrace in any of the years?

4 A The only thing I recall, and won't remember what
5 year, probably ten years ago, there was this mesh thing
6 they put across the railing. I said, I bet someone's
7 little dog just went over, because the railings are
8 about that far apart. But that is the only thing I've
9 seen like that.

10 I think I noticed signage a couple of years ago,
11 but I don't remember what it says or does.

12 Q But the high-back chairs, anything about the
13 high-back chairs, from your perspective dangerous?

14 A No. No.

15 MR. GRANTLAND: Nothing further.

16 MS. GOLDING: Nothing further.

17 MR. GRANTLAND: Your Honor, we're moving a little
18 faster than I thought. We have a deposition, but we
19 have some objections to go over with the Court, and
20 then we have a couple of witnesses on the way.

21 MS. GOLDING: I was told yesterday he was going
22 to call Carl Tackett. If you're not, that's fine.

23 MR. GRANTLAND: I'm not calling him right now. I
24 may not be calling him, but maybe we can go over the
25 objections to the video deposition. It is just a short

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1 deposition, but there is some objections.

2 THE COURT: If the jurors will step in the jury
3 room for a few moments.

4 (The jury exits at 10:24 a.m., and the
5 following is heard out of the presence of the jury.)

6 MR. GRANTLAND: Your Honor, we have a video
7 deposition of Dave Young, if I could open it? It might
8 be -- we had some objections to questions. They have
9 objections, and I have a few objection. We can work
10 out the objections and try to play the deposition.

11 MS. GOLDING: Your Honor, Ms. Taylor will handle
12 this matter on behalf of the defendants.

13 THE COURT: All right.

14 MR. GRANTLAND: And Mr. Brittain is going to
15 handle it -- no, he's not (laughing).

16 I'll hand this to you, Your Honor.

17 So, Your Honor, I don't think there is -- I did
18 the direct, and Ms. Golding cross. There were
19 objections beginning -- do you want to hand the
20 Judge --

21 MS. VOEGEL: Yes. I have a copy for you.

22 MR. GRANTLAND: The objections to my direct,
23 again, on Page 7 -- 17 through 22. I asked: "How did
24 the access to the rooftop work?"

25 And he said: "It was his understanding" -- and

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1 there was no objection noted in the deposition, so I
2 think -- I'm happy to cover each one of the issues,
3 but....

4 THE COURT: Who is going first?

5 MS. VOEGEL: I can go first, if that is all
6 right?

7 MR. GRANTLAND: Sure.

8 MS. VOEGEL: We have objection to that answer for
9 lack of personal knowledge.

10 THE COURT: What line?

11 MS. VOEGEL: Line 17 on Page 7: "My
12 understanding and what I saw was the elevator was
13 locked."

14 So Mr. Young goes on to testify as to what his
15 understanding was, and not necessarily what he knew.
16 So we object on the lack of personal knowledge and
17 speculation.

18 THE COURT: First of all, who is Dave Young?

19 MR. GRANTLAND: An owner of Shoreham Towers.
20 He's a member of the HOA, and he rented Mr. Griffin's
21 unit in 2020, but he also owns a unit.

22 THE COURT: A unit below?

23 MR. GRANTLAND: Yes.

24 THE COURT: And he rented his unit?

25 MR. GRANTLAND: Yes.

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1 THE COURT: And the question is what?

2 MR. GRANTLAND: "How does the access to the
3 rooftop work?"

4 THE COURT: He said: "My understanding and what
5 I saw."

6 MR. GRANTLAND: It's personal knowledge.

7 THE COURT: Yeah. I think so.

8 MS. VOEGEL: Next, on Page 8, starting at
9 Line 16, the question from Mr. Grantland was: "Was it
10 your understanding that the terrace was restricted?"

11 We object to that as leading and in violation of
12 the parol evidence rule. You can see Ms. Golding's
13 objection there in Lines 18 through 23.

14 THE COURT: All right.

15 MR. GRANTLAND: Your Honor, that is the issue in
16 the case. The deed is -- the deed does reference a
17 terrace. It does reference a balcony. The -- his
18 outdoor space was treated like a balcony, and you
19 can -- it can be used when there is ambiguity, and I
20 don't think it was an improper question. I wasn't
21 putting words in his mouth.

22 THE COURT: "Was it your understanding that the
23 terrace was restricted"; is that leading or not?

24 MR. GRANTLAND: I guess it is a leading question,
25 but....

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1 THE COURT: That is her objection.

2 MR. GRANTLAND: I asked for his understanding.

3 THE COURT: I understand, but she is objecting to
4 leading, and I think it is leading.

5 MR. GRANTLAND: So we'll strike 8, 16.

6 MS. VOEGEL: And it continues on to Page 9. He
7 continues to answer that question in Line 4.

8 MR. GRANTLAND: Well, I don't think that my -- my
9 question on Page 9, Line 5 is objectionable. I
10 understand they are saying....

11 MS. VOEGEL: We object that as being a leading
12 question. The question starting on Line 5: "In the
13 20-plus years you owned a condo at Shoreham Towers, did
14 you ever consider the terrace outside the rooftop
15 penthouse to be common like the swimming pool?"

16 Answer: "No."

17 And then we have our objection, which is, once
18 again, leading.

19 THE COURT: What do you say to that?

20 MR. GRANTLAND: I was trying to get him to
21 explain his independent understanding.

22 THE COURT: But they are objecting to leading.

23 MS. VOEGEL: So his answer will go to Line 15 on
24 Page 9.

25 The next one we have begins on Page 11, starting

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1 at Line 14.

2 Question: "Who was the person Mr. Tackett was
3 talking about who wants to go up to the roof?"

4 Then Ms. Golding had an objection: "He
5 already testified that he couldn't identify the person
6 who had gone up to the roof."

7 And so this was asked and answered. The
8 witness already established he didn't know the answer.
9 At the end of the page, on Line 26 (sic), Mr. Young
10 testified he found out later the identity of the
11 individual on top of the roof.

12 MR. GRANTLAND: Your Honor, they are all
13 admissions by party opponents, and it is no surprise
14 that he found out that Mr. Aquino is the one member of
15 the board that wanted to go to the roof. I think it
16 certainly is admission by a party opponent.

17 THE COURT: I'll overrule that objection.

18 MS. VOEGEL: We have the objections to Page 12,
19 2 through 7. This is Mr. Young's continued explanation
20 that he ran into Marshall who then told him about the
21 litigation and suggested he call Will Grooms. We
22 objected on the basis of inadmissible hearsay. That
23 may fall under the party opponent exception, though.

24 THE COURT: I think so, too.

25 MR. GRANTLAND: Mr. Griffin is a party. I mean,

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1 what all of these folks said, they are all parties.

2 THE COURT: I'll overrule that.

3 MS. VOEGEL: Further down, Page 12, Line 13, we
4 have a question that calls for hearsay, questions that
5 will be asked and answered, the witness stated he
6 didn't know, and then testimony including inadmissible
7 hearsay.

8 So beginning with the question on Line 13: "And
9 who did you learn was the one board member who wants to
10 go up on the rooftop terrace? "

11 Ms. Golding objected.

12 Then down to Line 21, he answers the question,
13 and then we have an answer.

14 "So after talking to Will, Will basically said
15 that Richard" -- then Ms. Golding objected again.

16 Will Grooms, I believe, was a board member or
17 former president. He is not a party to this action, so
18 that is not admissible under party opponent.

19 MR. GRANTLAND: He was a member of the HOA,
20 Mr. Grooms. I mean, I think any statements by any HOA
21 members --

22 THE COURT: But they are not parties?

23 MR. GRANTLAND: Shoreham HOA is a party.

24 Mr. Grooms was president.

25 MS. VOEGEL: But at the time of this statement, I

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1 don't know that he was a member, and he was not
2 president or a member of the board.

3 MR. GRANTLAND: He was at the meeting. I mean,
4 you know -- so Mr. Grooms certainly is a member of the
5 homeowners association when the statement was made.

6 MS. VOEGEL: But he can't necessarily speak on
7 behalf of the association. He is not a member,
8 director, or officer -- he may be a member, excuse me,
9 but doesn't have knowledge to speak on behalf of the
10 association in that capacity.

11 THE COURT: He's a member of the association,
12 which is a defendant.

13 MS. VOEGEL: Yes. True, Your Honor.

14 THE COURT: I think that is admissible.

15 MS. VOEGEL: Okay. Next, on Page 13, we have
16 lines beginning with Line 8. This is a continuation, I
17 believe, of the same objection, the one board member
18 that you are aware of that who wants to go on top, so
19 this may fall under the same.

20 THE COURT: I think so.

21 MS. VOEGEL: Because it was a conversation with
22 Will Grooms, so that's overruled.

23 Okay. Page 16, Line 25 and continuing on to Page
24 17, Line 2: "How was your experience in 2022?"

25 "The elevator was secured, the furniture was

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1 back, it was like it was advertised on the website."

2 We object on the basis of the witness lacking
3 personal knowledge, and this being speculation.

4 MR. GRANTLAND: He was there.

5 THE COURT: I think so. I'll overrule that.

6 MS. VOEGEL: Page 17, Line 9, we have more
7 leading questions. Excuse me, start on Line 11: "Did
8 you all have -- how was your privacy on the terrace?
9 Did you have anyone coming and going? "

10 And then we have the answer of: "Nope. No
11 issues."

12 MR. GRANTLAND: And they didn't object. This is
13 a trial deposition. I mean, if she would have
14 objected, I would have tried to ask it in a different
15 way.

16 THE COURT: What is your response to that?

17 MS. VOEGEL: It's being introduced into evidence
18 now.

19 THE COURT: I think you still need to have
20 objected.

21 MS. VOEGEL: Okay, Your Honor. We understand.

22 THE COURT: What else?

23 MS. VOEGEL: Same Page 17 beginning with Line 15.
24 We have a question calling for speculation.

25 Question: "Other than Mr. Aquino and the

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1 current board, Mr. Young, do you know of any other
2 homeowners who want to use the rooftop terrace as a
3 common area?"

4 THE COURT: I don't think that is speculation.
5 He is asking if he knew.

6 MR. GRANTLAND: Exactly. He is a member of the
7 HOA and has a place. He said he talked to a few
8 people.

9 THE COURT: Overruled.

10 MR. GRANTLAND: Your Honor, I had a few
11 objections.

12 MS. VOEGEL: We have just one more.

13 MR. GRANTLAND: Oh, I'm so sorry.

14 MS. VOEGEL: Just one more. Page 17, beginning
15 at Line 22.

16 Question: "Again, from 1998 to 2019, how was
17 this terrace area outside of the penthouse treated?"

18 Then it continues on to Page 18: "If the
19 rules are changed back to where they were in 2020,
20 Mr. Young, would you rent the condo and terrace again?"

21 So this, again, calls for speculation.

22 MR. GRANTLAND: I think it's speaking to his
23 personal knowledge.

24 THE COURT: Yeah. His personal knowledge is what
25 we're talking about.

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1 MS. VOEGEL: Okay. Thank you.

2 THE COURT: And, Mr. Grantland, what is your
3 opinion?

4 MR. GRANTLAND: Bear with me, Your Honor.

5 (A brief pause in the proceedings.)

6 MR. GRANTLAND: Page 27, Ms. Golding asked: "Do
7 you know that the elevator lobby was a common area?"

8 That is the issue in the case. I mean, that's
9 what we're litigating. She's, basically, stating
10 something that is at issue in this case, and I think it
11 is an improper question.

12 MS. VOEGEL: Your Honor, I would point the Court
13 back to Page 9, Line 5 when Mr. Grantland was asking
14 questions: "In the 20-plus years you owned a condo at
15 Shoreham Towers, did you ever consider the terrace
16 outside the rooftop penthouse to be common like the
17 swimming pool?"

18 MR. GRANTLAND: And you objected and struck that.
19 That is no longer in the deposition. So if she can ask
20 about that, then I think I can, too.

21 THE COURT: Why don't neither one of you ask
22 about it. I'll strike yours, and I'll strike yours.

23 MS. VOEGEL: And the questions before that was a
24 little different of a question. Page 9, Line 2.

25 Question: "Was it your understanding that the

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1 terrace area was restricted?"

2 Which I think it is different than, perhaps,
3 "common."

4 MR. GRANTLAND: But that was struck, too.

5 THE COURT: That's right. It is like calling a
6 balcony a terrace, and a terrace a balcony.

7 MR. GRANTLAND: So we're striking 27, 5 and 6?

8 THE COURT: Yeah.

9 MR. GRANTLAND: Line 5 of Page 28 Ms. Golding
10 asked: "To your knowledge, Mr. Griffin doesn't pay a
11 penny for the rooftop area other than through his
12 assessments; is that correct?"

13 I objected to that. I mean, that is the issue.
14 I mean, that is not even factually accurate, but I
15 objected to the form because it was -- she's assuming
16 that he doesn't pay a penny, which is not true.

17 MS. VOEGEL: This was asking as to his knowledge.

18 THE COURT: I think it's okay.

19 MR. GRANTLAND: Page 29 she tells Mr. Young, Line
20 20, talking about the advertisement, she tells
21 Mr. Young on Line 20: "Isn't that misleading and false
22 if he's not the owner, his advertisement is false?"

23 I objected to those questions.

24 MS. VOEGEL: It is a question of opinion, "is it
25 misleading," and also cross-examination of this

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1 witness.

2 MR. GRANTLAND: I mean, she has no basis to say
3 he is misleading or making false advertisements. I
4 think it is assuming something that is not true. I
5 mean, it is a great question, but it is not a proper
6 question.

7 THE COURT: What's the answer to it?

8 MR. GRANTLAND: I'm not sure. That is what this
9 is all about.

10 THE COURT: I think I'll allow that one.

11 MR. GRANTLAND: Okay. And then -- that's all I
12 have, Your Honor.

13 If we can make sure we're clear on what's
14 objected to so we can queue the video deposition up.

15 MS. GOLDING: To remove?

16 MR. GRANTLAND: Right.

17 MS. GOLDING: While they're doing that, may we
18 take a small break?

19 MR. GRANTLAND: While the jury is out, I would
20 like to -- last thing I would like to do is ask the
21 Court to take judicial notice of the definition of
22 "balcony" and "terrace," and that the words are
23 synonyms of each other.

24 MS. GOLDING: Your Honor --

25 MR. GRANTLAND: I wouldn't want to ask this in

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1 front of the jury, but that is certainly -- we've been
2 dancing around that issue, and I would like the Court
3 to take judicial notice of the definition in the
4 Webster dictionary.

5 MS. GOLDING: Your Honor, I think that is
6 completely improper. It's what the master deed states,
7 and the master deed incorporates the Horizontal
8 Property Regime Act and also the plans. From those
9 four corners of those documents you derive the meaning
10 of a balcony, not from a dictionary.

11 Furthermore, it is not a matter to be taken under
12 judicial notice, Your Honor. So I would object under
13 that.

14 THE COURT: Yeah. I'll leave it to those people,
15 the jury, to figure it out.

16 MR. GRANTLAND: Thank you, Your Honor.

17 THE COURT: But I did look it up, and they are
18 synonyms.

19 MR. GRANTLAND: That is what I wanted you to tell
20 the jury.

21 THE COURT: They'll figure it out.

22 Let's take a short break and get everything
23 ready.

24 MR. GRANTLAND: Again, after that, I have,
25 basically -- I won't call Carter. So next, after the

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1 video deposition, is two maintenance men, and then the
2 plaintiff will rest.

3 THE COURT: Three to go?

4 MS. GOLDING: And then, of course, I'll make the
5 appropriate motions.

6 THE COURT: Right. Do you plan to begin today,
7 or how long?

8 MS. GOLDING: Yeah. I mean, if I can. After the
9 motions are heard by the Court, I definitely will start
10 calling witnesses.

11 THE COURT: That sounds good. Thank you.

12 (A recess was taken.)

13 THE COURT: Are we ready?

14 MS. GOLDING: Yes, Your Honor.

15 MR. GRANTLAND: Your Honor, my associate is going
16 to queue up the video.

17 THE COURT: Sure.

18 MS. GOLDING: It's a short one.

19 (Whereupon, the jury enters the courtroom at
20 11:07 a.m., and the following is had in the presence of
21 the jury.)

22 THE COURT: Okay. Call your next witness.

23 MR. GRANTLAND: Thank you, Your Honor. We call
24 Dave Young by video.

25 Your Honor, you have his original deposition?

DAVID YOUNG - VIDEO DEPOSITION PUBLISHED

1 THE COURT: Yeah.

2 (Whereupon, the video deposition of DAVID YOUNG
3 was published to the jury.)

4 JUROR: Your Honor, can we have it turned up?

5 THE COURT: Sure. Do you need to have it backed
6 up?

7 JUROR: No. It was just getting hard to hear the
8 video.

9 (Video continued being published to the jury.)

10 THE COURT: Call your next witness.

11 MR. GRANTLAND: The plaintiff calls Richard
12 Jones.

13 (RICHARD JONES, having been duly sworn,
14 testified as follows:)

15 THE WITNESS: Richard Jones.

16 **DIRECT EXAMINATION**

17 **BY MR. GRANTLAND:**

18 **Q** Good morning. May I call you Rich?

19 **A** Yes.

20 **Q** Tell the jury about yourself, where you are from
21 and what you do for a living.

22 **A** From Little River.

23 **Q** Originally?

24 **A** Originally, from Long Island. Back then, I was
25 an insurance broker.

RICHARD JONES - DIRECT EXAMINATION

1 **Q** How long have you lived in Little River?

2 **A** Twenty-two years.

3 **Q** What do you do in Little River?

4 **A** I work for a property management company.

5 **Q** Where do you do most of your work?

6 **A** Along the beach in North Myrtle.

7 **Q** And do you know Marshall Griffin?

8 **A** Yes, I do.

9 **Q** How long have you known Marshall?

10 **A** About 20 years.

11 **Q** Have you done any work for his rooftop terrace at
12 Shoreham Towers?

13 **A** Yes.

14 **Q** When did you start doing work?

15 **A** Probably 19, 20 years ago.

16 **Q** What did you do?

17 **A** Well, I had a punch list from the real estate
18 office, we would go up there on Saturdays, take care of
19 anything that was broken on the outside, replace bulbs,
20 clean up, clean furniture, whatever was required on the
21 outside to get it right.

22 **Q** Who paid you for your work on the inside and
23 outside of the penthouse?

24 **A** Mr. Griffin.

25 **Q** I'll show you Exhibit -- Plaintiff's Exhibit 35.

RICHARD JONES - DIRECT EXAMINATION

1 That is two pages.

2 (Whereupon, the following bench conference was
3 had out of the presence of the hearing of the jury.)

4 MS. GOLDING: This was prepared in anticipation
5 of litigation. This is just a summary of what he does.
6 This is a summary of his testimony.

7 MR. GRANTLAND: Your Honor, it's recorded
8 recollection. It's a business record.

9 MS. GOLDING: No, it can't be because it is in
10 anticipation of trial.

11 THE COURT: Why don't you just have him testify
12 from it.

13 MR. GRANTLAND: That's fine, Your Honor.

14 (Whereupon, the following was had in open
15 court:)

16 Q (MR. GRANTLAND) Do you recognize Exhibit 35?

17 A Yes, I do.

18 MR. GRANTLAND: Can you put it up?

19 Q (MR. GRANTLAND) What is this document?

20 THE COURT: Just let him testify from it.

21 MR. GRANTLAND: You can set that down, Crawford.
22 We're good.

23 Bear with me.

24 Q (MR. GRANTLAND) What is this document I just
25 handed you?

RICHARD JONES - DIRECT EXAMINATION

1 **A** This is a list of the work that we do at the
2 unit.

3 **Q** And if we can go through it. This a summary of
4 what you've done on the outside rooftop penthouse?

5 **A** Yes.

6 **Q** What do you call the area outside of the
7 penthouse, first of all?

8 **A** I really don't have a name for it.

9 **Q** So what are you --

10 **A** I refer to it as his balcony or terrace.

11 **Q** All right. And either way, you have been doing
12 work outside on the balcony or terrace for 20 years?

13 **A** Right, approximately.

14 **Q** And what days of the week do you go up to the
15 penthouse?

16 **A** Usually, Saturday.

17 **Q** How many hours a day?

18 **A** On Saturdays, usually an hour.

19 **Q** What is your hourly rate?

20 **A** Well, depends on what we have to do.

21 **Q** What is your routine when you get to the
22 penthouse?

23 **A** We start outside and work our way in.

24 **Q** What do you do? If you can, walk me through --
25 if you could, walk us through your summary there.

RICHARD JONES - DIRECT EXAMINATION

1 **A** We usually clean the furniture, spray the beds.

2 **Q** With what?

3 **A** Weed control.

4 **Q** Okay.

5 **A** We spray for pest control. We use above and
6 beyond what the HOA supplies. We take care of the
7 lighting.

8 **Q** Does the HOA give you --

9 **A** Herbicide?

10 **Q** Yeah.

11 **A** No.

12 **Q** So you use your own equipment?

13 **A** Yeah. Yeah. We pay for everything -- well,
14 Marshall pays for everything.

15 **Q** Go ahead.

16 **A** And the irrigation, anything for the overhang and
17 the walls.

18 **Q** All on the outside?

19 **A** All on the outside.

20 We clean the deck from debris, and then we work
21 our way inside.

22 **Q** And what about lighting, what --

23 **A** The lighting, the walkway lighting that wraps
24 around the balcony.

25 **Q** What do you have to do?

RICHARD JONES - DIRECT EXAMINATION

1 **A** We have to replace it. You know, it burns out or
2 runs all night long. They have a tendency to leave
3 them on during the day, so sometimes it is continually
4 running for 24 hours.

5 **Q** The lights outside?

6 **A** Right.

7 **Q** And you replace the bulbs?

8 **A** Right.

9 **Q** Who pays for the bulbs and --

10 **A** Mr. Griffin.

11 **Q** Where is the electrical box that controls the
12 lights on the terrace?

13 **A** In his utility room.

14 **Q** And where does that -- is there any other
15 electrical box?

16 **A** The main breaker box and all the switches are in
17 the interior of his unit.

18 **Q** The switches for the lighting out on the terrace?

19 **A** On the outside deck are all inside his unit.

20 **Q** And there is only one breaker box?

21 **A** That is inside his utility closet.

22 **Q** For the whole unit?

23 **A** Yes.

24 **Q** Inside and out?

25 **A** Correct.

RICHARD JONES - DIRECT EXAMINATION

1 **Q** You do power washing, deck cleaning?

2 **A** Yeah.

3 **Q** Irrigation.

4 You've been doing this work outside how many
5 years?

6 **A** Approximately, 20.

7 **Q** Has anyone besides Marshall paid you for this
8 work on the outside?

9 **A** No.

10 **Q** While you've been doing maintenance work on the
11 penthouse, have you had any contact with the
12 maintenance folks at Shoreham Towers?

13 **A** The maintenance crews? No.

14 **Q** You know who they are, though?

15 **A** Oh, yes. We meet them in the parking lot and
16 whatnot, so I know them.

17 **Q** Do the maintenance folks for Shoreham Towers do
18 any maintenance work on the terrace?

19 **A** No.

20 **Q** Who was responsible for the maintenance work on
21 the terrace?

22 **A** Me and Marshall.

23 **Q** How much have you charged Marshall over the last
24 20 years for the work you've done on the outside?

25 **A** I mean, you know, approximately a hundred dollars

RICHARD JONES - DIRECT EXAMINATION

1 a week, times 52 weeks, times 20 years. It's more when
2 we do deeper cleaning.

3 Q So 52 weeks a year, hundred dollars a week?

4 A Yeah.

5 Q For 20 years?

6 A Yeah, minimum.

7 Q So about \$104,000?

8 A He got a good deal.

9 Q I'm an English major, but I can count money fast.

10 A Yes.

11 Q What about the elevator foyer on the tenth floor,
12 do you do any cleaning in that room?

13 A Yeah. Yeah. It has to be cleaned because the
14 elevator comes right up into his unit.

15 Q What is done in that elevator foyer, what kind of
16 cleaning is done?

17 A The cleaning ladies take care of that. I take
18 care of the lighting in there, replace bulbs. The air
19 conditioning return is in there. But the cleaning
20 people have to take care of that, mop the area, the
21 rugs, mop the area, weekly clean the glass.

22 Q While you've done maintenance work for Marshall
23 in the last 20 years, have you ever run into
24 Mr. Aquino?

25 A Yeah. Sure.

RICHARD JONES - DIRECT EXAMINATION

1 **Q** And tell the jury about your experiences with
2 Mr. Aquino.

3 **A** I ran into him in the past. I know he lives
4 there. We spoke about different things, various things
5 at times. I assume he is on the board. He kept an eye
6 on certain things.

7 **Q** When you are on the deck doing your thing, how
8 often has Mr. Aquino been there?

9 **A** He's been there often. You know, I'm there every
10 week, so, you know.

11 **Q** What does he do while you do your cleaning?

12 **A** I really don't know.

13 **Q** And how about inside, has he ever -- have you
14 ever seen Mr. Aquino inside Marshall's unit?

15 **A** Yes.

16 **Q** How often?

17 **A** A few times.

18 **Q** Was he a guest?

19 **A** No.

20 **Q** Was anyone with him, or by himself?

21 **A** Most of the time, by himself.

22 **Q** Do you know what he was doing?

23 **A** I'm assuming he was doing some sort of HOA
24 inspection or something.

25 **Q** Did you ever tell Marshall he was inside his

RICHARD JONES - DIRECT EXAMINATION

1 unit?

2 **A** Yeah.

3 **Q** What did Marshall say?

4 **A** You know, what was he doing there?

5 **Q** Have you ever had to go into Mr. Aquino's unit?

6 **A** Not me, personally; but my workers, yes.

7 **Q** What were those circumstances?

8 MS. GOLDING: Your Honor, I'll make an objection.

9 If he's not personally been there, he can't testify to
10 that.

11 MR. GRANTLAND: He is speaking from personal
12 knowledge, Your Honor.

13 THE COURT: Rephrase your question.

14 **Q** (MR. GRANTLAND) What do you know about --

15 **A** We had to return to the building once because a
16 leaf or two of debris from the unit fell onto his
17 balcony, so he requested for Marshall -- called
18 Marshall, and Marshall called me and said, Hey, can you
19 send the guys back to get that. That was on two
20 occasions that I know of personally.

21 **Q** And did you send your guys back?

22 **A** Yes, I sent them back.

23 **Q** And how much debris was picked up?

24 **A** Not much.

25 **Q** Did you charge Marshall?

RICHARD JONES - DIRECT EXAMINATION

1 **A** Oh, yeah, we charged him.

2 **Q** You charged Marshall for going to Mr. Aquino's
3 unit?

4 **A** Yes.

5 **Q** The two times?

6 **A** Yes.

7 **Q** You didn't charge Mr. Aquino?

8 **A** No.

9 **Q** You charged Marshall?

10 **A** Yeah.

11 **Q** Besides the leaf, has Mr. Aquino ever reported
12 any other problems with the work you've done or
13 complained about the work you've done?

14 **A** I believe that he's mentioned like he doesn't
15 want us blowing anything off the balcony, so we work
16 our way from the railing in.

17 **Q** What about water, has he ever complained to you
18 about a water spray?

19 **A** Oh, yeah. Yeah. The irrigation had been turned
20 on from someone playing with it, and instead of
21 spraying the flowers, it was spraying over the railing
22 a little bit. We corrected that and had that taken
23 care of.

24 **Q** Were you there when Marshall's furniture was
25 taken away?

RICHARD JONES - DIRECT EXAMINATION

1 **A** For part of it, yes.

2 **Q** Can you tell -- what do you recall about that?

3 **A** It was just kind of like mayhem, you know. His
4 furniture was leaving.

5 **Q** Were you there when it was returned?

6 **A** Yeah. I believe I was, yes.

7 **Q** What about the Turtle tile, were you there when
8 it was taken?

9 **A** Just portions of it.

10 **Q** Did you have anything to do with the Turtle tile?

11 **A** No -- well, I did. Marshall told me to break it
12 into pieces so it would be easier for the people doing
13 the roof to move it. So we broke it into pieces and
14 put it into sections so it could be overlapped, and one
15 piece lifted, and then slid back, you know.

16 **Q** And what was the condition of the roof after the
17 Turtle tile was removed?

18 **A** They put down a coating, a membrane.

19 **Q** And how was that?

20 **A** That was like ice. It was like ice. When it got
21 dew or wet, it was just -- people would just fall.

22 **Q** Did you fall?

23 **A** Yeah, I fell.

24 **Q** Do you know if any of his renters fell?

25 **A** Yes.

RICHARD JONES - DIRECT EXAMINATION

1 **Q** And how long did that condition exist?

2 **A** Well, right away Marshall said we have to get up
3 there with mats. So we -- I personally purchased the
4 mats, and we started laying mats all on top of this
5 membrane. You were able to walk gingerly. Then we
6 bought mops and squeegees to keep the water from
7 coming -- when it rained, it just puddled. That was
8 the purpose of the Turtle tile.

9 **Q** That was going to be my question. Was that a
10 problem when you had the Turtle tile out on the
11 terrace?

12 **A** No. No.

13 **Q** It was safe to walk on?

14 **A** Right.

15 **Q** What is the condition of the roof now?

16 **A** Since then, they sanded it. They added sand to
17 the paint. We were able to pull up the carpets, and
18 it's much better.

19 **Q** Are you still doing maintenance at the rooftop
20 terrace?

21 **A** Yes.

22 **Q** How often?

23 **A** Weekly, or more. I also go on calls.

24 **Q** And that's been going on for how many years?

25 **A** Almost 20 years.

RICHARD JONES - CROSS EXAMINATION

1 MR. GRANTLAND: Thank you. Answer any questions
2 Ms. Golding has.

3 THE WITNESS: Oh, sure.

4 MS. GOLDING: We'll offer Exhibit 32, no
5 objection from the defendant.

6 THE COURT: 32 is in evidence without objection.
7 (Defendants' Exhibit 32 admitted.)

8 CROSS EXAMINATION

9 BY MS. GOLDING:

10 Q Mr. Jones, how are you?

11 A Very good.

12 Q Mr. Jones, you never have read or seen the master
13 deed for Shoreham Towers, have you?

14 A No.

15 Q And you've never read or designed the building
16 plans for Shoreham Towers, have you?

17 A I've seen blueprints of the building.

18 Q Blueprints?

19 A Yes.

20 Q Were these the blueprints that you saw, like this
21 (indicates)?

22 A Similar, yeah, but on a small piece of paper.

23 Q Like this (indicates)?

24 A Yeah. Something like that, yeah.

25 Q Were they provided to you by Mr. Griffin?

RICHARD JONES - CROSS EXAMINATION

1 **A** No.

2 **Q** Who gave those to you?

3 **A** I don't recall who showed them to me -- maybe an
4 engineer or something.

5 **Q** Do you know why you were shown them?

6 **A** I just remember doing work outside or something.
7 Maybe getting an estimate to do something.

8 **Q** Now, prior to the last roof repairs that occurred
9 in early 2019, you weren't a part of those repairs,
10 were you?

11 **A** No.

12 **Q** That was Thompson Roofing?

13 **A** I'm assuming, yes.

14 **Q** And Thompson Roofing, after those repairs were
15 done, they put some type of coating, sand-base paint on
16 top of that; is that correct?

17 **A** On that membrane?

18 **Q** Yes, sir.

19 **A** Yeah, after we had a few instances.

20 **Q** And then after that, was it Thompson Roofing that
21 put the carpet on the rooftop, on the terrace?

22 **A** I don't know who put the carpet on the balcony or
23 terrace, whatever.

24 **Q** But that carpet was put on shortly after the
25 membrane?

RICHARD JONES - CROSS EXAMINATION

1 **A** Yes.

2 **Q** And the carpet was done by the homeowners
3 association?

4 **A** Okay.

5 **Q** You didn't participate in putting the carpet on
6 there?

7 **A** No.

8 **Q** And you said something about -- maybe you didn't,
9 maybe I'm thinking -- it was something about repairs,
10 or doing repairs on the roof railing. You don't do
11 repairs on the roof railing, do you?

12 **A** No. I report it when it needs repairs.

13 **Q** And you report to Mr. Griffin?

14 **A** Yes.

15 **Q** And then, to your knowledge, he reports it to the
16 homeowners association?

17 **A** I would assume so.

18 **Q** And here is Exhibit 32. Is that a picture of
19 the --

20 **A** On the repaired railing.

21 **Q** That brace was put on by the homeowners
22 association; do you recall that?

23 **A** I recall it being put on. I don't know if the
24 HOA did it.

25 **Q** And that brace was put on because the roofing

RICHARD JONES - CROSS EXAMINATION

1 railing portion was --

2 **A** Getting rusted, yeah.

3 **Q** And getting loose?

4 **A** Uh-huh.

5 **Q** Is that a yes?

6 **A** Yes.

7 **Q** The court reporter can't pick that up.

8 But, clearly, you weren't a part of this --

9 **A** No. I was just reporting it was looking like it
10 needed attention.

11 **Q** And the next thing is that there were warning
12 signs that were put on the walls, the walls on the roof
13 terrace?

14 **A** Yes.

15 **Q** And those warning signs were put down -- were
16 removed, weren't they?

17 **A** Yes.

18 **Q** Did you remove them?

19 **A** No.

20 **Q** And the warning signs were put up to say to be
21 careful, don't go near the edge?

22 MR. GRANTLAND: Objection; unless we have the
23 sign, there is no evidence.

24 **A** Even when I gave the deposition, I don't remember
25 what the signs said.

RICHARD JONES - CROSS EXAMINATION

1 **Q** Do you know what happened to the signs? Where
2 are they?

3 **A** I don't know where they are. I just know that
4 one of the maintenance guys came and took them down.

5 **Q** You said Mr. Richard Aquino came to the rooftop?

6 **A** Sure.

7 **Q** At least one time he came inside Mr. Griffin's
8 unit to look for a leak; is that right?

9 **A** I'll assume that is what he was looking for.

10 **Q** And you always told Mr. Griffin if Mr. Aquino was
11 there?

12 **A** Yeah. If it came up, if I spoke to Mr. Griffin
13 that day -- you know, I wouldn't go out of my way to
14 say, you know, the tenant from downstairs is, you
15 know....

16 **Q** But Mr. Griffin never told you to tell Mr. Aquino
17 not to be on the rooftop, did he?

18 **A** No.

19 **Q** With regard to the weeds, I think you told me
20 that you started taking care of the weeds in July of
21 2019; is that right?

22 **A** That is what it looks like on my invoices, yeah.

23 **Q** Before you started taking care of the weeds in
24 July of 2019, the weeds were, sort of, getting out of
25 control, weren't they?

WILLIAM CROSSLAND - DIRECT EXAMINATION

1 **A** Yeah, because they grew quite a bit between
2 landscaping trips.

3 MS. GOLDING: That's all I have.

4 MR. GRANTLAND: No questions.

5 THE COURT: You may step down. Thank you.
6 Call your next witness.

7 MR. GRANTLAND: Defendant calls William
8 Crossland.

9 THE COURT: The defense calls?

10 MR. GRANTLAND: I'm sorry. The plaintiff calls
11 William Crossland.

12 (WILLIAM CROSSLAND, having been duly sworn,
13 testified as follows:)

14 THE WITNESS: William Crossland,
15 C-R-O-S-S-L-A-N-D.

16 **DIRECT EXAMINATION**

17 BY MR. GRANTLAND:

18 **Q** Can I call you Billy?

19 **A** Sure.

20 **Q** Is that what everyone else calls you?

21 **A** They do.

22 **Q** Where are you from?

23 **A** Columbia, South Carolina.

24 **Q** What do you do for a living?

25 **A** Landscape, irrigation and outdoor lighting.

WILLIAM CROSSLAND - DIRECT EXAMINATION

1 **Q** How long have you had your own landscaping
2 business?

3 **A** About 40 years.

4 **Q** Where do you do landscaping?

5 **A** We used to work in three states, now we pretty
6 much work in North Myrtle Beach, Tabor City, Wilmington
7 area, and Columbia area, small towns.

8 **Q** What have you done with Williams -- you are a
9 Gamecock, right?

10 **A** I don't go either way.

11 **Q** What have you done with the William Brice Stadium
12 and their grass?

13 **A** We maintained their irrigation, whenever Carolina
14 wins a game or has a loss, they tear up the shrubbery
15 on the ends, so we replace it. We've replaced some of
16 the pieces of the field, put palm trees in.

17 **Q** So the last time the crowd charged the field at
18 Williams Brice, you had to do some work?

19 **A** Yes.

20 **Q** Was that the Georgia game? I forgot.

21 **A** I didn't watch it (laughing).

22 **Q** But you have a contract with USC?

23 **A** Well, not really contracts. Sometimes they get
24 their own employees to dig them up and get us to put
25 them back.

WILLIAM CROSSLAND - DIRECT EXAMINATION

1 Q Do you know Marshall Griffin?

2 A I do.

3 Q How long have you known Marshall?

4 A I'd say for 25 years.

5 Q Have you ever done any landscaping work for
6 Marshall at his penthouse at Shoreham Towers?

7 A I have.

8 Q When did you start doing work on the outside of
9 the rooftop penthouse?

10 A About 25 years ago.

11 Q What did you do?

12 A We've relandscaped it twice, installed the
13 irrigation.

14 Q Who paid you for your work?

15 A Marshall Griffin.

16 Q I'll hand you -- did you prepare a summary?

17 MR. GRANTLAND: This is just for identification.

18 MS. GOLDING: Okay. That's fine.

19 Q Did you prepare a summary of your work for what
20 you did at Shoreham Towers?

21 A I did.

22 Q Will it help you to look at your summary?

23 A Says we've installed all of the plants and
24 planters.

25 Q Let me ask some questions. Is that a document

WILLIAM CROSSLAND - DIRECT EXAMINATION

1 you have prepared?

2 **A** Yes, it is.

3 **Q** And is it a summary of the work you have done on
4 the rooftop penthouse?

5 **A** Yes.

6 **Q** So explain the summary to the jury.

7 First, what did you do 20 years ago?

8 **A** We put the plants on the north and south end and
9 installed irrigation.

10 **Q** And then who did you charge for that work?

11 **A** Marshall Griffin.

12 **Q** And you would have put these plants in the
13 planters?

14 **A** Correct.

15 **Q** And then the next one is 20 years ago you
16 installed -- what is the second thing on your list?

17 **A** Installed the irrigation system in all planters.

18 **Q** How long ago?

19 **A** Probably 20 years ago.

20 **Q** And tell us about the irrigation. What was there
21 before, and what did you have to do?

22 **A** What was there before is what I call a cheap
23 homeowner's system, a soaker hose. It would half way
24 water the plants.

25 **Q** What did you do?

WILLIAM CROSSLAND - DIRECT EXAMINATION

1 **A** We tore that all out and put in a drip system
2 with sprays and controllers in that brings the system
3 on automatically.

4 **Q** And how many times have you had to replace the
5 sprinkler system in the last 20 years?

6 **A** Probably replaced the controller maybe three,
7 four times over the years. The drip zone, maybe twice.

8 **Q** I don't know what a drip zone is, but that's
9 okay.

10 Number 3, what does No. 3 on your list say?

11 **A** Trimmed all shrubs. When the Elaeagnus -- we
12 didn't trim them every month. He would get us to do
13 the big stuff.

14 **Q** And for how long have you been -- that is also
15 for last the 20 years?

16 **A** Yeah, last 25 years. The Elaeagnus came out
17 maybe six, seven years ago.

18 **Q** And moving on down. Seven years ago, what
19 happened?

20 **A** The Elaeagnus came out. We didn't take them out.
21 I don't know who took them out, but we replanted.

22 **Q** What did you put in their place?

23 **A** We put Emerald Green arborvitaes.

24 **Q** Why did you do that?

25 **A** I believe the homeowners association didn't like

WILLIAM CROSSLAND - DIRECT EXAMINATION

1 the Elaeagnus. They wanted something low maintenance.
2 Marshall wanted something low maintenance. The Emerald
3 Green arborvitae, you only have to trim them maybe once
4 every ten years, and they are evergreens.

5 Q And what about the roots?

6 A The roots are not aggressive. Because the
7 homeowners association was worried about the liners in
8 the planters.

9 Q Did you recommend arborvitae to Marshall?

10 A I did, yeah.

11 Q And how did they work out?

12 A Some of them died, maybe because the irrigation
13 didn't cut on and off.

14 Q They need water?

15 A Yes.

16 Q And then your last thing was about eight years
17 ago, what did you do?

18 A We had to replace the controller. They just go
19 bad. And we made his controller WiFi.

20 Q Okay. So this was all on the outside?

21 A Yeah. That is all the irrigation. The
22 controller is not. It's in the electrical room.

23 Q And so all of your work has been on the outside
24 of Marshall Griffin's -- on that balcony terrace area;
25 is that correct?

WILLIAM CROSSLAND - DIRECT EXAMINATION

1 **A** Yeah.

2 **Q** And that is -- you've been doing this for
3 Marshall for over 20 years?

4 **A** Yes.

5 **Q** And how much have you billed Mr. Griffin for the
6 last 20 years for the maintenance work on the terrace
7 and planters on the rooftop?

8 **A** I would say 80,000.

9 **Q** Have you ever worked for Shoreham Towers HOA?

10 **A** I have.

11 **Q** When did you work for them?

12 **A** Probably 25 years ago.

13 **Q** And when did you -- how long did you work for
14 them?

15 **A** Up until -- maybe seven years ago.

16 **Q** Why did you stop working with the HOA?

17 **A** For the reason we're here now.

18 **Q** What do you mean?

19 **A** Just too much conflict.

20 **Q** Did you have any experience with Mr. Aquino?

21 **A** Yes, I worked for Richard.

22 **Q** When you work for the HOA, were you also doing
23 landscaping for Marshall?

24 **A** Was I working both at the same time?

25 **Q** Yes.

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1 **A** Yes.

2 **Q** When you did work on the terrace, who did you
3 bill?

4 **A** Marshall Griffin.

5 **Q** And you never -- did the -- you worked for the
6 association, the building association?

7 **A** Correct.

8 MR. GRANTLAND: Thank you. Answer any questions
9 she may have.

10 MS. GOLDING: No questions. Thank you.

11 THE COURT: You may step down.

12 Any other witnesses?

13 MR. GRANTLAND: The plaintiff rests.

14 THE COURT: We'll take a lunch break and be back
15 at 2 o'clock.

16 (The jury exits at 12:17 p.m., and the
17 following is heard out of the presence of the jury.)

18 THE COURT: Let's take ten minutes.

19 (A recess was taken.)

20 THE COURT: What are your motions?

21 MS. GOLDING: The ultimate issue in this case is
22 whether or not the roof terrace is a common element
23 and, Your Honor, that is a decision for this Court, and
24 this Court alone, and not for the jury.

25 The interpretation, Your Honor, of a deed is an

MOTIONS

1 equitable matter, and that is in the *Heritage Federal*
2 *Savings and Loan Association versus Eagle Lake and Golf*
3 *Condominiums*, SC cite is 458 S.E.2d, 561.

4 Furthermore, the rights and authority of a
5 horizontal property regime are governed by the master
6 deed and the act. The rights and authority of this
7 regime can only be determined from the master deed, and
8 the master deed in its entirety. Your Honor, that is
9 in the case of *Roundtree Villas Association versus 4701*
10 *Kings Court*, S.C. cite is 321 S.E.2d, 46. I remember
11 that case. That was a John Clark case.

12 Then, Your Honor, it is for this Court to
13 determine is the contract clear? Is the contract
14 ambiguous? That is not a jury issue. And that, Your
15 Honor, is in *Williams versus Geico Insurance*, 762
16 S.E.2d, 705.

17 And then the contract, to be ambiguous, must be
18 capable of different interpretations by different
19 people. You don't look at the contract, the master
20 deed, based upon what someone did. You look at the
21 contract in its four corners.

22 So, in this case, as testified, there is only one
23 contract, and that is the master deed. An
24 interpretation of the master deed is for this Court,
25 because it is a deed, an equitable matter. Looking at

MOTIONS

1 the master deed encompasses not only the master deed,
2 which is introduced as Plaintiff's Exhibit No. 5, but
3 also encompasses the building plans. I've pointed out
4 in Exhibit A that the building plans are specifically
5 incorporated and made a part of this master deed.

6 So if you look at the master deed, Your Honor,
7 there are only two components of this Horizontal
8 Property Regime Act: That is the dwelling unit, and
9 common elements. This Horizontal Property Regime Act
10 does not have limited common elements. I think that is
11 very important. Limited common elements, Your Honor,
12 under the definition of the Horizontal Property Regime
13 Act are common elements that the master deed provides
14 can only be used by certain unit owners, or reserved
15 for certain unit owners.

