THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Thomas W. McGee III, Circuit Court Judge

Case No. 2021-cp-10-01215
Appellant Case No. 2024-001813

RECEIVED
Oct 21 2025
SC Court of Appeals

Mansfield at Park West, Inc. ……Respondent,

v.

D.R. Horton, Inc. ……Appellant.

RECORD ON APPEAL
VOLUME III

John T. Crawford, Jr., Esq., SC Bar #69682
Thomas E. Dudley, III, Esq., SC Bar #66154
F. James Warmouth, Esq., SC Bar 101072
Kenison Dudley & Crawford, LLC
325 W Mcbee Avenue
Suite 301
Greenville, SC 29601
Office: (864) 242-4899
crawford@conlaw.com
dudley@conlaw.com
warmouth@conlaw.com

Carl F. Muller, Esq., SC Bar #4131
Carl F. Muller, Attorney at Law, P.A.
607 Pendleton Streeet
Suite 201
Greenville, SC 29601
Office: (864) 991-8904
carl@carlmullerlaw.com

Attorneys for Appellant

John T. Chakeris, Esq., SC Bar #7060
Alicia Denise Pullano, Esq., SC Bar #102801
Chakeris Law Firm
234 Seven Farms Drive
Suite 128
Charleston, SC 29492
Office: (843) 853-5678
john@chakerislawfirm.com
alicia@chakerislawfirm.com

John Phillips Linton, Jr., Esq., SC Bar #79130
Jennifer Sue Ivey, Esq., SC Bar #102533
Walker Gressette & Linton, LLC
PO Box 22167
Charleston, SC 29413
Office: (843) 727-2252
linton@wglfirm.com
ivey@wglfirm.com

W. Jefferson Leath, Jr. SC Bar #3244
Jefferson Leath Esquire, LLC
106 Tradd Street
Charleston, SC 29401
(843) 709-8653
jeff@leathesq.com

Stephen P. Hughes
Howell, Gibson and Hughes
P.O. Box 40
Beaufort, SC 29901
sphughes@hghpa.com

Attorneys for Respondent

RECORD ON APPEAL

Appellant D.R. Horton – Respondent Mansfield at Park West

Appeal 2024-001813

VOLUME I

ORDERS

1. Consent Order to Arbitrate filed July 28, 2021……...1

2. Order Denying D.R. Horton's Motion to Clarify entered September 26, 2023 …...4

3. Order Denying Motion to Vacate Arbitration Award filed September 4, 2024…….5

4. Order Denying Motion for Reconsideration filed October 3, 2024……..15

JUDGMENTS

5. Arbitration Award filed August 22, 2023……18

6. Judgment entered September 5, 2024……23

PLEADINGS

7. Plaintiff's Complaint and Arbitration Summons filed March 12, 2021…….27

8. Plaintiff's Motion to Compel Arbitration filed March 12, 2021……..37

9. D.R. Horton's Answer to Plaintiff's Complaint (Jury Trial Demanded), filed May 18, 2021……..39

10. Memorandum in Opposition to Defendant's Motion to Dismiss filed July 9, 2021…….48

11. Memorandum in Opposition to Plaintiff's Motion to Compel Arbitration and in Support of D.R. Horton, Inc.'s Motion to Dismiss filed July 15, 2021…….54

    A. Exhibit A Declaration of Covenants Conditions and Restrictions for Mansfield at Park West, selected pages……60
    B. Exhibit B Second Amendment to Declaration of Covenants Conditions and Restrictions for Mansfield at Park West (same as Exhibit 18A) …..70

C. Exhibit C Ownership Record……73
D. Exhibit D Letter……75

12. D.R. Horton's Amended Answer and Third-Party Complaint and Summons, filed June 10, 2022……..77

13. D.R. Horton's Motion for Summary Judgment and filed August 30, 2022……..97

14. D. R. Horton's Memorandum in Support of its Motion for Summary Judgment filed August 30, 2022 with attached Exhibits (Same as 18G)……..102

A. Exhibit A Permit Dates……117
B. Exhibit B Certificates of Occupancy (Same as Exhibit 18O)……118
C. Exhibit C Declaration of Covenants Conditions and Restrictions for Mansfield at Park West (Same as Exhibit 18B)……..141
D. Exhibit D Second Amendment to Declaration of Covenants Conditions and Restrictions for Mansfield at Park West (same as Exhibit 18A)……...208