16 There is no existence of any limited common
17 elements. The master deed is completely devoid of any
18 mention of that. So you look at the master deed, and
19 it starts in Article 3, saying there is only two
20 components: Dwellings, and common elements.

21 It is clear that Mr. Griffin only owns a
22 dwelling. I specifically asked him that question. He
23 agreed. He also agreed that his dwelling is within the
24 four corners of his unit; but, of course, "dwelling" is
25 defined not only in the master deed, but the Horizontal

MOTIONS

1 Property Regime Act, and it is basically what's within
2 the walls on top of the floor. The common elements are
3 everything else.

4 The case law is fairly clear -- well, I shouldn't
5 say that. The Horizontal Property Regime Act goes into
6 the definition of common elements, and part of that
7 definition is general common elements means -- and this
8 is Section 27-31-20, paren, F, end paren, No. 2 says:
9 "Foundation, main walls, roofs, halls, lobbies,
10 stairways." It goes on and lists other items.

11 And, then, in No. 6, it states "elevators."

12 No. 7 -- excuse me, No. 3 it says: "Basements,
13 flat roofs."

14 So this master deed has never been amended. This
15 master deed provides if you are not a dwelling, you are
16 a common area, common element. The master deed
17 incorporates the plans.

18 On the various pages of the plans, the plaintiff
19 is trying to say that the balcony -- that what he has
20 is a roof balcony; that's not correct. The plans do
21 not show that he has it all. That is without dispute.
22 The only location of balconies are floors nine through
23 two. The plans are clear on several pages that
24 balconies are below the roof terrace. The roof terrace
25 is identified separately. And since the roof terrace

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1 is not a dwelling, it must be a common element.

2 The master deed further states that you cannot
3 divide, sever, separate common elements. There is a
4 perpetual easement to all unit owners; in other words,
5 you can't claim an exclusive -- you cannot claim
6 exclusive control over common elements, because every
7 unit owner has a perpetual non-exclusive right to the
8 common areas.

9 I want the Court to remember Mr. Griffin
10 testified he does not own the rooftop. His position is
11 he has exclusive use of the rooftop. He specifically
12 on cross-examination said -- not once, but twice -- he
13 does not own the roof terrace. I specifically asked
14 him about that. Since he does not own the roof terrace
15 and claims no ownership of the roof terrace, it can
16 only be a common element, and a common element is
17 non-exclusive to all unit owners.

18 The master deed also provides that the
19 association has the right to establish rules to govern
20 common elements. The common elements are to be
21 maintained by the association. That is in Article 21.

22 Now, the fact that Mr. Griffin paid for some work
23 on the roof terrace, paid for work in the planters,
24 remodeled, and took away the elevator lobby and paid
25 for that, that doesn't mean that he gained any

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1 ownership interest. He did that voluntarily. Not one
2 bit of evidence is before this Court that Mr. Griffin
3 was required to do that. That was a voluntary act on
4 his part.

5 There was reference that maybe there's an
6 agreement of the planters -- with respect to the
7 planters, but, Your Honor, that does not affect
8 ownership of the planters. In fact, Mr. Griffin was
9 real clear that the planters were common elements;
10 therefore, if the association -- even if they told him
11 you put the dirt in, you put the arborvitaes in, you
12 take care of that, well, the association didn't do
13 that.

14 The association has a right to direct others to
15 do activities relating to common elements. They
16 contract with property managers. They request someone
17 to come in and do some activities. Even Mr. Crossland,
18 the landscaper, worked for the association. The
19 association has that right to ask third parties or to
20 ask others to do activities relating to common
21 elements. That does not change the aspect or the
22 character of a common element because a unit owner does
23 some work with respect to a common element.

24 The testimony is clear that at Shoreham Towers
25 there is not one unit owner that owns any part

MOTIONS

1 individually of a common element. There is no contrary
2 evidence to that. The master deed and the Horizontal
3 Property Regime Act establish and state that if you
4 start out as a common element, you must remain a common
5 element. And that is under the Horizontal Property
6 Regime Act 37-31-70, Article 9 of the master deed.

7 The only way you can change the character of a
8 common element is to amend the master deed, and that
9 did not occur.

10 The testimony about a balcony, the plans, as I
11 said, are very clear about where the balconies are
12 located. The master deed references balconies, that
13 they belong to the unit owner. So you go to the master
14 deed -- I mean the plans, and show where the balconies
15 are located. There is no confusion in the master deed
16 as to the location of the balconies; none at all.
17 Nothing in the documents say that the rooftop is a
18 balcony -- or the roof terrace, excuse me. Again, that
19 is the decision of the Court.

20 There are differences with respect to the roof
21 terrace and the balconies starting on the ninth floor
22 going to the second. There is no stairwell going to
23 any of the balconies on these plans. There is no
24 elevator going to any of the balconies on these plans.
25 None of the balconies on those plans serve as a roof

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1 for the building. Clear distinctions exist, Your
2 Honor.

3 Now, with respect to the legal claims --

4 MR. GRANTLAND: Can we address this first?

5 THE COURT: Sure. Go ahead.

6 MR. GRANTLAND: We're bouncing around "balcony"
7 and "terrace," and there is no question those words are
8 synonyms. There's no question the master deed says all
9 balconies from the dwelling to the railing are not
10 common.

11 THE COURT: And witnesses have used those words
12 interchangeably all throughout this trial, including
13 the lawyers.

14 MR. GRANTLAND: Right. And since 1983, the
15 testimony is clear that the terrace balcony has not
16 been considered common. It changed in 2019 when they
17 created these rules. But since 1983, when Marshall's
18 uncle owned it, and since he had it from '95 to 2019,
19 it's not been considered common. They looked and said,
20 hey, terrace isn't in there, and that is the ambiguity
21 we think is a fact question. The word "terrace" is not
22 anywhere in the master deed, but the word "balcony" is,
23 and all we're asking the jury for, or any fact finder,
24 is to use commonsense. Look at the intent of the
25 parties.

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1 You heard Mr. Beckham, no one would put a glass
2 house without any private space. That's silly. And
3 he's never appraised anything like that.

4 So I think it is a factual issue. It does go to
5 the jury.

6 THE COURT: I think it is a factual issue and
7 goes to the jury.

8 MS. GOLDING: Just to state, Mr. Grantland just
9 said that "terrace" is not anywhere in the master deed.
10 That is incorrect. It is in the master deed because it
11 is in the plans.

12 THE COURT: But what is a balcony? What is the
13 terrace? People are using the word "terrace," but then
14 they're using the word "balcony" for the same property.

15 MS. GOLDING: No, Your Honor. It is not what the
16 witnesses testify to. It is what the documents are.

17 THE COURT: It's both. It's what the evidence
18 is.

19 MS. GOLDING: No, sir. It is --

20 THE COURT: How do you interpret the contract,
21 and how does he interpret the contract? That is the
22 issue, or we wouldn't be here.

23 MS. GOLDING: Right. I understand that, Your
24 Honor, and I respect what you are saying, but you don't
25 listen to what someone else says is a balcony. You go

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1 into the documents, and the documents are very clear.

2 The master deed is very clear.

3 THE COURT: But, I mean, if I were sitting in the
4 penthouse, and you told me to go out on the balcony and
5 pick up that bucket, I would walk right out there on
6 the terrace and pick up that bucket.

7 It just -- the whole thing doesn't make sense
8 that you would build a four-walled glass house that the
9 whole world can look into and have it where the whole
10 world can come up and just look in my house or drink a
11 beer or do corn hole, whatever. It does not make sense
12 to me, but it is not for me to decide. I'll let them
13 decide.

14 MS. GOLDING: Yes, sir.

15 THE COURT: Okay.

16 MS. GOLDING: The first cause of action is the
17 breach of contract. I specifically asked Mr. Griffin
18 to point me out a term that was breached in the
19 contract, the master deed. He could not. There is not
20 one term that Mr. Griffin can point to as to what was
21 breached in the contract.

22 THE COURT: All right. Reply?

23 MR. GRANTLAND: They came up with rules in 2019
24 for the first time that changed his use of this
25 terrace, and that's the breach, Your Honor. From '95

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1 to '19, it was not -- it was his balcony. It was not
2 considered common. He had the same rules everyone else
3 had for their balconies. But in '19, they said, no,
4 you can't go out there before 8:00. You have to come
5 in after 10:00, and we can let any homeowner and guest
6 come up there. That's the breach.

7 THE COURT: I understand.

8 MS. GOLDING: It's not in the contract, Your
9 Honor. That is not in the master deed. He has to
10 point to the master deed and show where in the master
11 deed any of the defendants breached. That has to be
12 shown.

13 MR. GRANTLAND: No. They added to the master
14 deed by creating the rules. That is the breach. I
15 mean, that is the -- I mean, he was living under the
16 master deed perfectly fine.

17 THE COURT: And they unilaterally changed the
18 rules of the contract to his detriment, and on what
19 appears to be based on bad blood, but anyway.

20 MS. GOLDING: Your Honor, there is nothing
21 unilaterally changed in the master deed.

22 THE COURT: That is for interpretation, for the
23 jury to decide.

24 MS. GOLDING: They have to have -- you have to
25 point to some provision in the master deed that the

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1 defendants breached; they cannot, because there was
2 none.

3 MR. GRANTLAND: No. No. The provision that says
4 all balconies from the dwelling to the railing are not
5 common. That changed when they created these rules.

6 THE COURT: That's right.

7 MR. GRANTLAND: And it only singled out him.

8 THE COURT: Right.

9 MS. GOLDING: Next is breach of contract
10 accompanied by fraudulent intent. Aside from the fact
11 that the defendants had never, never shown any breach
12 of the master deed, they also did not show any intent,
13 any fraudulent act or intent, that accompanied any
14 breach of the contract. There has to be some fraud.
15 The testimony of Mr. Griffin that the defendants can
16 have an opinion, the defendants -- that doesn't mean
17 it's fraudulent. Their opinion was that this is a
18 common element.

19 THE COURT: Well, they came up with that opinion
20 20-something years later after they started having bad
21 blood between one tenant and another owner. I think it
22 is a question of fact.

23 MR. GRANTLAND: I agree, Your Honor.

24 Under *Lister versus NationsBank*, 329 S.C. 133,
25 494 S.C.2d 449: "A fraudulent act is any act

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1 characterized by dishonesty in fact, unfair dealing, or
2 unlawful taking of another person's property
3 intentionally."

4 They did all of that. Dishonesty of fact,
5 Mr. Aquino sent the e-mail out that started the fight.
6 He said Marshall monkeyed around with the elevator,
7 which he didn't do.

8 He said Marshall converted an atrium, which is
9 within the walls of his condo, which he didn't do.

10 They said he messed with the keylock on the
11 stairwell, which he didn't do.

12 He said a lot of things that were not true. And
13 after we filed suit, what do they do? For the first
14 time in the history of Shoreham Towers, in 2019, after
15 he filed suit, they get a safety expert to say, oh,
16 yeah -- and he only looks at the terrace. I mean, he
17 doesn't look at the high-back chairs on any other
18 balcony. He singles out the terrace. That is unfair
19 dealing. And then they file suit 2019 --

20 MS. GOLDING: We didn't file suit.

21 MR. GRANTLAND: I filed suit. They take his
22 furniture in 2020, I mean.

23 THE COURT: I think it is a question of fact.

24 MS. GOLDING: The next legal issue is the claim
25 for unjust enrichment quantum meruit. Clearly, they

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1 testified there is a contract, so that claim cannot
2 stand since the contract exists.

3 THE COURT: So he would have to elect between the
4 breach of the contract or quantum meruit?

5 MR. GRANTLAND: Then we'll dismiss quantum
6 meruit. If you say I have to elect.....

7 THE COURT: All right. That one is gone.

8 MS. GOLDING: The next one is conversion. In the
9 complaint, the plaintiff sets that the defendant
10 exercised unauthorized possession control and/or
11 ownership of the area adjacent to the rooftop
12 penthouse. Plaintiff has already testified that he
13 doesn't own the rooftop terrace. Because he doesn't
14 own the rooftop terrace, he cannot now claim this was
15 conversion.

16 THE COURT: Conversion doesn't apply to real
17 property anyway, does it?

18 MS. GOLDING: No, it doesn't.

19 THE COURT: So I think conversion goes.

20 MR. GRANTLAND: No, Your Honor. How about the
21 furniture? They took the furniture from May until
22 October. They took his Turtle tile.

23 THE COURT: Yeah, the furniture is fine.

24 MR. GRANTLAND: I'm entitled to argue conversion
25 as to the --

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1 THE COURT: As to personal property?

2 MR. GRANTLAND: Right.

3 MR. GOLDING: That is not in the complaint. That
4 never has been a part of the complaint, Your Honor.

5 MR. GRANTLAND: The complaint was filed in '19.
6 They took his furniture in 2020. I would ask the Court
7 to allow me to amend --

8 THE COURT: I'll allow you to amend. I think it
9 only applies to the personal property.

10 MS. GOLDING: Your Honor, in that light, the
11 plaintiff cannot seek any damages for anything other
12 than personal property, so the --

13 THE COURT: Under the conversion part.

14 MS. GOLDING: Yes, sir, conversion. He cannot
15 seek any damages other than allegedly to the furniture.
16 Of course, Your Honor, there is evidence to the effect
17 that Mr. Griffin was asked numerous times to remove the
18 furniture. He refused, so we had to do it.

19 MR. GRANTLAND: Your Honor, on the conversion, my
20 theory on that is that by coming up with the rules,
21 they devalued his property. I think -- I mean, that is
22 certainly permissible evidence that you heard from the
23 appraiser, and whether that is damages under breach of
24 contract --

25 THE COURT: It would need to be under something

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1 other than conversion.

2 MR. GRANTLAND: As long as I'm permitted to argue
3 those damages. I mean, I won't confuse the jury, I'll
4 just say this is --

5 THE COURT: Right.

6 MS. GOLDING: There again, Your Honor, and this
7 is what I said at the pretrial conference with respect
8 to Henry Beckham and damages, those damages cannot go
9 to the jury, because if there -- if the roof terrace is
10 a common element, he cannot claim any damages for loss
11 of use. If it is -- excuse me. I think I got it
12 reversed, I apologize.

13 If the roof terrace can be exclusively used by
14 the plaintiff, he cannot declare any devaluation
15 because it's his -- supposedly has been his.

16 If, in fact, it is a common element, he cannot
17 claim any damages, because under the master deed, it
18 belongs to everyone. It has never been a part of his
19 unit.

20 So either way you look at the testimony of
21 Mr. Beckham, it is not appropriate to permit those --
22 that damage testimony.

23 MR. GRANTLAND: The rules devalue his property,
24 and Mr. Beckham explained it. I mean, they created
25 these rules in 2019, and it's a \$222,000 devaluation of

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1 his property, if those rules remain in effect.

2 THE COURT: I agree.

3 MS. GOLDING: Next, Your Honor, is cause of
4 action for civil conspiracy. All the individual
5 defendants are board members, so there is no viable
6 claim for conspiracy.

7 THE COURT: Mr. Grantland?

8 MR. GRANTLAND: Your Honor, conspiracy can be --
9 and I'm not saying anyone is a criminal, but conspiracy
10 can be a lawful act -- complete a lawful act by
11 unlawful means. They have been lawfully met. They
12 took away what has been his private balcony for the
13 last 26 years with their rules. They singled him out.
14 They went along with this safety report after suit was
15 filed, said his furniture is unsafe. Then, they took
16 all of his furniture, and then they threatened to
17 destroy his furniture and rip out all of his plants.

18 This was all done behind his back. These are all
19 decisions. So they may have been lawfully been able to
20 meet as a board, and I get that, but they were making
21 unlawful acts.

22 THE COURT: Who were they conspiring with?

23 MR. GRANTLAND: The three of them.

24 THE COURT: Individually?

25 MR. GRANTLAND: Yes, sir. I sued them

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1 individually.

2 THE COURT: Okay. I think that would apply for
3 them individually, but not for the HOA.

4 MS. GOLDING: You cannot --

5 THE COURT: A corporation cannot conspire.

6 MS. GOLDING: I understand, but individuals in a
7 corporation cannot conspire if they are all part of the
8 same. The individuals -- it is called intercorporate
9 immunity. The law is fairly clear, I thought, Your
10 Honor, that there can be no conspiracy among
11 individuals within a corporation.

12 MR. GRANTLAND: No. I mean, Mr. Aquino came out
13 with these untrue statements. They got behind it and
14 said, you know, he's not paying his fair share, he's
15 been taking advantage for years, and we're going to
16 create these rules to fix them. That is why I sued
17 them individually.

18 And wanton and willful is not protected by any
19 corporate shield, and this clearly is an unfair
20 dealing. Untrue statements are not -- dishonesty of
21 fact is not protected by the corporate shield.

22 THE COURT: Seems like he could go after them
23 individually.

24 MS. GOLDING: If that was the case, no one would
25 ever meet in a corporation or in a homeowners

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1 association.

2 THE COURT: You would have to prove that they
3 were acting grossly, correct?

4 MR. GRANTLAND: I mean, that is our case.
5 Mr. Aquino came up with this e-mail, a false narrative,
6 about Marshall taking advantage for years and years.

7 THE COURT: So individuals, they worked together,
8 but used the corporation to complete what they were
9 trying to do?

10 MR. GRANTLAND: Exactly.

11 THE COURT: That's the way I see it. The
12 corporation would be immune, but not individually.

13 MR. GRANTLAND: That is why I sued them.

14 MS. GOLDING: Obviously, Your Honor, I disagree;
15 but, okay.

16 Now, at this point in time, Your Honor, there is
17 a flaw in this case, and the flaw is that the plaintiff
18 is not the sole owner of the unit. He has a co-owner
19 who has not testified and is not a party to this case.
20 I do not believe that he can come across and present
21 himself as losing anything, because he only has a
22 50 percent interest -- well, it is an undivided
23 50 percent interest. That is a fatal flaw.

24 He is standing before the Court as a dwelling
25 owner, but he's not. He has a 50 percent interest in

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1 the dwelling, which means that he is not entitled to
2 recover for the dwelling because his wife was never a
3 part of the lawsuit.

4 MR. GRANTLAND: Your Honor, the time to make a
5 Rule 19 motion is before trial, not during the trial.
6 Case law is very clear that, you know, adjoining -- I
7 mean, just because they own it together does not mean
8 that she's an indispensable party. In the *Marshall*
9 *versus Winter* case it says that adjoining landowners in
10 a suit do not have to be necessary parties to bring a
11 property dispute.

12 Again, if she thought that Marshall's wife was an
13 indispensable party, that should be covered by a motion
14 under Rule 19, not a directed verdict, dismiss the
15 whole thing. If that was important, it certainly
16 wasn't brought up until today.

17 MS. GOLDING: It is pled as a defense, Your
18 Honor; that's for sure.

19 THE COURT: I think it was brought up regarding
20 the DJ action.

21 MS. GOLDING: Well, the DJ action, clearly, had
22 to be there. That is not before the Court, and that's
23 not a legal claim, the DJ action.

24 THE COURT: I agree. You can't have the DJ
25 action, because we don't have all the owners made a

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1 party to it.

2 MS. GOLDING: Right. But as a practical matter,
3 you want to award damages to one owner? No, you can't.

4 MR. GRANTLAND: They are joint tenants with -- I
5 mean, they are joint owners with an undivided interest.
6 I think the decision of one is the decision of both.

7 THE COURT: That's an interesting question.

8 MS. GOLDING: Yes, sir.

9 THE COURT: What kind of research do you have on
10 it?

11 MS. GOLDING: I don't.

12 THE COURT: How about you, Mr. Grantland, what
13 research do you have?

14 MR. GRANTLAND: In *Marshall versus Winter* 250
15 S.C. 308, 157 S.C.2d 595, the Court determined that
16 both of the joint landowners/lessees of the plaintiff
17 were not necessarily parties to an action in a property
18 dispute. You know, there is -- in all of our research,
19 Your Honor, it is rare that all landowners are
20 indispensable parties.

21 And, you know, again, this is not -- this would
22 be a Rule 19 motion, not in a
23 directed-verdict-dismiss-the-case motion.

24 MS. GOLDING: I think it goes directly to the
25 heart of any entitlement to damages. *Marshall Griffin*,

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1 as an individual, is not entitled to damages. If he
2 were, and his wife were in this lawsuit, that is
3 something else.

4 THE COURT: Why isn't he entitled to damages?
5 He's an owner.

6 MS. GOLDING: He's part owner.

7 THE COURT: But an owner.

8 MS. GOLDING: Yes, sir. But I think that in
9 order to say that there is any type of devaluation or
10 any type of loss of property -- he's never said that he
11 owned it solely. It has to be both of them.

12 THE COURT: But any lawsuit he has in this case
13 would be a loss to her, too.

14 MS. GOLDING: But she's not a party. There is no
15 evidence that she lost anything. None.

16 THE COURT: Other than she's a half owner of this
17 property, which is the subject of this lawsuit.

18 MS. GOLDING: That's right.

19 THE COURT: So it would affect her.

20 MS. GOLDING: But there has to be evidence.

21 THE COURT: There is a lot of evidence to send to
22 the jury, for sure. It does affect her. Just because
23 she's here or not here, really doesn't make any
24 difference.

25 MS. GOLDING: I respectfully disagree.

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1 THE COURT: You don't have any case law to give
2 me to back it up?

3 MS. GOLDING: We will. We will.

4 MR. GRANTLAND: We purposely didn't name her. I
5 mean, he inherited it. He manages it. I mean, the
6 case law doesn't say she has to be a part of it.
7 Certainly, if that was necessary, if she had made a
8 motion before trial, we would have added her, if
9 necessary. But I don't think it's necessary when he's
10 the one dealing with the board and getting the e-mails.
11 He's the target of the board's decisions.

12 THE COURT: Yep, I'll let it go forward; right,
13 wrong, or between.

14 MS. GOLDING: I understand. And we pled, as a
15 defense, lack of an indispensable party. They cannot
16 go forward because an indispensable party was not
17 named. That is not something that has to be brought up
18 before at the commencement of a legal action. It can
19 be brought up at trial, and we asserted that defense.

20 THE COURT: But from a practical point of view,
21 if she was made a party, how would that change
22 anything?

23 MS. GOLDING: The change would be....

24 THE COURT: She would have sat at that table and
25 said nothing.

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1 MS. GOLDING: But in reality, she wasn't. And
2 she's definitely indispensable.

3 THE COURT: I'm looking at it from a practical
4 view. How would that have really changed anything?

5 MS. GOLDING: I think you have to add the unit
6 owners. He's suing on the unit that is owned by two
7 people.

8 THE COURT: Husband and wife. The husband
9 inherited it.

10 MS. GOLDING: The deed doesn't show that he
11 inherited it. He bought it. The deed only reflects
12 that he purchased the unit.

13 THE COURT: He bought it out.

14 MR. GRANTLAND: The decision to deny or grant a
15 motion to join under Rule 19 or intervene lies in the
16 sound discretion of the trial Court.

17 THE COURT: Well, I've ruled.

18 MS. GOLDING: Next is the Immunity Statute, South
19 Carolina 33-31-834. It provides that all the
20 directors, trustees, members of a not-for-profit
21 corporation are immune from suit arising from the
22 conduct and affairs of the corporation association.

23 Clearly, all the acts that were done were part of
24 being directors with the association. They did not act
25 individually outside of the association. They acted as

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1 directors. All their actions were within the
2 association, and he has not been able to establish that
3 any of these individuals, in any way, not only did not
4 act, but their actions were not willful or wanton, Your
5 Honor. It is willful, wanton, or grossly negligent.
6 They did not act outside of their authority, and they
7 did not act willfully, wantonly, or grossly negligent.

8 THE COURT: I'll let that jury determine if
9 Richard did that or not.

10 MS. GOLDING: So only the three defendants can be
11 dismissed under immunity, because there is no evidence
12 that they ever acted willfully, wantonly, or grossly
13 negligent.

14 THE COURT: They went along with what Richard was
15 up to maybe. I don't know, but it is a question of
16 fact.

17 MS. GOLDING: Your Honor, you said you don't
18 know. There has to be evidence.

19 THE COURT: I'm not going to make that decision.
20 They're going to make that decision.

21 MS. GOLDING: No, but some evidence must exist at
22 this stage.

23 THE COURT: Were they acting as a board?

24 MS. GOLDING: Yes, sir, they acted as a board.

25 THE COURT: Were they directed by Richard Aquino?

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1 MS. GOLDING: No, sir. There is no evidence that
2 they were directed.

3 THE COURT: It sure sounds like he was working
4 with them to accomplish something that benefited him,
5 possibly.

6 MS. GOLDING: Yes, sir.

7 THE COURT: I just think it is a question of
8 fact.

9 MS. GOLDING: I respectfully disagree, but I
10 understand.

11 THE COURT: He talked to us for half a day.

12 MS. GOLDING: Those are the claims that are
13 asserted by the plaintiff, which we would seek a
14 dismissal. Thank you.

15 MR. GRANTLAND: Your Honor, I renew my motion to
16 amend the pleadings to conform to the evidence. I did
17 not plead acquiescence or adverse possession, but in
18 this case, there is most certainly evidence of both.

19 THE COURT: I think there is evidence for
20 acquiesce. I don't think there's adverse possession.
21 He didn't adversely possess that property.

22 MR. GRANTLAND: He's always treated it as his
23 own.

24 THE COURT: I know, but not hostile.

25 MR. GRANTLAND: If hostile means to dispossess

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1 someone, he wasn't kicking anyone else off, if that's
2 the Court's ruling.

3 THE COURT: Right. I think that is -- I don't
4 think there is a cause of action for -- and the DJ is
5 not proper, because not everyone was joined.

6 MR. GRANTLAND: But you agree with the
7 acquiescence?

8 THE COURT: I do.

9 MS. GOLDING: And now I would like to move for a
10 directed verdict on acquiescence, because acquiescence
11 is nothing but waiver and estoppel, Your Honor.

12 The plaintiff cannot use acquiescence as a
13 shield. So waiver and estoppel are not applicable to
14 -- are not applicable to the plaintiff. That is an
15 impossibility -- excuse me, Your Honor.

16 (A pause in the proceedings.)

17 MS. GOLDING: Furthermore, Your Honor,
18 acquiescence must include all of the named -- all the
19 unit owners at Shoreham Towers.

20 THE COURT: Where is that written?

21 MS. GOLDING: Sorry?

22 THE COURT: Where do you have that? Is that a
23 statute?

24 MS. GOLDING: The only cases in South Carolina,
25 with respect to acquiescence, is the one that was cited

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1 by the plaintiff, and that was based on a mistaken
2 belief that the rule applies to cases involving
3 boundary disputes. This is not a boundary dispute
4 between adjoining property owners. So, therefore, the
5 rule is not applicable on a case involving a dispute
6 over an entire tract of land. In that case, the
7 mistaken belief -- wait, this is adverse possession.

8 (A brief pause in the proceedings.)

9 MS. GOLDING: Do you mind if Ms. Voegel speaks?

10 THE COURT: All right.

11 MS. VOEGEL: I had to dig in my property law
12 textbooks a little bit to get into acquiescence, but it
13 seems to me that acquiescence is really coming up in
14 the context of boundary line disputes between adjoining
15 landowners, which seems different here, and then also
16 as sort of a way to deal with the element of hostility
17 within adverse possession.

18 So it sort of seems to have developed as like a
19 substitute for whenever we don't have the hostile
20 element met in adverse possession, because maybe there
21 is a mistaken belief. So can you meet the hostile
22 element if you don't have any intent because the
23 properties owners are mistaken about a boundary line?

24 This doctrine seems to have addressed that
25 specific issue to allow -- of boundaries. Again, in

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1 the factual context, it seems to be with boundary line
2 disputes; also, legally, as sort of a way to save an
3 adverse possession claim by addressing that hostile
4 element over boundary disputes.

5 MR. GRANTLAND: I would like to go back to
6 adverse possession. But on acquiescence, the case law
7 says: "Acquiescence can be shown by the way the
8 parties did not act. For instance, evidence that the
9 party made no objection to the use of land can be used
10 to show recognition and acceptance of the property
11 rights of the other party."

12 So from '95 to '19, there was an acceptance that
13 this was his -- Marshall's balcony, his private space.
14 Only until Mr. Aquino started looking, and he saw
15 "balcony," and there wasn't "terrace," then the rules
16 changed. So I think it is not just a property line, it
17 is the use of property.

18 MS. VOEGEL: Just one more point. I think when
19 we are looking at acquiescence in that sense, that's
20 where it comes back to estoppel. One of the cases that
21 the plaintiff cited, *Southern Railroad Company versus*
22 *Day*, 140 S.C. 338, a 1926 case. In that opinion that
23 discusses acquiescence is quiet under the umbrella,
24 unmistakably, of estoppel. So that comes back to that
25 argument that an estoppel waiver cannot be used as a

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1 sword, but only as a shield.

2 MR. GRANTLAND: I believe that acquiescence is a
3 separate legal doctrine under the case law. I think we
4 can plead it and raise it based on the evidence.

5 THE COURT: I'm going to stick to my original
6 plan. I won't allow adverse possession, declaratory
7 judgment, but I'll allow acquiescence to go forward.

8 MR. GRANTLAND: And, Your Honor, if I can speak
9 on one -- I didn't bring this up. If the only issue
10 the Court has on adverse possession is hostile, the
11 testimony is '95 to '19 he acted like it was his. In
12 '19, they said, No, it's ours. He sued them.

13 So this is our -- if hostility requires attempt
14 to dispossess the owner, we filed this lawsuit because
15 they said, No, it's ours. So I think that is evidence.

16 THE COURT: But I don't think that's what they
17 meant by hostile. Everyone gets hostile in the
18 lawsuits.

19 MR. GRANTLAND: I just wanted to at least put
20 that in the record that when they dispossessed and
21 said, No, it's ours, we filed this lawsuit. We
22 couldn't have a duel or a fight. We filed a lawsuit.

23 THE COURT: Right.

24 MS. GOLDING: I know the Court's ruling, but
25 adverse possession, according to the plaintiff, is

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1 premised on the fact that it's a common element.

2 THE COURT: I'm not going to allow it.

3 Anything else?

4 MR. GRANTLAND: No, Your Honor.

5 THE COURT: Let's get some lunch and come back at
6 2:00.

7 (A lunch recess was taken.)

8 MS. GOLDING: I've conferred with Mr. Grantland,
9 and he's agreed with Defendants' Exhibit 7 through 22
10 to be in evidence.

11 MR. GRANTLAND: No objection.

12 THE COURT: Okay. Defendants' 7 to 22 in
13 evidence.

14 (Defendants' Exhibits 7-22 admitted.)

15 MS. GOLDING: And then he's agreed to Defendants'
16 41 to 51.

17 THE COURT: Okay. Exhibits 41 through 51 in
18 evidence as well.

19 MR. GRANTLAND: Without objection.

20 (Defendants' Exhibits 41-51 admitted.)

21 THE COURT: All right. Let's bring out the jury.

22 (The jury enters at 2:12 p.m., and the
23 following is heard in the presence of the jury.)

24 THE COURT: Members of the jury, I want to let
25 you know we're missing one attorney, Mr. Brittain. He

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1 got sick. So he's not out there in the hall drunk or
2 playing golf. He's got sick, and that's why he's gone.

3 (Laughing in courtroom.)

4 MR. GRANTLAND: We sprayed over here (laughing).

5 THE COURT: All right. Call your first witness.

6 MS. GOLDING: Thank you, Your Honor. I call Bill
7 West.

8 (BILL WEST, having been duly sworn, testified
9 as follows:)

10 THE WITNESS: My name is Bill West, W-E-S-T.

11 DIRECT EXAMINATION

12 BY MS. GOLDING:

13 Q Hi, Mr. West. How are you doing?

14 A I'm good.

15 Q I'm going to try to stand over here -- maybe I'll
16 move the TV out of the way for a second. Going back
17 and forth, I've been tripping. Don't want that to
18 happen.

19 Okay. Can you tell the jury where you live, what
20 your education is, and what you have been doing for
21 your life?

22 A Okay. I lived in Morrisville -- outside of
23 Morrisville, North Carolina. Morrisville is between
24 Salisbury and Statesville.

25 I'm currently retired. I am retired about three

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1 years. I spent 35 years with Duke Energy in Charlotte,
2 in the Charlotte area. I worked in the supply chain
3 area. Retired in 2019. I'm a 1982 graduate of
4 Appalachian State University with a degree in -- BS
5 degree in business administration.

6 Q Do you own a unit at Shoreham Towers?

7 A Yes, I do.

8 Q How long have you owned the unit and what is the
9 number of the unit?

10 A I purchased it in 2009, 14 years. Unit number is
11 3A.

12 Q What is the size of that unit, square footage?

13 A 1,610 square feet.

14 Q Does that square footage -- what does that
15 include? Tell the jury what that includes.

16 A In my case, and in the case of all of the other
17 39 units, other than the rooftop penthouse unit, my
18 unit consists of 1,610 square feet, and approximately
19 1,400 square feet of heated square footage, and then
20 approximately 200 square feet of balcony area. That is
21 not dwelling. The dwelling is -- 1,610 square feet
22 consists of the balcony and the heated area inside the
23 walls.

24 Q Now, with respect to your balcony that is part of
25 your square footage in your unit, do you have

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1 stairwells going into your balcony?

2 **A** No, ma'am.

3 **Q** Do you have an elevator going to your balcony?

4 **A** No, ma'am.

5 **Q** Is your balcony used as a roof for the building?

6 **A** No, it's not.

7 **Q** Are you associated or part of the Shoreham Towers
8 Homeowners Association?

9 **A** Ever since I purchased I've been a member of the
10 homeowners association.

11 **Q** Why is that?

12 **A** Whenever you -- as part of purchasing the condo,
13 you become a member of the homeowners association. It
14 is part of the master deed. Once you purchase, you are
15 automatically -- whether you like it or not, you are
16 automatically part of the HOA.

17 **Q** Have you ever served on the board of the HOA?

18 **A** Yes, I have. I currently serve.

19 **Q** And tell us your positions that you served and
20 when you served.

21 **A** I currently serve -- began serving in March of
22 2016. I have served as the vice president, secretary,
23 and I've also served as the president. I currently do
24 not have an office. I'm a member at large, currently.
25 I did serve as president for a three-year term.

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1 **Q** How many members are on the board?

2 **A** Five.

3 **Q** With respect to you being a board member, who
4 elects you? How do you get reelected?

5 **A** We get -- the master deed, the governing
6 documents of the association, has a process for how you
7 elect members of the board. So you follow that
8 process, and the members of the board are elected by
9 all of the members of the HOA. So the 40 owners at
10 Shoreham Towers vote for their board members. You are
11 elected for a two-year term.

12 **Q** When is the votes? Is there a meeting that those
13 votes are held for?

14 **A** There is an annual meeting, and in our case, it
15 is during October. It is stated in the master deed
16 when that occurs, but there is a meeting every second
17 or third week of October that we have a meeting and
18 board members are elected.

19 Ballots go out prior to that, and people -- you
20 can vote via proxy -- mail in a vote, or you can vote
21 at the meeting, either way. Everyone has an
22 opportunity to vote.

23 **Q** With respect to the homeowners association, who
24 governs the homeowners association?

25 **A** The master deed governs the association. The

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1 association -- master deed is the rules. The HOA
2 itself is a governing structure. The HOA is a
3 governing structure that has to follow, obviously, the
4 master deed. The governing structure of the HOA has to
5 elect this board. I just described that process. That
6 board is responsible for making sure we maintain the
7 building, it has insurance. The board is responsible
8 for the common areas, the upkeep of the common areas,
9 rules and regulations for the common areas.

10 **Q** That is what I was going to ask you. What does
11 the board of directors govern? What are you supposed
12 to do?

13 **A** We have to create an annual budget for the
14 building. We have to create rules and regulations to
15 govern the common areas. Of course, rules and
16 regulations have to be in compliance with the master
17 deed. We can't go outside what is in the master deed,
18 like hours for the swimming pool, for example.

19 We're also responsible -- along with the budget,
20 we have to determine -- the budget ends up being the
21 assessments, and we have to make sure we have a
22 management company. We have to hire a management
23 company to pay our bills for us, and accounts
24 receivable, make sure members pay their dues. They
25 handle all of that. Make sure that someone is doing

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1 that function.

2 Q When you say dues and assessments, is that the
3 same thing?

4 A I'm using that term interchangeably, assessments
5 and dues, yes.

6 Q Who sets the assessments? How is that done?

7 A There is Article 26 in the master deed that talks
8 about assessments. Then you have exhibits in the
9 master deed, Exhibit A, Exhibit B. What the
10 assessments are determined by is the -- in the master
11 deed, and I believe it is Exhibit A -- A or B, it
12 defines the square footage of each dwelling.

13 Q You want me to put up that document?

14 A You don't have to. You can put it up for them,
15 but I look at it a lot. They haven't had that
16 opportunity. You can put it up.

17 But each unit, I believe in Exhibit A, describes
18 the square footage of the different units. There is
19 five different sized units at Shoreham Towers. The
20 majority of the -- there are units that go -- 1,350
21 square feet is the smallest unit, and there is a number
22 of others on floors two through eight.

23 The units go up to the largest unit, which is Mr.
24 Griffin's penthouse -- rooftop penthouse, and that is
25 2,630 square foot, which is, you know, as said earlier,

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1 about twice the size of the smaller units.

2 Your HOA assessment are based on the dwelling
3 size. So the more your square feature unit is, the
4 more your percentage of the assessments is. But you
5 only pay your assessments based on the square footage
6 that is defined in that master deed. The master deed
7 sets the percentage.

8 Did that answer the question?

9 **Q** Yes, sir, you did.

10 With respect to the unit sizes, are there units
11 that have one, two, three, four bedroom or --

12 **A** Okay. Of the 40 units, 39 of the units have
13 three bedroom, two bath. The only exception is the
14 rooftop penthouse unit, Mr. Griffin's unit, which has
15 four bedrooms and three baths, I think that is right.
16 I'm not looking at the document, but I'm going by
17 memory.

18 **Q** With respect to the balcony outside of your unit,
19 are there other units with balconies?

20 **A** Yes. There are 39 units with balconies.

21 **Q** And those 39 units, are those balcony square
22 footage a part of the unit size?

23 **A** Yes. They are part of the dwelling. For the 39
24 units, those balconies are part of the dwelling. When
25 I was assessed -- my assessments include that square

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1 footage from my balcony. Like I said, 1,610 square
2 feet is what I'm assessed for. Of the 1,610 square
3 feet, approximately 1,400 of it is heated space, and
4 the other 200 is outside air balcony, but I pay for all
5 of that area, and not only in my assessments, but I
6 also pay for all of that in my Horry County property
7 taxes. I pay for all of that area, both in the
8 assessments and Horry County property taxes. I pay for
9 my balcony and inside space.

10 **Q** Let's go to the rooftop penthouse, Mr. Griffin's.
11 How is his assessment based?

12 **A** His assessment is based -- 2,630 square feet,
13 which is described -- approximately, that is when you
14 use the word "approximately" -- 2,630 square feet, and
15 it is defined in Exhibit A -- well, I can't see, but
16 Exhibit A. He is assessed for that amount. Per the
17 drawing plans, which are part of the master deed -- and
18 we haven't really talked about it yet, but we had a
19 survey done. The association paid an independent
20 surveyor, and I think I'm getting ahead of you, but we
21 had a survey done. We wanted to do our due diligence
22 as a board. Not only -- we wanted to confirm the
23 master deed information by an independent surveyor to
24 make sure our square footage numbers added up right,
25 and they did.

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1 What that confirmed is what we already knew. The
2 2,630 square feet, that is the area inside his walls,
3 inside the glass. Inside the walls is the 2,630 square
4 feet. That is what he pays his assessments based on.
5 That is what he pays Horry County based on. That area,
6 the terrace that surrounds his unit, that is not part
7 of his assessed square footage. That is not part of
8 what he pays Horry County.

9 **Q** Now, the common elements, who owns the common
10 elements at Shoreham Towers?

11 **A** All 40. All 40 owners own the common elements.
12 Everyone.

13 **Q** And with those common elements, who maintains
14 those common elements?

15 **A** The HOA. All 40 owners maintain it. They pay
16 for the upkeep.

17 **Q** So is that the purpose for the assessments?

18 **A** The purpose of the assessments is to pay for
19 those common elements, which include things like the
20 insurance policy on the building. We have to pay the
21 water and sewer, pool maintenance, janitorial
22 maintenance, pest control. Those dues pay -- I'm
23 leaving out -- when you look at the budget, it probably
24 has 40 line items of things we pay for, but that is
25 what the HOA is for.

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1 In major projects, we put aside moneys to help
2 pay for major projects like repainting the outside of
3 the building. It will get pretty expensive because you
4 have to get scaffolds and all.

5 **Q** Do you have special assessments?

6 **A** Yes, we do.

7 **Q** Why do you have special assessments?

8 **A** Well, a special assessment, unfortunately --
9 whenever we do our quarterly reserves, whenever we pay
10 assessments, we don't always pay in enough. We had
11 some major projects, like the roof repair we did in
12 2019. That was \$124,000, or something like that. We
13 had not saved up enough money in our bank account,
14 reserve account. We hadn't built up enough money by
15 normal assessments that we take in. We were short to
16 pay for that big project, which had to be done.

17 The roof is just an example. There is other
18 ones, like painting outside of the building, but if we
19 don't have enough funds, then the board of directors,
20 per the master deed, has the right to vote and approve
21 a special assessment, which all the owners have to pay
22 a special assessment. This is in addition to their
23 quarterly dues.

24 **Q** How is the special assessment determined?

25 **A** The same percentages as your normal assessments.

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1 The amount that each person pays by square footage.

2 So, therefore, a person with smaller units, their total
3 amount they pay is less because their percentage of the
4 total, of the whole building, is smaller, so they pay
5 less. The formula is the same. It's the same formula,
6 special assessment or regular assessment.

7 Q Since you mentioned the roof, let's talk to the
8 jury about the roof repair -- well, before 2019, do you
9 know of roof repairs that had to occur at Shoreham
10 Towers?

11 A Before that, yes, I do. I don't remember the
12 exact details. I did purchase in 2009, and that
13 roof -- it has been mentioned earlier that that roof is
14 made up of a number of different sections. They don't
15 all have to be repaired at the same time. They are
16 kind of on different schedules, which helps out from a
17 cash flow standpoint. Not everything has to be done at
18 one time.

19 We have an A stack roof, which is over the north
20 end of the building. E stack is the south end, and so
21 there is different roofs. I know at least one or two
22 of those were done previous. The roofs only last 15,
23 20 years, the membrane, like a rubber membrane. After
24 15, 25 years, those membranes will wear out and start
25 leaking and you have to remove and reapply.

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1 **Q** Is the roof terrace around Mr. Griffin's unit a
2 roof?

3 **A** Yes, it serves as a roof.

4 **Q** And that roof, has that been repaired in the
5 past?

6 **A** The only repair I'm aware of, since I've been an
7 owner in 2009, was the repair done in 2019, which
8 consisted of putting a coating over that membrane. The
9 membrane was still in good enough shape that we were
10 able to clean it up. There may have been minor
11 caulking or something, but they just put a coating.
12 That was recommended by Thompson Roofing, so we did do
13 that.

14 **Q** And when that coating wore out is when the
15 membrane came into place in 2019?

16 **A** We did replace the entire membrane on other
17 sections of the roof. The actual roof that is over Mr.
18 Griffin's unit rooftop penthouse, the roof over his
19 head, that membrane actually -- the old one was pulled
20 up and a new one put down.

21 **Q** What about around the roof terrace?

22 **A** The roof terrace they only put a coating. I'll
23 call it a paint. It wasn't just a regular paint. It
24 was a specialized coating that was put over.

25 **Q** Was that in 2019?

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1 **A** That was in 2019. That was to prolong and
2 enhance the life of that membrane.

3 **Q** And who paid for this roof repair in 2019?

4 **A** HOA. All 40 members.

5 **Q** Who was sitting on the board when that was
6 approved?

7 **A** When that was approved, to my knowledge, that was
8 the -- I'm trying to think if it was the same group. I
9 believe it was the same group with Mr. Griffin.

10 **Q** When you came in 2009, who was president of the
11 homeowners association?

12 **A** Mr. Griffin.

13 **Q** And from 2009 to I think 2016, who was president?

14 **A** He was the president.

15 **Q** And you've served as president?

16 **A** Yes, I have.

17 **Q** Is the president basically the front person for
18 the property management company?

19 **A** They are. They are. And the property management
20 company appreciates that, because it's good to have one
21 person that things are flowing through versus five
22 different people picking up the phone and calling.