15. D.R. Horton's Reply Brief in Support of its Motion for Summary Judgment filed September 22, 2022 (Same as 18H)……..211

A. Exhibit A (30)(b)(6) Deposition (same as Exhibit 18P)……221
B. Exhibit B Photograph ……...232
C. Exhibit C Order Granting Summary Judgment on Plaintiff's Claims for Negligence and Breach of Warranty……233
D. Exhibit D Deposition of Russell Todd Mease……243

16. D.R. Horton's Prehearing Brief filed July 2023 (same as Exhibit 18I)……558

17. D.R. Horton's Motion for Clarification dated September 11, 2023, filed November 20, 2023 (Same as Exhibit 18M)……..657

18. D.R. Horton's Motion to Vacate Arbitral Award dated November 20, 2023...265

A. Exhibit A Second Amendment to Declaration of Covenants Conditions and Restrictions for Mansfield at Park West and emails...299
B. Exhibit B Declaration of Covenants Conditions and Restrictions for Mansfield at Park West……...307
B2. Exhibit B2 Declaration of Covenants, Conditions, and Restrictions for Mansfield at Park West, continued……357
C. Exhibit C First Amendment to Declaration of Covenants, Conditions, and Restrictions for Mansfield at Park West……..374
D. Exhibit D Consent Order for Arbitration……382
E. Exhibit E Arbitration Award……...385

F. Exhibit F D.R. Horton's Notice of Motion and Motion for Summary Judgment……390
G. Exhibit G D.R. Horton's Memorandum in Support of Its Motion for Summary Judgment with attached exhibits…….395

VOLUME II

G. Exhibit G D.R. Horton's Memorandum in Support of Its Motion for Summary Judgment with attached exhibits, Continued……..501
H. Exhibit H D.R. Horton's Reply Brief in Support of Its Motion for Summary Judgment with attached exhibits……504
I. Exhibit I D. R. Horton's Pre-Hearing Brief with attached exhibits…558
J. Exhibit J D.R. Horton's Proposed Order……632
K. Exhibit K Visual Consulting Preliminary Estimate……653
L. Exhibit L Ratzlaff Construction Estimate……...655
M. Exhibit M Motion to Clarify……...657
M2. Exhibit M2 Letter Filing Exhibits with Motion to Vacate……..660
N. Exhibit N Order Denying D.R. Horton's Motion to Clarify……661
O. Exhibit O Certificates of Occupancy……..662
P. Exhibit P 30(b)(6) Deposition of Mansfield at Park West – Michael Frappier ……..707
Q. Exhibit Q Contractor Agreements……..718

VOLUME III

R. Exhibit R Owner Surveys……...827
S. Exhibit S International Residential Code……828
T. Exhibit T Fastening Tips for HardiePlank……..834
T2. Exhibit T2 Construction Documents……..836
T3. Exhibit T3 Construction Documents ……873
U. Exhibit U – None……...N/A
V. Exhibit V Applied Building Sciences……886
V1. Exhibit V1 Letter Filing Exhibits with Motion to Vacate……920
V2 Exhibit V2 Installation manual……...921
W. Exhibit W Nichiha Architectural Wall Panels 15-year Limited Warranty……922
X. Exhibit X Arbitration Transcript July 26, 2023 selected pages……..923
Y. Exhibit Y Arbitration Transcript July 31, 2023 selected pages……..943

19. Memorandum in Opposition to Defendant's Motion to Vacate filed by Plaintiff Mansfield at Park West, Inc., dated July 3, 2024……997

A. Exhibit A Consent Order for Arbitration (Same as No. 1)……1019
B. Exhibit B Arbitration Award (Same as No. 5)……..1023
C. Exhibit C Second Amendment to Declaration of Covenants, Conditions

and Restrictions for Mansfield at Park West (Same as Exhibit 18A)…… 1029
D. Exhibit D Emails, July 3, 2024……1033
E. Exhibit E Plaintiff's Proposed Award……...1038
F. Exhibit F D.R. Horton Short Form Proposed Award 2……1041

20. D.R. Horton, Inc., Motion for Reconsideration filed September 16, 2024……1045

A. Exhibit A Affidavit of John Crawford Jr……..1055

21. Notice of Appeal filed October 24, 2024……..1057

A. Proof of Service, filed October 24, 2024…… 1061
B. Order, filed October 3, 2024……1064
C. Order, filed September 4, 2024……1067
D. Order, filed September 5, 2024……1077

TRANSCRIPTS

22. (30)(b)(6) Deposition of Plaintiff, selected pages (same as Exhibit 18P)……1082

23. Arbitration Transcript July 26, 2023, selected pages (same as Exhibit 18X)……1093

24. Arbitration Transcript July 31, 2023, selected pages (same as Exhibit 18Y)…1113

OTHER MATERIALS OR DOCUMENTS

25. D.R. Horton, Inc., proposed awards (same as Exhibit 18J and Exhibit 19F)…… 632 & 1041

26. Certificate of Counsel……..1167

EXHIBIT R

Round 1 of Surveys					
Owners Last Name	**Address**	**Date Purchased**	**1. Exterior Repairs & Maintence**	**4. Identify Insurance Claim**	**Attatchments**
McLeod, Janet	3021 Park West Blvd	October 2010	Added additional screws to front gate	None	none
Beutel, Mark & Swett, Lauren	3029 Park West Blvd	April 7,2022	none	none	Inspection report
Pyajas, Jim & Laurie	3001 Park West Blvd	December 2019	none	None	Inspection Report
Whanger, David & Sarah	3061 Park West	October 2020	Replaced exterior exhaust vent covers 2022	none	Inspection report
Scott, Tracie	3033 Park West Blvd	July 2021	none	none	Inspection agreement
Raudabaugh, Peter	3057 Park West Blvd	August 13, 2021	A- Soffit repair before closing B- 8/12/2021 per invoice C-East Shore construction D- Copy Attatched	none	Inspection Report
Gair, Robert & Mary	3109 Park West Blvd	November 2010	none	none	Building Inspection Report
Suuir, Andrew N.	3053 Park West Blvd	October 25, 2019	none	None	none
Frappier, Michael	3041 Park West Blvd	August 2019	Roof but maintaince- invoice attatched	none	invoice
Campbell, Peter	3093 Park West Blvd	August 12, 2019	none	none	none
Round 2 of Surveys					
McCane, Gina	3009 Park West Blvd	October 2019	none	none	Inspection Report
Tucker, Holli	3005 Park West Blvd	June 18, 2021	Gate boards replaced & gate rehung - 2022	none	Inspection report
Swain, Nicole	3017 Park West Blvd	Febuary 28, 2020	none	none	none
Martin, Clint	3081 Park West Blvd	2017	none	none	none
Jervey, Hardd as rep for Bullard, Johnnie G.	3013 Park West Blvd	March 1, 2010	none (as known to rep)	none	Special stipulations addendum
Malone, Victoria S.	3085 Park West Blvd	May 29, 2015	none	none	none
McGinnis, Catherine C.	3065 Park West Blvd	November 2017	replaced exterior exhaust vent covers - 2010.	none	invoice
Nastro, Roseann	3089 Park West Blvd	2014	none	none	Residential Property Disclosure Statement
Liu, Fu	3101 Park West Blvd	2010	none	none	none
Ceaxum, Lashay	3105 Park West Blvd	March 16, 2022	roof replacement	A- 07/05/2022 B- QBE Company- Praetonian Insurance Co. C- water in upstairs electrical outlet C- adjuster said hail damage D- insurance company said 30%	Insurance adjuster report
Bemmarito, Michael	3073 Park West Blvd	August 30, 2022	none	none	Residential Property Disclosure Statement
Round 3 of Surveys					
Lewis, Gregory & Sarah	3045 Park West Blvd	June 14, 2019	none	none	none
Kaltsounis, Art	3069 Park West Blvd	August 2013	drywall damage, roof leg- 2019	none	invoice not attatched
West, Chris	3077 Park West Blvd	August 2021	replaced a few fence boards and posts	none	invoice not attatched
Pizzi, Nicole	3097 Park West Blvd	October 2010	none	none	none
Rothernel, Sarah Jane	3037 Park West Blvd	2010	fence post repair	none	none
Savage, Russell & Joanna	3049 Park West Blvd	November 2014	none	none	none
McGinnis, Corey & Brooke	3025 Park West Blvd	September 2020	french drain- november 2021 -by owners	none	none