23 Anyone can pick up the phone. But in normal business,
24 it is good to have the president to be the main source.

25 **Q** To your knowledge, was Marshall Griffin the main

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1 person for the association while he was president?

2 **A** Yes.

3 **Q** Now, let's go back to the roof. There was a vote
4 to approve the roof project?

5 **A** Yes.

6 **Q** And at that time who did the association contract
7 for the roof project?

8 **A** You said who?

9 **Q** What company?

10 **A** Thompson Roofing.

11 **Q** Do you recall when that roof project was
12 undertaken?

13 **A** 2019.

14 **Q** Do you know when, about, it was completed?

15 **A** It was done -- I don't have my notes in front of
16 me. I think it took several weeks or a month or so. I
17 believe it was in the spring of 2019.

18 **Q** When that bid was accepted for Thompson Roofing,
19 what was your understanding about the Turtle tile on
20 the roof at that time?

21 **A** There was a debate about the Turtle tile. I
22 remember that discussion, the pros and cons of whether
23 it should go back down or not. There was a lot of
24 discussion around that. You know, I try to be open and
25 look at the pros and cons, but the bottom line was our

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1 roofing contractor recommended that it not be placed
2 back down, and we have that in writing. We got that in
3 writing. Because there was a lot of investigating, so
4 we got that in writing from Thompson Roofing. I
5 believe it is on their letterhead. It is on one of the
6 exhibits you have.

7 MS. GOLDING: If you'll get that exhibit.

8 **A** But what they found -- and you may have seen some
9 of the photos -- the Turtle tile did capture dirt and
10 stuff and mold. It would get underneath there. I
11 think there was weeds growing out from under it. Mr.
12 Thompson, at the time, what we were told, is that if we
13 put that --

14 MR. GRANTLAND: Objection.

15 THE COURT: Don't say what someone else says.

16 MS. GOLDING: Your Honor, Defendants' Exhibit No.
17 30, which has been admitted, I'll ask him to read the
18 document.

19 THE COURT: Okay.

20 **Q** (BY MS. GOLDING) I'll show you Exhibit 30 that is
21 introduced into evidence. Exhibit 30 is a document
22 from Quin Roofing?

23 MR. GRANTLAND: Thompson.

24 MS. GOLDING: I'm sorry, Thompson Roofing.

25 **A** Thompson Roofing, Incorporated.

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1 **Q** (BY MS. GOLDING) Read it slower when reading to
2 the jury.

3 **A** I do get too fast.

4 **Q** It's the North Carolina.

5 **A** That's what it is. My heart is beating.

6 **Q** Are you going to read it?

7 **A** Oh, you want me to read it?

8 **Q** Yes. I'm sorry.

9 **A** I feel sorry for them.

10 Dated May 13, 2019. "To Shoreham Towers Board of
11 Directors from Quin Thompson. Subject: Shoreham
12 Towers One.

13 Members of the board, number one, Thompson
14 Roofing does not -- in all caps -- recommend
15 reinstallation of the existing Turtle tile because
16 there is no evidence that the Turtle tile has any
17 effect on the longevity of the roof membrane, and for
18 it not to be detrimental to the sealant, I'm providing
19 it would have to be picked up and cleaned under at
20 least quarterly."

21 That is what I was going to say.

22 "Not something I would recommend. Instead, we're
23 recommending installation of a walkway material
24 demonstrated on Saturday, May 4th. The gray mat was
25 preferred by all present; for example, in the tiny

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1 corridor in the rooftop.

2 After the contract sealant is applied and has
3 time to dry and harden, the walking material will be
4 installed 6 feet wide leaving approximately a 1-foot
5 boarder where the sealant will show on each side,
6 except for the bump-out area, which will be completely
7 covered by a walking mat.

8 Number two, the existing heavy wood furniture
9 should be removed -- number two, the existing heavy
10 wooden furniture should be removed from the rooftop and
11 should not be permitted to be placed on the walking mat
12 on top of the sealant. The weight of this furniture
13 and the legs of the furniture are detrimental to the
14 roof sealant and walkway material.

15 Number three, the sealant, once hardened and set,
16 can be painted any color by the board of directors
17 would prefer. It will be installed as white.

18 Sincerely, Quin Thompson."

19 **Q** Now, Mr. West, how did this memo from Thompson
20 Roofing affect the board's decision with respect to the
21 Turtle tile?

22 **A** Once the board had this letter, it made our
23 decision. We decided to not reinstall the Turtle tile.

24 **Q** And was that due solely to this opinion of the
25 roofing contractor?

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1 **A** I can't really speak how everyone else was
2 thinking, but what I believe?

3 **Q** Yes, sir.

4 **A** Just me, personally, this was what I needed to
5 make my decision.

6 **Q** And let me next pull up Defendants' Exhibit 33.
7 Now, 33 -- you might stand around so you can see the
8 second paragraph in 33. Is that the Turtle tile?

9 **A** Yes, it is.

10 **Q** And had you seen the Turtle tile in this kind of
11 condition?

12 **A** I did not -- I'm trying to remember if I went up
13 there. I did go up there -- I went up there when the
14 Turtle tile was down, but I didn't pay close attention.
15 No, I don't recall seeing that condition, but I didn't
16 go up there and look.

17 **Q** Let's look at the next photograph. This
18 photograph, do you recall what that shows?

19 **A** That photograph shows the surface of the rooftop,
20 looks like when the Turtle tile was being pulled up. I
21 guess they pulled it up; looks kind of nasty.

22 **Q** You may sit down now.

23 In 2019, when this roofing project was going on,
24 what was your position on the board?

25 **A** I was the secretary.

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1 **Q** And, to your knowledge, did anyone on the board,
2 or the board as a whole, ever tell Mr. Griffin that the
3 Turtle tile would be replaced -- or would be returned
4 to the roof?

5 **A** No.

6 **Q** After the roof was put down, when was carpet put
7 on that?

8 **A** The carpet was put on, seems like, within a
9 couple of weeks of it, because the carpet was part of
10 the solution so it would not be slippery. I know a
11 grit was applied to it. There was a grit applied to
12 the surface, that was previously talked about this
13 morning, but the carpet was another layer of safety to
14 make that area less slippery.

15 **Q** Who made the decision that the carpet be placed
16 on the roof?

17 **A** It was recommended by Mr. Thompson, but the board
18 made a decision to put the carpet on the roof. The
19 board made that decision.

20 **Q** To explain to the jury between the time the roof
21 covering was put on and the carpet was, what was on
22 that surface, the roof surface, the roof terrace
23 surface before the carpet was put down?

24 **A** The Turtle tile was removed, then there was a
25 sealant applied, and then a grit.

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1 **Q** When you say "grit"?

2 **A** Like a sandy type of material. Instead of a
3 slick paint surface, the vendor, Mr. Thompson, came
4 back and applied some type of like a sand. Imagine a
5 sand. Like in a final coat with sand in it to make it
6 -- give it friction where it wouldn't be slippery.

7 **Q** During this time period, did the board ever
8 receive communications from Mr. Marshall or his
9 attorney that there was slippery areas on the roof
10 terrace?

11 **A** We did. We did.

12 **Q** What did the board do as a result of being
13 contacted by Mr. Griffin's attorney?

14 **A** I can't remember if they put signage up or not.

15 **Q** How about red tape?

16 **A** I think we -- we did put red tape around the
17 rail, but I don't know -- Ms. Golding, I'm not sure
18 what the board did. I know we took immediate action to
19 make sure that carpet was installed as soon as
20 possible, but I was not physically there. I know some
21 of the board members were physically there. I don't
22 remember -- there were immediate actions taken.

23 **Q** That was as a result of being contacted by the
24 penthouse owners; is that right?

25 **A** Correct.

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1 **Q** And so after that period, the carpet was
2 installed; is that correct?

3 **A** Correct.

4 **Q** So since the carpet was installed some time in
5 early spring of 2019, to the present, has anything else
6 been put on that roof terrace?

7 **A** Other than furniture?

8 **Q** Yeah. I'm talking about material.

9 **A** No. No. I am not aware of any other material
10 that was put on.

11 **Q** And the carpet was put down by whom?

12 **A** Thompson. I believe Thompson Roofing did, paid
13 for by the HOA, of course, at the direction and paid
14 for at the HOA.

15 **Q** Now, let's go to -- I think it was September of
16 2018 that there was some communication made to the
17 board, or one of the board members, communications in
18 September of 2018 about the roof terrace and its use by
19 Mr. Griffin. Can you tell the jury about that?

20 **A** Yes. I was on the board. It was
21 September 30th -- it was September. Mr. Aquino, who
22 was actually not on the board at that time -- he did
23 get elected that October -- Mr. Aquino sent the e-mail
24 with the six or seven issues, reports, to the board at
25 that time. Yes, I'm aware of that.

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1 **Q** As a result -- take this jury through what
2 happened.

3 **A** Okay. Okay. Okay. We -- that was right near
4 the transition time from -- we had an election in
5 October, mid-October. That was received late
6 September. So the current board -- I was part of that
7 board -- we got it and started reviewing it. I'm not
8 sure if we had a meeting, but there was no action
9 really taken. The new board was then elected and put
10 in place.

11 **Q** That was in October of 2018?

12 **A** October of 2018. So that was the responsibility
13 of the new board. I was still on the board. Marshall
14 was on the board. I think the only change was Will
15 Grooms went off the board, and Tony came on, Tony
16 Giovino. Tony Giovino came along.

17 So, at that point, we had to make some sort of
18 response back to -- we had to look at Mr. Aquino's
19 issues. Part of it, obviously, involved why we are
20 here today, is that rooftop terrace a common element,
21 or is it a private area of the owner Mr. Griffin?

22 Of course, we found that a couple of those issues
23 really turned into non-issues. Mr. Aquino withdrew the
24 issue about the elevator key. He withdrew that issue.
25 He withdrew the issue about the atrium, which is

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1 actually called the "dining court" on the drawing. Mr.
2 Aquino agreed that was part of Mr. Griffin's unit.
3 That was part of his square feet. He withdrew those
4 issues.

5 But, to me, the main issue, and why we are here
6 today, is the terrace -- rooftop terrace, is that
7 common, or is it exclusive only to Mr. Griffin? That
8 was the issue. So we, as a board, started to look at
9 the master deed. I mean, I looked at the master deed,
10 but you have to look at those areas that talk about
11 what is a dwelling, what is a common area, and start
12 digging into it.

13 We looked, and in our due diligence as a board --
14 we had retained about this same time Roger Roy as our
15 legal counsel for the HOA. So to do our due diligence
16 as a board, we went to Mr. Roger Roy and told him what
17 the issue was. We sent Mr. Aquino's -- Tony was the
18 president -- Tony or Carter, because we kind of
19 assigned Carter Tackett to be like the lead to work
20 with Roger Roy on some of these issues.

21 **Q** Where did Roger Roy practice?

22 **A** Myrtle Beach. He has an office there. He is a
23 local attorney.

24 To do due diligence, we wanted to get our HOA
25 attorney involved.

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1 **Q** When you say "we" --

2 **A** The board. We wanted to get legal advice. We
3 wanted to get an attorney to look at Mr. Aquino's
4 points. The attorney also needed to look at the master
5 deed and give us his guidance. We looked for guidance
6 from him.

7 I recall, and I can't remember if all of us went,
8 but I know I went. One day we met at Mr. Roy's office
9 to talk about these things. But the end result was
10 that Mr. Roy, after reviewing the documents, he said --

11 MR. GRANTLAND: Objection.

12 THE COURT: Sustained. Be careful how far he
13 goes.

14 **A** I'll try to speed it up.

15 THE COURT: Let her ask a specific question, and
16 you answer.

17 **Q** (BY MS. GOLDING) As a result of receiving
18 guidance from Mr. Roy, what did the board do?

19 **A** Mr. Roy provided us guidance that the rooftop --

20 MR. GRANTLAND: Objection.

21 MS. GOLDING: No. You can't tell us what Mr. Roy
22 told you. No, sir.

23 **A** Can I tell you if it is put in writing?

24 **Q** We'll get to that in a minute.

25 With respect to the actions taken by the board --

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1 and let's go right into January of 2019, a meeting that
2 was held in January of 2019. Do you recall a board
3 meeting or several --

4 **A** I do. I do.

5 **Q** In January 2019, who participated in the board
6 meeting?

7 **A** That board meeting, all the board members -- all
8 of us in here: Mr. Griffin, myself, and three of the
9 defendants -- no -- yeah. We actually met at Mr.
10 Griffin's invite. We met and took a tour of his
11 rooftop penthouse and the rooftop terrace area just to
12 get us all familiar. I think I had been up there once
13 before, so I wasn't that familiar with it. So it
14 helped me to see the lay of the land since we had this
15 issue.

16 But after that tour, we actually did have a board
17 of directors meeting to talk about a number of issues.

18 **Q** I'll get those meeting minutes, but at any point
19 in time before that, was Mr. Griffin asked to provide a
20 written response to Mr. Aquino's e-mail?

21 **A** He was asked to provide a written response. You
22 slowed me down. I was jumping all the way. But, yeah.
23 Yeah.

24 **Q** What was Mr. Griffin's response with respect to
25 -- how did -- how did Mr. Griffin respond to the

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1 board's request to provide something in writing?

2 **A** He -- he did not provide a response. I don't
3 recall him providing a response, to my knowledge.

4 **Q** Did he tell you why, by any chance? Do you
5 recall that?

6 **A** I don't recall.

7 **Q** Let me get the board minutes for that
8 January 2019.

9 MS. GOLDING: I'm going to give him the minutes
10 from 44 and 45.

11 MR. GRANTLAND: No objection.

12 MS. GOLDING: I think they are in, John.

13 **Q** (BY MS. GOLDING) You have that in your hand?

14 **A** The first one is 2018.

15 **Q** The first one is December 2018?

16 **A** Yes, ma'am.

17 **Q** Let me ask you something about board meetings.
18 When you have a board meeting, what is basically the
19 first order of business that you have?

20 **A** Call to order, then approval of minutes of the
21 previous meeting.

22 **Q** When you say "approval of minutes of the previous
23 meeting," is that done at every board meeting?

24 **A** Should be.

25 **Q** Even if minutes don't have that specific

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1 activity, do you believe that that was done?

2 **A** Yes.

3 **Q** So in December of 2018, is there anything in
4 those minutes that relate to the issues about the roof
5 terrace?

6 **A** December 7, 2018, at the bottom of the page, yes.

7 **Q** What is that?

8 **A** It says: "Rooftop common area discussion."

9 **Q** And was Mr. Griffin present at this meeting?

10 **A** Yes, ma'am. Per the minutes, he was.

11 **Q** At this point, was there any type of resolution
12 that you recall? Look at the second page.

13 **A** There was no resolution. I'll have to read that.
14 No, there was no resolution.

15 **Q** Can I ask you to look at the paragraph that says:
16 "A motion was made"?

17 **A** Thank you for helping me out. It is good to have
18 minutes instead of me rambling. Yes, a motion was made
19 for Carter to contact Roger Roy.

20 **Q** And how was that vote?

21 **A** It says motion passed to get Roger Roy's opinion.
22 I don't need to read all of the paragraph, but passed
23 three to zero with Richard and Marshall abstain.

24 **Q** That is Richard Aquino?

25 **A** And Marshall Griffin.

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1 **Q** Subsequently, did you get any information about
2 Marshall Griffin changing his vote or anything?

3 **A** Not to my knowledge, no.

4 **Q** But, essentially, it was passed by three to zero,
5 with three members abstaining?

6 **A** That is what the minutes say.

7 **Q** So that three board members, the majority?

8 **A** Yes, ma'am.

9 **Q** The majority, was that you, and who else?

10 **A** Myself and Carter and Tony.

11 **Q** And the next meeting, Exhibit 45, January 19,
12 2019?

13 **A** Correct.

14 **Q** At this meeting, was there a discussion of the
15 rooftop area?

16 **A** Yes.

17 **Q** I don't think you need to read all of it, but was
18 Marshall Griffin involved in this meeting?

19 **A** Yes, he was.

20 **Q** And what topics were discussed at that meeting?

21 **A** Of course, that's with the walk-down, the first
22 thing. But the topics that were discussed was the
23 rooftop common area and the different bullets that were
24 -- issues -- I'll refer to them as issues -- in Mr.
25 Aquino's September 30th e-mail.

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1 We also voted to change the HOA meeting date. We
2 actually adopted updated rules and regulations -- not
3 rules and regulations for the rooftop, just other
4 standard rules and regulations, updated those.

5 We talked about a number of issues; you want me
6 to go through all of them?

7 **Q** No. Turn to the second page. Is there anything
8 on the second page that related to the rooftop, the
9 fourth paragraph?

10 **A** Quin Thompson revised proposal; yes, there is.

11 **Q** Was that proposal approved at that time, to your
12 knowledge?

13 **A** Vote was unanimous to approve.

14 **Q** And unanimous means?

15 **A** All five. All five approved it.

16 **Q** Was there another meeting that was held -- what
17 was the second meeting? Was that on March 25, 2019?

18 **A** Yes. There was a meeting held that day, yes.

19 **Q** Was there a special assessment that was voted
20 upon?

21 **A** Yes.

22 **Q** And the special assessment of \$75,000, what was
23 that for?

24 **A** That was the funding for this roofing project,
25 and we had to replace the street-side backflow

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1 prevention valves.

2 Q This funding of 75,000, that took into
3 consideration the amount of money the homeowners
4 association had in the capital reserve; is that
5 correct?

6 A Correct. Correct. Of the needed funds, we had
7 some amount in capital reserves already.

8 Q And then the particular assessments for each unit
9 were voted upon; is that correct?

10 A Yes.

11 Q Unit size, excuse me.

12 A Yes. That is shown. Just took the calculations
13 that came from the master deed, the exhibits, and did
14 -- just broke down the \$75,000 to show what each would
15 owe per the governing documents, the master deed.

16 Q The next exhibit is Defendants' 47. That was the
17 meeting that was held on April 5 of 2019?

18 A Yes. I've got it.

19 Q Who was present at the meeting?

20 A Tony Giovino, myself, Carter Tackett, Richard
21 Aquino, Marshall Griffin, and we had our community
22 manager -- our HOA -- managing company representative
23 was there, Tiffany Allen.

24 Q These minutes say that the meeting was held by
25 conference call, is that something that is standard or

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1 usual?

2 **A** It is, because a couple of folks -- Tony lives
3 there, but Richard is part time. Some are out of
4 state.

5 **Q** The next meeting minutes we have are Exhibit 48
6 of May 25, 2019; is that correct?

7 **A** Yes.

8 **Q** And what was the purpose of this meeting?

9 **A** This meeting was solely to discuss the rooftop
10 rules and regulations.

11 **Q** And these rooftop rules and regulations, who
12 participated in preparing those?

13 **A** Three of us: Myself, Carter Tackett, and Tony
14 Giovino took the lead with the guidance and okay of
15 Roger Roy for the three of us. We focused on drafting
16 these rules and regulations without Mr. Aquino or
17 Mr. Griffin involved.

18 **Q** Why did the board decide to draft rules and
19 regulations for the rooftop?

20 **A** Because at that point, as of May 25, we had
21 determined -- the board determined -- the majority of
22 the board determined that the rooftop terrace was
23 common. That decision was obviously --

24 MR. GRANTLAND: Objection. I don't want him to
25 give any opinions of Mr. Roy.

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1 MS. GOLDING: He can say what it was based upon,
2 Your Honor.

3 THE COURT: Don't say what Mr. Roy said.

4 Q (BY MS. GOLDING) Was it based -- what was the
5 basis of that opinion of the board?

6 A The basis -- two things. Our own review, the
7 board's review, of the master deed of what was common
8 and what was a dwelling, and then the confirmation of
9 that information by Roger Roy.

10 Q And as a result of those two things, what was the
11 reason for the rules and regulations for the rooftop?

12 A Because it was determined to be a common area,
13 we, as a board of directors, are responsible for common
14 areas. We're responsible for any liability, anything
15 that could happen.

16 Q What do you mean you are responsible for
17 liability? Is that a concern?

18 A It was a concern. We're responsible for the pool
19 area, make sure it is safe and in a safe condition,
20 that there is not a trip hazard there.

21 Q Why would you be concerned about liability on a
22 roof terrace?

23 A Because it was determined to be a common area, so
24 we had to make sure that it was safe, in a safe
25 condition, good condition.

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1 **Q** And since you made a determination that the roof
2 terrace was a common element, who owned the roof
3 terrace then?

4 **A** The HOA. All the members, all 40. All common
5 areas are owned by all 40 members, and the board of
6 directors has a responsibility to have rules and
7 regulations for all common areas. That is part of our
8 main duties, our responsibilities.

9 **Q** The recorded rules. With respect to the rules
10 and regulations, did you have any third-party review
11 those rules and regulations?

12 **A** Yes, our attorney, Roger Roy.

13 **Q** Also, with respect to the rules and regulations
14 --

15 **A** He reviewed them and approved them in writing.

16 **Q** With respect to those rules and regulations, were
17 they -- did you get any input from John Grantland?

18 **A** We asked for input from Mr. Griffin.

19 **Q** As a result of asking Mr. Griffin's input, did
20 you receive communications from John Grantland?

21 **A** We did. We did. The board did. I hope you got
22 it as an exhibit because I don't remember the details.

23 **Q** I do. I just need to find it real quick. It is
24 Defendants' 25 and 26?

25 MR. GRANTLAND: May we approach?

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1 MS. GOLDING: I'm going to pull this for Your
2 Honor.

3 (Whereupon, the following bench conference was
4 had out of the hearing of the jury.)

5 MR. GRANTLAND: Exhibit 26 is Mr. Ward's letter
6 giving his opinion.

7 MS. GOLDING: No, that's not the opinion letter.
8 This is another letter in response to your letter, is
9 my understanding.

10 THE COURT: Plaintiffs or defendants?

11 MS. GOLDING: Defendants', Your Honor.
12 Defendants' Exhibits 25 and 26.

13 MR. GRANTLAND: I object to 26, Your Honor, at
14 least the portion....

15 THE COURT: Why don't you share which portions
16 you want out.

17 MR. GRANTLAND: You know, all of this
18 (indicates). That's his legal opinion.

19 MS. GOLDING: No, that's not a legal opinion.
20 That is what he is saying it is showing on the plans.
21 He is not saying it is a legal opinion.

22 MR. GRANTLAND: He is most certainly saying it.
23 This second paragraph, Your Honor.

24 THE COURT: (Examines document.) It says: "The
25 plans that are a part of the master deed clearly depict

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1 the rooftop area." He's not saying "it is my opinion."

2 MR. GRANTLAND: But he's giving an opinion. He
3 doesn't say the word "opinion," but he's giving an
4 opinion as a lawyer.

5 MS. GOLDING: There is another letter, Your
6 Honor, that he said to the board in March that it is
7 his opinion.

8 MR. GRANTLAND: I mean....

9 THE COURT: The master deed is in evidence?

10 MR. GRANTLAND: Yes, sir.

11 THE COURT: And it shows rooftop --

12 MR. GRANTLAND: But his comment, Your Honor, it
13 is a common area -- "clearly depicts," that is his
14 opinion.

15 MS. GOLDING: This is in response to
16 Mr. Grantland's letter where he says -- that is
17 Mr. Grantland's letter.

18 THE COURT: That is an opinion.

19 MR. GRANTLAND: I'm happy for it not to go into
20 evidence.

21 MS. GOLDING: This is all part of the process.

22 THE COURT: I mean, it is in a gray area. Is
23 there any way we can redact that?

24 MR. GRANTLAND: You can redact as much as you
25 want, but I would like his letter that clearly has an

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1 opinion, redact his opinion.

2 MS. GOLDING: Shall I redact the second
3 paragraph, Your Honor?

4 THE COURT: I'm good with that.

5 MR. GRANTLAND: Yes, sir.

6 (The following is had in open court.)

7 MS. GOLDING: We offer Exhibits 25 and 26, and we
8 have redacted the portion that was agreed upon about by
9 Mr. Grantland.

10 MR. GRANTLAND: Thank you.

11 (Defendants' Exhibits 25 and 26 admitted.)

12 Q (BY MS. GOLDING) Okay. Mr. West, with respect to
13 the issues with the rooftop terrace, did the board ever
14 hear from a lawyer about the rooftop terrace?

15 A Yes. When we requested the lawyer to give us
16 advice and guidance, yes.

17 Q Is Exhibit No. 26, is that -- Defendants' 25, is
18 that a letter that was received by the board, the
19 letter dated May 1, 2019?

20 A Yes. This wasn't that -- it was taken to our
21 attorney. Yes, we received this letter.

22 Q And did you receive Exhibit 25 after the board
23 received a legal opinion from Roger Roy about the
24 rooftop terrace?

25 A Ms. Golding, I don't have a letter -- or do I

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1 have a copy of the letter?

2 Q I'll give you a copy.

3 A They can't see it, but I can --

4 Q Right. You can look at it.

5 A I think it was before, but the letter would
6 confirm that.

7 Q Okay. Let me give you that letter.

8 A I'm pretty sure it was, but the letter would
9 confirm that.

10 MS. GOLDING: Your Honor, this is just marked for
11 identification purposes only.

12 Q This is a letter from Roger Roy to the board
13 dated March 19, 2019. Can you -- don't say what that
14 letter says, but you can identify that letter?

15 A Yes, I can identify it. I have seen this letter.

16 Q As a result of receiving a letter from Roger Roy,
17 what reliance, if any, did the board have with respect
18 to that letter?

19 A I put a great deal of reliance on that letter. I
20 can't speak for the other members, but, personally, I
21 put a great deal of reliance on that letter.

22 Q Did that letter give guidance as to your approach
23 to the rooftop terrace, your personal approach to the
24 rooftop terrace?

25 A It certainly did, strongly.

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1 **Q** Now, after receiving the letter from Roger Roy,
2 subsequently was a letter received from Mr. Grantland?

3 **A** Yes, the Exhibit 25, the May 1st letter.

4 **Q** How did the board receive this Exhibit 25 from
5 Mr. Grantland?

6 **A** When you say -- you mean via e-mail or hard copy?

7 **Q** I think it was via e-mail.

8 **A** Yeah, looks like it.

9 **Q** Is that correct?

10 **A** Yes.

11 **Q** And I think it's already in evidence. As a
12 result of this letter from Mr. Grantland, what did the
13 board do?

14 **A** We still moved forward with discussions and with
15 our decisions.

16 **Q** Did you provide a copy of this letter from
17 Mr. Grantland to Roger Roy?

18 **A** I do not recall. I feel like we did, but I can't
19 say that.

20 **Q** Let's look --

21 **A** To my knowledge -- I'm sure we did. I,
22 personally, did not give it to him.

23 **Q** Look at Defendants' Exhibit No. 26. Is that a
24 letter from Roger Roy to Mr. Grantland dated May 3,
25 2019?

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1 **A** Yes. Which, obviously, means he did receive the
2 letter, yes.

3 **Q** And did Mr. Roger Roy's letter reference
4 Mr. Grantland's letter of May 1?

5 **A** Yes. Yes. We did send it to him. Yes, ma'am.
6 Immediately, apparently, yes.

7 **Q** I'll ask if you could put the letter, Defendants'
8 Exhibit 26 --

9 MS. GOLDING: Oh, I see. I can't put it up
10 because there is a redacted version, which we don't
11 have on the computer.

12 **Q** (BY MS. GOLDING) With respect to Roger Roy's
13 letter to Mr. Grantland, read to the jury the last
14 paragraph.

15 **A** This is Exhibit 26?

16 **Q** Yes, sir. Just the last paragraph.

17 **A** "It is the board's position that your client has
18 violated the master deed and plan for many years. Mr.
19 Griffin, in the items outlined in your letter, are in
20 violation of the master deed, with the exception of the
21 electricity from the planters.

22 The board expects your client to comply with the
23 master deed as it does -- as it does with all other
24 unit owners. The board intends to vigorously defend
25 its position if your client elects to litigate this

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1 matter."

2 Q In the letter from Mr. Grantland, Exhibit 25,
3 does this letter threaten the board?

4 A I can only speak for myself.

5 MR. GRANTLAND: Objection. This is a leading
6 question, and the letter speaks for itself.

7 THE COURT: Sustained.

8 Q How did you receive this letter from
9 Mr. Grantland?

10 A It says via e-mail.

11 Q I mean personally.

12 A How did I personally receive it?

13 Q Not just receive it, how did you interpret it?

14 A Oh. It is threatening, it is. Obviously, we
15 took it seriously. We got legal counsel's advice on
16 how to move forward, and I just read what we were
17 given.

18 Q With respect to the board's steps, with respect
19 to the rooftop, how often or was there a step that the
20 board took in 2019 with respect to the rooftop that was
21 not consistent with legal counsel's guidance?

22 A No. I'm trying to think of the -- we sought out
23 legal counsel. We wanted to do our due diligence. We
24 wanted to protect not only the HOA, but ourselves.
25 This is serious, I mean. We tried to do everything we

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1 could to get legal advice and follow legal advice,
2 which is what we did.

3 Q Looking next at Exhibit 48, the minutes of the
4 May 25, 2019 board meeting.

5 A Which exhibit?

6 Q 48. And with respect to Exhibit 48, there
7 appears -- what was discussed at that meeting?

8 A The rooftop rules and regulations.

9 Q Who participated in the preparation of these
10 rooftop rules and regulations?

11 A Carter Tackett, Tony Giovino, and myself.

12 Q Why was Mr. Aquino and Mr. Griffin not a part of
13 preparing these rules and regulations?

14 A Early on, it was -- those two -- they were at
15 opposite ends. Mr. Griffin -- opposite ends, I'll put
16 it like that. It was felt that the three of us could
17 try to draft something up that would be suitable to
18 both parties. We wanted to mediate -- not mediate,
19 that may be the wrong word. But we tried to keep this
20 from ending up where we are today. We wanted to try to
21 find common ground that we could take to these two
22 gentlemen and get by.

23 Q And let me get -- I think we have the rules and
24 regulations, Defendants' 52.

25 (Defendants' Exhibit 52 marked.)

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1 MS. GOLDING: This is a copy of the recorded
2 version of the rules and regulations.

3 THE COURT: Any objection?

4 MR. GRANTLAND: No objections, Your Honor.

5 MS. GOLDING: I have a copy for you.

6 (Defendants' Exhibit 52 admitted.)

7 Q (BY MS. GOLDING) I'll hand you a copy, but I want
8 to highlight a few of them so you can explain to the
9 jury.

10 Exhibit 52, there's an -- two last pages of the
11 rules and regulations, right?

12 A Yes.

13 Q These rules and regulations, there were a few
14 points that were discussed by Mr. Griffin in his direct
15 examination, and I'll discuss it as to you.

16 There was time limitations on the rooftop, not
17 before 8:00 a.m. and not after 10:00 p.m. Tell the
18 jury your thought process of why that was implemented.

19 A We actually tried to limit when folks could be up
20 there to afford Mr. Griffin some level of privacy, but
21 at the same time, the other 39 owners have a right to
22 be able to access that common area. We put those
23 hours -- those are the hours that the pool is open,
24 same hours that the pool is open. We did write in
25 there, and it's been pointed out, that these hours

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1 apply to everyone, including the folks in the rooftop
2 penthouse. It does say that. We put that there to be
3 fair.

4 At the same time, we did not allow renters.
5 There is a lot of rentals that go on, and we did not
6 allow renters to go up there at any time, only owners
7 or guests of owners that are accompanied by the owner.
8 So we really tried to limit the traffic that could go
9 up there, but at the same time, give the other owners a
10 right that they could go up there, if they wished to.

11 Most people wouldn't want to. I have no personal
12 desire to go up there, but it is not what I want. I'm
13 looking out for the other 39 other units if some of
14 them wish to exercise their right to the common area.

15 Those hours -- and we, as a board, talked about
16 this. Yes, it says that only between those hours, but
17 if any other homeowner went down to the pool area at
18 7:00 in the morning with their cup of coffee, and it
19 doesn't open until 8:00, if they went there at 7
20 o'clock in the morning with a cup of coffee and weren't
21 disturbing anyone, playing loud music or anything, no
22 one is going to ask them to leave.

23 The same thing with the rooftop penthouse. If
24 one of the guests or renters up there went out early in
25 the morning before 8 o'clock and wanted to have a quiet

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1 cup of coffee out there on that terrace, nobody was
2 going to ask them to leave during the time after we put
3 these rules in effect.

4 Did anyone walk outside of those doors before
5 8 o'clock or late at night? I don't know, but if they
6 did, we weren't going to -- we weren't going to
7 strictly enforce that, unless there was a disturbance.
8 If they were causing loud noise, playing loud music,
9 which you can't do anywhere anyway. We have quiet
10 hours.

11 Does that help?

12 **Q** Yes.

13 Also, with respect to the elevator that goes to
14 the tenth floor, has that elevator always gone to the
15 tenth floor?

16 **A** Yes.

17 **Q** So there is a tenth floor button?

18 **A** Yes.

19 **Q** Is that elevator used as an emergency or anything
20 like that? What is that elevator?

21 **A** The elevator, the south -- we have a north and
22 south elevator. The one elevator goes all the way up
23 to the elevator lobby on the tenth floor where you
24 access the rooftop penthouse.

25 **Q** Is that an emergency elevator?

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1 **A** It is emergency -- only one that goes to that
2 floor. It is also tied to our diesel generator. So if
3 the power goes out, we have an emergency diesel
4 generator that kicks on, and it is run by that
5 elevator.

6 **Q** With respect to the elevator, what rules apply to
7 the tenth floor elevator?

8 **A** These rules....

9 **Q** How about No. 6?

10 **A** It says the elevator -- rooftop stairwell doors
11 will be -- the board of directors controls the keypad
12 and key access to the rooftop stairwell doors.

13 **Q** Now, you've heard Mr. Griffin testify about the
14 planters, and he's agreed they are common elements.
15 Did the association ever tell him he had to have
16 maintenance on those plants or anything like that?

17 **A** No.

18 **Q** Was that a voluntary act on his part?

19 **A** Yes. Yes. Now, if you go back to the late
20 1990s, I don't have all of the dates and numbers in
21 front of me, but there was a previous dispute about the
22 planters. The board, at that time -- I wasn't an owner
23 then. I was reading the minutes, and the board at that
24 time said they were going to cement over the planters
25 because the membranes were leaking and causing leaks in

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1 the building.

2 At that time, there ended up being an agreement
3 between the board and Mr. Griffin that they would not
4 cement those over, but he would pay for some portion of
5 the upkeep.

6 Q Has there been issues with the upkeep of the
7 planters or plants?

8 A The plants?

9 Q Yes, sir, or what is in the boxes.

10 A The safety report, there is issue with
11 arborvitaes -- I'll butcher that word, too. There is
12 an issue with the height of them and the possibility of
13 them blowing out. That is really the only issue with
14 the plants.

15 We've had issues with the planters, with leaks,
16 water weepage from the membrane of the planters. That
17 occurred right before I joined the board, I believe.
18 In 2016, maybe 2015, there were issues with the
19 membrane.

20 Q And have you reviewed most, if not all, of the
21 minutes of the board of directors of Shoreham Towers?

22 A Because of this, I have reviewed them, yes, I
23 have.

24 Q And in your review, at a guesstimate, how often
25 were planters a controversy?

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1 **A** I don't want to say they were a controversy other
2 than that late 1990 issue. There have been issues
3 about drawings, what is supposed to go in them. There
4 was issues over the years, early on, as far as leakage,
5 water weepage from the planters causing issues.

6 **Q** And, at this point in time, the last issue was
7 due to the safety inspector's report?

8 **A** Yes.

9 **Q** And what was that issue with the arborvitaes?
10 Why was that pointed out by the safety inspector?

11 MR. GRANTLAND: Objection.

12 MS. GOLDING: The inspection is in, Your Honor.
13 I just didn't want to go over there and get it. It is
14 Exhibit 19.

15 **Q** (BY MS. GOLDING) Let me give you what is Exhibit
16 19. If you can remember -- I don't need for you to
17 read that out, but tell the jury what the safety
18 inspector said about the arborvitaes.

19 **A** Said they could grow considerable in size over
20 time, and this could be a concern based on high winds
21 and the possibility of the vegetation becoming uprooted
22 and being lifted off the building and falling to the
23 ground below.

24 **Q** About this safety inspection, you've heard some
25 testimony before. For what reason was the safety

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1 consultant contacted?

2 **A** Once we were aware it was a common area, once it
3 was determined it was a common area, it is not a
4 private area, it is a common area, and being a common
5 area, we have to make sure that -- the HOA is
6 responsible for the insurance coverage for that area,
7 so we have to make sure it is safe. Because if that
8 vegetation was to become uprooted in high winds and
9 blow over and cause damage, the association would be
10 responsible. The HOA would be responsible.

11 As a board, many of our responsibilities is to
12 manage risk. We're risk managers, of sorts. One of
13 the hats we have to wear. And to manage risk, the
14 safety inspector points things out to you to manage
15 that risk. And I'm sure our insurance company would
16 appreciate us managing the risk.

17 **Q** With respect to the safety consultant, did the
18 safety consultant make any comment with respect to the
19 high-back chairs?

20 **A** Yes.

21 **Q** What was that?

22 **A** There again, I won't read all of this, but those
23 chairs were determined to be of a height being too
24 high, that the center of gravity of those chairs would
25 be such that if you took that chair and moved it too

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1 close to the railing -- I mean, this is a balcony
2 railing. Your center of gravity is such that when you
3 are entering or exiting the chair, you could
4 potentially fall over the balcony.

5 So the safety consultant recommended that those
6 chairs be removed or placed back making sure -- ensure
7 that they were placed back.

8 Since it was a common area, the common area of
9 the HOA, the board of directors is responsible for
10 managing that risk. That is what we had to do. We had
11 to get them moved back or moved off, one or the other.

12 Q With respect to the safety consultant's report,
13 how did the board rely on that?

14 A Highly. Highly. There again, I'm repeating
15 myself. I know I do that, I'm sorry. But we have to
16 manage the risk. And, of course, my background, I came
17 from working in a nuclear station, and you take safety
18 seriously. That is your top priority, personal safety.

19 Q You heard Ms. Peck testify today; did you not?

20 A Yes, I did.

21 Q And Ms. Peck testified that she couldn't even get
22 up on the chair. Did you hear that?

23 A I did.

24 Q Did that testimony concern you?

25 MR. GRANTLAND: Objection.

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1 MS. GOLDING: As a board member.

2 A It confirmed some of what we already read here in
3 the report. It didn't surprise me, no.

4 Q (BY MS. GOLDING) With respect to -- after
5 receiving that safety consultant's report by letter,
6 and that was introduced in January, that safety
7 consultant's report was provided to Mr. Griffin. Did
8 Mr. Griffin respond to you about that safety consultant
9 report?

10 A I do not recall.

11 Q Did the board ask Mr. Griffin to move the
12 high-back chairs?

13 A Yes. Yes.

14 Q Do you recall how many times the board asked him
15 to move the high-back chairs?

16 A It was more than once, but I don't have that.
17 You have the timeline and exhibits. But, yes, I don't
18 know the exact day or number of times.

19 Q Did he ever move the high-back chairs after
20 months and months of the board asking that to be done?

21 MR. GRANTLAND: Objection; leading.

22 THE COURT: Sustained.

23 Q (BY MS. GOLDING) To your knowledge, how many
24 times did Mr. Griffin move the high-back chairs in
25 accordance with the board's request?

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1 **A** How many times did he move -- did he move them?

2 **Q** Yes, sir.

3 **A** He did not remove them. He may have moved them
4 back a little bit at times, but his guests or
5 renters -- there is nothing to stop them to move it
6 back to the railing. He did not remove them from the
7 rooftop, no.

8 MS. GOLDING: One moment, Your Honor.

9 No further questions, Your Honor.

10 THE COURT: Thank you. Cross-examination?

11 MR. GRANTLAND: Thank you. May it please the
12 Court?

13 **CROSS EXAMINATION**

14 **BY MR. GRANTLAND:**

15 **Q** Good afternoon, Mr. West.

16 **A** Good afternoon.

17 **Q** I'll show you some exhibits and pictures. Let me
18 get set up here.

19 You were president of the Shoreham Towers HOA
20 from what year?

21 **A** October of 2019 until October of 2022.

22 **Q** You bought your condo at Shoreham Towers in 2009?

23 **A** Yes, sir.

24 **Q** And before 2009, you had no idea how Marshall
25 used the rooftop terrace outside?

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1 **A** No.

2 **Q** You were not there until 2009, correct?

3 **A** Yes.

4 **Q** And before Mr. Aquino wrote his e-mail in October
5 of 2018, did you ever go up on the terrace?

6 **A** I'm not sure of the exact day. I did go up on
7 the terrace, or at least the rooftop, of Marshall's
8 unit with Marshall. Marshall was showing me around.

9 **Q** Marshall invited you to his unit in 2019 when you
10 were looking for quotes for roof repairs?

11 **A** Yes. Yes.

12 **Q** And you considered Marshall a friend?

13 **A** I did, yes. It is tough with being personally
14 named. It's very tough now.

15 **Q** Other than Mr. Aquino, are you aware of any other
16 homeowners that had a dispute with Marshall about the
17 use of the penthouse terrace or balcony?

18 **A** No.

19 **Q** You had no dispute with him how he used the
20 penthouse balcony?

21 **A** No.

22 **Q** Other than Mr. Aquino, are you aware of any other
23 homeowners who had complaints about Marshall's renters'
24 use of the penthouse terrace?

25 **A** No.

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1 **Q** And before Mr. Aquino's e-mail of 2018, neither
2 you or the board ever sat down with Marshall to ask him
3 about his use of his penthouse terrace or balcony?

4 **A** No, I did not.

5 **Q** Before Mr. Aquino's e-mail in October of 2018,
6 and his list of violations, no one ever accused
7 Marshall of violating the terms of the master deed?

8 **A** No.

9 **Q** And, again, you can't speak for his use of the
10 terrace before 2009, correct?

11 **A** Correct.

12 **Q** And but for the nine years you had a place at
13 Shoreham Towers, from 2009 to 2018, you had -- no one
14 had any issues with Marshall's use of the terrace; is
15 that correct?

16 **A** Not that I'm aware of.

17 **Q** Besides Mr. Aquino?

18 **A** Correct.

19 **Q** And then you got Mr. Aquino's e-mail?

20 **A** Yes.

21 **Q** You know Marshall has owned the penthouse since
22 1995?

23 **A** Yes, sir.

24 **Q** And the Shoreham Towers board, you had not
25 formally called it a "common area" until you got Mr.

BILL WEST - CROSS EXAMINATION

1 Aquino's letter in October of 2018?

2 **A** I had not called it that, correct.

3 **Q** Right.

4 Now, if we can look at Mr. Aquino's e-mail,
5 briefly. Do you have it? Exhibit 12.

6 **A** I don't have a copy with me.

7 **Q** I'll find one.

8 MR. GRANTLAND: Can you pull up Exhibit 12,
9 Crawford?

10 MR. KREBS: I already did, sir.

11 MR. GRANTLAND: Thank you.

12 **Q** (BY MR. GRANTLAND) May I hand you Exhibit 12? It
13 is on the screen. I'll go through it quickly.

14 Mr. Aquino's first complaint was about Turtle
15 tile being placed on the terrace outside of the unit,
16 right?

17 **A** Correct.

18 **Q** Do you know when Marshall put down the Turtle
19 tile?

20 **A** No. Just from what I hear in the discussions.

21 **Q** It was before you bought your unit in 2009?

22 **A** That is my understanding.

23 **Q** Do you know if Marshall was on the board when the
24 Turtle tile was put down?

25 **A** I know he was on the board from 2002 until 2016,

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1 but I do not know the year he put it there.

2 Q Would it surprise you that he put it down in 1995
3 when he bought the place?

4 A Would not surprise me, no.

5 Q Now, you mentioned in the -- when you talked
6 about the roof being prepared, the terrace, you said --
7 correct me if I'm wrong -- when you were doing a repair
8 in 2019 and the Turtle tile was being taken up, you
9 said the membrane actually looked good; is that right?
10 All you had to do was put a new coat?

11 A It had to be cleaned up.

12 Q Had to be to cleaned, but the membrane was in
13 good shape?

14 A That's my understanding, yes.

15 Q So you had to replace the membrane on the roof,
16 but not the membrane on the terrace?

17 A Right.

18 Q Because that is the area that is covered up by
19 the Turtle tile?

20 A Yes.

21 Q And it still hasn't been replaced?

22 A Correct.

23 Q All you had to do is put a new coating?

24 A Yes.

25 Q And you had to put grit and then you put the mat

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1 down?

2 **A** Yes.

3 **Q** Second complaint Mr. Aquino makes is he thought
4 Marshall converted the common area into a private
5 atrium; you see that?