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

EXHIBIT S

DEFENDANT'S EXHIBIT
10
7-31-2023
PENGAD 800-631-6989

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

INTERNATIONAL RESIDENTIAL CODE®

FOR ONE- AND TWO-FAMILY DWELLINGS

CODE AND COMMENTARY

VOLUME I

2006

ICC
INTERNATIONAL CODE COUNCIL®

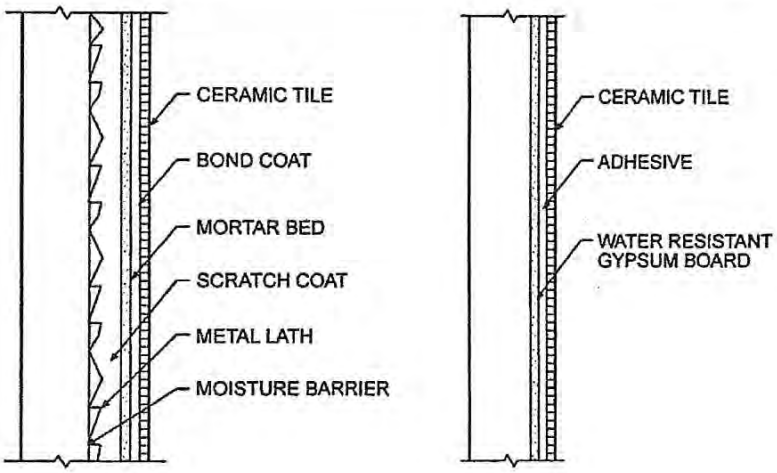


Figure R702.4.1
INTERIOR WALL TILE INSTALLATION

R702.5 Other finishes. Wood veneer paneling and hardboard paneling shall be placed on wood or cold-formed steel framing spaced not more than 16 inches (406 mm) on center. Wood veneer and hard board paneling less than $^1/_4$ inch (6 mm) nominal thickness shall not have less than a $^3/_8$-inch (10 mm) gypsum board backer. Wood veneer paneling not less than $^1/_4$-inch (6 mm) nominal thickness shall conform to ANSI/HPVA HP-1. Hardboard paneling shall conform to ANSI/AHA A135.5.

❖ This section contains requirements for wood veneer and hardboard paneling that are not addressed in previous sections. Modular home construction will generally use hardboard paneling applied directly to the studs. For this reason, there are specific provisions for wood veneer and hardboard siding. Wall finishes with adequate thickness will resist excessive bending and possible failure.

R702.6 Wood shakes and shingles. Wood shakes and shingles shall conform to CSSB *Grading Rules for Wood Shakes and Shingles* and shall be permitted to be installed directly to the studs with maximum 24 inches (610 mm) on-center spacing.

❖ Complying wood shakes and wood shingles may be attached directly to the studs in an interior application provided the studs are spaced at no more than 24 inches (610 mm) on center. The shakes and shingles must conform to the appropriate grading rules set forth by the Cedar Shake and Shingle Bureau.

R702.6.1 Attachment. Nails, staples or glue are permitted for attaching shakes or shingles to the wall, and attachment of the shakes or shingles directly to the surface shall be permitted provided the fasteners are appropriate for the type of wall surface material. When nails or staples are used, two fasteners shall be provided and shall be placed so that they are covered by the course above.

❖ Because there is no concern for weather protection, the shakes or shingles may be attached directly to the surface with nails, staples or glue. At least two fasteners are required per shake or shingle where nails or staples are used, located so that the course above will cover the fasteners.

R702.6.2 Furring strips. Where furring strips are used, they shall be 1 inch by 2 inches or 1 inch by 3 inches (25 mm by 51 mm or 25 mm by 76 mm), spaced a distance on center equal to the desired exposure, and shall be attached to the wall by nailing through other wall material into the studs.

❖ In addition to direct attachment of wood shakes and shingles to studs or a wall surface, the use of furring strips is permitted under specific conditions. Furring strips should be either 1 inch by 2 inches (25.4 mm by 51 mm) or 1 inch by 3 inches (25.4 mm by 76 mm). The spacing of the strips is determined by the desired exposure of the shake or shingle, attached by nailing through other wall surface materials into the studs.

SECTION R703
EXTERIOR COVERING

R703.1 General. Exterior walls shall provide the building with a weather-resistant exterior wall envelope. The exterior wall envelope shall include flashing as described in Section R703.8. The exterior wall envelope shall be designed and constructed in a manner that prevents the accumulation of water within the wall assembly by providing a water-resistant barrier behind the exterior veneer as required by Section R703.2. and a means of draining water that enters the assembly to the exterior. Protection against condensation in the exterior wall assembly shall be provided in accordance with Chapter 11 of this code.