6 **A** Yes, sir.

7 **Q** And you agree he was wrong about that?

8 **A** Yes, I do.

9 **Q** At the time you got the e-mail, you weren't sure?

10 **A** That's correct. Correct. I had to do research
11 and investigation to determine that it was part of his
12 2,630 square feet.

13 **Q** Marshall did not convert anything. This was part
14 of his condo?

15 **A** Yes, sir.

16 **Q** And it belongs to him?

17 **A** That's why we did our due diligence to research
18 and spend months doing research to rule that out.

19 **Q** And when you did your inspection of Marshall's
20 unit, did you tell him he needed to change anything
21 inside the atrium?

22 **A** Did I tell him? No. No.

23 **Q** Third complained Mr. Aquino made was about locks
24 on the doors. Do you know who installed the keys on
25 the stairwell doors?

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1 **A** No, I do not.

2 **Q** And, to your knowledge, had Marshall ever refused
3 anyone work on the roof, HVAC contractors or anyone?

4 **A** No.

5 **Q** He's never refused anyone, has he?

6 **A** Not that I'm aware of.

7 **Q** And then the complaint about the elevator. I
8 think that is number -- number six.

9 After Mr. Aquino made his complaint about the
10 elevator, you learned what he was complaining about was
11 an original feature of the building?

12 **A** Yes, sir.

13 **Q** Before you bought your unit in 2009, there was a
14 keylock feature on the elevator?

15 **A** That's my understanding.

16 **Q** And it was there when you bought your unit in
17 2009?

18 **A** I never paid attention to it. I wouldn't
19 disagree.

20 **Q** So Mr. Aquino's allegation that Marshall changed
21 the elevator for his own benefit, that is not true?

22 **A** You're correct. It's not true.

23 **Q** And even though the private elevator access was
24 original to the building, you and your board decided to
25 deactivate the keylock?

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1 **A** Yes. But that is before we knew that this was
2 not true. It was determined at some point that that
3 was not true, that it was an original feature.

4 **Q** And you deactivated it in 2020, didn't you?

5 **A** I don't remember the exact date.

6 **Q** We had to go to court to make you put it back;
7 you remember that?

8 **A** Yes.

9 **Q** And the only reason why it is back now is because
10 we had to get a restraining order to put it back; is
11 that correct?

12 **A** Correct.

13 **Q** Have you ever had to deal with restraining orders
14 before?

15 **A** This is my first time.

16 **Q** The only reason there is a keylock in that
17 elevator is because a judge here in Horry County made
18 your board put it back the way it has been?

19 **A** Correct.

20 **Q** And the elevator works now the way it did when
21 you first moved in?

22 **A** That is my understanding.

23 **Q** Which is the way it's been since the '80s?

24 **A** (No verbal response.)

25 **Q** I'll ask you about some exhibits while on we're

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1 Mr. Aquino's e-mail.

2 Do you have Exhibit 34 in front of you,
3 Defendants' Exhibit 34? Looking at December 7, 2018.

4 Do you remember telling Ms. Golding that
5 Mr. Marshall did not respond to Mr. Aquino's e-mail?

6 **A** I'm sorry. I'm looking at the December 7,
7 2018 --

8 **Q** Yes, sir.

9 My first question is: Do you remember telling
10 Ms. Golding that Marshall did not respond to Mr.
11 Aquino's e-mail?

12 **A** Yes, I do remember.

13 **Q** Now, at the bottom of Exhibit 34 it records
14 Marshall's response; does it not? Under "rooftop
15 common area discussion."

16 **A** Yes, it does say that.

17 **Q** You read some of these minutes, and we can't put
18 it on the screen, but can you read the beginning
19 paragraph there, Marshall's response to Mr. Aquino's
20 e-mail and the paragraph on the second page?

21 **A** "Marshall requested that we walk down as a board
22 on a Saturday in late January. Marshall -- Richard
23 asked the board to put Marshall" -- and then it goes.

24 **Q** Next page.

25 **A** It is going into -- but he did -- you are

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1 correct, he did respond. I mentioned we did do that --
2 that meeting in his unit on the 19th. I never
3 denied -- we agreed to have a meeting.

4 Q And I asked -- I'll read it to you. This is your
5 minutes from December 18: "Richard asked the board to
6 put Marshall on notice to make changes to meet master
7 deed and bylaw requirements or hire a contractor to
8 make changes."

9 Do you remember Richard telling you that? That
10 is in your minutes.

11 A Okay. I'll have to look. I can't remember
12 everything.

13 Q Yes, sir. But it is on the top of the --

14 A Oh, I understand. You have to slow down a little
15 bit.

16 Q I'll read it slower: "Richard asked board to put
17 Marshall on notice" --

18 A Yes, sir. It is right here. I see it.

19 Q -- "to make changes to meet master deed and bylaw
20 requirements or hire a contractor to make changes."

21 Is that what he said?

22 A Yes, sir.

23 Q Richard -- and then it says: "Richard requested
24 Marshall to complete the restoring of the RTPH
25 violations by January 31, 2019, and that if he does

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1 not, then our management company was to hire a
2 contractor to get it done."

3 **A** That's what it says, but just because Richard
4 requests something, doesn't mean we're going to go
5 immediately and do it. We, as a board, have to do our
6 due diligence for anyone's request, and that is what we
7 did.

8 **Q** It went on to say: "Richard reminded he had
9 already spelled out these violations were to be
10 accomplished at his expense."

11 **A** That is what he said. That doesn't mean we had
12 to do it. This is Richard's request to the board.
13 Richard's requests are not rules we have to do. We
14 have to investigate and do due diligence.

15 **Q** Yes, sir. And then Exhibit 45, can you pull up
16 Exhibit 45?

17 **A** Okay.

18 **Q** So Marshall had points for each of Mr. Aquino's
19 complaints; did he not?

20 **A** Marshall? Yes. Yes, he did.

21 **Q** So like on number one with the Turtle tile, what
22 was -- what did Marshall tell the board?

23 **A** He says here the previous board knew of the
24 Turtle tile installation, but he cannot document -- his
25 position is the tile enhances the life of the roof

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1 membrane due to reduced UV rays and protects from foot
2 traffic. Per Tony, if tile remains it will require
3 removal and cleaned twice a year.

4 Q And then number two: Atrium conversion. What
5 did Marshall say?

6 A You want me to read it?

7 Q Yes, sir.

8 A "Per Marshall, atrium should be treated as the
9 terrace around the rooftop penthouse. Per Carter's
10 square foot calculation, that atrium is a part of the
11 rooftop penthouse square footage HOA assessment
12 calculation, and, therefore, rooftop penthouse private
13 space."

14 So, yeah, that is one where we already ruled out
15 Richard's bullet. We canceled it out through our due
16 diligence as a board.

17 Q And number three was about the rooftop furniture
18 on the terrace. What did Marshall say?

19 A Marshall's position is: "Rooftop terrace is for
20 the rooftop penthouse use only. An owner has a right
21 to place furniture as he wishes. If there is a noise
22 nuisance, contact him."

23 Q Are you aware of -- other than Mr. Aquino, are
24 you aware of anyone else having -- calling Marshall's
25 use of a terrace a "nuisance"?

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1 **A** No, I'm not.

2 **Q** And the signs -- I don't know in number four
3 about the signs. I don't know if -- you agreed to have
4 some replacement signs; is that correct?

5 **A** It says: "After discussion, we agreed to
6 determine placement signs."

7 **Q** We're not fighting about signs.

8 Number five: Keypad locks installed on several
9 doors.

10 What did Marshall say?

11 **A** He said he did not install those keypads. He
12 believes the HOA did.

13 **Q** Do you have any reason to disagree with what he
14 said?

15 **A** I don't know one way or the other. I don't know
16 who installed them.

17 **Q** Number six we've talked about, the elevator.
18 What Marshall said, it's always been that way, correct?

19 **A** He was correct. And that was another one we
20 found that Mr. Aquino advised that that was incorrect
21 through our due diligence in doing these reviews.

22 **Q** And then there was equal access to common
23 elements. You all addressed the rooftop elevator
24 lobby; is that right?

25 **A** Yes, sir.

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1 **Q** And Marshall said it didn't meet the fire code?

2 **A** And it did. We actually had someone come and
3 look at it, and it does meet fire code.

4 **Q** Okay. Good.

5 Let me ask you about Exhibit No. 46.

6 **A** There again, due diligence to make sure it met
7 code, because it is a common area.

8 **Q** Yes, sir. Yes, sir.

9 Look at Exhibit 46, March 2019 minutes.

10 **A** Okay.

11 **Q** Under the assessments for the \$75,000 assessment,
12 what unit owner pays the most?

13 **A** Rooftop penthouse due to the -- he has the most
14 square footage and based on the master deed square
15 footage.

16 **Q** So of the assessment, he paid \$3,241.20?

17 **A** Yes.

18 **Q** Compared to the other penthouses who paid \$2,096
19 or \$2,385?

20 **A** Yes, sir. Based on the square footage of the
21 dwelling of the --

22 **Q** Yes, sir.

23 Now I'll ask you about Exhibit 48, May 2019.

24 **A** I think I pulled it to the side because I knew
25 you were going to ask me. You know when you look for

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1 something, that is when you can't find it. May 25
2 letter?

3 Q No. This is what it looks like.

4 A About half a page. I've got it here somewhere.
5 I have it.

6 Q This is from May 25, 2019?

7 A Yes, sir.

8 Q And you all had a meeting, and this is the
9 meeting where Marshall was not allowed to attend this
10 meeting?

11 A Correct.

12 Q He called in, and I think you called him and said
13 you can't participate?

14 A I heard that earlier. I'm not going to dispute
15 it. I can't remember that exactly, but....

16 Q Mr. Aquino was at this meeting?

17 A Yes.

18 Q He participated?

19 A Yes, sir.

20 Q Even though he was the originator of the
21 violations that --

22 A The reason that the other four members were
23 there, and Mr. Griffin was not there is because we
24 received advice from the attorney in a previous letter
25 that due to the -- I don't know if I can read from

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1 Exhibit 26? But since Marshall retained counsel, the
2 board expects him to recuse himself from any future
3 discussions on this matter, and this meeting was only
4 on this matter.

5 Q That is what --

6 A Mr. Aquino was not asked to recuse himself. We
7 already drafted them up, the three of us. The other
8 three drafted them up, and we were ready to try to get
9 it finalized.

10 Q But you allowed Richard in the meeting?

11 A Yes. This was the finalization, yes.

12 Q Exhibit 25 is my letter to Mr. Giovino that
13 Ms. Golding asked you about?

14 A I have it here.

15 Q Who did I "cc" on this letter of May 1 of 2019?

16 A All the board members and Roger Roy.

17 Q So Roger Roy was already involved in this before
18 May of 2019, correct?

19 A Yes, sir.

20 Q I mean, I made sure he was copied on this letter?

21 A Yes, sir.

22 Q So he was already aware of his involvement?

23 A Certainly.

24 Q The master deed, you've read it a lot?

25 A And, believe me, I have not memorized it. I'm

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1 not that smart.

2 Q It isn't a test. But does the deed say that the
3 terrace is common?

4 A The deed? No, it does not say it is common. It
5 does not say the terrace is common, but it's not a
6 dwelling. So if it isn't a dwelling, it is common.

7 Q And correct me if I'm wrong, it does say the
8 balcony area between the dwelling and the railing is
9 not common?

10 A The balcony area between the....

11 Q Dwelling and the railing, balcony railing, is not
12 common?

13 A It is, or is not? Did you read that right?

14 Q Doesn't your deed say that the balcony area
15 between the dwelling and the railing is not common?

16 A Oh, yeah. You are right. It is not common. It
17 is private. I'm sorry.

18 Q Right. And do you think there is a difference
19 between the words "balcony" and "terrace"?

20 A It is in the reference of these master deeds. It
21 is a big difference.

22 Q Do you know that they are synonyms?

23 A In the dictionary they are, yes, sir. But the
24 big difference here -- here is the big difference
25 between these. Not only does the plans refer to them

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1 differently, but the balconies between the second and
2 the eighth floor, those balconies are part of the
3 dwelling units of those units. We pay our assessments
4 and property taxes based on those balconies being a
5 part of our assessments and property taxes, per the
6 master deed.

7 In the case of that rooftop terrace, that is not
8 a part of the dwelling of the rooftop penthouse, nor
9 does he pay Horry County property taxes on it.

10 Q Have you read his Horry County property tax bill?

11 A Have I read his bill? I've seen some documents
12 on it. Anyone's is public record. You can go -- I can
13 look at mine. If I knew your name, I could look at
14 yours. You can look at mine.

15 Q I don't want to look at yours.

16 Who paid more in assessments?

17 A The rooftop penthouse in assessments because it
18 has the most square footage.

19 Q Have you calculated how much more in assessments
20 Marshall pays than Penthouse 2 and 3?

21 A Have I calculated? No, I have not done the
22 calculation.

23 Q Would you agree --

24 MS. GOLDING: Let him finish, John. He was not
25 finished.

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1 **A** I haven't done the -- I can do the calculation.
2 I have to get my calculator. I can do a little bit of
3 math.

4 **Q** (BY MR. GRANTLAND) And probably better than me.

5 **A** No, I wouldn't say that.

6 **Q** But he pays more than Penthouse 2 and 3?

7 **A** Yes, because he has more square footage. His
8 dwelling unit has more square footage. He pays twice
9 than about the smallest unit because of his square
10 footage.

11 **Q** So he pays more in assessments than anyone?

12 **A** Yes, but he does not pay for the terrace.

13 **Q** That's your opinion?

14 **A** He doesn't. That is not my opinion that he
15 doesn't pay assessments on the terrace. That is a
16 fact.

17 **Q** We'll move on. After this lawsuit was filed in
18 2019, you wrote Marshall in May 2020 and told him to
19 remove his furniture off the terrace?

20 **A** Yes, sir.

21 **Q** Can we pull Exhibit 21? Do you need to see your
22 letter that you wrote Marshall?

23 **A** I'll look at it and make sure.

24 **Q** I promise you, I haven't doctored it.

25 **A** I'm sure you haven't.

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1 Q I'll show you Exhibit 21.

2 A Yes. This is my letter that I sent him. It was
3 crafted with our attorney's advice. As I said during
4 my deposition --

5 Q I don't want you to say what your attorney said,
6 okay. I don't want you -- that is hearsay.

7 A All I'm saying is I did send this letter, but the
8 language in this letter came from our attorney, his
9 legal advice, due diligence. There again, this board
10 did its due diligence.

11 Q Yes, sir. And this letter was after we filed the
12 lawsuit in 2019, correct?

13 A Yes, sir.

14 Q After the lawsuit that brings us in this room in
15 2023, you wrote Marshall and told him to remove his
16 furniture off the terrace?

17 A Yes, I did. I'll tell you why. It was a safety
18 issue.

19 Q And we'll talk about the safety --

20 MS. GOLDING: Let him finish.

21 A It is a safety issue because we deemed that to be
22 a common area. It was a safety issue, and our due
23 diligence, responsibility, when we had -- I would have
24 been negligent if I had not demanded that furniture to
25 be removed. In my opinion, I would have felt that that

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1 was negligence. Like I say, safety has been beaten
2 into me.

3 Q (BY MR. GRANTLAND) When did you hire your safety
4 expert?

5 A We hired him after the lawsuit.

6 Q After the lawsuit.

7 So before Marshall -- if you are so concerned
8 about safety, why did you hire a safety expert after we
9 filed the lawsuit?

10 A Because we realized we were responsible for that
11 area. I can't tell you the exact timing, but whether
12 you filed the lawsuit or not, we knew we were
13 responsible for that area, the safety of that area, so
14 we had someone look at it.

15 Q You hired --

16 A Before all of this came up, before this ever came
17 up, Richard points out -- this is me, personally -- I
18 never even thought about that terrace, to be honest. I
19 never thought about it. Marshall was on the board. He
20 was the president of the board. I always felt it is
21 Marshall's area. I never thought about it. But when
22 this came up, and once you are made aware of something
23 and you are told it is common and there is a safety
24 issue, if you are in a leadership position, you have a
25 responsibility to take action, and that is what we

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1 tried to do.

2 **Q** But this was a selected safety issue; wouldn't
3 you agree?

4 **A** The guy said he didn't have time to look at the
5 whole building.

6 **Q** This is in 2019 --

7 MS. GOLDING: Your Honor, he's continuing to
8 interrupt.

9 THE COURT: I understand.

10 **A** Go ahead.

11 **Q** (BY MR. GRANTLAND) This was in 2019. Have you
12 all given the safety expert any time to come back to
13 look at the balconies, high-back chairs, the other
14 balconies?

15 **A** They are private balconies. They are part of
16 that unit's dwelling. That particular unit owner is
17 responsible for the liability of his dwelling unit. I
18 don't have to have -- I have an HO6 policy that covers
19 me for liability if something happened on my balcony
20 with any chairs or tables. It is my fault -- or in my
21 unit.

22 That common area, once I step outside of my unit
23 onto the walkway, that is a common area. My HO6 policy
24 doesn't cover it. But as long as it is within my unit,
25 I'm responsible for anything safety-wise.

BILL WEST - CROSS EXAMINATION

1 **Q** Up until 2018/2019, Marshall's terrace was
2 private, wasn't it?

3 **A** It was -- to him it was private. Up until this
4 came up, it was treated that way. It wasn't -- per the
5 master deed, it wasn't.

6 **Q** That is what we're --

7 MS. GOLDING: Your Honor, he's continuing to
8 interrupt.

9 **A** But it wasn't explored. It wasn't his private
10 area. It was treated as his private area in '95 to
11 2019. It was treated that way.

12 **Q** (BY MR. GRANTLAND) And you understand we're here
13 in court --

14 **A** That's why we are here.

15 **Q** That's right. But the safety man was hired after
16 the lawsuit was filed?

17 **A** My point is, I agree. That is why we are here,
18 to get this settled. But this board, they tried to do
19 -- I hope I'm trying to demonstrate that -- we tried to
20 do our due diligence. Once, as a board member, it's
21 told it is a common area, I have a responsibility to
22 make regulations to regulate that area and try to keep
23 it safe.

24 **Q** And you agree your safety man did not look at any
25 other --

BILL WEST - CROSS EXAMINATION

1 **A** He did not.

2 **Q** There are other high-back chairs all over
3 Shoreham Towers?

4 **A** Yes. We've already been through that, and why
5 they are there.

6 **Q** No. I'm saying --

7 **A** There are other high-back chairs, but they are
8 not the HOA's responsibility. They are not in common
9 areas.

10 **Q** And your safety expert looked at his plants or
11 arborvitaes?

12 **A** Yes.

13 **Q** And you heard from his maintenance man, who had
14 them up there for over 20 years, or he had a
15 professional landscaper; you heard that?

16 **A** Yes, sir.

17 **Q** How many hurricanes and storms have you gone
18 through at Shoreham Towers?

19 **A** Since?

20 **Q** Since Marshall -- since you've been there.

21 **A** About every two, three years.

22 **Q** Have you had any arborvitaes --

23 **A** No, we haven't. But just because you haven't had
24 an incident doesn't mean you won't have one in the
25 future.

BILL WEST - CROSS EXAMINATION

1 Q And they are tied down by a cord?

2 A I understand they are.

3 Q Yeah.

4 So back to this e-mail. The -- the reason for
5 this e-mail was a safety report that you all --

6 A Sorry. Get me back to what?

7 Q 21.

8 A 21, I got you. Yes, sir. I'm on it.

9 Q We talked about the high-back chairs. You said
10 your issue was his furniture is 6 feet off the railing,
11 right?

12 A Yes, sir.

13 Q And you agree you have balconies with people's
14 furniture closer than 6 feet to the railing?

15 A There are other units, yes, sir. Yes, sir. Yes,
16 sir.

17 Q I mean, other people put their furniture up
18 against their railing?

19 A But there's a big difference.

20 Q You say theirs is private and Marshall's is
21 common?

22 A Yes.

23 Q Which is why we are here.

24 A If a high-back chair is on a private balcony and
25 they have an issue, it's that owner's responsibility,

BILL WEST - CROSS EXAMINATION

1 first. That is not to say that someone couldn't come
2 after the HOA -- and here I'm not a lawyer talking to
3 an expert in this area -- but they could come after the
4 HOA also if there was an incident. But it is a private
5 area. That owner, that dwelling, has the
6 responsibility for what happens on that balcony with
7 any high-back furniture or any unsafe condition.

8 Q Did you ever e-mail Marshall about concerns about
9 his furniture before he sued you?

10 A Did the board ever e-mail Marshall about?

11 Q Your concerns about the unsafe furniture. Did
12 you ever e-mail him about his unsafe furniture before
13 he sued you?

14 A Not to my knowledge, no. It would have been
15 after the safety report, which was after the lawsuit.
16 Like I said, we weren't aware of it then. Once you are
17 aware of something, you have to take action.

18 Q We don't need to -- the lawsuit came before the
19 safety report. There is no question.

20 Now, you go on to say in the letter, second page,
21 that the board will put up signs, and if people still
22 put chairs near your railings, fines will be levied?

23 A Yes, sir.

24 Q Fines like a parking ticket or speeding ticket?

25 A It could be monetary fine. We didn't define it.

BILL WEST - CROSS EXAMINATION

1 **Q** So let's back up. October of 2019 we filed a
2 lawsuit about Marshall's rights about his use of the
3 terrace, correct?

4 **A** Correct.

5 **Q** There is no question in May of 2020 you knew
6 about the lawsuit?

7 **A** Yes, sir.

8 **Q** And you knew what it was about. And then in
9 May of 2020, even after having a lawsuit and dealing
10 with Covid, you threatened to fine Marshall and his
11 wife for having a chair within 6 feet of the railing?

12 **A** If it was a high-back, because it was a safety
13 issue. Whether you filed a lawsuit or not, it is --

14 **Q** No, it doesn't say --

15 **A** It's a safety issue. We have to take action. We
16 have to take action if it is a safety issue. Just
17 because you haven't had an incident doesn't mean that
18 you couldn't have one in the future. You have to
19 mitigate the risks.

20 **Q** Mr. West, in your letter you don't specify
21 high-back furniture. You say no furniture is to be
22 placed in the 6-feet setback. That's what the letter
23 says?

24 **A** Yes.

25 **Q** That is what you said?

BILL WEST - CROSS EXAMINATION

1 **A** That's true.

2 **Q** "No furniture."

3 And, again, no one else has this requirement put
4 on them, correct?

5 **A** Correct. And I told you why.

6 **Q** Whose idea was it to fine Marshall and his wife
7 if they had a chair within 6 feet of the railing?

8 **A** It was the board's with the advice of our
9 counsel.

10 **Q** Are you sure this wasn't a retaliation for filing
11 a lawsuit six months earlier?

12 **A** No. This is a safety issue of liability. This
13 has nothing to do with that.

14 **Q** But the safety issue only came up after the
15 lawsuit, correct?

16 **A** It came up -- safety report was done after the
17 lawsuit, yes.

18 **Q** That's right. And have you fined anybody?

19 **A** No.

20 **Q** You wrote this letter with the rest of the board?

21 **A** Yes, sir, and with legal counsel guidance.

22 **Q** You realize when you write a letter like this and
23 threaten to fine him if he has a chair within 6 feet,
24 that is why we are here in this lawsuit? You get that,
25 don't you?

BILL WEST - CROSS EXAMINATION

1 **A** Yes, sir.

2 **Q** And, correct me if I'm wrong, you went ahead on
3 May 29 -- what did you all do on May 29 of 2020?

4 **A** That is the day the furniture was removed. And
5 I'm going by memory. It is getting kind of scary.

6 **Q** Were you there when the furniture was removed?

7 **A** No, I was not.

8 **Q** Do you know how many pieces of Marshall's
9 furniture was removed?

10 **A** I believe the count was 23.

11 **Q** And, correct me if I'm wrong, all of the
12 furniture belonged to Marshall?

13 **A** Yes.

14 **Q** None of it belonged to anyone else?

15 **A** Correct. We, as a board, determined not only the
16 high-back furniture, but no individual unit owner can
17 place their own private furniture in a common area. We
18 don't allow me to take my own lounge chair and take it
19 down to the pool and leave it overnight. You can't
20 leave furniture.

21 So we had to treat the rooftop common area -- try
22 to treat it the same way that no individual would have
23 private furniture out there. We did, as a board, as
24 that furniture was being taken off -- we would have the
25 furniture -- I think -- we brought furniture up there

BILL WEST - CROSS EXAMINATION

1 for the convenience of Marshall. I Know it was not
2 exactly what they wanted. There wasn't as much
3 furniture or the variety, but we did bring furniture up
4 there to try to serve Marshall's guests with furniture.

5 Q In May of 2020, after we filed this lawsuit, you
6 were going to treat Marshall's balcony as common as the
7 pool?

8 A Your lawsuit didn't change whether it was common
9 or not.

10 Q Clearly.

11 A It didn't change it.

12 Q Have you taken any other homeowners' furniture if
13 they disagreed with the board?

14 A If they disagreed with the board? Not that I'm
15 aware of, no. But we would -- we would take their
16 furniture if they left it by the pool. We would have
17 the maintenance guy do it.

18 Q Was the table with the umbrella, was that an
19 unsafe piece of furniture?

20 A I don't recall that being labeled as "unsafe,"
21 no. But it was his private furniture. It was his
22 private furniture.

23 Q And the rocking chair, was that unsafe?

24 A Not that I'm aware of.

25 Q But you removed that, too?

BILL WEST - CROSS EXAMINATION

1 **A** Because it was his private furniture, not HOA
2 furniture.

3 **Q** How many years has Marshall had his furniture on
4 the terrace?

5 **A** I understand since 1995, or four.

6 **Q** Some of this furniture may have been from before
7 you moved in?

8 **A** Absolutely could have been.

9 **Q** Had the board received any type of claim or
10 complaint -- any type of claim involving the rooftop
11 terrace?

12 **A** Not that I'm aware of.

13 **Q** Has anyone been injured on the rooftop terrace?

14 **A** Not that I'm aware of.

15 **Q** So the safety -- I mean, the safety report has no
16 merits?

17 **A** It does. Just because you haven't had an
18 incident doesn't mean you couldn't have one. Just
19 because no one tripped over this cord laying out here
20 on the floor doesn't mean someone couldn't.

21 **Q** But after this lawsuit was filed, you were
22 suddenly worried about people's safety, so worried,
23 that you decided to inspect Marshall's terrace and move
24 his furniture?

25 **A** We should have done it sooner.

BILL WEST - CROSS EXAMINATION

1 **Q** You should have taken his furniture sooner?

2 **A** No. We should have done the safety report
3 sooner. We thought it -- I thought that was Marshall's
4 area, but once I was enlightened and researched -- and
5 he doesn't pay for that area or for that terrace. I
6 found out that is common. At that point then, all the
7 sudden, that area is -- the safety of the area is not
8 Marshall Griffin's. That safety is now the HOA board
9 of directors' responsibility, so now I'm responsible.

10 So if we did anything wrong, we should have had
11 that safety report done sooner than we did.

12 **Q** Or maybe do it for the whole building?

13 **A** And I won't disagree, but this was new. The rest
14 of the building -- and we knew what was common and
15 private. I'm sure it met all of the safety codes for
16 all of the years, but we did not know, because no one
17 really thought about that being a common area, at least
18 I didn't. I didn't think of it as such until 2019 when
19 we did this research. Once we knew it was or realized
20 it was common, then, you know, we got a responsibility
21 to look at that area. Things were pointed out like the
22 high-back chairs and the high plantings.

23 **Q** How many months was Marshall without his
24 furniture?

25 **A** Without his furniture?

BILL WEST - CROSS EXAMINATION

1 **Q** Uh-huh.

2 **A** I don't recall, exactly. I want to guess three,
3 four months. Is that about right? It is in the
4 records.

5 **Q** During the tourist season, correct?

6 **A** From May until....

7 **Q** November?

8 **A** November, yes, sir.

9 **Q** And the only reason that furniture was put back
10 was because a judge here in Horry County ordered you to
11 put it back?

12 **A** Yes. Yes. And, actually, when the judge made
13 that decision -- we were not pleased the decision was
14 made, but that relieved the board and the HOA of our
15 responsibility for the safety of that area because the
16 judge ordered us to put that furniture back up there.

17 So, now, as far as the safety and liability, and
18 this is me speaking, I felt like I was relieved of some
19 of that liability for the high-back furniture because
20 the judge said, Board, you have to put it back up
21 there. Now I can't do anything about it. If something
22 happens, I've done all I could do.

23 **Q** Ever been ordered by a judge to bring back
24 someone's furniture?

25 **A** No. I've never been in anything like this.

BILL WEST - CROSS EXAMINATION

1 **Q** If you hadn't been ordered by the judge, you
2 would have not returned it?

3 **A** No, we would not.

4 **Q** And you would have forfeited it later on in
5 October?

6 **A** I can't say what would have happened. We would
7 have made efforts to get that furniture back to Mr.
8 Griffin.

9 **Q** Did you see the letter?

10 **A** We sent him letters to go pick it up. We stored
11 it for him. We didn't throw it away. That was
12 expensive furniture.

13 **Q** In October of 2020, the plan was for the storage
14 company to get rid of the furniture; was it not? Do
15 you need to see the letter?

16 **A** Yeah, let me see the letter. We did -- Mr.
17 Grantland, the letter, without me looking at it, we did
18 tell him if he did not pick it up, it would be disposed
19 of. I'm not going to deny that. We told him that.

20 **Q** Okay.

21 So you also were going to get rid of his
22 arborvitaes plants?

23 **A** Yes, sir.

24 **Q** And the only reason you didn't is because the
25 judge told you you can't rip those out?

BILL WEST - CROSS EXAMINATION

1 **A** Yeah. Once the judge said leave them, if
2 something happens now, if they blow off, the board did
3 its due diligence.

4 **Q** And they haven't blown off, have they?

5 **A** I hope they don't.

6 **Q** And they've never blown off for as long as you
7 have lived there?

8 **A** There again, it doesn't mean it couldn't happen.

9 **Q** Right.

10 And the lighting of the terrace, who pays for the
11 electricity on the terrace?

12 **A** I understand Mr. Griffin. I don't know for sure
13 he does, but that's my understanding.

14 **Q** Do you get a light bill or does the HOA get a
15 bill from the power company for the electricity on the
16 terrace?

17 **A** I don't know. We get a light bill for common
18 areas, we do. I understand from one of your -- I can't
19 remember his name.

20 **Q** Jones?

21 **A** Jones. He traced it back to the box and said it
22 was, so I have to take him at his word, but I have not
23 confirmed that.

24 **Q** Do you have any evidence or information that
25 someone else, besides Marshall, pays for the lights on

BILL WEST - CROSS EXAMINATION

1 that terrace?

2 A I don't have any evidence, no.

3 Q So you are letting Marshall pay for the lights on
4 the terrace, but still calling it "common," and you are
5 taking his furniture away?

6 A Correct.

7 Q Do you see the hypocrisy in that, Mr. West?

8 A I don't see -- he had treated it all of these
9 years as his own private area.

10 Now, if we had -- once it was made common, if Mr.
11 Griffin requested -- notified the board there is lights
12 burned out, they need to be replaced, that being a
13 common area, this board would have replaced them.

14 Q Would you have paid the power bill, too?

15 A If asked to, we would. I understand the switch
16 is inside his unit.

17 Q Exactly.

18 A But if we were asked to -- and I can't speak for
19 everyone, but the decision -- if this jury were to rule
20 it is a common area, and the owner of the rooftop
21 penthouse came and said this is not fair, you should
22 have that bill rewired to common, I would say that is
23 only fair.

24 Q Is there anywhere else at Shoreham where the
25 homeowner pays for lights on a common element?

BILL WEST - CROSS EXAMINATION

1 **A** Not that I'm aware of.

2 **Q** You don't have any homeowners paying for lights
3 at the swimming pool?

4 **A** The HOA pays for it.

5 **Q** But not one homeowner?

6 **A** No.

7 **Q** And you agree it doesn't make sense you are
8 calling the terrace common to let Marshall pay for the
9 power bill?

10 **A** It is inconsistent.

11 **Q** You think? Yes, sir. Yes, sir.

12 **A** It is. It is.

13 **Q** We agree, Mr. West. Thank you.

14 Do you know that before he paid for it, his Uncle
15 Bobby paid the power bill for the terrace.

16 **A** He was the owner, I assume he did.

17 **Q** Right.

18 And you looked at the elevator lobby?

19 **A** Yes, sir.

20 **Q** You say that the elevator lobby on the tenth
21 floor is common?

22 **A** That is what the master deed says.

23 **Q** Before I took your deposition, you did not know
24 that Marshall paid for the electricity in the elevator
25 lobby, did you?

BILL WEST - CROSS EXAMINATION

1 **A** I did not, no.

2 **Q** Did you know that the HVAC and the lighting to
3 the tenth floor runs off of his unit?

4 **A** I'm told it does. Now, what I don't know is when
5 he did the unauthorized remodel of that area, or
6 updating that area, removed some door, I don't know if
7 it had any impact on the HVAC or lighting.

8 **Q** Have you addressed that since Marshall actually
9 pays for the electricity and the HVAC in the elevator
10 lobby, have you said we need to figure out how to pay
11 for it?

12 **A** We have not gone into that, no.

13 **Q** You have been to the terrace? You have been to
14 Marshall's unit?

15 **A** Yes.

16 **Q** No other unit is all glass?

17 **A** Correct.

18 **Q** And you have seen pictures, and I can show you
19 pictures, that you can look inside his unit from
20 outside unless the curtains are closed?

21 **A** Correct. Just like all the other units have
22 bedrooms.

23 **Q** No. No.

24 **A** The units in the building -- the other 39 units
25 in the building all have at least one bedroom, if not

BILL WEST - CROSS EXAMINATION

1 two, windows that someone walking in the common area
2 can look in. That is why you have blinds and curtains.

3 Q So I'll show you pictures. You are telling me
4 every other unit is like the rooftop penthouse?

5 A No. No. Every other unit had a window of some
6 type that had a common area where folks can look in.

7 Q You agree a window is different from a window
8 wall?

9 A Yes.

10 Q I'll show you Exhibits 2 through 2G. Do you
11 recognize that as the inside of Marshall's unit?

12 A Yes, sir.

13 Q You agree it's all window walls?

14 A That's my understanding, yes.

15 Q And if you look at the children's room, 2F, you
16 can look inside if the curtains are open? That is a
17 sliding glass door, right?

18 A Yes, sir.

19 Q And that is a window wall right there, isn't it?

20 A Yes, sir.

21 Q And your testimony is that in 2019 you all
22 decided that that terrace outside of the children's
23 room is a common element?

24 A Yes, sir.

25 Q And so someone can be out there and look right

BILL WEST - CROSS EXAMINATION

1 inside, can't they?

2 **A** If the blinds are open, yes, sir.

3 **Q** And when you go to the beach, you want to see the
4 ocean?

5 **A** My children's room has a window -- not window
6 wall, but if I don't close the blinds, you can see.

7 **Q** And you think this is common, this terrace
8 outside?

9 **A** I don't think it should be common. It is common.
10 The master deed says it is common.

11 **Q** That is why we're arguing.

12 Your rules and regulations -- look at Exhibit 52.
13 Number seven says: "The terrace shall be closed off
14 and off-limits to all, including occupants of the
15 rooftop penthouse, from 10:00 p.m. to 8:00 a.m."?

16 **A** Yes, sir.

17 **Q** Now, there is no "coffee" exception?

18 **A** You are correct.

19 **Q** You talked about an exception?

20 **A** You are correct.

21 **Q** But there isn't one in these rules?

22 **A** Correct.

23 **Q** And, in fact, Mr. Aquino said if he saw
24 Mr. Griffin out there, you would have a meeting about
25 it?

BILL WEST - CROSS EXAMINATION

1 **A** Yes, sir.

2 **Q** Do you think that is fair for Mr. Griffin?

3 **A** I think it is fair. We're trying to be fair to
4 all 40 owners.

5 **Q** You also -- correct me if I'm wrong, number eight
6 is: "Terrace is open from 8:00 to 10:00. All unit
7 owners" -- and that is 39 unit owners -- "and their
8 family"; is that correct?

9 **A** All 40 and their family and guests could come up
10 there.

11 **Q** Yes.

12 **A** You didn't --

13 **Q** You were nodding.

14 **A** I'm sorry. I was leading. Yes. Yes.

15 **Q** I'm not trying to bore anyone. I want to be
16 clear.

17 **A** Oh, I'll do that.

18 **Q** All owners -- correct me if I'm wrong, all 39
19 owners and their family?

20 **A** And their guests, yes. No renters.

21 **Q** All up there between 8:00 and 10:00?

22 **A** Yes.

23 **Q** And that number is unlimited?

24 **A** Correct.

25 **Q** There is no limit on how many people you could

BILL WEST - CROSS EXAMINATION

1 bring up there?

2 And then number nine --

3 **A** By what we wrote there, we believe that there
4 will be very little traffic up there.

5 **Q** Is there a rule here that there will be very
6 little traffic?

7 **A** No. No. We intentionally didn't even pass these
8 new rules out to all of the owners. We did publish it
9 and recorded it with Horry County as required by law.
10 We did publish these rules, put them on the website,
11 but we didn't say everyone go look at the new rules.
12 We try to keep it low-key. That was to try to help
13 Marshall. I know it doesn't seem that way to you or
14 Marshall, but we tried to keep it low-key, to try to
15 minimize the amount of traffic up there.

16 I think it was very minimal during the time when
17 we put these rules in effect until the TRO, temporary
18 restraining order. I think the traffic up there,
19 because of these rules and regulations put in effect,
20 was very minimal.

21 **Q** That is your opinion.

22 **A** That's my opinion.

23 **Q** You didn't stay in the penthouse?

24 **A** No. I don't know.

25 **Q** That's right.

BILL WEST - CROSS EXAMINATION

1 Number nine: "The board has control and sole
2 discretion of the common element planters and is
3 responsible for selection, care, and cost of plants"?

4 **A** Yes.

5 **Q** So you heard the testimony about Marshall spent
6 about \$80,000 on plants?

7 **A** That was his choice. We didn't force him to do
8 it. No one else would go up there. We didn't realize
9 it was common. So if he wanted plants and no one else
10 could go up there -- if he wanted to put plants up
11 there, we left it up to him. As long as he met some
12 basic safety rules, we let him, you know....

13 **Q** And he's paid around a hundred thousand dollars
14 over 20 years for maintenance?

15 **A** That is what I heard this morning, but now the
16 board, the HOA, has paid for the maintenance of the
17 planters themselves -- not the plants, but planters.

18 They have a rubber membrane in the bottom of the
19 planters to keep the water from weeping through.
20 Around the 2015 time frame, the HOA spent approximately
21 \$13,000 on repairs to the membranes of those planters
22 themselves.

23 Mr. Griffin paid for the dirt to go back in, and
24 I know he paid for the plants that went back in there,
25 because no one else really --

BILL WEST - CROSS EXAMINATION

1 Q And the dirt?

2 A And the dirt. But no one else was aware that
3 that was a common area. I wasn't.

4 Q And you --

5 A So we let him do what he wanted, as long as it
6 was safe.

7 Q And you let him pay for 20 years?

8 A He didn't have to. Remember back in the late
9 '90s the board was going to concrete those things over.
10 The problem of expenses was going to go away. I just
11 read the minutes.

12 Q We can look at the minutes. You've looked at
13 minutes from 1992?

14 A I have, but I can't remember all of that.

15 Q I'll show you Exhibit 7. I don't think we can
16 bring it up because it has a redacted portion. In the
17 HOA minutes in 1992, the area around the penthouse
18 would be handled the same way as the other balconies?

19 A That was an opinion of the attorney at that time.

20 Q And that is how Marshall treated it, correct?

21 A Yes.

22 Q And that has been over 30 years ago?

23 A Yes.

24 Q And then the first time that changes is in 2018,
25 correct?

BILL WEST - CROSS EXAMINATION

1 **A** Correct.

2 **Q** You agree that from '92 to 2018 the area was
3 handled like the balconies?

4 **A** Yes, it was treated like a balcony.

5 **Q** And you weren't there in 2001. You weren't there
6 in 2001, were you?

7 **A** No.

8 **Q** Pull up Exhibit 9, please. 2009 -- I'll show you
9 Plaintiffs' 9. Did you know what the board called his
10 area outside of the penthouse -- I'm sorry, 2001, the
11 last sentence.

12 **A** They called it the "penthouse balcony area."

13 **Q** And that is not what you call it, is it?

14 **A** It's not about what I call it. It's what the
15 drawings call it. They don't call it a "balcony."
16 They call it a "terrace."

17 **Q** But the board called it that over 20 years ago,
18 correct?

19 **A** They called it that in this minute, yes.

20 **Q** And then in 2016 -- I can show you the minutes,
21 but would you believe that they called it a "deck" in
22 2016?

23 **A** I can believe that.

24 **Q** Were you on the board in 2016?

25 **A** I joined in March of '16.

BILL WEST - CROSS EXAMINATION

1 **Q** Exhibit 11, this is from October of '16. So in
2 2016, you and Marshall were both on the board?

3 **A** Yes.

4 **Q** And what did you call the area outside of the
5 rooftop penthouse then?

6 **A** What did we call it then? By the master deed, it
7 was called a terrace.

8 **Q** No. What did you call it in these minutes?

9 **A** Whatever it says.

10 **Q** You are discussing -- I'll read it: "In
11 discussing the terrace of the roof, the board discussed
12 replacing the roof over the rooftop penthouse and look
13 at the coating of the roof area that" --

14 **A** "Serves as a deck."

15 **Q** -- "serves as a deck."

16 So that is what we're fighting about today. So
17 you called it a deck. You agree you called it a deck
18 in 2016?

19 **A** It was called a deck in these minutes, yes.

20 **Q** And it was called a "penthouse balcony area" in
21 2001?

22 **A** Correct.

23 **Q** And in '92, no question the area was going to be
24 treated just like balconies?

25 **A** That is what the attorney said.

BILL WEST - REDIRECT EXAMINATION

1 **Q** And you agree that "balcony" and "terrace" are
2 synonyms?

3 **A** Per Webster they may be, but they are not
4 synonyms as far as the master deed. The terms are used
5 differently. If they meant for them to be the same,
6 they would have called the rooftop balcony, but it's
7 not. And it is not -- Marshall doesn't pay for that
8 deck as part of his assessments or for Horry County.

9 **Q** That is your big beef, he doesn't pay enough?

10 **A** He pays for his dwelling. He pays enough. He
11 pays what is required of the dwelling, every penny of
12 it. He pays for his dwelling. He doesn't pay to the
13 terrace. Nobody can make -- we can't change the master
14 deed unless we amend it, and it hasn't been amended.
15 He pays exactly what he is supposed to pay for his
16 dwelling. He doesn't pay for the terrace.

17 **Q** That is your opinion.

18 **A** No, that is not an opinion. It is a fact.

19 MR. GRANTLAND: No further questions. Thank you.

20 **REDIRECT EXAMINATION**

21 **BY MS. GOLDING:**

22 **Q** Just a couple. Let me give you what is
23 Defendants' Exhibit No. 15, which is a letter dated
24 September 15, 2000 from Pinnacle Real Estate
25 Management, from Mr. Grubb. Did you see this document

BILL WEST - REDIRECT EXAMINATION

1 in the books and records of the Shoreham Towers
2 Association?

3 **A** Yes, I did.

4 MR. GRANTLAND: And the exhibit number?

5 MS. GOLDING: Defendants' Exhibit 15.

6 MR. GRANTLAND: Thank you.

7 **Q** (BY MS. GOLDING) This document, was it kept in
8 the books and records in the association in accordance
9 with the standard of --

10 MR. GRANTLAND: Objection. This is one of
11 records that we objected to. It is a hearsay statement
12 of Mr. Grubb, who is not on the board.

13 MS. GOLDING: Mr. Grubb used to be president,
14 Your Honor. It is a letter --

15 THE COURT: Come on up.

16 (The following was a bench conference out of the
17 hearing of the jury.)

18 MR. GRANTLAND: We discussed this in pretrial.

19 MS. GOLDING: No, we didn't.

20 MR. GRANTLAND: I sure did.

21 MS. GOLDING: It is kept in books and records.

22 It constantly has asked every witness, Did you have any
23 complaint? Did you have any complaint? That is a
24 complaint.

25 MR. GRANTLAND: Mr. Griffin's name is not

BILL WEST - REDIRECT EXAMINATION

1 mentioned in the letter.

2 THE COURT: It's not?

3 MS. GOLDING: No. It is a complaint that the
4 rooftop terrace is a common element.

5 MR. GRANTLAND: No, it doesn't even say terrace.
6 It is a complaint about the locks. I believe he's
7 complaining about the door, the roof doors being
8 locked, not about the terrace. There is no --

9 MS. GOLDING: He said common elements, and that
10 is an issue here. It is a complaint.

11 THE COURT: To who?

12 MR. GRANTLAND: From Mr. Grubb to Pinnacle Real
13 Estate. I have no idea who he is. He lives in
14 Raleigh.

15 THE COURT: And it is addressed to who?

16 MR. GRANTLAND: Pinnacle Real Estate.

17 MS. GOLDING: The management company at that
18 time.

19 MR. GRANTLAND: Mr. Griffin's name is not in
20 here. His terrace is not mentioned. It is a complaint
21 about locks.

22 MS. GOLDING: To the rooftop. He was president.
23 He was on the board, and he was the president.

24 THE COURT: But addressed to who?

25 MS. GOLDING: The management company of Shoreham

BILL WEST - REDIRECT EXAMINATION

1 Towers, and the management company turns it over to
2 Shoreham, and they put in their records.

3 MR. GRANTLAND: My beef is she's going to say it
4 is related to Marshall, and his name is not even in it.

5 THE COURT: You can cross examine him on it.

6 MR. GRANTLAND: You'll let me do that?

7 THE COURT: I will.

8 (The following is had in open court.)

9 MS. GOLDING: We offer Defendants' 15 into
10 evidence.

11 MR. GRANTLAND: Over my objection.

12 THE COURT: Yes.

13 (Defendants' Exhibit 15 admitted.)

14 Q (BY MS. GOLDING) Was Pinnacle the management
15 company for Shoreham?

16 A It is my understanding, at that time.

17 Q And that letter was kept in the records of
18 Shoreham Towers?

19 A Yes, ma'am.

20 Q And that letter is for a complaint that was made
21 in 2000 with respect to the locks to the rooftop?

22 A Yes. It was a complaint about the access to the
23 rooftop due to the doors being locked, yes. A
24 complaint about access to the common area.

25 Q Final question. Since you were asked by

BILL WEST - RECROSS EXAMINATION

1 Mr. Grantland something about the lawsuit, have you
2 ever been personally sued before?

3 A No, I have not.

4 MS. GOLDING: Thank you.

5 RECROSS-EXAMINATION

6 BY MR. GRANTLAND:

7 Q Last question. Does this letter that
8 Ms. Golding just gave you, does it mention Marshall
9 Griffin?

10 A No, it does not.

11 Q Do you even know if it is a complaint about
12 Marshall Griffin?

13 A It is a complaint about access to the rooftop
14 terrace, the common area, while Mr. Griffin was the
15 owner of the rooftop terrace.

16 Q Is the terrace mentioned in the letter? I've
17 read it. Are you sure?

18 A He doesn't use the word "terrace." He uses the
19 word "roof."

20 Q Exactly.

21 A And the roof -- per the master deed, the roof is
22 a common element.

23 Q Right. And we're not disagreeing with you on
24 that.

25 A But you access the terrace through those doors.

BILL WEST - RECROSS EXAMINATION

1 The doors that are locked that he's complaining about
2 not having access to, lead onto the common element
3 terrace.

4 Q My question is: Does this letter mention
5 Marshall Griffin?

6 A It does not.

7 Q Does it accuse him of locking anything?

8 A It accuses the board of directors at that point,
9 and the management company, of being in on limiting
10 access to the rooftop, but it does not mention him by
11 name, no.

12 Q And as we discussed, you don't know anything
13 about locks or keylocks on the stairwells? I mean this
14 was --

15 A His letter said it was locked and people didn't
16 have free access.

17 Q You don't know who locked it?

18 A I don't.

19 Q And in 2000, you weren't here yet?

20 A No. But the letter says that they are being
21 locked. Mr. Grubb, the original president of Shoreham
22 Towers, he was the original president and served on the
23 board for a number of years, he was president on the
24 board, he wrote this letter. But he was the original
25 president for Shoreham Towers that wrote this complaint

BILL WEST - RECROSS EXAMINATION

1 about access to that area.

2 Q Again, you have no information that Marshall had
3 anything to do with this complaint?

4 A No. I believe that Marshall's -- I believe that
5 Marshall's wife was on the board of directors at the
6 time of the complaint.

7 Q Do you have any information that his wife had
8 anything to do with this letter?

9 A No, other than she was on the board of directors
10 at this time.

11 MR. GRANTLAND: Thank you.

12 MS. GOLDING: Nothing further, Your Honor.

13 THE COURT: You may step down.

14 MS. GOLDING: I have more witnesses, but they'll
15 be late.

16 THE COURT: All right. Let's be back at 9:30 in
17 the morning.

18 (WHEREUPON, THE PROCEEDINGS FOR FEBRUARY 1, 2023
19 CONCLUDED AT 5:06 P.M.

20 THE FOLLOWING WAS HAD ON FEBRUARY 2, 2023 OUT OF
21 THE PRESENCE OF THE JURY.)

22 THE COURT: Everyone ready?

23 MS. GOLDING: Yes, Your Honor. Before we bring
24 the jury out, Mr. Grantland and I have conferred with
25 respect to Exhibit 23, the letter of Mr. Roy dated

JASON THOMPSON - DIRECT EXAMINATION

1 March 19, 2019. We made significant redactions from
2 that letter, redacting his opinion.

3 Then the letter from Mr. Roy to John Grantland,
4 Defendants' 26, we redacted an opinion from that
5 letter.

6 And then in Defendants' Exhibit 29, we redacted
7 what is perceived as an opinion in that letter, and so
8 we would offer those exhibits.

9 MR. GRANTLAND: No objection.

10 THE COURT: Defendants' 23, 26 and 29 in
11 evidence. All right. Those are admitted.

12 (Defendant's Exhibits 23, 26, 29 admitted.)

13 THE COURT: Okay. We can bring out the jury.

14 (The jury enters at 9:51 a.m., and the
15 following is heard in the presence of the jury.)

16 THE COURT: Defense, call your next witness.

17 MS. GOLDING: Yes. I call Jason Thompson.

18 (JASON THOMPSON, having been duly sworn,
19 testified as follows:)

20 THE WITNESS: Jason Thompson.

21 **DIRECT EXAMINATION**

22 **BY MS. GOLDING:**

23 **Q** Good morning, Mr. Thompson. I know you arrived
24 here, and you asked me to take you now.

25 **A** Yeah. Because of my dad and personal things.

JASON THOMPSON - DIRECT EXAMINATION

1 **Q** I know you have work to do.

2 Tell us what your association is with Thompson
3 Roofing.

4 **A** It is a family business. My dad started it
5 probably 45 years ago, and now me and my brother have
6 taken it over. I do -- I'm the estimator and foreman
7 on most jobs we do.

8 **Q** How long have you been in the roofing business?

9 **A** 19 years.

10 **Q** And just for the jury's information, where do you
11 live?

12 **A** Exact address?

13 **Q** No, no.

14 **A** Wampee, Longs area.

15 **Q** Let's go to Shoreham Towers. Are you familiar
16 with Shoreham Towers?

17 **A** Yes, ma'am.

18 **Q** And tell us how you became familiar with Shoreham
19 Towers.

20 **A** Well, we do a lot of commercial roofing, or
21 whatever. So a call comes into the office wanting to
22 get the roof inspected to see if they need a new roof,
23 and then you mediate with whoever, in this situation,
24 the board, the HOA. Then we do a walk-through to see
25 what is going on with the roof, and then give our ideas

JASON THOMPSON - DIRECT EXAMINATION

1 on what needs to be done to fix it.

2 Q Who, primarily, did you deal with on the board?

3 A Mostly Tony, Mr. Tony.

4 Q And Tony is one of the directors, right?

5 A Yes. As far as I know, yes.

6 Q And with respect to the last job that your
7 company did at Shoreham Towers, can you tell the jury
8 what the company did and about when that happened, the
9 roofing job on the roof terrace?

10 A Just the terrace?

11 Q Yes.

12 A Okay. The terrace -- the terrace, we had to take
13 up the tile called Turtle tile and remove that, and
14 then that way we could get the -- the whole problem was
15 the drains couldn't get water off of a roof.

16 See, the thing is, to help explain, most people
17 think of a roof as a shingles, but you have pitch.
18 Water can come off quick. But the whole purpose of the
19 flat roof is make sure the drains are open to get the
20 water off of a flat roof. So that was the main issue
21 with the terrace.

22 With the tile on top of the drains, there was
23 grass growing and you couldn't get water to get to the
24 drains. Water is so heavy, it is dangerous if you
25 don't get it off the roof. It is different from

JASON THOMPSON - DIRECT EXAMINATION

1 shingles because it can fly off your house with no
2 problem. But with a flat roof, everything is
3 different.

4 We observed everything and picked up those tiles,
5 and those drains were like grass that high. That's no
6 good.

7 Q And we have a picture?

8 A Yep.

9 Q I don't know if it is 32 or 33. I can't find it,
10 but Taylor will try to pull it up, if we can. It's
11 primarily the picture of the Turtle tile.

12 A Okay.

13 (A brief pause in the proceedings.)

14 Q (BY MS. GOLDING) Can stop right here and look at
15 this one right here.

16 MS. GOLDING: Do you remember what number that
17 is?

18 MS. VOEGEL: That is 32.

19 Q (BY MS. GOLDING) Do you mind stepping around?

20 A Yeah. Yeah.

21 Q I could not find the pictures in my exhibit area
22 to hand to you. Stand beside the table, that would be
23 fine.

24 Do you recognize this picture here?

25 A That's the wall and looks like the railings.

JASON THOMPSON - DIRECT EXAMINATION

1 **Q** Did you have anything to do with putting the
2 brace on the railing down?

3 **A** We came back to fix a railing, but I don't know
4 if it is that one. There was a leak over, I think,
5 Richard -- his apartment, but I don't know if that's
6 the one. Where we did it, where the bottom of the
7 railing went into the concrete, there was a leak coming
8 from that. I don't know. We might have done that, but
9 I don't know if that's the railing. I don't know from
10 that picture.

11 **Q** Let's get to another picture then, 33. Now, is
12 that the Turtle tile?

13 **A** That is the Turtle tile, yeah.

14 **Q** And what's growing out of the Turtle tile?

15 **A** It looks like grass or just debris. It could be
16 pine straw from the trees from that terrace and all of
17 that.

18 **Q** If there is grass and debris in there, what
19 happens?

20 **A** Well, see, when it covers up the drain, it clogs
21 it up and the water can't flow. You are 11, 12 stories
22 up, and you are trying to get water off of the flat
23 roof, because water is heavy, you know. I mean, my
24 grandma used a five-gallon bucket of water for her
25 plants. You know, you try to pick one up and it's

JASON THOMPSON - DIRECT EXAMINATION

1 heavy. So if you imagine thousands of gallons of water
2 being poured on that and it can't drain.

3 Q Let's go to the next one. What do you see there?

4 A Well, that is just dirt. See all the dirt where
5 it hadn't be cleaned enough? It is just collecting too
6 much dirt. You are too close to the ocean, you have
7 trees on the terrace, pine straw and leaves blowing in
8 it. So it's no good.

9 If that drain is there and it is clogged up, you
10 have no chance for the water to get off.

11 Q You can take a seat.

12 With respect to the job that was done in the
13 first part of 2019 --

14 A Yeah, I believe it was.

15 Q After the Turtle tile was picked up, what did
16 your company do to the roof terrace?

17 A We tried to clean it. When I say "clean it," I
18 mean blow it off and try to get it ready for
19 preparation. We went through different things on what
20 to do, but we went to a silicone system. Because now
21 underneath it, it has a torched modified system. It is
22 called torch modified. It is like an older system in a
23 way.

24 But, basically, we felt like the easiest way to
25 keep more life expectancy on that roof was to put like

JASON THOMPSON - DIRECT EXAMINATION

1 a silicone -- hundred percent silicone down and paint
2 the terrace and get rid of the Turtle tile. That way,
3 the water can flow.

4 Now, I mean, it looks really good and flows
5 great, the water.

6 Q So you put a coating on top of the roof?

7 A Yes.

8 Q And after you put the coating on top of the roof,
9 what next did you do?

10 A On that roof?

11 Q Yes, sir, that roof terrace.

12 A Well, at one time when we put the coating it was
13 a little too slick. Tony had issues about the
14 slickness, so we came back and added granules, like
15 construction granules, and mixed it in with it and did
16 another coating. That way it gave it that grit to walk
17 on, if that makes sense.

18 Q Did that solve the slippery issue?

19 A As far as I know, yeah.

20 Q And, currently -- did you recommend -- let me
21 show you what is marked Exhibit 30. That is introduced
22 into evidence. Exhibit 30 is a memo that was given to
23 the board. Do you remember that memo?

24 A Let's see, "Thompson Roofing does not recommend
25 the reinstallation of the Turtle tile" -- yeah, that is

JASON THOMPSON - CROSS EXAMINATION

1 my dad. But I remember that, yes.

2 Q Let me ask you about your father. Your father
3 was involved with this roofing job, was he not?

4 A He was, yes.

5 Q But at this point in time, your father -- tell
6 the jury.

7 A Well, in the last year to nine months he's real
8 bad with dementia. He is basically homebound. He
9 lives with me now. It is just a sad situation.

10 Q Well, I just wanted -- with respect to not
11 replacing the Turtle tile, was that the opinion of the
12 association, or was that Thompson Roofing's opinion?

13 A That was our opinion. And then, of course, it
14 had to be approved by the homeowners association. And,
15 you know, that is for cost and everything. It's a lot
16 cheaper than tearing it up and do it another way to
17 save the roof. So we coated it with that 100 percent
18 silicone to help the terrace out.

19 MS. GOLDING: Answer any questions that
20 Mr. Grantland may have.

21 CROSS EXAMINATION

22 BY MR. GRANTLAND:

23 Q Good morning.

24 A Morning.

25 Q I have a few questions for you. I asked you in

JASON THOMPSON - CROSS EXAMINATION

1 your deposition --

2 **A** Uh-huh --

3 **Q** If I can move this back. I asked you in your
4 deposition if you had any invoices for your work on the
5 balcony terrace outside of the penthouse, and you
6 didn't have any?

7 **A** There should be.

8 **Q** Remember you had invoices for the rooftop, for
9 the roof on top of the penthouse?

10 **A** Yeah, but I believe Henri has that.

11 **Q** Okay. So do you know how much you all charged
12 for removing the Turtle tile and all?

13 **A** That -- I can't remember the price on that. But
14 we had a whole thing about -- we gave different
15 options. One thing was going to put that walkway that
16 we talked about in that deposition. There is a
17 picture, and it might be in one of these things, but
18 where we left three, four samples of the walkway. They
19 didn't want to go with that, so we went with silicone
20 system instead.

21 **Q** And the work on the balcony terrace involved
22 taking up Turtle tile, cleaning it, and putting down a
23 new coat?

24 **A** Right.

25 **Q** You did not have to replace the membrane?

JASON THOMPSON - CROSS EXAMINATION

1 **A** No. No. No. That stayed, yeah.

2 **Q** And that membrane had been under the Turtle tile
3 for how many years?

4 **A** Oh, I don't know. I don't know when it was put
5 down, honestly.

6 **Q** Did you know that Turtle tile was put down in
7 1995?

8 **A** No. I don't know.

9 **Q** But the membrane -- you replaced the membrane on
10 the roof?

11 **A** Yeah. Yeah. The main roof, yeah. Yeah.

12 **Q** But you did not have to replace the membrane on
13 the terrace?

14 **A** For cost effectiveness, no. We could have, if
15 they wanted.

16 **Q** But it didn't need to be replaced?

17 **A** It had to be patched where the Turtle tile --
18 people walked on it for so long, it made too many
19 impressions and holes. So, yes, we patched it. You
20 get another roll of the torched modify, and you patch
21 anything that looks bad, and then you roll silicone.

22 **Q** You've never met Mr. Griffin?

23 **A** Not that I know of.

24 **Q** Were you aware that he and his wife owned that
25 penthouse since 1995?

JASON THOMPSON - CROSS EXAMINATION

1 **A** No.

2 **Q** Have you ever done any work on the terrace
3 outside of the penthouse before 2019?

4 **A** Yeah. I believe when White Realty had it.

5 **Q** Do you know anything about how he maintains the
6 terrace before 2019?

7 **A** As in? What do you mean?

8 **Q** Anything about what kind of maintenance he did on
9 the terrace before 2019?

10 **A** No, I don't know his maintenance schedule.

11 **Q** When you first inspected it, you saw the Turtle
12 tile was down?

13 **A** Uh-huh.

14 **Q** And you removed the Turtle tile. You talked
15 about the drains?

16 **A** Yeah.

17 **Q** Were any drains actually clogged?

18 **A** Oh, yeah.

19 **Q** And you and your dad recommended that it not be
20 put back down after you put down the new coating?

21 **A** Exactly. Because all of the debris collected in
22 the Turtle tile. It defeats the purpose of the drain
23 getting the water off. Do you know what I mean?

24 **Q** And were you informed that Marshall Griffin owned
25 that Turtle tile?

JASON THOMPSON - CROSS EXAMINATION

1 **A** Yes. Actually, we were -- we saved it and put it
2 on a pallet, and all of that, and kept it; you know
3 what I mean?

4 **Q** Did you ever talk to Mr. Griffin about it?

5 **A** Me, personally, no, but the office, yes.

6 **Q** Do you have any --

7 **A** E-mails and stuff? Yes. Where I stored it and
8 everything for four years, and it never got picked up.

9 **Q** So you say you e-mailed Marshall?

10 **A** The guy at my office, Ken Webster, he's retired
11 now, but, yes.

12 **Q** Do you have any of these e-mails today?

13 **A** I don't. I believe Shoreham Towers does.

14 **Q** Are you sure you e-mailed Marshall, or did you
15 e-mail Shoreham Towers?

16 **A** It would have gone to Shoreham too, but Marshall
17 was on it, yes.

18 **Q** What is his e-mail address?

19 **A** I don't know. I'm not in the office. Ken would
20 know that.

21 **Q** You don't have any of the copies of the e-mails
22 sent to Marshall?

23 **A** Me, personally, no, I don't.

24 **Q** And correct me if I'm wrong, when I took your
25 deposition, you didn't know his name?

JASON THOMPSON - CROSS EXAMINATION

1 **A** You just told me it was Marshall.

2 **Q** But when I took your deposition in December, you
3 did not know who owned the penthouse, did you?

4 **A** No. No. No.

5 **Q** And even though -- when you dealt with the board,
6 did they ever say, Let's talk to Marshall Griffin about
7 the Turtle tile?

8 **A** I mean, I'm not in their HOA meetings, so I have
9 no idea.

10 **Q** But you never spoke to them about it?

11 **A** I don't know if he lives here. I have never seen
12 him at the place.

13 **Q** You only dealt with Tony and the board?

14 **A** Yes.

15 **Q** And they -- they told you -- did they tell you
16 they wanted it removed, and then you said, yeah, that
17 is a good idea, let's remove it?

18 **A** No. No. It was our opinion that over all the
19 years we've done roofing, that it had to be removed so
20 you could get the water off. Like I said, if you don't
21 get -- that water is heavy and that water is dangerous.
22 I mean, that thing will collapse.

23 **Q** And water collects on it even today without the
24 Turtle tile?

25 **A** I mean, maybe a little puddle. But if you have a

JASON THOMPSON - CROSS EXAMINATION

1 drain clogged up, you are talking about a lot of water.

2 Q And, again, you said you sent notices -- you took
3 the Turtle tile back to your shop?

4 A Uh-huh.

5 Q You sent notices for the Turtle tile to be picked
6 up?

7 A Yep, multiple.

8 Q Who did you send those to?

9 A Ken, supposedly, would have sent them to Shoreham
10 and Marshall.

11 Q Can you prove that?

12 A I mean, I don't have those e-mails.

13 Q The reason I ask is Marshall said he never got
14 e-mails.

15 A Well, sure --

16 THE COURT: One second. Stop. Let him ask a
17 question, and you answer it. Don't interrupt each
18 other.

19 MS. GOLDING: Mr. Grantland is also trying to
20 testify.

21 THE COURT: This is cross examination. He has
22 some leeway.

23 Q (BY MR. GRANTLAND) If Mr. Griffin said he never
24 got an e-mail from you or Thompson Roofing, can you
25 refute that?

JASON THOMPSON - CROSS EXAMINATION

1 **A** Say that again?

2 **Q** If Mr. Griffin said he never got an e-mail from
3 Thompson Roofing, do you have any evidence to refute
4 that or information to refute that?

5 **A** Yeah. I can find it, I guess. I mean, unless it
6 is in my mom's e-mail. I thought it was sent from Ken
7 Webster, is what I was told.

8 **Q** We talked about this in your deposition?

9 **A** Uh-huh.

10 **Q** And you said you would look for e-mails that were
11 sent to Mr. Griffin?

12 **A** Right. And like I said, it could have been from
13 my mom's, who passed a year ago, and I'm not trying to
14 get into that and getting into her e-mails and stuff
15 like that. Before all of this, before she passed and
16 everything, she even said make sure that tile stays
17 there because I sent this guy multiple e-mails to come
18 pick it up.

19 **Q** But you don't have any of those e-mails?

20 **A** I'm not going into her account, so I don't know.

21 **Q** And if Marshall said he didn't get any e-mails,
22 you have no way of refute that, do you?

23 **A** At this moment, no. Okay. But....

24 **Q** Could you have sent e-mails just to Mr. Giovino?

25 **A** He would have been one that got it too, I'm sure,

JASON THOMPSON - CROSS EXAMINATION

1 yes. But from what they told me at the office, yes, it
2 was sent to Marshall also.

3 Q So just to confirm, no one from Thompson Roofing
4 ever talked to Marshall?

5 A Not personally, no.

6 Q You talked to Tony, who was on the board?

7 A Yes.

8 Q But he was not the owner of the Turtle tile?

9 A I guess not, no.

10 Q You say your mom sent e-mails, but we don't have
11 those?

12 A Yep.

13 Q And so until we took your deposition in December,
14 you did not even know Marshall's name; is that correct?

15 A No, I don't know Marshall.

16 Q And once you finished, you said that roof was
17 slippery for a period of time until you put down this
18 grit?

19 A Yes.

20 Q And about how long was it slippery? How long did
21 --

22 A Well, once you put it on, a coating -- you
23 usually have to put two coatings. So you put the first
24 coating and dry a little bit before you can come back,
25 maybe a week or so, and put another coating. So in

ROGER ROY - DIRECT EXAMINATION

1 that time it could have been wet before we came back
2 and did the extra coating.

3 MR. GRANTLAND: Thank you. No further questions.

4 MS. GOLDING: No questions. He's under subpoena
5 if we can --

6 THE COURT: He's excused.

7 MS. GOLDING: So you can go to work.

8 THE WITNESS: All right.

9 THE COURT: Call your next witness.

10 MS. GOLDING: We call Roger Roy.

11 (ROGER ROY, having been duly sworn, testified
12 as follows:)

13 THE WITNESS: Roger Roy, Junior.

14 **DIRECT EXAMINATION**

15 **BY MS. GOLDING:**

16 **Q** Mr. Roy, could you introduce yourself to the
17 jury. Tell them who you are, where you live, what you
18 do.

19 **A** I live in North Myrtle Beach and practice law.
20 My office is in the city limits of North Myrtle Beach
21 in what they call the Briarcliff area.

22 **Q** How long have you been practicing law?

23 **A** I think since 1994 or five, somewhere in that
24 area.

25 **Q** And since you started practicing law, how much of

ROGER ROY - DIRECT EXAMINATION

1 your law practice encompasses real estate?

2 **A** Right now about 75 percent of it is real estate
3 related, whether it is closings, development work,
4 contract work, representing other parties that are
5 involved in developing real estate.

6 **Q** I meant to ask you, what is the name of your
7 firm?

8 **A** Roy and Casper.

9 **Q** And your firm name, Roy and Casper, who is
10 Casper?

11 **A** Juliet Casper. She's my law partner.

12 **Q** With respect to Shoreham Towers, when was the
13 first time you were ever engaged by the board of
14 directors for Shoreham Towers?

15 **A** I believe in November of 2018.

16 **Q** Do you recall the reason or purpose of the
17 engagement?

18 **A** It was, in effect, to determine some changes in
19 bylaws and some interpretation of the master deed.

20 **Q** With respect to Shoreham Towers, I meant to ask
21 you is -- what is that?

22 **A** Shoreham Towers is an oceanfront tower, which
23 they have homeowners, which the building technically is
24 managed by the association, which is the board, which
25 is in charge of managing the building.

ROGER ROY - DIRECT EXAMINATION

1 Q It's what they call a horizontal property regime?

2 A Yes, ma'am.

3 Q And with respect to horizontal property regimes,
4 before you were engaged by Shoreham Towers in November
5 of 2018, were you familiar with horizontal property
6 regimes?

7 A Yes, ma'am.

8 Q And with respect to the master deed of Shoreham
9 Towers -- I'll give you Exhibit No. 5, the master deed.
10 This master deed -- are you familiar with master deeds
11 for horizontal property regimes?

12 A Yes, ma'am. The type of work I've done
13 throughout the years, I probably have drafted master
14 deeds and what they call restrictive covenants --
15 probably have drafted 20 to 30 different sets for
16 different developments and different projects.

17 Q With respect to your engagement, once you were
18 engaged by the board for Shoreham Towers Association,
19 can you tell us what steps you took to review the
20 issues that were presented to you for Shoreham Towers'
21 board of directors?

22 A Sure. They gave me what they wanted me to review
23 as to the rooftop. Also, at that point in time, I
24 think it was about owners and service on the board, and
25 what they had to be as far as good standing. They gave

ROGER ROY - DIRECT EXAMINATION

1 me questions they had, which in turn led me to look at
2 the Horizontal Property Regime Act, look at the master
3 deed and plans for the tower.

4 Q When you say "they gave me questions," there were
5 several e-mails from Richard Aquino with regard to a
6 number of six, seven -- what he perceived to be issues.
7 Do you recall reviewing that?

8 A I did review it. Most of my contact for this was
9 with Mr. Giovino and Mr. Tackett.

10 Q And Mr. Giovino is --

11 A Tony.

12 Q Tony. But who else?

13 A Carter Tackett.

14 Q Okay. And with respect to your review, you said
15 you reviewed the master deed, which is Plaintiff's
16 Exhibit 5. Does the master deed incorporate documents
17 such as plans or anything of that nature?

18 A Typically, master deeds will have the so-called
19 rules and regulations and how -- how it is governed.
20 They'll have bylaws, percentage of ownership, the
21 plans. They will have a legal description of where the
22 project sits.

23 Q And with respect to your review, were you able to
24 take a look at the plans?

25 A Yes, I was.

ROGER ROY - DIRECT EXAMINATION

1 **Q** And the plans that you reviewed, do you know the
2 location of where they were?

3 **A** I reviewed them in the meeting room at Shoreham
4 Towers.

5 **Q** And let me give you -- I think these plans are --
6 I won't give you the big set, okay. I just want to
7 make sure these -- were these the plans, the copy of
8 the plans, that you reviewed?

9 **A** (Witness examines document.) Yes, ma'am.

10 **Q** And the set that you reviewed, which is
11 Defendants' Exhibit No. 1, a large set like this?

12 **A** That's correct.

13 **Q** And can you tell the jury with respect to
14 horizontal property regimes, like Shoreham Towers, what
15 is the requirement for the filing of these plans?

16 **A** Well, part of --

17 MR. GRANTLAND: Objection. She's asking for a
18 legal opinion.

19 THE COURT: What was your question?

20 MS. GOLDING: I asked what the requirement is for
21 the filing of horizontal property regime plans.

22 THE COURT: What is the requirement for filing
23 them?

24 MS. GOLDING: Yes, sir.

25 MR. GRANTLAND: Your Honor, I want to be -- may

ROGER ROY - DIRECT EXAMINATION

1 we approach?

2 MS. GOLDING: I can ask him to his knowledge were
3 these plans were recorded.

4 THE COURT: Yeah.

5 A They were recorded and were a part of the master
6 deed.

7 Q (BY MS. GOLDING) When you say they were recorded,
8 where would the plans be publicly recorded?

9 A Horry County Register of Deeds Office.

10 Q And with respect to the plans, were you able to
11 see in the plans areas called "balcony"?

12 A Yes, ma'am.

13 Q And I've given you -- let me draw your attention
14 to -- I think it may be Page 13, the last page?

15 A Yes, ma'am.

16 Q Yeah. Last page is 14. But did you see on the
17 plans, on Page 13, where the balconies are located?

18 A I do.

19 Q And is there any identification in the plans that
20 there is a balcony on the roof terrace?

21 A There is not.

22 Q With respect to the master deed, and particularly
23 Exhibit A to the master deed, I think on the second
24 page --

25 A Yes.

ROGER ROY - DIRECT EXAMINATION

1 **Q** And on the second page, is there a reference to
2 balconies on the second page of Exhibit A to the master
3 deed?

4 **A** There is.

5 **Q** And that reference to the balconies on the second
6 page of Exhibit A in the master deed, does that
7 correspond with the plans?

8 **A** It does.

9 **Q** Now, after your review and research, did you
10 thereafter communicate with Carter Tackett with regard
11 to your opinion? We cannot give your opinion to the
12 jury.

13 **A** Yes, ma'am. I did communicate with him.

14 **Q** Let me hand you what is marked as Exhibit No. 23,
15 Defendants' 23. In Defendants' 23, is this a copy of a
16 letter you sent to Roger Tackett dated March 19, 2019?

17 **A** I did send this to Mr. Tackett.

18 **Q** And can you read to the jury the second paragraph
19 of your letter?

20 **A** It states: "I'm very concerned that this area
21 would be a great liability to the association due to
22 the possible unsafe areas that would be accessible by
23 the owners' immediate family, guests, and invitees. I
24 would encourage the board to devise rules and
25 regulations concerning this area as to when and how it

ROGER ROY - DIRECT EXAMINATION

1 may be used. These rules should limit the activity on
2 the rooftop."

3 Q With respect to the paragraph you just read, is
4 this paragraph your own creation?

5 A Yes, ma'am.

6 Q Subsequently, after you issued the letter to the
7 association, did you continue your representation?

8 A I did.

9 Q Let me hand you what is introduced as Defendants'
10 Exhibit No. 27, which -- excuse me, not 27. I
11 apologize. Defendants' Exhibit No. 25.

12 In Defendants' Exhibit No. 25, what is that?

13 A It is a letter from Mr. Grantland to Mr. -- to
14 Tony Giovino.

15 Q And did you receive this letter from
16 Mr. Grantland?

17 A I did.

18 Q And, thereafter, did you respond to
19 Mr. Grantland?

20 A I did.

21 Q I'll hand you what is Exhibit 26. Is this your
22 response to Mr. Grantland?

23 A It is.

24 Q And in your response to Mr. Grantland, did you
25 provide a copy of that to the board of directors?

ROGER ROY - DIRECT EXAMINATION

1 **A** I did.

2 **Q** Did you, thereafter, have further communications
3 with Mr. Grantland?

4 **A** I did.

5 **Q** And with respect to the communications with Mr.
6 Grantland, do you recall discussing rules and
7 regulations?

8 **A** I do.

9 **Q** Were you involved in the process of the
10 association or the board developing rules and
11 regulations?

12 **A** The board actually came up with the rules and
13 regulations on their own and then sent them to me for
14 review.

15 **Q** Did you then review the rules and regulations?

16 **A** I did review.

17 **Q** Did you provide those rules and regulations to
18 Mr. Grantland?

19 **A** I did.

20 **Q** After that did Mr. Grantland send a letter
21 proposing different rules and regulations?

22 **A** He did.

23 **Q** Can you identify that letter?

24 **A** Defendants' Exhibit 27, and it was May 31, 2019,
25 which he sent me a letter and then a draft of rules.

ROGER ROY - DIRECT EXAMINATION

1 **Q** Are those rules that Mr. Grantland proposed
2 attached to his letter?

3 **A** They are.

4 **Q** As a result of the board issuing rules and
5 regulations, were these rules and regulations
6 subsequently filed?

7 **A** Yes. They have to be filed in the Register of
8 Deeds Office.

9 **Q** What part did your office play in filing the
10 rules and regulations?

11 **A** We drafted a sheet -- according to South Carolina
12 law, it has to be in a recordable form. So we drafted
13 a two-page introduction to the rules and regulations
14 attached the legal description, and the rules and
15 regulation approved by the board, and recorded those
16 with the Register of Deeds Office in Horry County.

17 **Q** At some point in time, do you recall being
18 contacted by Mr. Grantland about some potential danger
19 or moisture on the rooftop?

20 **A** I do.

21 **Q** I'll give you what is marked as Exhibit No. 43.
22 Is Exhibit 43 -- can you explain that to the jury?

23 **A** In response to the communications I had with
24 Mr. Grantland concerning someone slipping on the
25 rooftop, I sent those concerns -- and I believe there

ROGER ROY - DIRECT EXAMINATION

1 is a picture included with that -- to the board, and
2 then this was the letter that resulted from my
3 conversations with the board.

4 Q To your knowledge, did the board then take steps
5 to remedy any potential dangerous condition?

6 A It was my understanding that that was their plan
7 to do those things that were listed in the letter.

8 Q Did you find it unusual that Mr. Grantland would
9 contact you for an area that Mr. Griffin thought was
10 his?

11 MR. GRANTLAND: Objection. She is asking for an
12 opinion.

13 MS. GOLDING: No, I wasn't --

14 THE COURT: Sustained. Ask the question again.

15 Q (BY MS. GOLDING) What was your thought about Mr.
16 Griffin's attorney, Mr. Grantland, sending you a letter
17 and saying that there is a safety issue on the rooftop
18 terrace?

19 MR. GRANTLAND: Objection. She's asking for his
20 thoughts or his opinions.

21 MS. GOLDING: I'm not asking for his opinion.

22 THE COURT: She's asking for his thoughts about
23 your letter.

24 MR. GRANTLAND: Right.

25 THE COURT: Not an opinion.

ROGER ROY - DIRECT EXAMINATION

1 **A** There was a concern when I got that about the
2 safety and what was going on on the rooftop, which has
3 always been a concern. So that being the case, the
4 board, you know, at that point in time, wanted to get
5 back with Thompson Roofing to find a solution to that
6 problem. It was someone that had slipped and fell
7 that, I guess, was a tenant of Mr. Griffin's.

8 **Q** Was that letter of Mr. Grantland inconsistent
9 with the position of Mr. Grantland, that the rooftop
10 terrace is his?

11 MR. GRANTLAND: Again, objection. She's asking
12 for an opinion.

13 THE COURT: Yeah. Rephrase that.

14 **Q** (BY MS. GOLDING) With respect to Mr. Grantland's
15 previous letters to you, and this last letter to you, I
16 think it was the end of June of 2019, did you see any
17 inconsistencies with those letters?

18 MR. GRANTLAND: Same objection.

19 THE COURT: Sustained.

20 MS. GOLDING: I'll move on. The jury can see the
21 letters.

22 THE COURT: They can see the letters.

23 **Q** (BY MS. GOLDING) Now, with respect to Defendants'
24 Exhibit 29, can you tell the jury what that is?

25 **A** That is a letter in response to the proposed

ROGER ROY - DIRECT EXAMINATION

1 rules and regulations for the common area, pool and
2 rooftop, that were sent to me by the board for me to
3 review.

4 Q With respect to that letter, rules and
5 regulations, did you take steps to -- I think we asked
6 this?

7 A Yes, ma'am.

8 Q What actions did you take with respect to the
9 rules and regulations?

10 A Defendants' Exhibit 52, it shows that a document
11 was prepared to file the rules and regulations with the
12 Horry County Register of Deeds Office.

13 Q I can't ask you an opinion, but during 2019 --
14 2018 to 2019, were you in frequent contact with
15 Mr. Tackett and Tony Giovino on the board?

16 A I was with all of the board. They were normally
17 copied on all of the e-mails, except for the issue that
18 dealt with this, because Mr. Griffin at that point in
19 time was also on the board.

20 Q With respect to communications from the board
21 that you -- did you ever see anything that you believed
22 was improper in their communications and their goals
23 and objectives?

24 MR. GRANTLAND: Objection.

25 THE COURT: Sustained.

ROGER ROY - CROSS EXAMINATION

1 MS. GOLDING: I have no further questions.

2 THE COURT: Cross?

3 **CROSS EXAMINATION**

4 **BY MR. GRANTLAND:**

5 **Q** Good morning, Mr. Roy.

6 **A** Good morning.

7 **Q** Like Ms. Golding, I won't ask you any questions
8 about your legal opinions.

9 MS. GOLDING: Oh, you can.

10 (Laughing in courtroom.)

11 **Q** (BY MR. GRANTLAND) You agree he is the judge of
12 the law?

13 **A** Without a doubt.

14 **Q** And you and I are just lawyers?

15 **A** Yes, sir.

16 **Q** We went to the same school, so if I go there I --
17 you are a fact witness, okay?

18 **A** Okay.

19 **Q** I don't -- not that I don't respect you, I just
20 don't want any of your opinions.

21 When the board came to you -- may I call you
22 Roger?

23 **A** Please.

24 **Q** When the board came to you, first came to you,
25 had they already decided that they thought the rooftop

ROGER ROY - CROSS EXAMINATION

1 terrace was common?

2 **A** Not to my knowledge.

3 **Q** Were they looking for confirmation from you about
4 what they already thought?

5 **A** I do not believe they were looking for
6 confirmation. I believe they were looking for
7 guidance.

8 **Q** And Ms. Golding showed you a letter I wrote about
9 someone slipping. I'll hand you Plaintiff's Exhibit 32
10 for identification.

11 **A** I didn't get the letter about the slipping.

12 **Q** About the hazardous condition, you remember
13 talking about that?

14 **A** I remember receiving the letter, yes, sir.

15 **Q** Did you -- did I send you these pictures?

16 **A** Yes, sir.

17 **Q** This is Plaintiff's 32. But you received it,
18 including the picture of a man falling?

19 **A** Yes, sir.

20 **Q** And this was after the Turtle tile was removed?

21 **A** That's correct.

22 **Q** And I assume it was before Thompson Roofing
23 finished?

24 **A** It was before they put that last gritty membrane
25 on.

ROGER ROY - CROSS EXAMINATION

1 MR. GRANTLAND: I admit 32 in evidence.

2 MS. GOLDING: I thought it was, but that's fine.

3 No problem.

4 (Plaintiff's Exhibit 32 admitted.)

5 Q (BY MR. GRANTLAND) When I sent you a picture of a
6 man on the ground, that is when -- bear with me.

7 If you could -- bear with us, Roger.

8 (A brief pause in the proceedings.)

9 MR. GRANTLAND: Can we approach?

10 MS. GOLDING: Sure.

11 (The following bench conference was had out of
12 the hearing of the jury.)

13 MR. GRANTLAND: Your Honor, I forgot to say
14 something. I got a call from Tommy this morning. His
15 Covid test was inconclusive. He still feels bad. I
16 told him to stay home. Do you mind saying something
17 excusing him? Do you mind saying he was excused.

18 (The following was had in open court.)

19 THE COURT: Just to let you all know,
20 Mr. Brittain has been excused from court. He feels
21 sick, and he's at home, and we're glad he's at home.

22 MR. GRANTLAND: Thank you. No one is more glad
23 than I am.

24 THE COURT: I bet the lady in the front row
25 sitting beside him is (laughing).

ROGER ROY - CROSS EXAMINATION

1 MR. GRANTLAND: Close second (laughing).

2 Q (BY MR. GRANTLAND) So I send you a picture. This
3 was in June of '19?

4 A I believe so, yes.

5 Q So this is in the summer. Is Myrtle Beach busy
6 in June?

7 A It is.

8 Q And this was after the board had the Turtle tile
9 removed?

10 A It appears, yes.

11 Q And I sent you that picture because I wanted you
12 to be aware that the board had taken up the Turtle tile
13 and this is what happened; is that correct?

14 A Well, I believe you sent it to me because it was
15 something happened up there, not based on anything else
16 other than something happened.

17 Q Have you ever talked to Marshall about his use of
18 the penthouse terrace?

19 A Not that I recall.

20 Q Have you ever met him?

21 A I've seen him before, yes.

22 Q When you were hired by the board in 2018, you
23 never spoke to Marshall about how long he's owned the
24 rooftop penthouse or what he's done on the terrace over
25 the years?

ROGER ROY - CROSS EXAMINATION

1 **A** I did not.

2 **Q** Before 2018, had anyone, to your knowledge, ever
3 come up with rules for the penthouse rooftop terrace?

4 **A** Not to my knowledge.

5 **Q** Before 2019, to your knowledge, had the board
6 ever addressed whether the rooftop terrace was common
7 or private?

8 **A** Not to my knowledge prior to that, no.

9 **Q** Prior to 2019?

10 **A** Correct -- 2018, prior to, correct.

11 **Q** Right. And from when the building was built in
12 the 1980s until 2018, do you know how the terrace was
13 treated?

14 **A** I do not.

15 **Q** Was this your first involvement with Shoreham
16 Towers?

17 **A** It was.

18 **Q** You met with the board, and you met with them
19 several times?

20 **A** Right.

21 **Q** Did they ever share with you any minutes from
22 prior board meetings?

23 **A** They did. Seeking for the advice they were
24 seeking, they pretty much opened up everything that
25 contained that issue.

ROGER ROY - CROSS EXAMINATION

1 **Q** Do you remember reading minutes from 1992,
2 Exhibit 7?

3 **A** I do.

4 **Q** And you read where in 1992 it was stated that the
5 area around the penthouse would be handled the same as
6 other balconies?

7 **A** On that document, yes.

8 **Q** And this was 27 years before you met with the
9 board?

10 **A** That's correct.

11 **Q** Did the board tell you about what happened with
12 the planters in 1997? I'll show you Exhibit 8.

13 **A** I've seen this before, yes.

14 **Q** And did you read where the board and Marshall
15 were working out maintenance calls for the planter
16 boxes and future costs?

17 **A** Yes.

18 **Q** And this was more than 20 years before you met
19 with the board; is that correct?

20 **A** According to date of this, yes.

21 **Q** And did you know Marshall has been paying for
22 maintenance cost for the plants and planters since
23 1997?

24 **A** I'm not sure what year.

25 **Q** 2001, did you see the minutes from Exhibit 10,

ROGER ROY - CROSS EXAMINATION

1 October of 2001?

2 **A** Yes.

3 **Q** And did you read where -- did I -- can I see that
4 back? Sorry. I meant to give you 9 first, but you can
5 hold onto to both. Exhibit 9.

6 **A** Yes, I've seen this.

7 **Q** Did you read where in February of 2001 Marshall
8 agreed he would be responsible to have dirt and
9 vegetation removed from the planters?

10 **A** I see that.

11 **Q** And in 2001, what did the board call the area
12 outside of the rooftop penthouse? Last sentence.

13 **A** In here it says "penthouse balcony area."

14 **Q** Penthouse balcony?

15 **A** Area.

16 **Q** Yeah. And this was more than 17 years before you
17 met with the board?

18 **A** That's correct.

19 **Q** And then you read Exhibit 10 from October 2001
20 where the planters were being repaired, and the minutes
21 say that Marshall will have a platform constructed to
22 use on the roof system? Did you read that?

23 **A** Yes.

24 **Q** And this is 16, 17 years before you met with the
25 board?

ROGER ROY - CROSS EXAMINATION

1 **A** Correct.

2 **Q** When you first met, did they show you these prior
3 minutes from '92 to 2001?

4 **A** Early on, in asking me to give them advice, they
5 did show me these, yes.

6 **Q** And do you know how many years Marshall had
7 Turtle tile on the terrace?

8 **A** I do not.

9 **Q** It was not on the whole roof system, just on the
10 bump-out and terrace around the last building; is that
11 correct?

12 **A** To the best of my recollection, it was, yes.

13 **Q** And how long had the keylock in the elevator,
14 south elevator, been there?

15 **A** I don't know.

16 **Q** Did you know whether it was part of the original
17 plan from the 1980s?

18 **A** I'm not sure.

19 **Q** You read the master deed?

20 **A** Correct.

21 **Q** Does the deed mention the rooftop terrace?

22 **A** It mentioned -- it says something to the effect
23 of the rooftop. I don't recall "terrace" being stated
24 in there, but it is on the plans.

25 **Q** But the word "terrace" is not on the master deed,

ROGER ROY - CROSS EXAMINATION

1 is it?

2 **A** No. I don't recall seeing that there.

3 **Q** Now, as you know, we're in trial here in Conway?

4 **A** Correct.

5 **Q** You and I have known each other since 2019?

6 **A** Correct.

7 **Q** And do you recall me asking you more than once if
8 Marshall can meet with the board to resolve our issues?

9 **A** Yes.

10 **Q** And the board never wanted to meet with Marshall?

11 **A** That's correct.

12 **Q** Even after the board came up with rules and
13 regulations, and Marshall wanted to meet, they did not
14 want to talk to Marshall, did they?

15 **A** That's correct.

16 **Q** And you and I didn't meet, did we?

17 **A** Just phone conversations and e-mail.

18 **Q** You even said there was one board member who was
19 hard to deal with on this matter, didn't you?

20 **A** Correct.

21 **Q** Who was that?

22 **A** Mr. Aquino.

23 **Q** You also said you couldn't get them to budge
24 about having a meeting?

25 **A** That's correct.

ROGER ROY - CROSS EXAMINATION

1 **Q** I appreciate you trying.

2 The rules, you said you did not write any rules
3 and regulations. The board came up with those, and you
4 reviewed them?

5 **A** Correct.

6 **Q** You didn't make decisions on what would be in the
7 rules and what would not be in the rules?

8 **A** No.

9 **Q** They did not ask you any specific questions about
10 what do you think of this rule or that rule?

11 **A** They asked me questions about certain things and,
12 you know -- this it is very intelligent board. I mean,
13 as far as homeowners associations, this is one of the
14 most intelligent boards. So they put together -- after
15 talking with them -- a list of rules and regulations.
16 To me, it was well thought out and very appropriate.

17 **Q** You didn't write them?

18 **A** No.

19 **Q** Now, let me ask you about what Marshall pays for.
20 Exhibit 6. Have you seen the building at night before?

21 **A** Not from the ocean side.

22 **Q** Do you know -- I mean, I'll show you. Here is
23 Exhibit 6. Have you seen the terrace at night?

24 **A** Not from the ocean side.

25 **Q** It's pretty.

ROGER ROY - CROSS EXAMINATION

1 **A** It has a great view.

2 **Q** And do you know that Marshall, and before him his
3 Uncle Bobby, was paying for the lights on the terrace
4 since the 1980s?

5 **A** There is some mention of it in some of the notes,
6 yes.

7 **Q** Did you know the light switch for the lights
8 inside the terrace is inside the penthouse?

9 **A** Yes.

10 **Q** Do you know that Marshall has been paying the
11 electricity bill since he's been the owner?

12 **A** That is my understanding.

13 **Q** And the tenth floor elevator lobby, Exhibit 14,
14 do you know who pays for the electricity in this
15 elevator lobby on the tenth floor?

16 **A** I'm not sure.

17 **Q** Did you know Marshall, and before him his Uncle
18 Bobby, paid for the electricity in the elevator lobby?

19 **A** I'm not sure.

20 **Q** Do you have any reason to doubt that Marshall has
21 been paying the electricity?

22 **A** No.

23 **Q** Are you aware that he's been paying for
24 maintenance on the terrace for over 20 years?

25 **A** I'm unaware of that.

ROGER ROY - CROSS EXAMINATION

1 **Q** On a weekly basis, a hundred dollars a week. were
2 you aware of that?

3 **A** I'm not.

4 **Q** Did the board tell you that he was paying
5 maintenance on the terrace for the last 20 years?

6 **A** No.

7 **Q** Were you aware he was paying landscaping cost for
8 the planters for over 20 years?

9 **A** No.

10 **Q** The board didn't tell you that either?

11 **A** No.

12 **Q** If we can look at my Exhibit 43 -- have I asked
13 you any opinions yet?

14 **A** No.

15 **Q** Okay. Good.

16 **A** What is the date of the letter?

17 **Q** July 1, 2019. You have it?

18 **A** Yes.

19 **Q** Okay. Great. In July 1, 2019, you wrote me,
20 right?

21 **A** Correct.

22 **Q** Now, did you recommend to the board to remove all
23 of Marshall's furniture off of the terrace?

24 **A** I recommended, after discussion with the board
25 about the safety factor of what is up there, that it

ROGER ROY - CROSS EXAMINATION

1 was unsafe to have people up there without certain
2 rules and regulations.

3 Q Did you recommend to the board -- did you ask the
4 board or recommend to the board they remove the
5 furniture off of the terrace?

6 A I didn't recommend to the board. We discussed
7 it, and it was a board decision after the discussions.

8 Q I can show you your deposition, if you want. But
9 when I asked: "Did you recommend to the board to
10 remove all of Marshall's furniture?"

11 Your response in your deposition was: "I did
12 not."

13 Do you need to see?

14 A I'm not disagreeing with that. But if you are
15 asking me did I tell them to remove, we had discussions
16 about it, but I didn't tell them to remove it.

17 Q But you didn't tell them to remove the furniture?

18 A No.

19 Q The board did that on their own?

20 A Correct.

21 Q Did you know the board removed Marshall's
22 furniture in May of 2021 after I filed this lawsuit?

23 A I'm unsure of the timing.

24 Q It was not something you recommended?

25 A Again, we had discussions about it. Did I tell

ROGER ROY - CROSS EXAMINATION

1 them to remove the furniture? The answer is, no.

2 **Q** In this letter of July of 2019, did you recommend
3 for the board -- that they put up security cameras to
4 make sure that Marshall's guests follow the rules?

5 **A** I believe that was something that the board
6 discussed and communicated to me to communicate that to
7 you.

8 **Q** You wrote me and said the board will be providing
9 furniture for the bump-out that will accommodate eight
10 people. The board will install security cameras on the
11 bump-out section to be sure that the rules and
12 regulations are being followed in the common area; is
13 that what you wrote?

14 **A** I wrote that based on direction from the board,
15 correct.

16 **Q** Were cameras ever installed on the rooftop
17 terrace?

18 **A** I haven't been up there since this.

19 **Q** Do you know -- you don't know whether cameras
20 were installed or not?

21 **A** I'm unsure if they have or haven't been. We had
22 discussions about them.

23 **Q** Was it the board's idea for you to tell me that
24 they were going to put up cameras to make sure that the
25 rules were being followed?

ROGER ROY - REDIRECT EXAMINATION

1 **A** It was a safety issue in which they wanted to be
2 sure that there weren't people at night. To my
3 understanding, where they were going to be placed was
4 not be intrusive in the enjoyment for that unit of his
5 invitees, guests, or himself, Mr. Griffin himself.

6 **Q** So it was not your idea, but you were just
7 communicating --

8 **A** Correct.

9 MR. GRANTLAND: I think I'm finished. Bear with
10 me.

11 (A brief pause in the proceedings. Plaintiff's
12 Exhibit 43 admitted.)

13 MR. GRANTLAND: Thank you very much.

14 MS. GOLDING: A little follow-up.

15 **REDIRECT EXAMINATION**

16 **BY MS. GOLDING:**

17 **Q** With respect to a couple of exhibits, portions
18 that were not -- I'm going to ask you to look at
19 Plaintiff's 10. Do you still have that in front of
20 you?

21 **A** Yes, ma'am.

22 **Q** And the very last line of Plaintiff's 10, that is
23 the board meeting on October 20, 2001, the board of
24 directors meeting in 2001?

25 **A** That is correct.

ROGER ROY - REDIRECT EXAMINATION

1 **Q** Read to the jury the very -- do you see --

2 **A** I do. "The board moved to move ahead with the
3 planter repairs."

4 **Q** Do you know at any time if Mr. Griffin ever was
5 involved with the planter repairs?

6 **A** I do not.

7 **Q** We have Defendants' Exhibit 13. Do you have
8 that?

9 **A** I don't.

10 MR. GRANTLAND: This is new -- this is recross
11 and she's bringing up new information.

12 THE COURT: What information are you seeking to
13 elicit?

14 MS. GOLDING: 13 is a lawsuit in which
15 Mr. Griffin says that the planters are common elements.
16 He discussed the planters.

17 MR. GRANTLAND: I mean, I'm fine for her to bring
18 it up, but not through this witness, because she didn't
19 bring it up in her direct.

20 MS. GOLDING: He brought up planters.

21 THE COURT: You brought it up in your cross.

22 MR. GRANTLAND: Thank you, Your Honor.

23 **Q** (BY MS. GOLDING) I can't find that exhibit in
24 this pile here, but it is Defendants' 13. I'll ask you
25 to look at Paragraph 10 -- Paragraph 9 in this lawsuit,

ROGER ROY - REDIRECT EXAMINATION

1 which is Defendants' Exhibit 13.

2 A Okay.

3 Q Were you familiar with this lawsuit that
4 Mr. Griffin started back in 1997 about the planters?

5 A I became aware of it not in 1997, but, yes, I
6 became aware of it.

7 Q And was this lawsuit part of your consideration
8 with respect to the guidance you gave the board of
9 directors at Shoreham?

10 A It was not.

11 Q In that lawsuit, Paragraph 9, can you read that
12 to the jury?

13 A Yes, ma'am. "Upon information and belief,
14 Article 19 of the master deed prohibits the defendant
15 from taking any action to alter the common elements
16 which prejudices the rights of an owner. And upon
17 information and belief, the defendant's intended action
18 prejudices the rights of the plaintiff in this peaceful
19 enjoyment of his property, and to be free from actions
20 of the defendant, which would devalue his investment
21 and increase his risk in the liability to third
22 parties."

23 Q And with respect to the planters, do you see
24 anything in there in which Mr. Griffin alleges in his
25 lawsuit that the planters are not common elements?

ROGER ROY - RECROSS EXAMINATION

1 **A** I do not.

2 MS. GOLDING: No further questions.

3 **RECROSS EXAMINATION**

4 **BY MR. GRANTLAND:**

5 **Q** Do you know anything about this 1997 lawsuit?

6 **A** Other than reviewing yours. It was not the basis
7 for anything, as far as the advice goes.

8 **Q** And you and I never talked about it?

9 **A** That's correct.

10 MR. GRANTLAND: Thank you.

11 THE COURT: Have a good day.

12 MS. GOLDING: Can he be excused from his
13 subpoena?

14 MR. GRANTLAND: You subpoenaed him (laughing)?

15 MS. GOLDING: (Laughing.)

16 Is this an appropriate time to take a break, Your
17 Honor?

18 THE COURT: Sure. Sounds good. If you would,
19 step into the jury room for 15 minutes.

20 (The jury exits at 10:51 a.m., and the
21 following is heard out of the presence of the jury.)

22 MS. GOLDING: I apologize. We have Defendants'
23 Exhibit 39, and Mr. Grantland does not oppose the
24 admission.

25 MR. GRANTLAND: That is correct.

ROBERT WARNER - DIRECT EXAMINATION

1 THE COURT: 39 in evidence.

2 (Defendants' Exhibit 39 admitted.)

3 (A recess was taken.)

4 THE COURT: Okay. Are we ready?

5 MS. GOLDING: We have one more short witness.

6 (The jury enters at 11:20 a.m., and the
7 following is heard in the presence of the jury.)

8 THE COURT: Okay. Call your next witness.

9 (ROBERT WARNER, having been duly sworn,
10 testified as follows:)

11 THE WITNESS: Robert Warner.

12 **DIRECT EXAMINATION**

13 **BY MS. GOLDING:**

14 **Q** I'll apologize to you and the jury. I forgot you
15 were my next witness and short.

16 MR. GRANTLAND: Not short in height.

17 (Laughing in courtroom.)

18 **Q** (BY MS. GOLDING) Tell the jury your occupation,
19 where you live.

20 **A** The president of Robert A. Warner and Associates.
21 I'm a land surveyor. I live in Myrtle Beach, South
22 Carolina.

23 **Q** How long have you been a surveyor?

24 **A** Got my license in 1992.

25 **Q** When you say a license, where did you get your

ROBERT WARNER - DIRECT EXAMINATION

1 license from?

2 **A** State of South Carolina.

3 **Q** As a surveyor, you have to be licensed?

4 **A** Yes.

5 **Q** Where did you go to college?

6 **A** Clemson.

7 **Q** We won't hold that against you.

8 Mr. Warner, I contacted you and asked you to do
9 an assignment at Shoreham Towers. Can you tell the
10 jury what you did at Shoreham Towers?

11 **A** Initially, they called and we went up to measure
12 the penthouse, the rooftop penthouse, and mainly the
13 outside part where the planters are.

14 Let me look at the map. We measured the rooftop
15 terrace, planters, and there is a big area where the
16 HVAC is at either end. We measured around where the
17 actual penthouse was. We did go inside the penthouse
18 briefly and measured the elevator foyer and the street
19 balconies. And then we also on that trip went into
20 several units and measured the balconies.

21 Do you want me to keep going?

22 **Q** Yeah. That's fine.

23 **A** Later, I was called back and we went ahead and
24 fully measured all of the other units as well.

25 **Q** As a result, did you prepare a survey?

ROBERT WARNER - DIRECT EXAMINATION

1 **A** I did. I prepared a plan of our measurements
2 that shows our measurements.

3 **Q** Primarily, with regard to the balconies, on nine
4 through two, did you measure those balconies?

5 **A** I did.

6 **Q** And with respect to Exhibit 39, is this the
7 document -- is this the survey that you prepared?

8 **A** Yes.

9 **Q** Did you look at the master deed in preparing this
10 survey in any respect, Exhibit A of the master deed?

11 **A** Frankly, initially, I prepared it independently
12 of the master deed, but then I did look at the master
13 deed to make sure that the numbers were where they were
14 supposed to be, or close.

15 **Q** Do you want to see a copy of the master deed?

16 **A** If you are going to ask me questions, yes.

17 **Q** If you can look at Exhibit A on that.

18 **A** Yes. (Witness examines document.)

19 **Q** Exhibit A to the master deed, third paragraph,
20 does it have sizes of different units?

21 **A** Yes, ma'am.

22 **Q** And when you measured -- let's take the first
23 one. I can't see it. When you measured a unit, did
24 you measure the balcony with each unit?

25 **A** Yes.

ROBERT WARNER - DIRECT EXAMINATION

1 **Q** And did the measurement of the unit, including
2 the balcony, correspond with the square footage that is
3 in Exhibit A to the master deed?

4 **A** Yes.

5 **Q** So the square footage in the master deed -- let's
6 go to one, third paragraph on Exhibit A: "Dwellings
7 are varying sizes." Did you see that?

8 **A** I did.

9 **Q** And it says: "Dwellings on floors two through
10 eight inclusive with letter designations B, C, D
11 contain approximately 1,353 square feet."

12 **A** Yes.

13 **Q** And the measurements of those dwellings two
14 through eight, which is B, C, and D, the smaller
15 dwellings, does this 1,353 square feet incorporate the
16 square footage of the balcony?

17 **A** It does.

18 **Q** And that is true for every unit below, from nine
19 to two?

20 **A** Yes. That's correct.

21 **Q** With respect to the rooftop dwelling, the master
22 deed provides 2,630 square feet. Is that inclusive or
23 exclusive of the rooftop terrace?

24 **A** That is exclusive of the rooftop terrace.

25 **Q** Did you do an independent measurement of the

ANTHONY GIOVINO - DIRECT EXAMINATION

1 rooftop terrace?

2 **A** I did.

3 **Q** What is the square footage of that?

4 **A** 2,072 square feet to the terrace.

5 MS. GOLDING: Your Honor, we introduce No. 39
6 into evidence.

7 MR. GRANTLAND: No objection.

8 MS. GOLDING: Nothing further.

9 (Defendants' Exhibit 39 admitted.)

10 MR. GRANTLAND: No questions.

11 MS. GOLDING: I call Tony Giovino.

12 (TONY GIOVINO, having been duly sworn,
13 testified as follows:)

14 THE WITNESS: Anthony, G-I-O-V-I-N-O.

15 MS. GOLDING: I've been mispronouncing your last
16 name.

17 **DIRECT EXAMINATION**

18 **BY MS. GOLDING:**

19 **Q** Tell the jury where you live.

20 **A** In Shoreham Towers, Unit 4E.

21 **Q** How long have you lived there?

22 **A** Eleven years.

23 **Q** Tell us about your background.

24 **A** I actually started in the auto body business for
25 20 years. I did body and fender work, and then I

ANTHONY GIOVINO - DIRECT EXAMINATION

1 started a screen printing embroidery business. I
2 operated for 35 years, and then my son, who is an
3 entrepreneur, so to speak, he's involved in a few
4 different businesses, and we started a transportation
5 company as a family business. We now currently operate
6 in four different states in Vermont, Pennsylvania,
7 Maryland, and we were in South Carolina, but we pulled
8 that operation. So that is what I've been doing. I
9 retired 17 years ago, and he keeps me working.

10 Q Mr. Giovino, are you a member of the board of
11 directors?

12 A Yes.

13 Q When did you first become a member of the board
14 of directors?

15 A 2015.

16 Q Was it 2013?

17 A '13? No. '13 is when I got on the board, yeah.

18 Q That is what I was asking.

19 A Oh, yeah. Yeah. 2013.

20 Q When you were elected to the board in 2013, did
21 you assume any type of position, chairman or anything?

22 A Mr. Griffin at some point asked me to oversee the
23 maintenance of the building, and so that's my role.

24 Q How long have you served on the board?

25 A I served twice, from '15 to '16, and this is

ANTHONY GIOVINO - DIRECT EXAMINATION

1 October to October, and then '18 to '19, and that was
2 again October to October.

3 Q You are talking about as president?

4 A Yes.

5 Q My question was: How long have you served on the
6 board from 2013 to the present?

7 A Same.

8 Q And so you were president two different times?

9 A Yes, ma'am.

10 Q With respect to you being a building chairman of
11 the board, how long were you in that position?

12 A From that time until 2016, October '16, when
13 another president was elected for two years and decided
14 that we were no longer needed on an oversight of the
15 building. So I didn't do anything for those two years,
16 but then have been -- came back to what I am now.

17 Q Let me ask you, with respect to the planters and
18 the arborvitae -- is that how you pronounce it?

19 A Arborvitae.

20 Q What involvement did you have with the board and
21 the communications with Mr. Griffin between the
22 arborvitae?

23 A All I was told is that there was trees planted up
24 on the rooftop, and that's the term when I was
25 president in 2016. I called Mr. Griffin and I said who

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1 gave you permission to put it up there, knowing it was
2 assumed to be a common area, and he said I don't need
3 permission. Well, that got me going on let's look at
4 these rules. So I researched the master deed, and it
5 clearly stated it is a common area up there, and he
6 just refused to accept that.

7 Q Did you ever have any communications with Wayne
8 White when he was property manager about the
9 arborvitaes?

10 A Yes. Marshall claimed he submitted some plans to
11 the management company to show where he was putting
12 these plants. So I got in touch with Wayne, and I
13 said, Wayne, do you have any recollection of this? So
14 then our attorney has the communication I had with
15 Wayne White, and he said I never seen this. I'm sure
16 if the board has seen this, they wouldn't have
17 permitted this.

18 Q I'll give you Defendants' Exhibit No. 40.

19 MS. GOLDING: Your Honor, Mr. Grantland has no
20 objection to the admission.

21 THE COURT: All right. Defendants' 40.

22 (Defendants' Exhibit 40 admitted.)

23 Q (BY MS. GOLDING) And what is Exhibit 40? Do you
24 recognize it?

25 A Yes, ma'am. It says: "You won't find anything

ANTHONY GIOVINO - DIRECT EXAMINATION

1 pertaining to Marshall's planting plans. We had a
2 small discussion about the height of the plants that
3 were to be planted. I'm okay with having a meeting to
4 vote on anything that we deem necessary of a vote. I
5 do think that he needs to be told to cease planting
6 anything other than the flowers or low growing plants."

7 **Q** Did you at some point in time then discuss with
8 Mr. Griffin's landscaper about the arborvitaes?

9 **A** I did. I ran into Bill Crossland. I ran into
10 him in the parking lot. I said, Billy, why was those
11 trees planted up there? And he goes, Well --

12 MR. GRANTLAND: Objection.

13 THE COURT: Sustained.

14 **Q** (BY MS. GOLDING) As a result of the
15 communications with Mr. Crossland, did you then
16 communicate with anyone with regard to the arborvitaes?

17 **A** I called a couple of farms that grow the
18 arborvitae --

19 **Q** You can say what you asked them, but you can't
20 say what they told you.

21 **A** I did research on the arborvitaes.

22 **Q** What did you ask them?

23 **A** I asked them would they survive on a rooftop of
24 10 stories high.

25 **Q** Did you then subsequently communicate to anyone

ANTHONY GIOVINO - DIRECT EXAMINATION

1 on the board as to the information you received on the
2 arborvitaes?

3 **A** Yes, ma'am.

4 **Q** And what did you tell the board?

5 **A** That we have to take some action here to stop
6 this thing or have them removed, and they decided that
7 they would have him submit his plans again, and then we
8 got a revised date of plans with a different date. I
9 think it was 2021. He submitted another set of plans,
10 and then the board allowed a vote on it. It was three
11 to one -- four to one vote, and I said I totally
12 disagree.

13 **Q** But with respect to the planters, did
14 Mr. Griffin ever tell you that the planter itself,
15 planter box, that he had control of that, or it's just
16 the dirt inside the box?

17 **A** No. Never had any conversation about that.

18 **Q** Would the planters have to be painted?

19 **A** Well, that's part of paint when the whole
20 building is done.

21 **Q** Who has the responsibility of painting the
22 planters?

23 **A** The HOA.

24 **Q** Has the HOA been painting the planters over the
25 years?

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1 **A** Well, if it needed touch-up paint, it was done.
2 But, overall, when the whole building is done,
3 everything is resurfaced, repainted.

4 **Q** How about irrigation in the planters?

5 **A** Well, the irrigation, there was two incidents
6 where the irrigation broke down. I was called up to
7 the rooftop because the water was running all the way
8 down into the parking lot. There was a man and his
9 wife and two children out there with their feet --
10 wading their feet in the water. The sprinklers were --
11 looked like the ends of them were blown out. It was
12 like a quarter-inch hole in the water line. It was
13 just spewing over.

14 So I knew -- I didn't know exactly where the
15 shutoff was, but I assumed it was in that door where he
16 has his air handler or whatever. We couldn't get in.
17 I went down to the conference room to get the keys, and
18 there was no key on there for that door. So I said to
19 the gentlemen out there, Do you happen to have your
20 keys so I can look to see if I can get into the door to
21 shut the water off?

22 I called Gene Hubb, who is now a current board
23 member, and he was a board member at the time, and I
24 said, Can you come up with me and make sure that we're
25 doing this the right way? So they gave me their key,

ANTHONY GIOVINO - DIRECT EXAMINATION

1 and there was a key on that keyring to open the door.
2 I opened it up, and Gene went in and turned the water
3 off.

4 Then I went to see, well, there is no water meter
5 in here, so obviously the HOA is paying for the water
6 that goes into the planters.

7 Q From what you saw about the water meter, how long
8 do you believe that the HOA has been paying for the
9 water into the planters?

10 A As long as his Uncle Bobby built it probably, or
11 probably when Bill Crossland said he installed the
12 irrigation ten years or so ago.

13 Q With respect to the roof terrace, did you have
14 any involvement with the repair work done in 2019?

15 A I met with Quin Thompson, and I think Richard was
16 there, too. I don't know if any other board members
17 were there. But Quin, in particular, he said he saw
18 the grass coming out of the Turtle tile. He said -- he
19 was up there to look at the surface. And he said --

20 MR. GRANTLAND: Objection.

21 THE COURT: Sustained.

22 A Okay.

23 Q (BY MS. GOLDING) But, anyhow, as a result of what
24 the roofing company instructed the board, did the board
25 take the position to return the Turtle tile?

ANTHONY GIOVINO - DIRECT EXAMINATION

1 **A** No. Not at that time, no.

2 **Q** When did the board make a decision not to have
3 the Turtle tile returned?

4 **A** After Mr. Thompson suggested that we not.

5 MR. GRANTLAND: Objection.

6 THE COURT: Sustained.

7 MS. GOLDING: Your Honor, it is in evidence.

8 **Q** (BY MS. GOLDING) I'll give you Exhibit 30. In
9 Exhibit 30, what is the date of Exhibit 30?

10 **A** May 13, 2019.

11 **Q** And Exhibit 30 is a memo from the Thompson
12 Roofing?

13 **A** From Quin Thompson, yes.

14 **Q** And what is the recommendation in that?

15 **A** "Thompson Roofing does not recommend
16 reinstallation of the existing Turtle tile because
17 there is no evidence that the Turtle tile has any
18 effect on the longevity of the roof membrane. And for
19 it not to be detrimental to the ceiling that I'm
20 providing -- I would recommend -- instead of --
21 instead, we are recommending installation of the
22 walkway material demonstrated on Saturday, May the
23 4th, when a gray mat was referred by an all-present --
24 and we were altogether, Carter and myself -- and a
25 female occupant.

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1 After the contract sealant is applied and has
2 time to dry and harden, the walking material will be
3 installed 6-feet wide leaving approximately a
4 1-foot border where the sealant will be allowed to be
5 on each side, except for the bump-out area, which will
6 be completely covered by a walking mat."

7 **Q** Let me stop. I apologize. Did the board rely on
8 the opinion of Thompson Roofing with respect to not
9 permitting the Turtle tile back on the roof?

10 **A** Absolutely.

11 **Q** With respect to the repair of the roof, after the
12 roof was repaired or coated by Thompson Roofing, was
13 there also carpet installed on the rooftop terrace?

14 **A** After it was -- the grit was put on to eliminate
15 the slipping. We had carpeting put on outside of Mr.
16 Griffin's sliding doors, his access to the bump-out,
17 and he was involved in selecting the color of the
18 carpeting. We put that down to make it more
19 comfortable for them to sit out there.

20 **Q** Who paid for that carpeting?

21 **A** HOA.

22 **Q** Did Mr. Griffin offer to pay for that?

23 **A** No.

24 **Q** You've been sued in this case by Mr. Griffin.
25 Have you ever been personally sued?

ANTHONY GIOVINO - CROSS EXAMINATION

1 **A** No, ma'am.

2 **Q** With the allegations of Mr. Griffin, Mr. Griffin
3 believes that you defrauded him. Do you have any idea
4 of any actions you ever took to defraud Mr. Griffin?

5 **A** No.

6 **Q** Were all the actions that you took as a member of
7 the board relying upon advices, such as from attorneys
8 and contractors, with respect to the rooftop terrace?

9 **A** That's our fiduciary responsibility, yes.

10 MS. GOLDING: No further questions. Thank you.

11 **CROSS EXAMINATION**

12 **BY MR. GRANTLAND:**

13 **Q** Good morning, Mr. Giovino.

14 **A** Good morning.

15 **Q** I'm sorry if I mispronounced your name.

16 **A** That's fine.

17 **Q** Let me ask you about your testimony about the
18 water meter or no water meter. No one at Shoreham
19 Towers gets a water bill?

20 **A** That's correct.

21 **Q** So water is provided to all units?

22 **A** Yes. For usage in their unit.

23 **Q** So the fact that there is no water meter on the
24 terrace, that's because no one pays for water at
25 Shoreham Towers?

ANTHONY GIOVINO - CROSS EXAMINATION

1 **A** Well, specifically for the irrigation, there
2 should be.

3 **Q** But correct me if I'm wrong, no one at Shoreham
4 Towers gets a water bill?

5 **A** No. It is part of the HOA.

6 **Q** That's right.

7 You purchased a unit at Shoreham Towers in 2011?

8 **A** Yes.

9 **Q** So how Marshall used his penthouse and rooftop
10 balcony and terrace from '94 to 2011, you would not
11 know?

12 **A** No.

13 **Q** You weren't here yet.

14 When you had issues with the rooftop balcony
15 terrace, you would call Marshall, and he was
16 responsive?

17 **A** Yes.

18 **Q** He was always responsive?

19 **A** Yes.

20 **Q** You did disagree with Marshall over the
21 arborvitae?

22 **A** Yes.

23 **Q** And you heard Bill Crossland's testimony
24 yesterday?

25 **A** Yes.

ANTHONY GIOVINO - CROSS EXAMINATION

1 Q And he is a competent landscaper?

2 A Yes.

3 Q And he landscaped for the HOA?

4 A He did at one time, yeah.

5 Q And do you know how long Marshall had arborvitaes
6 on the terrace?

7 A He never had it until he put it on in 2016.

8 Q And before that, he had other plants?

9 A But not arborvitae.

10 Q And he has had plants in the planters since he
11 took over or became the owner; is that correct?

12 A Possibly, yes.

13 Q Do you know how much Marshall paid for the
14 maintenance for the plants and planters?

15 A No idea.

16 Q You heard Mr. Crossland's testimony, it has been
17 about \$80,000 over the last 20 years. Do you have any
18 reason to dispute that?

19 A No.

20 Q And the plants are still up there today?

21 A The arborvitae, yeah. It is probably the second
22 or third set of them.

23 Q Have any of the arborvitaes been blown off from
24 the hurricanes?

25 A Not blown off.

ANTHONY GIOVINO - CROSS EXAMINATION

1 **Q** None have blown off. Have any of these plants
2 hurt anyone?

3 **A** The only thing they are hurting is the drains,
4 because they are dead -- some of them are dead.

5 **Q** Other than your disagreement with Marshall about
6 the plants, did you have any other disagreements with
7 Marshall?

8 **A** No.

9 **Q** You haven't had any complaints about how Marshall
10 has used his rooftop penthouse balcony/terrace?

11 **A** Not at all.

12 **Q** Other than Mr. Aquino, you are not aware of
13 anyone else with complaints about Marshall's use of the
14 terrace?

15 **A** No.

16 **Q** Are you aware of the dispute with Mr. Aquino
17 where Mr. Aquino parked his motorhome?

18 **A** Yes.

19 **Q** He was parking -- Mr. Aquino was parking in the
20 overflow parking, and Marshall thought he should park
21 it somewhere else?

22 **A** Yeah.

23 **Q** And the motorhome took up parking space?

24 **A** Richard leaves in the summertime with his
25 motorhome with his wife. He always traveled around on

ANTHONY GIOVINO - CROSS EXAMINATION

1 the west coast and in some cooler areas. His wife took
2 sick that July, and he had to come back. When he came
3 back, it was in July. So we knew it would be a problem
4 if he parked it where he did before where it took up,
5 maybe, six different places. So we suggested that we
6 park it across the back of the area where it only took
7 up two, two-and-a-half parking spaces. We can still
8 get into the trash containers where every day the
9 maintenance people have to put garbage in it. So that
10 is where he parked it.

11 Q That was back and forth between Marshall and Mr.
12 Aquino about --

13 A You know, I don't know that for sure.

14 Q That's what you testified to. Do you --

15 A I know they were going back and forth, but --
16 yeah. Yeah.

17 Q Right.

18 Now, I want to ask you about how did the board
19 start investigating Marshall's use of the penthouse use
20 of the balcony. You said the board -- correct me if
21 I'm wrong, you said the board did not start looking at
22 Marshall's use of the terrace until your management
23 company suggest that they do something?

24 A Uh-huh.

25 Q That is not exactly true, is it?

ANTHONY GIOVINO - CROSS EXAMINATION

1 **A** Oh, it's true. From Atalaya.

2 **Q** Who asked the management company to do something
3 about Marshall's use of the balcony terrace?

4 **A** That, I don't know.

5 **Q** Have you seen Exhibit 15?

6 **A** No.

7 **Q** I'll show you. I'll hand you Plaintiff's 15. We
8 discussed this in your deposition.

9 Who asked the management company to do something
10 about Marshall's use of the terrace?

11 **A** Richard Aquino.

12 **Q** Yeah. And he told you the management company was
13 going to look into it?

14 **A** Uh-huh.

15 **Q** And you now have seen this e-mail asking you to
16 do something about Marshall's violations of the deed,
17 or what he described as Marshall's violation of the
18 deed?

19 **A** Right.

20 **Q** So to make sure we're clear, and to quote
21 Mr. Tackett, Mr. Aquino was the originator of the
22 complaint against Mr. Marshall?

23 **A** Correct.

24 **Q** And Marshall was the target of the complaint?

25 **A** Yes. Yes.

ANTHONY GIOVINO - CROSS EXAMINATION

1 **Q** The fight did not start until Mr. Aquino sent his
2 e-mail listing his grievances about Marshall's use of
3 the terrace; is that correct?

4 **A** That's correct.

5 **Q** And this was in October of 2018?

6 **A** Uh-huh.

7 **Q** So from 1994 when Marshall inherited the unit,
8 fast forward 15, 16 years to 2011 when you moved into
9 your unit, are you aware of anyone questioning
10 Marshall's use of the balcony terrace?

11 **A** No.

12 **Q** And fast forward from 2011 when you moved in to
13 2018, that is when your board first started questioning
14 him about the use of the balcony?

15 **A** Uh-huh.

16 **Q** Let me change gears and talk about furniture.
17 You said that before 2018 Marshall had beach furniture
18 out on the terrace?

19 **A** I said that?

20 **Q** Yes. Or do you know what kind of furniture he
21 had?

22 **A** Yeah. He had lounges and chairs similar to what
23 is in the pool area.

24 **Q** And he added a table with an umbrella?

25 **A** Yes.

ANTHONY GIOVINO - CROSS EXAMINATION

1 **Q** And before Aquino's 2018 e-mail, had anyone
2 talked to Marshall about any concerns about the
3 furniture on the terrace?

4 **A** No. Just when it came to light with the Thompson
5 Roofing, the weight of the furniture on that membrane.

6 **Q** You just heard testimony from Thompson Roofing,
7 and he didn't say anything about the furniture.

8 **A** I don't know if he was asked.

9 **Q** Mr. Aquino's -- but had anyone talked to Marshall
10 about concerns about the furniture before Mr. Aquino
11 made his complaint?

12 **A** Not to my knowledge.

13 **Q** And Mr. Aquino actually complained about hearing
14 Marshall's chair squeaking from inside his penthouse?

15 **A** Yes.

16 **Q** So Mr. Aquino is directly below Marshall?

17 **A** Yes. Yes.

18 **Q** And Mr. Aquino complained about how the chairs
19 were moved inside Marshall's condo?

20 **A** Yes.

21 **Q** And he complained to you about how the chairs
22 were moved outside the condo?

23 **A** Yes.

24 **Q** And Mr. Aquino had problems with chairs being
25 moved?

ANTHONY GIOVINO - CROSS EXAMINATION

1 **A** Yes.

2 **Q** He called it a nuisance?

3 **A** Correct.

4 **Q** You agree when you live somewhere, you have to
5 move chairs?

6 **A** Yes.

7 **Q** So it's not uncommon to move a chair inside or
8 outside?

9 **A** No. No.

10 **Q** Following this up, you were not involved in
11 Marshall's outdoor furniture being moved off the
12 terrace?

13 **A** No.

14 **Q** Had you or your board -- and you have been there
15 a long -- ever moved someone else's furniture before
16 you had Marshall's furniture removed?

17 **A** I helped moved the furniture off a lot of the
18 decks during the hurricane.

19 **Q** But this is different. This is when -- have you
20 taken someone else's furniture against their will?

21 **A** No.

22 **Q** This is the first time?

23 **A** Yeah.

24 **Q** And you all had to put the furniture back, didn't
25 you?

ANTHONY GIOVINO - CROSS EXAMINATION

1 **A** Yes.

2 **Q** And why did you have to put the furniture back?

3 **A** The restraining order.

4 **Q** The only reason you put it back is because a
5 judge here in Horry County ordered you to do so?

6 **A** Yes.

7 **Q** Have you ever been ordered by a judge to give
8 someone else's furniture back to them?

9 **A** No.

10 **Q** You came up with the rules for the rooftop
11 terrace?

12 **A** Uh-huh.

13 **Q** You were on that committee?

14 **A** Yes.

15 **Q** Okay.

16 MR. GRANTLAND: Can you go to Exhibit 17,
17 Crawford?

18 **Q** (BY MR. GRANTLAND) Have you seen -- have you
19 looked at the rules lately?

20 **A** Yes.

21 **Q** Do I need to show you a copy of them?

22 **A** No.

23 **Q** They are in evidence as Exhibit 17. Before 2019,
24 there were no written rules for the use of the terrace?

25 **A** Right.

ANTHONY GIOVINO - CROSS EXAMINATION

1 **Q** And, again, you don't know how Marshall used the
2 balcony terrace before you moved there in 2011?

3 **A** Correct.

4 **Q** And between 2011 and when you moved -- and until
5 2019, no rules at all?

6 **A** Correct.

7 **Q** You reviewed the rules, but not too involved in
8 the wording; is that right?

9 **A** That's right.

10 **Q** I asked you if you knew why some things were
11 written in April and then taken out in May, and you
12 didn't know?

13 **A** No, I didn't.

14 **Q** You know the rules you approved to allow all
15 owners' family and guests to be up on the terrace
16 between 8:00 a.m. and 10:00 p.m.?

17 **A** Yes, sir.

18 **Q** And so under your rules, if Marshall wants to go
19 outside -- and also your rules say that the rooftop
20 penthouse terrace, you can't go outside until 8:00 a.m.
21 and 10:00 p.m.?

22 **A** That was being consistent with the other common
23 areas.

24 **Q** You were treating the balcony terrace outside of
25 Marshall's unit like you treat the swimming pool?

ANTHONY GIOVINO - CROSS EXAMINATION

1 **A** That's right.

2 **Q** So if he wants to go outside at 7:00 a.m. and
3 have a cup of coffee, he's violating your rules?

4 **A** Technically, yeah, I guess. But we never
5 enforce -- there is people that come to the pool after
6 10 o'clock. They don't get in the pool, but they have
7 their coffee and grill and cook at night.

8 **Q** If you don't enforce it, why have a rule?

9 **A** I don't enforce it because it was never a
10 problem.

11 **Q** It was never a problem until Mr. Aquino sent out
12 this e-mail in 2018; is that right?

13 **A** Yes. Yes.

14 **Q** And there is no limitation on how many people can
15 go out on the terrace?

16 **A** On his terrace?

17 **Q** Yes.

18 **A** I think the 12.

19 **Q** That is for the rooftop penthouse?

20 **A** Yeah. That is what you are saying, the terrace.

21 **Q** But there is no limitation on how many people can
22 go out on the terrace at any given time under your
23 rules, are there?

24 **A** I don't know what you are talking about now. You
25 are talking about his terrace?

ANTHONY GIOVINO - CROSS EXAMINATION

1 Q Yeah.

2 A Yeah.

3 Q I mean, under your rules, there is no limitation
4 on how many people can go up there?

5 It says it's opened to all unit owners, family,
6 and invited guests. You have 39 unit owners, and their
7 family and guests. So is there any limitation on how
8 many people can go out on this terrace, under your
9 rules?

10 A Not that I know of.

11 Q You know Marshall's penthouse is all glass?

12 A Yes.

13 Q You've been to it?

14 A Yes.

15 Q And he has bedrooms with sliding glass doors?

16 A Yes.

17 Q And each bedroom opens up on the terrace?

18 A Uh-huh.

19 Q His living room has a glass wall with sliding
20 glass doors?

21 A Correct.

22 Q So if you enforce your rules, Marshall and his
23 renters are the only people who have a bedroom and
24 living room surrounded by a common area?

25 A Correct.

ANTHONY GIOVINO - CROSS EXAMINATION

1 **Q** A living room surrounded by a common area where
2 anyone can be out there between 8:00 and 10:00; is that
3 right?

4 **A** Uh-huh.

5 THE COURT: Is that a yes?

6 **A** Yes. Yes. I'm sorry.

7 **Q** (BY MR. GRANTLAND) When I asked you if you ever
8 discussed how it will affect Marshall or his guests,
9 you said that you never have traffic up there?

10 **A** Right.

11 **Q** But you don't live up there?

12 **A** That's right.

13 **Q** And you also said that other than Mr. Aquino, no
14 one else has frequented the rooftop?

15 **A** Correct.

16 **Q** And until you prepared the rules where you tell
17 the owners that they and their family and guests can go
18 up there, no one has gone up to the terrace, besides
19 Mr. Aquino; is that right?

20 **A** Right.

21 **Q** You've walked around the terrace outside of the
22 penthouse?

23 **A** Yes.

24 **Q** And I'll show you Exhibits 3A through F. And I'm
25 wrapping up. They are stapled together, but these are

ANTHONY GIOVINO - CROSS EXAMINATION

1 pictures from the outside. You recognize it, I assume?

2 A Yes.

3 Q From the terrace -- let me ask you this: Are
4 there any bathrooms up on the roof?

5 A Public bathrooms?

6 Q Yes.

7 A No.

8 Q So when you open up the terrace to allow all
9 owners and their family and guests, did you consider
10 the fact there is no public bathrooms up there?

11 A No.

12 Q The only bathroom on the rooftop terrace area is
13 inside Mr. Marshall's penthouse?

14 A Yes.

15 Q Now, from the terrace, you can look through the
16 glass walls and see inside the condo, can't you?

17 A From the terrace? You have to get up pretty
18 close. They are tinted.

19 Q They are glass?

20 A Yes.

21 Q You can see inside?

22 A Uh-huh. Yes.

23 Q You can see into the bedrooms?

24 A Yes.

25 Q And the living room.

ANTHONY GIOVINO - CROSS EXAMINATION

1 Now, you said you consider the privacy concerns
2 of Marshall or his renters?

3 **A** Say that again?

4 **Q** You said -- when I took your deposition,
5 Mr. Giovino, you said that you all considered
6 Marshall's privacy when you came up with these rules?

7 **A** Yes.

8 **Q** How did you consider his privacy when you allow
9 other owners and their family and guests to use the
10 terrace between 8:00 and 10:00 p.m.?

11 **A** The privacy that he's talking about is other
12 people coming up on the terrace -- I don't know if that
13 was ever discussed, really.

14 **Q** Do you think you should have discussed Marshall's
15 privacy?

16 **A** Well, the trees on this 3A that you are looking
17 at, planted in the planter --

18 **Q** Okay.

19 **A** -- it shows a building next door that is four
20 stories higher that looks into that unit all the time,
21 you know. I mean, those trees were planted because he
22 wanted to hide the building, and it's not going to
23 happen.

24 **Q** No one from that building is going to be walking
25 on the terrace?

ANTHONY GIOVINO - CROSS EXAMINATION

1 **A** Not on their terrace.

2 **Q** Right. Not on Marshall's terrace?

3 **A** Right. Yes.

4 **Q** Looking at Photo 2F, this is the children's
5 bedroom. Do you recognize these are from the inside?

6 **A** Yes.

7 **Q** Go to 2F. That is an all glass room, right?

8 **A** Yes.

9 **Q** Sliding glass door goes out on the terrace?

10 **A** Yes.

11 **Q** And under your rules, on the other side of the
12 children's bedroom, that's common for any other owner
13 or guest or family to use from 8:00 to 10:00?

14 **A** Yes.

15 **Q** And people can drink, smoke, do whatever they
16 want outside the bedroom from 8:00 to 10:00?

17 **A** Yes.

18 **Q** Now, I assume you have children and
19 grandchildren?

20 **A** Yes.

21 **Q** Would you want your children or grandchildren
22 sleeping in this room when strangers are outside
23 between 8:00 and 10:00?

24 **A** That is a hypothetical question. Would I want my
25 children -- sure.

ANTHONY GIOVINO - CROSS EXAMINATION

1 **Q** In an all glass --

2 **A** Sure. Because there hasn't been people going up
3 on that, ever.

4 **Q** Except Mr. Aquino?

5 **A** Right.

6 **Q** Did you consider the privacy of the guests when
7 you came up with these rules?

8 **A** I don't know if we ever had that part of the
9 discussion of privacy.

10 **Q** You don't go up there because you have your own
11 deck?

12 **A** Yeah. I go as a board member if we had an issue
13 up there or to let the air conditioning companies go
14 up.

15 **Q** Right. I mean, you have your own deck, and so
16 you don't need to go up there?

17 **A** Yeah. I have three decks.

18 **Q** Three decks, okay. Are there any rules how you
19 can use your decks?

20 **A** No. I own it.

21 **Q** And I asked you if you addressed in your rules
22 whether the penthouse owner or occupant can ask people
23 to leave if they are disturbing him, and you said,
24 Sure.

25 Is it addressed in the rules that someone like

ANTHONY GIOVINO - CROSS EXAMINATION

1 Marshall or Ms. Peck can ask someone to leave the
2 terrace if they are bothering them?

3 A Sure.

4 Q Where is it in the rules?

5 A I don't know that.

6 Q Okay. You don't think it is a problem because no
7 one goes up on the roof terrace except Marshall and his
8 guests?

9 A No one has ever, to my knowledge, has ever gone
10 up there.

11 Q Except Mr. Aquino?

12 A Mr. Aquino. It was a few occasions. It wasn't
13 like he was there every week or day.

14 Q You read the master deed?

15 A I have.

16 Q Does the deed say the terrace outside of
17 Marshall's penthouse is common?

18 A Yes.

19 Q Does the deed say "terrace"?

20 A No. Rooftop.

21 Q The word "terrace" is not in the deed, is it?

22 A Not in that part.

23 Q The word "balcony" is in the deed, right?

24 A Balconies are.

25 Q And balconies are not common?

JOHN CARTER TACKETT - DIRECT EXAMINATION

1 **A** Right.

2 **Q** And before you made your rules, did you look up
3 the definition of "balcony" and "terrace"?

4 **A** Not necessarily. It's just pretty defined on my
5 deed.

6 **Q** Did you know "balcony" and "terrace" are
7 synonyms?

8 **A** Yeah.

9 MR. GRANTLAND: That is all I have. Thank you.

10 MS. GOLDING: No further questions.

11 (Defendants' Exhibit 53 marked.)

12 MS. GOLDING: We call Carter Tackett.

13 (CARTER TACKETT, having been duly sworn,
14 testified as follows:)

15 THE WITNESS: John Carter Tackett.

16 **DIRECT EXAMINATION**

17 **BY MS. GOLDING:**

18 **Q** Tell the jury a little bit about yourself.

19 **A** Married to my high school sweetheart for 47
20 years. I come from just outside Pittsburgh,
21 Pennsylvania. Came to Myrtle Beach since 1980s. Love
22 Myrtle Beach -- love North Myrtle Beach. Own a condo
23 in a partnership from '83 to '90. We dissolved that
24 partnership, went away for a few years, and then my
25 wife and I kind of said, hey, why are we staying away

JOHN CARTER TACKETT - DIRECT EXAMINATION

1 from Myrtle Beach? We had great times, let's go back.
2 We went back and scouted out for some property
3 acquisition and found Penthouse 1 at Shoreham Towers.
4 We made an offer and owned it for 20 years. We just
5 sold it in December of 2021. Probably going to miss
6 it.

7 I graduated from college in 1974. I'm a CPA, and
8 I worked about six or seven years with a public
9 accounting firm, and then I went to work for a
10 contractor who did general construction. I was their
11 chief financial officer, but also VP of operations. So
12 I worked in the field, worked in the office, did
13 whatever I had to do.

14 My dad was an auto mechanic and taught us if you
15 work hard, you get ahead.

16 Q With respect to the purchase of your Shoreham
17 Towers unit, when did you purchase that?

18 A 2001, with my wife.

19 Q Since 2001 to December of 2021, you and your wife
20 owned the unit?

21 A Yes.

22 Q And what floor is the unit located?

23 A Penthouse -- floor nine in Shoreham Towers,
24 Penthouse 1 is on the north end of the building.

25 Q At any time were you elected to the board of

JOHN CARTER TACKETT - DIRECT EXAMINATION

1 directors?

2 **A** Yes.

3 **Q** When did you start serving?

4 **A** 2001.

5 **Q** And how long did you serve?

6 **A** Served up to 2017, because in 2016 I almost met
7 my maker in a severe motorcycle accident. I tried to
8 stay on the board for that period of time, and I was
9 unable to travel. It just became cumbersome, and in
10 2017, I resigned so that someone else could take their
11 shot at this high paid job, which is volunteer, right.

12 So they -- it went on for a year, but I kept my
13 fingers in the pie because I was involved in almost
14 every dollar that went through the association in
15 preparing all of the documents for the budget and for
16 the assessments. And then I kept my eye on what was
17 going on, and I didn't like the way things were
18 happening, so I put myself in nomination again in 2018,
19 and I was elected in October of 2018.

20 **Q** How long did you serve from October of 2018?

21 **A** Until we sold our unit and I had to resign.

22 **Q** When you were on the board in 2001 through 2016,
23 who was the president of the board?

24 **A** Marshall was president for the biggest part. I
25 think he relinquished his presidency in 2015.

JOHN CARTER TACKETT - DIRECT EXAMINATION

1 **Q** And in 2015 did Mr. Griffin continue to serve on
2 the board?

3 **A** Yes.

4 **Q** You indicated that you were involved with
5 assessments of the unit owners at Shoreham Towers?

6 **A** Correct.

7 **Q** With respect to assessments, can you explain to
8 the jury how the board establishes the assessments and
9 what it is based on?

10 **A** In accordance with the master deed, and the
11 master deed schedule calls out the square footage in
12 each unit, and you take the square footage, divided by
13 the total square footage in the building, and whatever
14 that percentage is, that is the percentage allocation
15 that gets picked up by the respective building based on
16 what we come up as a budget. The board worked hard on
17 coming up with what would be an acceptable budget and
18 all of the items that we provided to the unit holders
19 budget. We had landscaping, budget for pool.

20 So we went through that every year. We also had
21 a reserve analysis that we all participated in, and we
22 tried to keep it to the point where if there was ever
23 going to be an emergency or any capital expenditure
24 that we would have to have, that we would try to have a
25 minimum special assessment. We didn't want people that

JOHN CARTER TACKETT - DIRECT EXAMINATION

1 have to get hit with -- even though the board has the
2 ability to say we have a special assessment for a
3 hundred thousand dollars. I'm a fiscally responsible
4 person, and we tried to control that and make sure that
5 everyone's finances were going to be taken into
6 consideration. You know, spend our dollars wisely.

7 Q With respect to Shoreham Towers, is there any
8 dwelling unit owner that personally directly pays for
9 anything outside of their dwelling unit as an
10 assessment?

11 A Not as an assessment. We do have some very good
12 occupants that, at times, will put flowers in for
13 landscaping. Tony Giovino is Mr. Maintenance Man.
14 He'll go around and help anyone any time, and he
15 doesn't ever put any amount of bill in for any of his
16 time. He does get reimbursed for the material, and
17 that's fair. But we have a lot of good people at that
18 facility that chip in, and that keeps a lid on what
19 your expenses are, right, so.

20 Q And with respect to being a member of the board
21 of directors, are any of the directors compensated for
22 their service time?

23 A No.

24 Q Is the assessment based on the square footage of
25 each dwelling, is that affected in any way by the fact

JOHN CARTER TACKETT - DIRECT EXAMINATION

1 you are a board member?

2 **A** No. No.

3 **Q** We heard conversations about you contacted Roger
4 Roy in the latter part of 2018. Did you do that?

5 **A** Yes. When I came back on the board, the
6 association always had a property manager. Wayne
7 White, who was here earlier, Wayne decided to get out
8 of the property management game, and so we had to go
9 find new property managers.

10 I went through those conversions where we had to
11 take the records over to Atalaya, and then over to
12 Cams, and then over to Tradd. So you had all of these
13 conversions you had to do in order to keep going.

14 Your question was in regards to the assessments?

15 **Q** No. I was asking about hiring Roger Roy.

16 **A** Yeah. Yeah. I apologize. So when we initiated
17 the board in 2018 -- after the board elected, then the
18 board has a meeting between the five individuals to
19 select officers.

20 **Q** Let me ask you: When are the boards members
21 elected?

22 **A** Third Saturday in October. Any of the 40 unit
23 holders is eligible to participate and run for the
24 board. But after the board, then you have a meeting
25 and you decide who will be president, treasurer, vice

JOHN CARTER TACKETT - DIRECT EXAMINATION

1 president, and all of that.

2 Q So when was Roger Roy hired and why?

3 A He was hired because in the past -- I apologize.
4 I think you need to know the history. When you had the
5 property manager and ask a legal question to a property
6 manager, we found that the property manager would get
7 the attorneys that they had to really support their
8 position, maybe more so than the homeowners
9 associations' position, right.

10 So then we said, okay, might be wise for us to
11 have an independent legal counsel and to hire a man on,
12 quote, like a retainer. So we took upon getting
13 information on who might be a candidate, who we would
14 use and would respect and follow his guidance. Roger
15 Roy's name was familiar with us. He had done closings,
16 so we selected Roger, and Roger agreed to be our go-to
17 adviser.

18 Q Did you then communicate with Roger Roy with
19 respect to the issues as to the rooftop terrace?

20 A Yes.

21 Q When did that start?

22 A Probably December of 2018, from my recollection.

23 Q At that point in time, on the board, who was
24 involved with communicating with Roger Roy?

25 A I would say myself, Mr. West, and Mr. Giovino.

JOHN CARTER TACKETT - DIRECT EXAMINATION

1 We did most of the correspondence with Roger because
2 the initiator of the issues before us today was
3 Richard, and the person who was kind of the person who
4 had the violations was Marshall.

5 Q So you took the two out of communicating with
6 Roger Roy?

7 A Correct.

8 Q And let's go into the January 29 meeting, did you
9 participate in that meeting as far as going upstairs to
10 the rooftop?

11 A Yes.

12 Q Was there communication with Mr. Marshall at that
13 time?

14 A Yes. We went there as Marshall's invited guests,
15 okay. We had gone over all of these, I think, six,
16 seven, I've heard, and I don't know which version we're
17 dealing with, but there are six or seven items that
18 were brought to the board's attention in regards to
19 violations or comments or things that we needed to
20 address, right.

21 We had the meeting with Marshall present, and we
22 all discussed them, right. And Marshall told us his
23 understanding of how those items happened, because some
24 of us didn't know, right.

25 And so when we asked them about the Turtle tile,

JOHN CARTER TACKETT - DIRECT EXAMINATION

1 for an example -- it was an issue, right. When did the
2 Turtle tile get put down? Marshall told us it got put
3 down when I took over the unit in 1995, and I put it
4 down so that I would protect the membrane and my people
5 could walk up there and everything could happen, right.

6 And then the question was -- because the way the
7 master deed and things work, you are supposed to ask
8 for permission when you do anything to change anything
9 that has to do with the units or what you are doing in
10 the condominium association. Did you ask anyone? He
11 said, No, he didn't. We said, That is not the way it
12 should have happened, okay.

13 Well, they didn't say anything, okay. Well, you
14 know, they didn't say anything, but what are you going
15 to do? That is not right. You were supposed to have
16 asked people, and I think Marshall understood that, you
17 know, if he would have done it correctly, he would have
18 had permission. The same with some of the other
19 things, he just took upon himself to change things
20 without asking anybody for permission to do so, like
21 taking a wall down. Those were the items listed that
22 we were trying to address.

23 Q You are talking about taking the wall down in the
24 elevator lobby?

25 A Yes, ma'am.

JOHN CARTER TACKETT - DIRECT EXAMINATION

1 **Q** Is the elevator lobby -- how is that designated
2 in the master deed?

3 **A** I think the elevator lobby is clearly designated
4 in Exhibit A as a common area. Marshall's response was
5 the area that is in Exhibit A, which everyone here
6 looks at and dwells upon, is the elevator lobby on the
7 first floor. But as I read it, and I think the rest of
8 us read it, you are talking about the rooftop
9 penthouse, you are talking about a common elevator
10 lobby. I don't know why you would digress from the
11 common elevator lobby down to the first floor.

12 We're talking about the tenth floor lobby, okay.
13 And the tenth floor lobby is a common area, and the
14 elevator is common. So in the original drawings you
15 looked at, there is a wall right outside the elevator
16 lobby. That makes the elevator lobby accessible to
17 anyone that is a unit owner that wanted to go to the
18 tenth floor or needed to go to the tenth floor. Why
19 you need to go to the tenth floor, I'm not sure,
20 because the only thing was Marshall's elevator.

21 But that got taken down and opened up, and that
22 was done by Marshall and without permission.

23 **Q** Now, with respect to the planters, did
24 Marshall -- did the homeowners association maintain and
25 keep the planters, lining?

JOHN CARTER TACKETT - DIRECT EXAMINATION

1 **A** To keep the planters and to keep the dirt and
2 everything in there. The only thing he exercised
3 control over was the plants, right. And the plants
4 were oftentimes debated on what kind of plants should
5 go in those planters, right.

6 **Q** Was that in the board meetings?

7 **A** Yes. Yes. And on the original plans. The
8 original plans that you had earlier show that when that
9 unit was first built, there were low-lying plants put
10 in there, and they were beautification purposes.

11 Well, then, Marshall took it upon himself to put
12 the plants in that, and in his testimony, going to
13 screen the air conditioning units up on the top floor.
14 There is a reason that everyone needs to get to the top
15 floor, because all of our air condensers are on the top
16 floor, right. So that is why it has to be a common
17 area, for us to get up there and service our air
18 conditioners, and that sort of thing.

19 **Q** When that meeting ended in January 2019, did
20 Marshall Griffin say anything to the board?

21 **A** Well, after we took the tour -- and he wanted us
22 to take a tour because some of us had not been to see
23 his unit because we didn't make the journey up there.
24 We kind of said it is a great building, you just don't
25 socialize with a lot of people.

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1 So some of the board members who were going to
2 make decisions as to what to do had never been up
3 there. So Marshall asked us why don't you come up and
4 take a look. You guys are saying you're thinking this
5 is a common area, come on up, and I'll go through it
6 step-by-step over all of the items.

7 He said, Do me a favor, let's do it on a
8 Saturday, okay, whenever I don't have any tenants. We
9 took our Saturday and went up there. I believe the
10 19th is a Saturday. We went up there, and Marshall
11 went through everything.

12 When he was done showing us everything, we went
13 down to the meeting room and we discussed, Do we still
14 think after touring -- do we think it is a common area,
15 or do we think it has some combination that would work
16 with the rooftop unit. We looked and said we thought
17 it was still a common area. It didn't change our mind,
18 and that angered Marshall because I think he could see
19 --

20 **Q** What did he say?

21 **A** He said, I'm going to lawyer up.

22 **Q** Subsequently, did you get an opinion from Roger
23 Roy in March of 2019?

24 **A** Yes.

25 **Q** And I believe -- I know it was introduced into

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1 evidence. Subsequently, did the board then continue
2 communications with Roger Roy?

3 **A** Yes. We did nothing in regards to this
4 communication of the rules and regulations. Anything
5 to do with the decision, we took no action without
6 consulting our legal consultant. Anything we drafted,
7 any conversation we got stuck on and wanted advice, we
8 went to Roger and said, hey, are we okay? We don't
9 want to do anything wrong. We are in new territory,
10 right. We're doing the best we can do, and I think
11 this board has always exercised conscientious --
12 including Marshall when he was on the board, we
13 exercised conscientious business practice, right.

14 If you are going to do something like a roof --
15 the best bid they had was 200 grand. We had bids when
16 I was on the board for 120 grand. Where did \$80,000
17 go? I'm a CPA, so you have to have competitive bids.
18 So I went back and we got ourself back instead and
19 ended up getting the roof done by Quin Thompson. He
20 was a very qualified person.

21 That is the kind of thing we do. We also tried
22 to exercise care to do the right thing. There was
23 never ever any discussion about doing this to penalize
24 Marshall. We took these people out of the equation
25 whenever we had conversation. They were all treated

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1 equally, and that is the way we went and discussed it
2 with Roger Roy.

3 Q With respect to -- these are already an exhibit,
4 but I wanted to put them together as one so it is
5 easier to see. I'll give you Defendants' Exhibit 53,
6 which Mr. Grantland agrees to Defendant's 53.

7 (Defendants' Exhibit 53 admitted.)

8 Q These are three letters sent on October 5 of 2020
9 to Mr. Griffin. The first letter in Exhibit 53 is from
10 Pat Clark with Tradd Management, and that letter
11 relates to the Turtle tile; is that correct?

12 A Yes.

13 Q To your knowledge, did Mr. Griffin ever go and
14 pick up the Turtle tile as requested in Exhibit 53?

15 A I know he did not. I was directly involved in
16 that Turtle tile, knee deep.

17 Q How many years did that Turtle tile sit?

18 A Jason testified this morning four years, and it
19 was probably at least that. Every time we sent out a
20 letter to remind Marshall his Turtle tile was there to
21 be picked up -- I called Thompson Roofing because I
22 didn't want to send a letter and have egg on our face.
23 I wanted to make sure that it was still there, because
24 it was there so long. The stuff went there in 2019.
25 This is not the only notice that went to Marshall. He

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1 had more than one notice.

2 Q Yeah. Now, the second page of Exhibit 15 relates
3 to unauthorized stored furniture. How many times did
4 the board ask Mr. Griffin to move the furniture and he
5 did not?

6 A At least twice, I believe.

7 Q And once the board had the furniture removed,
8 what did it do with the furniture?

9 A We stored the furniture in the secured storage
10 spot over by the North Myrtle Beach Airport. I made
11 the accommodation to have it stored and locked, a place
12 where the furniture could be put so that it could be
13 picked up.

14 Mr. Griffin was given letters and the opportunity
15 to come and get it himself, and repeatedly he just --
16 he didn't respond at all. So, finally, what are you
17 going to do? You have to do something, because the
18 unit holder has not responded.

19 Q Then, the last letter, again dated October 5,
20 relates to the removal of arborvitaes. How many times
21 do you recall that the board communicated with Mr.
22 Griffin about the removal of the arborvitaes?

23 A I would say at least twice, maybe more.

24 Q In Exhibit No. 53 it references the safety
25 report; is that correct?

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1 **A** On the arborvitae?

2 **Q** Yes, sir.

3 **A** Yes, it does.

4 **Q** Is the basis for the removal of the arborvitaes,
5 is that the consultant safety report?

6 **A** Yes. December 7, 2019.

7 **Q** And the basis for the removal of the furniture,
8 was that based upon the safety report and the opinion
9 of Roger Roy?

10 **A** It does not say in this letter, but it was, yes.

11 **Q** And then the basis of the removal -- not removal,
12 but the basis of not putting back the Turtle tile, was
13 that due to the opinion of Thompson roofing?

14 **A** Yes.

15 MS. GOLDING: One moment, please.

16 (A brief pause in the proceedings.)

17 MS. GOLDING: Answer any questions
18 Mr. Grantland may have.

19 **CROSS EXAMINATION**

20 **BY MR. GRANTLAND:**

21 **Q** Good afternoon, Mr. Tackett.

22 **A** Good afternoon, Mr. Grantland.

23 **Q** Let's start first with the letters that you just
24 looked at from Pat Clark. I think you said -- first,
25 let's look at the unauthorized stored furniture dated

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1 October 5, 2020. It is Exhibit 42 on our --

2 MR. GRANTLAND: Crawford, can you pull it up?

3 Q You said, correct me if I'm wrong, Marshall did
4 not respond at all?

5 A Correct, to our request to have him remove the
6 furniture from the rooftop.

7 Q Now, we sued you a year earlier in October of
8 2019?

9 A That was your prerogative. Yes, you filed suit.

10 Q And we're here today because of actions like this
11 in taking Marshall's furniture --

12 A No. We're here today to determine has the board
13 correctly determined it was a common area. You are
14 making it that we're here because it is some kind of a
15 vendetta between Mr. Aquino and Mr. Griffin. That's
16 not true.

17 Q You took his furniture in 2020?

18 A Correct.

19 Q And you say he didn't respond, but you took his
20 furniture after we filed the lawsuit?

21 A I didn't care if you filed a lawsuit or not.
22 That was going through the courts. We did what we had
23 to do, because we were treating the rooftop unit as a
24 common area.

25 We asked our unit holder to perform and remove

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1 the furniture, that our safety person told us it
2 shouldn't be up there, and he didn't do it. So when he
3 didn't do it, then we have to do what we have to do.

4 Q And you hired your safety person when?

5 A We hired a safety person shortly after we turned
6 your lawsuit over to Travelers, because Travelers was
7 our --

8 Q Don't talk about insurance.

9 A Don't talk about it? It is a fact.

10 MS. GOLDING: Mr. Carter, he asked you a question
11 as to when you hired the safety consultant.

12 A The board hired the safety person in, I believe
13 it was, November of 2020.

14 Q (BY MR. GRANTLAND) No. I think it was December
15 of 2019.

16 A Could be December of 2019.

17 Q My point is it was after we sued you?

18 A Yes. That is irrelevant.

19 Q You had no safety consultant before Marshall
20 filed this lawsuit, did you?

21 A No.

22 Q And you are concerned about safety now, but
23 before the lawsuit, you weren't?

24 A We were a hundred percent concerned with safety,
25 but we were also managing our funds, and we didn't see

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1 any reason we needed a safety report.

2 Q Why did it take a lawsuit for you to hire a
3 safety consultant?

4 A It did not take a lawsuit. It was a suggestion
5 of the persons that were involved in handling the
6 defense of the lawsuit.

7 Q You got the phone number from Ms. Golding, I
8 believe, to that expert, didn't you?

9 A Yes.

10 Q And if you are so concerned about safety, why did
11 your safety consultant only look at the rooftop
12 terrace?

13 A That is all the time he had to look.

14 Q And he hasn't had any time since 2019 to look at
15 the rest of the building?

16 A No. We didn't ask for the rest of the building.
17 We think -- that's fine.

18 Q You were involved in creating the rules,
19 regulations?

20 A Yes, sir.

21 Q Let me back up. I wanted to talk to you about
22 some -- I have some other questions for you. You
23 bought a unit in 2001, sold it in 2021?

24 A Yes.

25 Q And you are aware Marshall inherited the

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1 penthouse in '94, '95?

2 **A** Yes.

3 **Q** And you owned a penthouse similar to what
4 Mr. Aquino owns?

5 **A** Not similar, because mine is an end unit.

6 **Q** Yours is a little bigger?

7 **A** I have an extra two balconies that I pay for in
8 my assessment, in Horry County taxes.

9 **Q** Did you have any complaints how Marshall used the
10 penthouse or terrace?

11 **A** No.

12 **Q** Did you have any complaints how Marshall's
13 renters used the penthouse or terrace?

14 **A** No.

15 **Q** Besides Mr. Aquino, do you know of any owners
16 complaining about Marshall or his use of the penthouse
17 terrace?

18 **A** No.

19 **Q** Other than Mr. Aquino, do you know of any board
20 members who had a disagreement with Marshall?

21 **A** Disagreements? I would say, yes. We've had
22 conversations where we didn't see eye to eye. The same
23 -- we've all had that situation where we have
24 discussions as a board about, you know, what is the
25 proper course of action, and we have disagreements

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1 between us all.

2 Q But remember when I took your deposition I asked
3 the same question, that other than Mr. Aquino, are you
4 aware of any homeowners or board members who have had
5 disagreements with Marshall, and your response was, No?

6 A Okay. I'm elaborating today.

7 Q Clearly. But, overall, Mr. Aquino is the main
8 person who has had complaints with Mr. Marshall?

9 A Yes, because his unit is in close proximity.

10 Q But have you ever looked into Marshall's use of
11 the rooftop terrace?

12 A Have I ever looked into it?

13 Q Have you ever investigated the terrace or
14 Marshall's use of the terrace?

15 A No.

16 Q The only reason the board started looking at that
17 was in response to Mr. Aquino's e-mail?

18 A And our inspection and our reading of the master
19 deed and the drawings.

20 Q You concluded, after looking at it, that you
21 believed Mr. Aquino was correct, that Marshall was
22 violating the master deed?

23 A I do believe that Item No. 1, as I recall, and I
24 don't have that thing in front of me, but, yes, because
25 of the fact that in the master deed -- in our master

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1 deed, you are not allowed to modify anything in our
2 unit without getting permission from the board of
3 directors. And that is not like, hey, you can do it,
4 you have to have written permission. You have to
5 submit what you are going to do and get written
6 permission. Marshall, under his own admission, did not
7 do that.

8 Q Prior to 2019, did the board ever discuss whether
9 the rooftop terrace was common or private to the
10 penthouse?

11 A Prior to when?

12 Q 2019.

13 A Not that I know of, and I was on the board most
14 of that time.

15 Q From '90s, when Marshall inherited it, to 2019,
16 the balcony terrace was used by Marshall for himself or
17 his renters; is that correct?

18 A That's correct. And Marshall was the president
19 of the association and wasn't paying attention to what
20 was in the master deed and in the drawings.

21 Q Are you saying Marshall wasn't paying
22 attention -- what do you mean by that?

23 A He should have, I think the same as we did. He
24 should have said it is a common area.

25 Q No one --

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1 **A** Because he does not own that.

2 **Q** That is your opinion?

3 **A** No, that is what he said.

4 **Q** No one challenged his use of the terrace until

5 Mr. Aquino reached out, right?

6 **A** Yes.

7 **Q** And you wrote an e-mail in response to

8 Mr. Aquino's list of grievances; did you not? On

9 January 2019, you wrote an e-mail giving your opinions;
10 did you not?

11 **A** I may have.

12 **Q** I'll show you Exhibit 40.

13 MR. GRANTLAND: Bear with me, please.

14 MS. GOLDING: No objection.

15 (Plaintiff's Exhibit 40 admitted.)

16 **Q** (BY MR. GRANTLAND) I'll hand you Exhibit 40.

17 Have you seen this e-mail before, Mr. Tackett?

18 **A** Yes. I initiated it.

19 **Q** And in your e-mail to the board members, you

20 excluded Marshall; is that correct?

21 **A** Yes.

22 MR. GRANTLAND: This is marked as Exhibit 40, I
23 think without objection, Your Honor.

24 **Q** (BY MR. GRANTLAND) And you excluded him because
25 you are talking about him?

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1 **A** I presume, yes. But I don't know that for sure,
2 why I excluded him.

3 **Q** You presume the reason you didn't have Marshall
4 in this e-mail is because you were talking about him;
5 is that correct?

6 **A** Yes.

7 **Q** And let's go through it. In your e-mail, in the
8 first paragraph, you say -- in your e-mail you called
9 Mr. Aquino the originator of the violations, and
10 Marshall the target; is that right?

11 **A** Yes.

12 **Q** "Marshall the target"?

13 **A** He was the recipient.

14 **Q** That's a true statement. I mean, all of
15 Mr. Aquino's complaints focused on Marshall and his use
16 of that penthouse terrace; is that right?

17 **A** Yes.

18 **Q** You recognize in January of 2019 that master deed
19 was not very clear about whether the terrace was
20 common, hybrid, or private?

21 **A** That was in regards to the dining court.

22 **Q** Okay. Well, I think you said -- I think you
23 described it -- you said the master deed -- I'll move
24 on.

25 You also said that the documents were murky at

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1 best?

2 **A** That's correct. It was a very difficult
3 decision. We didn't take it lightly and didn't target
4 anyone. I apologize for the use of that. That was a
5 poor choice of words.

6 **Q** But it was a true choice of words, wasn't it?

7 **A** No.

8 **Q** I mean, Mr. Aquino -- you can live with your
9 words. Mr. Aquino was the originator, and Marshall was
10 the target.

11 **A** He was the recipient. It was all relative to his
12 rooftop. Mr. Grantland, when we discussed this as a
13 board, okay, we never used the term "Richard Aquino"
14 and "Marshall Griffin." We used "rooftop penthouse"
15 and "39 other units." Because some day Mr. Griffin may
16 not own that penthouse maybe. So when we draft
17 something as to what is right, wrong, or indifferent,
18 you have to take into consideration everything that has
19 to do with the issue at hand, and that is what we tried
20 to do.

21 We had no malice against anyone. So I'll say
22 mostly myself, Bill, and Tony, we were trying to
23 struggle through this because it was the first time we
24 did it. Yes, it was. Because it was the first time it
25 came up. But just because it was the first time

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1 doesn't mean it wasn't right.

2 So we did the best we could do to come up with a
3 solution that was going to work for everybody. We did
4 that. We came up with the rules and regulations. All
5 of 2019 -- until you filed the lawsuit, all through
6 2019, there was never any issue, whatsoever, brought to
7 our board -- whatsoever. The board was happy for that,
8 and the board said, We did a good job.

9 **Q** And we'll get to that. I appreciate your
10 testimony, but you called Marshall -- correct me if I'm
11 wrong, you called him the target in your e-mail?

12 **A** I've already -- it's been answered.

13 **Q** You want to take that back, but that is what you
14 called him in 2019?

15 **A** That is what is in this e-mail.

16 **Q** In 2019?

17 **A** Yes. The same as you saying the rooftop terrace
18 is a balcony. It is not. It is a rooftop terrace.

19 **Q** And if you are a target, you either run or fight?

20 **A** I guess so.

21 **Q** In several parts you make it clear you don't know
22 whether the terrace is common or private, and we can go
23 through it. Look at Paragraph 3 on the second page.
24 What is the bottom sentence of Paragraph 3, the last
25 sentence of Paragraph 3?

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1 **A** "This is to be a common area for any person who
2 occupies Shoreham Towers can congregate or enjoy, then
3 this disturbance would be much more difficult to
4 control."

5 **Q** No. This is what I want you to read.

6 Number 3 on the second page: "If, in fact --

7 **A** That is what I just read. "If, in fact, this is
8 to be a common area for any person who occupies
9 Shoreham Towers can congregate or enjoy, then this
10 disturbance would be much more difficult to control."

11 **Q** And Paragraph 4, what is the first -- what do you
12 say in the first sentence?

13 **A** Item 4: "Once the common area decision is made,
14 I think Marshall would be okay with whatever signage is
15 placed outside the doors and, in fact, welcome
16 directional signs to point out which air conditioner
17 units are accessed by which door."

18 **Q** So up until 2019, you all hadn't discussed
19 whether this was a common area or private, correct?

20 **A** Probably correct.

21 **Q** And up to 2019 no decision was made whether this
22 was a common area or private?

23 **A** That's correct. And we were charged with the
24 responsibility of trying to determine is it common or
25 not common.

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1 **Q** On the next page --

2 **A** This, by the way, was a memo going to Roger Roy,
3 who was here today, because we were seeking out his
4 expert -- even though we don't want to call him an
5 expert, his expert opinion of these matters, because
6 he's got more experience than any of us.

7 **Q** So these are also your thoughts at the time in
8 2019?

9 **A** This is the board's thoughts in 2019, that we
10 need to talk over with Roger. So we're doing our due
11 diligence and operating in a fair and equitable
12 fashion.

13 **Q** And at the middle of the long paragraph, you
14 write: "An overall caveat --

15 **A** Where are you at now?

16 **Q** On the next to the last page of your e-mail.

17 **A** "Even if the roof is to be construed as a common
18 element, for liability purposes and safety purposes, it
19 would seem reasonable and common sense would dictate
20 that access to a roof of a 10-story building not to be
21 opened to the public. Going back to the introductory
22 comment, Shoreham Towers has a situation that may be
23 one of a kind, question mark, question mark, question
24 mark."

25 I mean, it is one of a kind.

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1 **Q** And you wrote that because up until January of
2 2019, you and your board never thought about the
3 terrace being a common element?

4 **A** That's correct.

5 **Q** I point out those sentences because none of you
6 all were really sure whether it was common or private
7 in 2019?

8 **A** We were not certain.

9 **Q** And you have since read minutes from prior board
10 meetings that talked about the penthouse and how it
11 would be treated; did you not?

12 **A** Yes.

13 **Q** You read minutes from 1992 where the board stated
14 the area around the penthouse will be handled the same
15 as other balconies?

16 **A** Yes.

17 **Q** You weren't around Shoreham Towers in '92?

18 **A** That's correct. And I didn't see those comments
19 until after we got involved in this lawsuit.

20 **Q** You didn't see them until I took your deposition,
21 did you?

22 **A** That is probably correct.

23 **Q** I wish you would have read them in 2019. Did you
24 read any minutes from 2001?

25 **A** No, not that I can recall.

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1 **Q** You weren't on the board in 2001?

2 **A** I think that was the first year I was on.

3 **Q** Let's look at Exhibit 7. I showed them to you in
4 your deposition. February 2001, Exhibit 9, in
5 evidence.

6 Were you on the board in 2001?

7 **A** I guess not, because if I was on the board I
8 would be listed and I'm not listed as present.

9 **Q** Did you know that the board over 20 years ago
10 referred to the area outside the condo as a penthouse
11 balcony area?

12 **A** No. Not until....

13 **Q** Do you see that in the minutes? Last sentence.

14 **A** The last sentence says: "Ms. Daniels -- and I'm
15 not sure who she is -- "remembering to contact the
16 rental agent, McMillan Realty, prior to entering the
17 penthouse balcony area."

18 **Q** So you agree in 2001 it was called the "penthouse
19 balcony area"?

20 **A** By this board.

21 **Q** And you agree your board, 18 years later, is
22 taking an inconsistent position?

23 **A** Yes.

24 **Q** I mean, you are taking an inconsistent position
25 from a board in 1992, aren't you?

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1 **A** Yes.

2 **Q** And if the terrace is treated like balconies,
3 your board does not have a right to come up with rules
4 when Marshall can go outside and when he has to come
5 inside; is that correct?

6 **A** We don't have the responsibility to do it,
7 correct.

8 **Q** If the terrace is a balcony, your board can't
9 tell him what furniture he can put out there, can you?

10 **A** No.

11 **Q** And you agree that "balcony" and "terrace," they
12 are not opposite words, they are synonyms in the
13 dictionary?

14 **A** They are listed as synonyms in a thesaurus, but
15 the definition is definitely different if you want to
16 look it up in Webster.

17 **Q** And I have. Do we need to look it up?

18 **A** Look it up, because it says terrace is an
19 explanation for a roof, expansive roof flat area.

20 MR. GRANTLAND: I have a dictionary over here I
21 gave Ms. Golding.

22 **A** The difference between "terrace" and "balcony" is
23 that a terrace is expansive, and a balcony is private
24 and it's small. That is the general difference between
25 a terrace and balcony.

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1 Here we have a terrace. If they were going to
2 call it a balcony, since they called everything
3 underneath it a balcony, I think they would have
4 labeled it "rooftop balcony." And if it was a rooftop
5 balcony, Mr. Grantland, then the rooftop penthouse
6 would have to pay for everything that is outside of
7 there on the same basis that we pay for everything
8 underneath there.

9 Everybody underneath there, myself included, have
10 three balconies. I own them. They are in my deed, and
11 I pay Horry County taxes. If the rooftop owner, not
12 just Marshall, were to adopt that as a balcony, their
13 contribution would be doubled and their tax for their
14 unit would be skyrocketed.

15 **Q** You agree that "terrace" and "balcony" are
16 synonyms in the dictionary?

17 **A** Yes, but that is meaningless.

18 **Q** Well, meaningless to you.

19 While we're on the subject of money, you say
20 Marshall doesn't pay -- he should be paying more?

21 **A** No. I never said he should pay more. You've
22 said that before in earlier depositions. None of us
23 have ever said he should be paying more. Marshall is
24 paying what it says in our master deed.

25 **Q** You heard him that he is paying a hundred dollars

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1 a week for maintenance outside of his terrace?

2 **A** That's correct, because he rents it every time
3 and he wants to clean up for anyone that is going to
4 rent. That is at his discretion. He is doing that for
5 his own well-being.

6 **Q** That is money that the HOA doesn't have to pay?

7 **A** We probably wouldn't pay it because we wouldn't
8 be up there cleaning up for a hundred dollars.

9 **Q** You heard his testimony that for the landscaping,
10 he pays --

11 **A** At his own discretion.

12 **Q** That is also money that the HOA doesn't pay?

13 **A** That's correct.

14 **Q** Who pays the electricity?

15 **A** He does, and that's probably a negligible amount.

16 **Q** And who pays the electricity in the foyer?

17 **A** I presume it is hooked into his. We don't have
18 any definite proof, but if it is hooked into his, Mr.
19 Grantland, I think we know that electricity is for
20 lightbulbs and lights and is reasonably negligible.

21 **Q** And you are going to continue -- if you prevail,
22 you are going to continue to make Marshall pay?

23 **A** No. If it is determined it is a common area, I
24 think one of the first things the board may want to
25 do -- and I'm not on the board because I sold my unit,

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1 so I'm off -- but what the board may want to do is take
2 all of the common areas and put them on a meter that is
3 paid for by the homeowners association, because the
4 homeowners association is going to have to be the
5 person responsible for that whole rooftop.

6 Q Now, you agree -- that it is inconsistent for
7 you, as a board, to say he pays the electricity for
8 something we say is a common area?

9 A Yes.

10 Q And he's been paying it since '95?

11 A Yes. But the other two big numbers you threw out
12 there that you want to give him credit for, for taking
13 and maintaining them, that is his own discretion. The
14 board didn't ask him to do it. He did that on his own
15 freewill.

16 Q The board didn't tell him to stop?

17 A Amen. We didn't tell him to stop, because he
18 said he wanted to control it. He wanted to do it. So
19 knock yourself out, go ahead and do it.

20 Q And about the Turtle tile, Marshall told you he
21 put his Turtle tile after he inherited the unit in
22 1995?

23 A Yes.

24 Q Were you on the board in '95?

25 A No, sir.

JOHN CARTER TACKETT - CROSS EXAMINATION

1 **Q** Do you know if he got anyone's permission?

2 **A** He told us he didn't.

3 **Q** You weren't there, you don't know one way or the
4 other, do you?

5 **A** I have his word for it.

6 **Q** And before Mr. Aquino's e-mail, the board never
7 questioned Marshall about putting Turtle tile down?

8 **A** No. I don't know that we questioned it, because
9 we didn't question what was going on at the rooftop.

10 **Q** Right. It has been done for over 20 years
11 without any complaints; isn't that right?

12 **A** Other than the times that things were not tidy
13 enough, that the drains were not clean the way they
14 should be.

15 **Q** Marshall did not consent to Turtle tile being
16 removed, did he?

17 **A** No. He did consent to us replacing the roof.

18 **Q** He did not consent to you taking his Turtle tile
19 away?

20 **A** We didn't have to ask Marshall because it was in
21 our way and unauthorized.

22 **Q** And it belonged to him?

23 **A** Yes. And we preserved it and took it -- when the
24 roofer took it off, we didn't throw it away. The
25 roofer took it back to his place, stored it for four

JOHN CARTER TACKETT - CROSS EXAMINATION

1 years, free of charge, and Marshall was notified
2 numerous times to get it, and he didn't want to.

3 Q Do you have any evidence that Marshall was
4 notified numerous times?

5 A Yes. One of the reasons is we sent these letters
6 certified because we were saying, hey, the Turtle tile
7 is still over there and Marshall is not picking it up.
8 And I can tell you that I talked to Helen Thompson, who
9 is deceased.

10 Q Don't say what she said.

11 A No. I asked Helen Thompson and -- can I say what
12 her answer was?

13 THE COURT: No.

14 A It's not hearsay. That is what I heard from her
15 lips to my ears. That's okay.

16 Q Do you have any evidence to present to this jury
17 that Marshall was notified by you, by Thompson, by
18 anyone before October of 2020 to get his Turtle tile?

19 A I can't tell you. There is so many documents. I
20 don't know. I know he knew.

21 Q And that letter about coming to get it, that was
22 a year after we filed suit?

23 A It was a year after -- six months after the
24 Turtle tile was removed.

25 Q But October 2020 is a year after we filed suit?

JOHN CARTER TACKETT - CROSS EXAMINATION

1 **A** Yeah. Well, it was to the point that he was
2 notified so many times, that no one picked it up.

3 **Q** But you have no evidence that he was notified?

4 **A** No.

5 **Q** The elevator key, you all removed that elevator
6 key?

7 **A** That's not true. We did not remove the key, to
8 the best of my knowledge.

9 **Q** You disconnected it?

10 **A** No. To my knowledge, it was not disconnected.
11 We activated the tenth floor button. The elevator key
12 was still in control. If anyone wanted to use the
13 elevator key. You could push the tenth floor button.
14 That was activated so that anyone that wanted to go to
15 the tenth floor, the common elevator lobby, could push
16 the button.

17 And that is a big deal for safety, because if
18 someone is in that top unit and have a heart attack,
19 and there is no one around that has that key to get
20 that elevator up to that unit to service that unit,
21 right, Heaven forbid someone dies because we didn't
22 have a key. We should have that thing activated, and,
23 yes, we did.

24 **Q** And then you had to put it back to the original
25 condition, didn't you?

JOHN CARTER TACKETT - CROSS EXAMINATION

1 **A** Yes.

2 **Q** And why did you do that?

3 **A** Because the Court said we had to do it.

4 **Q** Have you ever been ordered by a court to return
5 someone's furniture, not mess with someone's plants?

6 **A** No. No.

7 **Q** Were you involved in removing Marshall's
8 furniture?

9 **A** Which time?

10 **Q** May of 2020, six or seven months after we filed
11 suit, were you involved in taking Marshall's furniture
12 off the terrace?

13 **A** The first time the furniture was taken off of the
14 terrace and placed in the garage where -- I knew it was
15 happening. Are you asking me if I actually moved it?
16 No, sir.

17 **Q** Were you supervising it?

18 **A** No, sir.

19 **Q** And how about the second time, in May of 2020?

20 **A** No. I live in Pennsylvania, but I get to the
21 beach.

22 **Q** Did Marshall consent to his furniture being
23 removed?

24 **A** No.

25 **Q** And did any of the chairs belong to anyone else

JOHN CARTER TACKETT - CROSS EXAMINATION

1 but Marshall?

2 **A** No. They were being removed based on the safety
3 inspection report -- or there was an OSHA regulation
4 that was violated by those chairs, according to the
5 expert.

6 **Q** No. We're not going -- the OSHA applies to
7 employees. There are no employees on the terrace?

8 **A** It applies to safety.

9 **Q** Okay. I'm not going to bore the jury with our
10 discussion. You didn't do the safety thing until after
11 the lawsuit was filed?

12 **A** Chronologically, that is correct.

13 **Q** You say you took his furniture because of safety,
14 but you took it, in a large part, because he filed this
15 lawsuit in 2019; isn't that right?

16 **A** That is your opinion.

17 **Q** Okay.

18 **A** That is not right.

19 **Q** I think it is common sense.

20 MS. GOLDING: Your Honor, I'll make an objection.
21 He is making these extraneous comments. He is only
22 supposed to conduct questioning.

23 THE COURT: That is true. Sustained.

24 MR. GRANTLAND: I'll move on.

25 **Q** (BY MR. GRANTLAND) Were you aware that Marshall

JOHN CARTER TACKETT - CROSS EXAMINATION

1 had renters using the furniture when it was taken away?

2 **A** No.

3 **Q** Have you taken another condo owner's personal
4 furniture before?

5 **A** If it was left in a common area, yes, we would
6 have. But we've never done it because no one left it
7 in a common area.

8 **Q** And until 2019, no one called the terrace a
9 common area; is that correct?

10 **A** Correct.

11 **Q** How many months was he without his furniture?

12 **A** I think it was three.

13 **Q** May until November, wasn't it?

14 **A** No, because when it was moved -- first time -- I
15 don't know all of these dates, but the first time it
16 was moved, it was put in the garage. My wife came in
17 from being out. She said, You know, someone took
18 Marshall's furniture out of the garage. I said, Well,
19 let's find out. So we tried to find out who took it,
20 and we had no idea who took it. That was a scary thing
21 because we had it roped up and everything. So nobody
22 would tell us. We asked people around, Do you know
23 where that furniture went? Nobody answered.

24 So, ultimately, we found the furniture had been
25 taken by someone and replaced up in the dining court,

JOHN CARTER TACKETT - CROSS EXAMINATION

1 which is in the interior to Marshall's.

2 Q Which is his private space?

3 A Which is his private space.

4 Q And the second time it was removed?

5 A I was the one that arranged for the storage space
6 near -- and I paid the bills for Shoreham Towers,
7 right. And every month I would get the bill. We got a
8 cheap deal. Just like any of the storage places, they
9 give you a two-months special, 60 bucks a month, right.
10 And then it goes to \$140 130 bucks, so it started to
11 get expensive, and he could get it any time he wanted.

12 Q This was in 2020, after the lawsuit was filed?

13 A Yes.

14 Q And by October, your agent wrote him and said
15 we're getting rid of it if you don't pay the bill? Do
16 you need to see the letter?

17 A No. I saw that letter. Yeah. Yeah. That is
18 when you guys tried to get TRO, and I think you got it,
19 and then we put it back.

20 Q And the only reason you put his personal
21 furniture back on the terrace is, why?

22 A Because of the TRO that you got. We weren't
23 supposed to discuss that.

24 Q Because the judge told you to take it back; isn't
25 that right?

JOHN CARTER TACKETT - CROSS EXAMINATION

1 **A** Yes.

2 **Q** Have you ever been ordered by a judge to return
3 someone's furniture?

4 **A** You asked that question, and I answered it, no.

5 **Q** Were you disappointed in the judge's ruling?

6 MS. GOLDING: That has no relevance.

7 THE COURT: I agree.

8 **Q** (BY MR. GRANTLAND) You prepared the rules to the
9 rooftop terrace?

10 **A** Yes.

11 **Q** And you didn't create the rules until you
12 determined it was common?

13 **A** That's correct. We voted on that at a meeting,
14 the board of directors. Do we think it is common or
15 not? The vote was for four common, one abstention by
16 your client. Your client went home that night called
17 Mr. Giovino and told Mr. Giovino, hey, change my vote
18 from abstention to denial. I disagree, whatever the
19 hell you want to call it.

20 So we did. So we changed the minutes to say
21 there was four saying it was a common area, and one
22 opposed, which was Marshall.

23 **Q** Right. And you've read the rules?

24 **A** Yes, I read them.

25 **Q** You wrote them?

JOHN CARTER TACKETT - CROSS EXAMINATION

1 **A** Yeah. Along with the help of Bill West and Tony
2 Giovino. Mr. Aquino recused himself from the writing
3 of the rules.

4 **Q** And the rules don't limit the number of people
5 outside Marshall's living area?

6 **A** No. But may I see them again? I haven't seen
7 them for awhile. I think there is a preamble to the
8 rules, which is one reason we didn't make a limit. We
9 explained to those folks that even if the roof is a
10 common area, we're not encouraging anyone to go up
11 there. But if you need to go up there or want to go up
12 there, you can go there without any problem. But
13 because of the liability factor, we don't want many
14 people to go up and be on that roof since it is a
15 common area.

16 **Q** You don't say that in the rules, do you?

17 **A** I think it is in the preamble.

18 **Q** I don't think I've seen a preamble.

19 **A** It is in the first paragraph. First time, Mr.
20 Grantland, that those rules were written, so we were
21 working from a start position from square zero. Tony,
22 Bill West, and I tried to be fair to whoever would own
23 the rooftop unit and the other 39 --

24 **Q** This is a copy of 17.

25 **A** Thank you. Can I read this first paragraph?

JOHN CARTER TACKETT - CROSS EXAMINATION

1 **Q** Sure.

2 **A** "The majority vote of the board of directors was
3 four to one. Except to legal interpretation of the
4 master deed, that all rooftop area outside of the glass
5 walls of the rooftop penthouse are a common element."

6 This is notifying the people because they didn't
7 know what was going on, right.

8 "As such, they are under the jurisdiction of the
9 board of directors pursuant Article 14 of the master
10 deed" -- which that is a quote -- "entitled Use of
11 Common Element, subject to rules of the association,
12 which states: 'Use of common elements by the owner or
13 owners of all dwellings and all other parties
14 authorized to use the same, shall be at all times
15 subjected to such reasonable rules and regulations as
16 may be prescribed and established governing such use,
17 for which hereafter may be prescribed and established
18 by the association.'"

19 And this is verbatim.

20 "The board must also take into consideration the
21 inherent liability factor of the common element due to
22 the rooftop access and the mechanical equipment placed
23 on the common elements.

24 As a common area, any owner has a right to visit
25 the rooftop terrace per the following rules."

JOHN CARTER TACKETT - CROSS EXAMINATION

1 That is what I call a "preamble." That clearly
2 explains to the people who are not party to this board
3 of director conversation and discussion that we have
4 been laboring over -- it is dated May 25th and this
5 whole thing started in January of 2019. The reason it
6 went on May 25th, Mr. Grantland, is because the
7 season was coming up and we wanted people to know that
8 this is now a common area. So we have to get these
9 things filed, per the law, and so we pushed hard to get
10 it done by May.

11 Your group was given a deadline to respond to
12 questions about these rules, and we got nothing, okay.
13 So then we're in that same quandary. We're asking
14 questions to have -- everyone have their input, and
15 we're not getting anything back. So we finally said,
16 We've done the absolute best we can do. As Mr. West
17 said yesterday, we did our due diligence and came up
18 with what we thought was effective for protecting the
19 association, to the best of our ability.

20 Roger Roy, who was here today, he looked at them,
21 reviewed them, and said we didn't have anything in here
22 that was illegal, that was a problem, so they can be
23 filed, and his office filed them.

24 **Q** Can I ask you a question now?

25 **A** Yes.

JOHN CARTER TACKETT - CROSS EXAMINATION

1 **Q** Does any other unit have a bedroom wall with
2 sliding glass doors that go out onto a common area?

3 **A** No. You asked that question of everyone, and
4 I'll answer the same way, no. No. No.

5 **Q** Right. No one else has a glass wall in their
6 bedroom, do they?

7 **A** No.

8 **Q** Just Marshall's unit.

9 And from your perspective, the fact that he has a
10 glass wall for a bedroom, is his problem?

11 **A** Yeah, it's his problem. It's the rooftop
12 penthouse owner's problem, because that is the way it
13 was designed.

14 **Q** And it didn't become a problem until you created
15 these rules?

16 **A** Still not a problem, because people have drapes.
17 You can pull them. We even gave Mr. Griffin an
18 alternative, say -- just like in your cars, tinting the
19 inside of your windows. If you tint the inside of your
20 windows, no one can look in and see what you are doing.
21 You can see out. We offered that up for him, but, no.

22 **Q** Is that in writing?

23 **A** We can't be responsible for the way it was
24 designed.

25 **Q** My point is it wasn't a problem until you opened

JOHN CARTER TACKETT - CROSS EXAMINATION

1 it up for everyone's use?

2 **A** We didn't open it up for everyone to use.

3 **Q** You opened it up for owners, their family and
4 guests?

5 **A** That's correct. And we were, in a way,
6 Mr. Grantland, as I understand, in a stretch. We
7 said -- like renters, if someone had a group of eight
8 people renting their condominium, and the owner was not
9 present, the unit owner was not present, those parties
10 are not allowed to go up on the roof by themselves. We
11 limited that. We were wondering maybe that is not
12 really something that we should discriminate against.

13 Roger Roy said you are doing the right thing.
14 Because, really, the common elements are there to be
15 used by the unit holders. So we said, okay, fine.

16 Our unit holders are good people. So our unit
17 owners haven't been up there when Marshall had it --

18 **Q** Well, Mr. Aquino had.

19 **A** We have all been up there to handle our air
20 conditioners, I believe. Mr. Aquino was up there most
21 times for fighting some problem for Shoreham Towers,
22 because he's a handyman like Tony Giovino, right.

23 And Marshall Griffin called him on more than one
24 occasion to investigate a leak or something, because
25 he's a qualified person. I've been up there on that

JOHN CARTER TACKETT - CROSS EXAMINATION

1 same issue, right. And we also volunteered our time to
2 make sure that the roofer and contractors were working
3 on our work that we were paying big money, and doing
4 the right thing. So, yes, we were up there.

5 Q And, again --

6 A Our unit holder, Mr. Young, testified that -- he
7 talked about unit owners don't want to go up there, and
8 that is good for you.

9 Q But it is open for owners?

10 A Per the master deed and the drawings, yes. It is
11 a common area.

12 Q And if Marshall or Ms. Peck has a problem with a
13 stranger outside from 8:00 a.m. to 10:00 p.m., that is
14 their problem?

15 A As long as they are behaving.

16 Q You don't see any hypocrisy in that?

17 A No, sir. Because people are outside of my unit
18 every day. I have glass windows. I keep my windows
19 closed. I have a hallway that borders -- two of my
20 bedrooms, and that was brought up by Mr. West, they go
21 to that hallway. That is the design. That is the way
22 the place was designed.

23 Q Your board met without Marshall more than once to
24 discuss these rules?

25 A Yes.

JOHN CARTER TACKETT - REDIRECT EXAMINATION

1 **Q** He disagreed with the rules, and you met without
2 him?

3 **A** Yes. We were advised not to have Mr. Griffin
4 involved, and we followed that.

5 MR. GRANTLAND: No further questions.

6 **REDIRECT EXAMINATION**

7 **BY MS. GOLDING:**

8 **Q** Do you still have Exhibit 40 in front of you?

9 **A** Yeah, right here.

10 **Q** The last document that Mr. Grantland -- not the
11 last, but Mr. Grantland handed you an e-mail marked
12 Exhibit 40?

13 **A** Yes.

14 **Q** And I think you said that that is supposed to be
15 for Roger Roy?

16 **A** Yes, it is.

17 **Q** Mr. Grantland didn't ask you, he just said that
18 e-mail wasn't sent to Marshall Griffin; is that right?

19 **A** Correct.

20 **Q** And that e-mail wasn't sent to Richard Aquino
21 either, was it?

22 **A** That's correct. Because these were the three
23 parties, Ms. Golding, that were working on trying to
24 come up with the solution of, Is it per the master
25 deed, a common area or not?

JOHN CARTER TACKETT - REDIRECT EXAMINATION

1 **Q** You were asking that question to legal counsel,
2 right?

3 **A** That's correct.

4 **Q** And I forget to ask you: With regard to the
5 association, that is a South Carolina non-profit
6 association; isn't that right?

7 **A** That's correct.

8 **Q** And as a non-profit, you just get money to take
9 care of common elements?

10 **A** That's correct. We don't make any money unless
11 we beat our budget.

12 **Q** And with respect to -- there is a master deed for
13 the rooftop; is that right?

14 **A** Master key for the stairwell? Yes. Both
15 stairwells have keys that are keyed, the same as the
16 stairwells we enter down on the basement.

17 **Q** So every unit owner has a master key to the
18 entrance to the door downstairs to the stairwell?

19 **A** Yes.

20 **Q** And to the stairwell on the tenth floor?

21 **A** That was accomplished in 2018. Everybody got
22 that key, because in the past, it was not that way.

23 MR. GRANTLAND: May we approach, Your Honor?

24 (The following is a bench conference had out of
25 the hearing of the jury.)

JOHN CARTER TACKETT - REDIRECT EXAMINATION

1 MR. GRANTLAND: This is a settlement letter.

2 MS. GOLDING: No, it is not. There is nothing
3 about settlement in that letter. We are redacting the
4 first paragraph, Your Honor. This was after the
5 mediation. This was in May of 2020, and I sent a
6 letter to both -- we moved the furniture, and he's been
7 badgering the witnesses about it. I think it is
8 important.

9 MR. GRANTLAND: If she did put this in, I can put
10 in that order.

11 MS. GOLDING: That's crazy.

12 THE COURT: That sounds fair to me.

13 MS. GOLDING: No, sir. That is highly
14 prejudicial. This is not prejudicial. He's been
15 badgering the witness, and we asked to get the
16 furniture removed.

17 THE COURT: What part exactly do you want to put
18 in there?

19 MR. GRANTLAND: All of it -- almost all of it.

20 THE COURT: Just ask the question what the letter
21 says about it, and he can say yes or no.

22 (Whereupon, the following was had in open
23 court:)

24 Q (BY MS. GOLDING) I'll give you a letter, and all
25 I'm going to ask you is with respect to number one --

JOHN CARTER TACKETT - REDIRECT EXAMINATION

1 read number one.

2 **A** Just read number one?

3 **Q** No. Wait a second, Mr. Tackett.

4 **A** You can just call me Carter. That is fine.

5 **Q** In May 2020, did you receive a letter from me,
6 that I had directed to Mr. Grantland and
7 Mr. Brittain, inquiring or seeking for removal of
8 furniture?

9 **A** Yes, the board did.

10 **Q** In this communication, to your knowledge, was the
11 plaintiff, through his lawyer, in May of 2020, asked to
12 remove the furnishings from the rooftop, and that all
13 remaining -- high-back -- and all remaining furniture
14 be at least 6 feet from the railings?

15 **A** Yes. That was to both attorneys, according to
16 this letter.

17 **Q** And to your knowledge, did either of the
18 attorneys respond to this letter request?

19 **A** No.

20 **Q** So I think we have got Exhibit 19 -- well, to
21 your knowledge, the first written request for
22 Mr. Griffin was on January of 2020 to remove
23 furnishings or place them away from the railing; is
24 that correct?

25 **A** There is dated --

JOHN CARTER TACKETT - REDIRECT EXAMINATION

1 **Q** Not that. But previously had the board asked Mr.
2 Griffin to remove --

3 **A** Yes. I believe so, but I don't know the date.

4 **Q** I have it in an exhibit, but we'll show it later.

5 And so there was a question for removal in
6 January, a request for removal in May of 2020; is that
7 correct?

8 **A** Yes.

9 **Q** And then, subsequently, you saw the letters of
10 Pat Clark in October of 2020; is that correct?

11 **A** Yes.

12 **Q** With respect to Mr. Aquino's e-mail in the fall
13 of 2018, if that e-mail had originated from any other
14 unit owner other than Mr. Aquino, how would that other
15 unit owner be treated?

16 **A** The same.

17 **Q** So did it matter to the board who inquired and
18 asked the board for direction?

19 **A** No.

20 **Q** Have you ever been sued personally?

21 **A** Nope, not until this case here.

22 MS. GOLDING: Thank you.

23 **RECROSS-EXAMINATION**

24 **BY MR. GRANTLAND:**

25 **Q** Briefly, Mr. Tackett. You were asked about a

JOHN CARTER TACKETT - RECROSS EXAMINATION

1 May 2020 letter; is that when it is dated?

2 **A** May 14th. This is a letter directed to you and
3 Tommy Brittain?

4 **Q** May 14, 2020?

5 **A** Yes, sir.

6 **Q** And you said no one responded -- or Marshall
7 didn't respond to the letter, and we didn't respond?

8 **A** Not that I know of.

9 **Q** Did you know we filed our restraining order in
10 June of 2020, so was that an adequate response?

11 **A** No. I -- I mean, I guess it is an adequate
12 response. It was your move to do that.

13 **Q** And after that restraining order was filed, that
14 is the only reason why Marshall got his furniture back?

15 **A** Correct.

16 **Q** Otherwise, you would have disposed of it?

17 **A** We think it would have been forfeited on the
18 basis that Marshall would have refused to make
19 payments. Because we, as a group, are done making
20 payments. So once you get done making payments on the
21 storage units, the storage group has the
22 responsibility -- but they let him know it is there,
23 okay. And if you don't pay me, we'll get rid of it.

24 **Q** Who let him know it was there?

25 **A** If we had gone that far, Mr. Grantland, the owner

JURY CHARGE CONFERENCE

1 of the Rent-A-Space, or whatever it was, would have let
2 him know. They would protect themselves.

3 Q Thankfully, his furniture was returned, wasn't
4 it?

5 A Yes.

6 Q And only because a judge ordered you to?

7 A Yes. You said that many times.

8 MR. GRANTLAND: Thank you.

9 MS. GOLDING: We rest our case.

10 THE COURT: Members of the jury, I'm going to
11 give you a break today and excuse you until 9:30 in the
12 morning. We'll stay and try to get this case ready for
13 you all in the morning.

14 (The jury exits at 1:10 p.m., and the
15 following is heard out of the presence of the jury.)

16 THE COURT: Let's take a 15 minute-break.

17 (A recess was taken.)

18 THE COURT: Okay.

19 MS. GOLDING: I'm going to approach this motion
20 or judgment as a matter of law, directed verdict, in a
21 different manner than I did after closing the
22 plaintiff's case.

23 The plaintiff, apparently, is seeking a ruling
24 that it has private use of the planters, elevator
25 lobby, and the terrace. I start out with the basic

JURY CHARGE CONFERENCE

1 directive of the master deed, that there are two
2 components to this Horizontal Property Regime Act. The
3 two components are: Dwellings and common elements.

4 Then the master deed goes on to state if you are
5 not a dwelling, then it is a common element. The
6 master deed does not list and identify all of the
7 common elements, but it specifically states not being a
8 dwelling means it is a common element.

9 So let's take the first common element that the
10 plaintiff is arguing about, and that is the planters,
11 the planters on the rooftop. These planters on the
12 rooftop in the master deed, Exhibit A, specifically
13 state: "The rooftop area contains planters which are
14 common." It's very clear. Planters are common.
15 Furthermore, plaintiff testified in this trial that
16 planters are common elements.

17 Then in his 2017 lawsuit, which was introduced in
18 the complaint, he alleges in there planters are common
19 elements. Then there was an agreement between
20 plaintiff and the HOA that Mr. Griffin can do some
21 activities with the planters. He testified he can
22 conduct some planting activities, dirt activities,
23 watering activities, but it's always understood, and
24 the records show, that the HOA did the planter
25 maintenance, the lining of the planting boxes, the

JURY CHARGE CONFERENCE

1 painting, and the repairs to the planters.

2 Then in 2016 there was an issue about the
3 arborvitaes. Plaintiff testified that he wanted the
4 arborvitaes. Defendant, Mr. Tony Giovino, testified
5 that they were not wanted. There was an Exhibit, 2015,
6 with the property manager which stated that the
7 arborvitaes were not -- or the plan for the arborvitaes
8 were not approved.

9 So, Your Honor, with regard to the master deed
10 and the breach of contract claim of the plaintiff, the
11 planters should not be part of that. This Court should
12 direct a ruling that the planters are not subject to
13 the breach of contract, for the planters are clearly
14 common elements.

15 The next item that was discussed by the plaintiff
16 is the elevator lobby. The master deed, again,
17 obviously elevator lobby is not a common element, but
18 then specifically in Exhibit A, the master deed
19 specifically states access to the rooftop penthouse
20 dwelling on the tenth floor is provided from an
21 elevator lobby, which is a common element, and
22 stairways to the rooftop area, which is also common.
23 So the master deed clearly states access to the rooftop
24 penthouse is provided from an elevator lobby, which is
25 common area.

JURY CHARGE CONFERENCE

1 When the plaintiff converted that lobby to his
2 own unit, took away a wall, took away a door, he
3 testified he did not get permission from the
4 association. The simple fact that plaintiff converted
5 that lobby, and supposedly placed electricity and HVAC,
6 does not mean you do away with the language in the
7 master deed. The master deed clearly states it is a
8 common area, and he cannot amend and revise the master
9 deed.

10 Your Honor, this provision is applicable to all
11 the subjects of, but the Horizontal Property Regimes
12 Act specifically states that you cannot partition or
13 change common elements. That is a specific provision
14 under the Horizontal Property Regimes Act, Section
15 27-31-70. That provision, in and of itself, should do
16 away with any contention that a common element can be
17 divided or partitioned. In fact, Section 70 says:
18 "Common elements shall not be divided."

19 Then, the plaintiff contends that the terrace
20 rooftop is a common element -- is under his control.
21 But, again, going to what the master deed says about
22 dwelling and common elements -- let's look at the
23 realty of the plans, the drawings, which are part of
24 the master deed. It's clear that the roof terrace is
25 not part of the unit. It's clear in the master deed,

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1 under Exhibit A, that the rooftop penthouse dwelling on
2 the tenth floor contains approximately 2630 square
3 feet.

4 I asked him on cross examination, Does your unit
5 encompass the roof terrace? He said, No. So that
6 square footage is all within the unit. Mr. Griffin
7 also agreed that his assessments by the homeowners
8 association are based upon the square footage within
9 his unit. The roof terrace has nothing to do with the
10 calculation of his assessment. In fact, the survey we
11 introduced -- the surveyor testified as to the square
12 footage of the dwelling unit, and the square footage of
13 the roof terrace. The roof terrace he testified was
14 2,060 square feet. So there is absolutely no way that
15 they can argue that that roof terrace is part of the
16 dwelling.

17 They say wait a minute, that roof terrace is a
18 balcony, but they are changing the plans, which they
19 cannot do. The plans clearly show the location of the
20 balconies. No balcony is located on the rooftop. The
21 balcony provision that they refer to on Exhibit A
22 relates to the dwelling -- to a dwelling. And only the
23 plans show that the dwellings that are on floors nine
24 through two have balconies.

25 Now, because a director or other people

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1 interchangeably use the word "balcony" or in the
2 minutes interchangeably being used, or the word "deck,"
3 that doesn't amend a master deed. That doesn't revise
4 the plans. The master deed and the plans are very
5 clear as to what units have balconies. And the fact is
6 that the rooftop terrace has no balcony. It has a
7 rooftop terrace -- excuse me.

8 The bottom line is with the roof terrace, all the
9 arrows point to the roof terrace being a common
10 element. In every part of the master deed, there is
11 only one reasonable conclusion, and that is it is a
12 common element.

13 Now, all of those, the planters, the lobby, the
14 terrace, all of those are the premise that there is a
15 breach of contract. I asked Mr. Griffin where in this
16 master deed did any of the defendants breach, tell me
17 that provision. The only provision they could point
18 out is in Exhibit A, second to last paragraph,
19 referring to balconies. But their use of that is
20 improper, because balconies are located on the floors
21 below the rooftop.

22 Aside from the fact, and going beyond the facts,
23 that there is no breach of contract, the second cause
24 of is for breach of contract accompanied by fraud.

25 MR. GRANTLAND: Can we address each one?

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1 THE COURT: That might be the thing to do. Go
2 ahead.

3 MR. GRANTLAND: Your Honor, you heard this
4 already. This is a unique property with a long
5 history. Regarding the planters, the history was
6 established since '97. Mr. Griffin has been paying for
7 dirt and plants in those planters, and they've allowed
8 it, and \$80,000 for landscaping for those planters. So
9 it's -- they are responsible for the roof and concrete.
10 He's been responsible for what has been inside. I
11 mean, that was established in the evidence.

12 So, you know, we know the master deed says it is
13 common, but they've allowed him since '95, '97 to plant
14 it, and so that's really a non-issue. The issue in
15 this case is is this terrace a balcony -- is it his
16 private space, or is it not?

17 You know, the same with the elevator lobby. The
18 master deed does not say "tenth floor elevator lobby."
19 It says "elevator lobby," and there is two elevator
20 lobbies, there is the first floor and tenth floor. He
21 moved the door. I mean, that is basically all he did,
22 to allow carts to get off of the elevator a little
23 easier.

24 His electricity and HVAC goes into that elevator
25 lobby. But, again, he's had that for over 20 years

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1 with no objection until just recently. So they can't
2 say it's common, but allow his electricity to be used
3 there, particularly when the master deed does not say
4 the tenth floor elevator is common. It is ambiguous,
5 and the history has been it's been his private elevator
6 lobby.

7 Again, we're fighting about the terrace. The '92
8 minutes says it should be treated as a balcony. In
9 '01, it is called the "penthouse balcony." It's been
10 his balcony from '95 to '19 until Mr. Aquino's e-mail
11 in 2018.

12 The deed says, the master deed, paragraph that we
13 think is important says "as to each dwelling," colon.
14 He's a dwelling. It is "as to each dwelling," colon.
15 So everything after that goes back to that beginning as
16 to each dwelling.

17 All balconies adjacent to each dwelling,
18 including the railing, are part of the dwelling and not
19 common, and that is how it has been treated. "Balcony,
20 terrace", they are synonymous.

21 THE COURT: Or "deck."

22 MR. GRANTLAND: Yeah. I mean, that's how it's
23 been from the beginning until they changed it. And
24 that is why -- the new rules singling him out, that is
25 why we think we have a breach of contract.

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1 THE COURT: I think there is a question of fact,
2 and I'll let them decide.

3 MR. GRANTLAND: Yes, sir.

4 MS. GOLDING: Thank you, Your Honor. With regard
5 to the breach of contract accompanied by a fraudulent
6 intent, there is no dispute of fact. A fraudulent act
7 must be dishonesty in fact, unfair dealing. A
8 fraudulent intent is not enough. Just because an
9 individual may have had an intent, it must be a
10 fraudulent act. And to be a fraudulent act, it has to
11 be shown by clear and convincing evidence. But the
12 weight of the evidence is not for this Court.

13 But where is the fraudulent act? Everything --
14 each of these individuals have done has been opened,
15 has been disclosed, has been part of the proceedings of
16 the board of directors. They communicated with an
17 attorney. They relied on the attorney and the
18 attorney's guidance. There's never been a question
19 that the attorney was involved in any fraudulent act.

20 What was done with the Turtle tile was based upon
21 the roofing company. What was done with the
22 furnishings was based upon Roger Roy. What was done
23 with the furnishings was based upon a safety
24 consultant. There is no evidence of fraudulent intent.
25 The only evidence of intent is that these board members

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1 believed what they were doing is proper and right, and
2 they sought consultation and advice, and followed that
3 consultation and advice. As a result, we ask that that
4 be dismissed. Thank you.

5 THE COURT: All right.

6 MR. GRANTLAND: There is a question of fact on
7 this. As I discussed in -- yesterday, or whenever we
8 argued this before, the dishonesty in fact is that
9 dishonest e-mail that Mr. Aquino sent. That started
10 everything. I mean, his e-mail was incorrect. He said
11 Marshall changed the keylock in the elevator. He said
12 Marshall converted the inside -- dining court to his
13 private atrium. He said Marshall was locking doors and
14 putting up signs. I mean, a lot of things that ended
15 up not being true.

16 The lawyer didn't make the rules. The lawyer
17 didn't tell them to put up security cameras. The
18 lawyer didn't tell them to make sure Marshall follows
19 the rules. The lawyer -- I specifically asked him, Did
20 you tell them to take the furniture, and he said, no.
21 That was their decision. So it all began with
22 dishonesty and dishonesty of fact with Mr. Aquino's
23 e-mail.

24 The unfair dealing, I mean, this safety
25 consultant -- I think I made it clear that they hired

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1 him after the lawsuit was filed, and they singled out
2 only Marshall. There are high-back chairs all over the
3 place violating OSHA, but only Marshall's high-back
4 chairs were a source of the commotion and due diligence
5 that we had to get rid of them. So I think that is a
6 question of fact. That is an unfair dealing because he
7 was clearly singled out, and it began when the --
8 before the lawsuit was filed, but that is why we had to
9 file.

10 THE COURT: I think we have a question of fact as
11 well.

12 MS. GOLDING: Next is the claim of conversion.
13 The second element of conversion is that it must be
14 converted for one's own use. There is no evidence that
15 there existed any conversion of furniture for one's own
16 use. Never converted to one's own use. Never claimed
17 ownership of the Turtle tile or the furniture. The
18 ownership of any item that was supposedly the subject
19 of conversion was never contested, Your Honor.
20 Therefore, I think that claim should be dismissed.

21 MR. GRANTLAND: They took it and they paid for
22 the storage of it, and then they were going to get rid
23 of it. They took it after we filed suit, number one.
24 There was no sanctity in filing the lawsuit. They took
25 the furniture after we filed suit, and then they told

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1 him they are getting rid of it unless he pays for the
2 storage and maintenance fees, storage fees. I think
3 that is, clearly, conversion.

4 They took his Turtle tile. I asked everybody,
5 Give me any evidence that you told Marshall to come get
6 it, and they said, Oh, yeah, Marshall was told to get
7 it. They had no e-mails, nothing in writing, until the
8 October 2020 letter that said we're going to destroy
9 it.

10 So at a minimum, there is a question of fact on
11 that.

12 THE COURT: And I think there are potentially two
13 different theories as to why the furniture was taken,
14 and that's been clearly laid out in this lawsuit, so
15 depending on what they believe.

16 MR. GRANTLAND: Yes, sir. They can believe it is
17 for safety reasons or for retaliation.

18 THE COURT: I deny the motion.

19 MS. GOLDING: Your Honor, with respect to the
20 breach of contract accompanied by fraudulent intent,
21 the complaint is unclear. I do not believe that is
22 directed to the individual defendants. I believe it is
23 only directed to the association, but I want to clarify
24 that, because I would also move that the individual
25 defendants should not be part of that breach of

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1 contract accompanied by fraud.

2 MR. GRANTLAND: No. It's the individuals. It
3 was Mr. Aquino's e-mail that was the dishonesty in
4 fact. And, I mean, they all ran with that, and it was
5 the -- and they ran with the safety consultant ruse to
6 take the furniture away.

7 So, you know, I would ask that the complaint be
8 amended to conform to the evidence, because there is no
9 question.

10 THE COURT: I think the breach of contract and
11 the breach of contract with fraudulent intent is with
12 the HOA only, not these individuals. They didn't
13 contract to do anything. Whatever breach there was was
14 between the plaintiff and the HOA. In my opinion, the
15 only thing that applies to these individuals is the
16 civil conspiracy claim.

17 MR. GRANTLAND: Again, if breach of contract with
18 fraudulent intent is based on unfair dealings and
19 dishonesty of fact --

20 THE COURT: Well, the corporation could breach it
21 with fraudulent intent.

22 MR. GRANTLAND: And there is certainly evidence
23 of that.

24 THE COURT: Right. Possibly, yeah. But not
25 subject to them. My verdict form I think indicates

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1 that.

2 MR. GRANTLAND: I guess, you know, they signed on
3 individually and as board members.

4 THE COURT: No. They signed on as board members
5 of the HOA.

6 MR. GRANTLAND: I understand.

7 MS. GOLDING: Thank you, Your Honor.

8 Going to civil conspiracy. To me, that is the
9 only claim against the individuals.

10 THE COURT: I agree.

11 MS. GOLDING: With respect to that, under the law
12 of South Carolina, the four defendants must -- each of
13 them must have committed an unlawful act or a lawful
14 act by unlawful means.

15 The testimony and evidence is that these
16 defendants acted under the scope of being a board
17 director. There is no evidence that any of these four
18 directors committed an unlawful act. There is no
19 evidence that any of these four directors committed an
20 act in an unlawful manner -- none.

21 Furthermore, Your Honor, there is no special
22 damages --

23 THE COURT: You don't have to have special
24 damages anymore.

25 MS. GOLDING: I know. Okay. Thank you, your

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1 Honor.

2 But the bottom line is that the unlawful act has
3 to be committed by the individual. None of them
4 committed an unlawful act.

5 So the next thing you look at is did they commit
6 a lawful act in an unlawful manner? No. No evidence
7 to that effect. Therefore, I request the Court to
8 dismiss the civil conspiracy against each of the
9 individual defendants.

10 MR. GRANTLAND: Your Honor, they clearly met
11 behind his back, and they clearly decided -- I agree,
12 they can meet lawfully, but they collectively agreed to
13 take his furniture, even though we filed a lawsuit.
14 We're taking his furniture, take out his plants. We
15 don't care about the past. You know, 26 years of
16 private use, we don't care. We made a decision. We're
17 taking that away from him. So they lawfully met, but
18 their actions ended up being unlawful, and that is why
19 we filed a restraining order.

20 THE COURT: Or what was the intent of their
21 actions? Why did they act the way they did? I don't
22 know, but it could be for nefarious purposes, and I
23 think there is a question of fact.

24 MR. GRANTLAND: There is certainly a question of
25 fact.

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1 MS. GOLDING: Your Honor, there is also the claim
2 that the Court permitted for acquiescence. The
3 evidence in this case that they are going to rely on
4 for acquiescence is only evidence related to estoppel.
5 That is what they are saying. We are estopped by
6 saying these are common elements because of what we let
7 happen. This is not permissible in a plaintiff's case.
8 Acquiesce does not relate to the facts in this case and
9 should not be permitted to proceed forward.

10 MR. GRANTLAND: Your Honor, you already ruled on
11 this.

12 THE COURT: But I'm taking another look at it.

13 MR. GRANTLAND: Yes, sir. But the case law is
14 very clear that acquiescence can be shown by the way
15 the parties did not act. For instance, evidence that a
16 party made no objection to the use of land can be used
17 to show the recognition and acceptance of the property
18 rights of the other party. That is Knox versus Bogan,
19 and that's what we have here, Your Honor.

20 From '95 to 2018, boards over the years, the HOA
21 over the years acknowledged that this -- assumed that
22 this terrace belonged to Marshall. You heard from the
23 property manager. You heard from other owners. You
24 heard from each of these folks. They didn't question
25 anything until 2018. That is a long -- 26 years, Your

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1 Honor, is a long time, and that is why we believe that
2 acquiescence -- and it is a separate legal doctrine. I
3 mean, it's in the case law as acquiescence, and I cited
4 it in our jury charges. So I believe it is
5 appropriate.

6 THE COURT: All right.

7 (A brief pause in the proceedings.)

8 THE COURT: I'm going to deny that motion.

9 MS. GOLDING: Your Honor, with respect to the
10 immunity of the individual defendants, the statute
11 states that they have to act wantonly, willingly. I
12 don't think any of them acted that way in any respect,
13 and there is no evidence that they acted in that
14 respect. Those intentional acts of wanton, willful
15 simply does not exist.

16 MR. GRANTLAND: The only way his furniture is
17 removed is by willful acts by them. And, again, they
18 say they were acting in the best interest of Marshall.
19 We say they were retaliating.

20 I think there is evidence of willful conduct,
21 beginning with Mr. Aquino's e-mail where he cited all
22 of these untrue statements about Marshall and then
23 building from there saying they already ruled. Before
24 a trial, they ruled it as common, and we're going to
25 act that way, and, Marshall, we don't care about your

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1 renters. We don't care about your privacy. I mean,
2 that is why we sued them.

3 THE COURT: I think we have a question of fact.

4 MS. GOLDING: May I state, Your Honor, that the
5 definition of "willfulness and wantonness" is defined
6 as: "The intentional doing of an unlawful act all
7 while knowing it is an unlawful act."

8 They all -- the individual defendants relied on
9 an attorney, relied on a safety expert, relied on a
10 roofing contractor. None of that is -- they did not
11 commit any unlawful acts, and that is the purpose for
12 this immunity, Your Honor. Because if you expose board
13 members to this type of liability, you are never going
14 to get people to act. You are never going to get
15 people to serve.

16 THE COURT: I think it is a jury question,
17 clearly. I think it is a jury question.

18 MS. GOLDING: Yes, sir.

19 Finally, it goes to the damages. The damages
20 that were testified by Mr. Beckham. The damages that
21 he testified is \$220,000 loss if it's not a common
22 element. It is a -- Your Honor, that is an impossible
23 -- that is impossible to say there is any damage. If
24 the jury finds it is a common element, it is a common
25 element. It is not his. It has never been his. It is

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1 a common element under the master deed, and that is how
2 he purchased it. If the jury finds it is not a common
3 element then --

4 THE COURT: I think we have a jury question. I
5 can tell you, I would not want it if it were common,
6 and I would want it if it were not common, clearly.

7 MS. GOLDING: Yes, sir.

8 THE COURT: Anything from you?

9 MR. GRANTLAND: No. Other than just to renew my
10 motion of adverse possession, and if I can renew that.
11 I won't reargue it.

12 THE COURT: You can.

13 MR. GRANTLAND: I think the Court said that we
14 didn't meet the requirement of "hostility"?

15 THE COURT: That's right. And I think that was
16 meant prior to the lawsuit, years and years time prior.
17 Everyone gets hostile when they start getting sued.

18 MR. GRANTLAND: My only point to that is this
19 began, as you may remember, with water coming down on
20 Mr. Aquino. He said, I'm cutting your water off. He
21 said, I'm calling the law if you do. That is pretty
22 hostile.

23 THE COURT: I don't think that is enough.

24 MR. GRANTLAND: I just wanted to renew my motion.

25 THE COURT: All right. Do you want to take a

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1 look at the charge? We're still working on the
2 acquiesce, but you can look at the verdict form.

3 MS. GOLDING: You have rooftop terrace, you have
4 terrace, lobby?

5 THE COURT: I mean, you can add it if you want to
6 clarify some issues.

7 MR. GRANTLAND: I mean....

8 THE COURT: That may help to clarify some issues.
9 We'll add that in. What all do you want?

10 MS. GOLDING: Planters and the elevator lobby.

11 THE COURT: Anything else?

12 MR. GRANTLAND: Really, I don't think we're
13 necessarily fighting about the planters. He's put dirt
14 in them.

15 THE COURT: It is a lawsuit that -- we talked a
16 whole lot about the planters and the elevator lobby.

17 MS. GOLDING: Right. He testified they were
18 common, so I couldn't understand.

19 MR. GRANTLAND: Right. Right. The fight is
20 about the terrace and the elevator lobby, right,
21 Marshall?

22 MR. GRIFFIN: Yes. Privacy is the main thing.

23 MS. GOLDING: If the fight is not about the
24 planters -- I mean, he testified they were common
25 elements, so we....

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1 MR. GRANTLAND: Right. But he's been -- I don't
2 think anyone is disputing he's been paying for the dirt
3 and the plants.

4 THE COURT: Do you want to consider that part of
5 the common area or not?

6 MS. GOLDING: Considering the ramifications of
7 the plaintiff's verdict, the ramifications is that he
8 will be totally responsible.

9 MR. GRANTLAND: For the planters?

10 MS. GOLDING: Yeah.

11 MR. GRANTLAND: All he wants is what he had
12 before the privacy of the --

13 THE COURT: We'll add planters and elevator
14 lobby, just to make it smart. That jury is smart.
15 They won't get it wrong.

16 Look at the rest of it.

17 MR. GRANTLAND: My biggest concern is having
18 inconsistent --

19 THE COURT: How is it inconsistent?

20 MR. GRANTLAND: No, it isn't. But if you put too
21 much in a verdict form --

22 THE COURT: I know, but we have to have enough --
23 for example, if they find it is not a common area,
24 damages can't be but so high, because that is where the
25 bulk of the damages come from. And I need to know

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1 about each of the individuals, because it takes two or
2 more.

3 LAW CLERK: Just real quick. The complaint has
4 Mr. Giovino's name as A-N-O.

5 MR. GRANTLAND: Oh, don't listen to my complaint
6 (laughing).

7 LAW CLERK: I think I spelled it right in the
8 verdict form, but I wanted to be sure.

9 THE COURT: G-I-O-V-I-N-O?

10 LAW CLERK: Right.

11 THE COURT: If we find out that the spelling on
12 your complaint is not right, you need to amend the
13 complaint and get the right name.

14 MR. GRANTLAND: Right.

15 THE CLERK: In the complaint it is --

16 MS. GOLDING: G-I-O-V-A-N-O.

17 THE COURT: G-I-O-V-I-N-O.

18 Are you amending your complaint then?

19 MR. GRANTLAND: I'm amending my complaint.

20 MS. GOLDING: I'll agree to that one, Your Honor.

21 I think we were wanting to seek an inclusion of
22 the immunity statute to have that as a charge -- not a
23 charge, I'm sorry -- to have it as a finding.

24 MS. VOEGEL: Just a question. Did each
25 individual defendant act willfully or wantonly?

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1 THE COURT: On the verdict form?

2 MS. VOEGEL: Yes, sir. I believe I saw that in
3 the jury verdict.

4 MS. GOLDING: Basically, if you find they did
5 not, you know, go into -- yeah, because I think.

6 THE COURT: Write it on No. 3 like you want it.

7 MR. KREBS: I would argue that if you've already
8 charged it, and then they checked the box that they did
9 commit civil conspiracy, then it is implied.

10 THE COURT: It is. It's right either way, but it
11 ain't going to make a difference.

12 MR. GRANTLAND: We just think --

13 THE COURT: They don't listen to me anyway. By
14 the time they have heard from you all, they are done.
15 They don't listen to me. They've already listened to
16 you all.

17 MS. VOEGEL: We discussed adding certain
18 provisions of the words on the property regime act to
19 the breach of contract charge for interpretation. The
20 master deed references the words from the Horizontal
21 Property Regime. I can give you law that says it is
22 incorporated and part of the document, if you need it.
23 And so we thought we would include specifically
24 definitions that are applicable. The definition in the
25 statute for "apartment," "condominium ownership,"

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1 "general common elements."

2 THE COURT: All of that is in evidence, isn't it.

3 MS. GOLDING: Not the Horizontal Property Regime
4 Act.

5 MS. VOEGEL: And Subsection 70 and 80, those have
6 to do with the bar on bringing a cause of action --
7 that may not be appropriate for the jury, but
8 Subsection 80: "Each co-owner may use the elements
9 held in common in accordance with the purpose for which
10 they are intended without hindering or encroaching upon
11 lawful rights of others."

12 MR. KREBS: Our argument would be the master deed
13 just incorporates the entire property regime act, and
14 if -- unless we're going to print off the entire title
15 and read it into evidence, then the defendant is
16 picking provisions that they believe are helpful to
17 their case and charging them to the jury rather than
18 referencing the entire thing that's incorporated into
19 the document.

20 MS. GOLDING: We're picking the provisions
21 applicable. If he wants provisions in there that he
22 thinks we're intentionally leaving out, that is fine.
23 But we definitely want the Horizontal Property Regime
24 Act to be charged, the applicable portions to be
25 charged.

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1 MS. VOEGEL: I will say the master deed towards
2 the end has a reference, a definition section, that for
3 common elements the definition incorporates the
4 Horizontal Property Regime Act, and specifically
5 whatever is listed as general common elements. Now, it
6 doesn't cite the code section, but there is a specific
7 reference to that provision.

8 THE COURT: I'm okay with it. I don't want to
9 read all of that particularly, but....

10 MR. GRANTLAND: Just note our objection to it.

11 THE COURT: Anything specific you want that you
12 think is applicable? And don't just add something to
13 add it, I mean have a reason for adding it in there.

14 MR. GRANTLAND: What I don't like is if you find
15 the roof terrace is a common element, you just find as
16 to the defendants as to all charges. I mean, that
17 is --

18 MS. VOEGEL: That is my language. That is not
19 what I'm asking you to do, just the provisions.

20 MR. KREBS: We're just adding in the horizontal
21 property --

22 MS. VOEGEL: That's right, just to the specific
23 provisions and subsections.

24 THE COURT: Highlight just the sections you want
25 me to read.

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1 MS. VOEGEL: There is also language we had
2 included in the conversion claim, in the damages
3 portion.

4 When property is innocently converted by mistake
5 or under a bona fide belief or right, the measure of
6 the damages is the value of the property at the time
7 and place of conversion, so the owner wouldn't be
8 entitled to additional improvement, so on and so forth.

9 So I can let you read that if you would like, but
10 this portion specifically about when the property is
11 innocently converted by mistake or a bona fide belief,
12 that is something we're fighting about.

13 MR. KREBS: I don't believe we are fighting about
14 whether or not there was a mistake that they thought it
15 was their property. They admitted that they took his
16 property, they knew it was his property, knew he didn't
17 consent, and knew it was someone else's property.

18 THE COURT: Read what it is you want to say.

19 MS. VOEGEL: I can take out the word "mistake."

20 "When property is innocently converted under a
21 bona fide belief or right, the measure of damages is
22 the value of the property at the time and place of
23 conversion."

24 MR. KREBS: I believe that is referring to a
25 belief that you have a right to the property, and they

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1 were saying it was a common element, which is why they
2 removed it. But no one alleged that they had a right
3 to his property and to keep it. They just said he
4 couldn't put it out there because it was a common
5 element. I don't think we heard from anyone saying
6 that they had a right to hold on to the property or
7 convert the property.

8 MS. VOEGEL: I think they did, though. If it's a
9 common element, they all testified they're responsible
10 for maintaining and making sure it is safe, and so they
11 are responsible for whatever is placed in the common
12 elements.

13 MR. KREBS: They testified they had a right to
14 remove the property from the common element, but they
15 didn't testify that they have a right to keep that
16 property after removing it.

17 Just because you leave your furniture out on the
18 deck doesn't mean it becomes the HOA's in perpetuity.
19 It means they removed it from the deck of a swimming
20 pool. Even if they are correct that it is a common
21 element, they can't just take his furniture and not
22 give it back to him.

23 MS. VOEGEL: This would only be related to the
24 conversion claim. So this is when property is
25 innocently converted, then that is what we're talking

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1 about. So conversion --

2 THE COURT: What about "if property is innocently
3 converted"? "If" instead of "when."

4 MS. VOEGEL: Sure.

5 MR. KREBS: If we change "if," I guess. But I
6 don't -- I guess my only objection is I don't think any
7 of them testified it was an innocent mistake.

8 THE COURT: They said they relied on a lawyer and
9 thought it was the thing to do. I heard the word "due
10 diligence" 16,000 times. I was dreaming about due
11 diligence.

12 MS. VOEGEL: It is a question of fact for the
13 jury, right? So I can highlight that as well, Judge.

14 We have one more, it is just a duty to mitigate.

15 THE COURT: Where do you want that placed in the
16 charge? What is the appropriate spot in conversion?

17 MR. KREBS: Is it specifically related to the
18 conversion claim?

19 MS. VOEGEL: Uh-huh. Yep. That specific charge,
20 because it has to do with -- if they find belief, then
21 how the value of the damages are calculated.

22 THE COURT: Where do you want that one? After
23 breach of contract after or before?

24 MS. VOEGEL: After.

25 MR. KREBS: Your Honor, we argue against the

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1 inclusion of the duty to mitigate charge because we
2 don't believe he had an opportunity to mitigate his
3 damages. I mean, there wasn't anything he could do.

4 THE COURT: It's just a charge. I mean, you can
5 argue all of that stuff.

6 MR. KREBS: Okay. I have to do my best.

7 THE COURT: Oh, you're good.

8 So we are good to go?

9 MS. VOEGEL: I think so.

10 LAW CLERK: Can they check the verdict form one
11 last time?

12 MR. GRANTLAND: Will you e-mail us the finished
13 charges?

14 THE COURT: Yes. They are all jumbled up.

15 LAW CLERK: I can scan them.

16 MR. GRANTLAND: If we can look at them before the
17 morning.

18 THE COURT: Where do you want to put failure to
19 mitigate? After actual damages?

20 MS. VOEGEL: Yes, sir.

21 LAW CLERK: You do have a duty to mitigate
22 charge.

23 MR. GRANTLAND: I thought there was one in there.

24 THE COURT: I think we're good. Okay. See you
25 tomorrow.