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Exceptions:

1. A weather-resistant exterior wall envelope shall not be required over concrete or masonry walls designed in accordance with Chapter 6 and flashed according to Section R703.7 or R703.8.
2. Compliance with the requirements for a means of drainage, and the requirements of Section R703.2 and Section R703.8, shall not be required for an exterior wall envelope that has been demonstrated to resist wind-driven rain through testing of the exterior wall envelope, including joints, penetrations and intersections with dissimilar materials, in accordance with ASTM E 331 under the following conditions:
   2.1. Exterior wall envelope test assemblies shall include at least one opening, one control joint, one wall/eave interface and one wall sill. All tested openings and penetrations shall be representative of the intended end-use configuration.
   2.2. Exterior wall envelope test assemblies shall be at least 4 feet (1219 mm) by 8 feet (2438 mm) in size.
   2.3. Exterior wall assemblies shall be tested at a minimum differential pressure of 6.24 pounds per square foot (299 Pa).
   2.4. Exterior wall envelope assemblies shall be subjected to a minimum test exposure duration of 2 hours.

The exterior wall envelope design shall be considered to resist wind-driven rain where the results of testing indicate that water did not penetrate: control joints in the exterior wall envelope; joints at the perimeter of openings penetration; or intersections of terminations with dissimilar materials.

❖ Exterior walls of buildings must be protected against damage caused by precipitation, wind and other weather conditions. The main text of this section prescribes three basic components of a weather-resistive exterior wall assembly: a water-resistive barrier installed over the building substrate; flashings at penetrations and terminations of the exterior wall finish and a means of draining moisture that may penetrate behind the finish back to the exterior. Section R703.2 is referenced for the requirements of the water-resistive barrier and Section R703.8 is referenced for requirements for the flashings (see commentary, Sections R703.2 and R703.8). This section does not, however, contain a prescriptive requirement for the means of drainage to be provided. The method to provide the means of drainage is a performance criterion and must be evaluated based on the ability to allow moisture that may penetrate behind the exterior wall covering to drain back to the exterior. This may be as complicated as a rain-screen pressure-equalized type of exterior assembly or as simple as providing discontinuities or gaps between the surface of the substrate and the back side of the finish, such as through the use of noncorrodible furring.

For common types of construction, such as vinyl siding or brick veneer, the typical practice of installing building paper and weeps will comply with the intent of this section. Discontinuities between the exterior covering and substrate must be such that they encourage the flow of moisture via gravity or capillary action to a location where the water may exit, such as at flashings and weeps. The absence of a means of drainage may result in the accumulation of moisture that becomes trapped between the finish and the substrate. Over time, extended exposure to moisture may contribute to the degradation of the finish, building substrate or even the structural elements of the exterior wall.

Exception 1 states that where the exterior wall envelope is designed and constructed of concrete or masonry materials in accordance with the requirements of Chapter 6 and Sections R703.7 or R703.8, respectively, the water-resistive barrier and means of drainage may be omitted. This is because the penetration of moisture behind the exterior wall finish is not detrimental to concrete and masonry substrates.

Exception 2 permits the use of exterior wall finishes that do not meet the prescriptive requirements of Sections R703.2 and R703.8, provided that the system, with penetration details, is tested for wind-driven rain resistance. The test specimen(s) must incorporate those penetration and termination details intended for use, and the system will be limited to use with those details that successfully pass the test. The minimum panel size specified represents that which is commonly used in testing to ASTM E 331; however, this does not preclude the testing of larger panels if desired. The modifications to the test pressure differential and test duration are intended to represent more closely conditions that will be encountered in service. The pass/fail criterion is based on the visual observation of moisture on the rear side of the wall assembly. In cavity-type assemblies, such as stud walls, this requires the observation of locations such as the rear face of the exterior wall sheathing and wall framing members for the presence of moisture. The test method is intended to assess the performance of the method(s) intended for use in sealing the interface between the termination of the exterior wall finish and the penetration items or abutting construction. The test is not necessarily intended to test the performance of the penetrating item.

Walls designed and constructed in accordance with this chapter must also comply with the requirements of Chapter 11 of this code. This requires that wall cavities be protected from moisture infiltration from the building interior through the use of a vapor retarder (see Commentary Figure R703.1) or by the ventilation of the wall cavity.

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

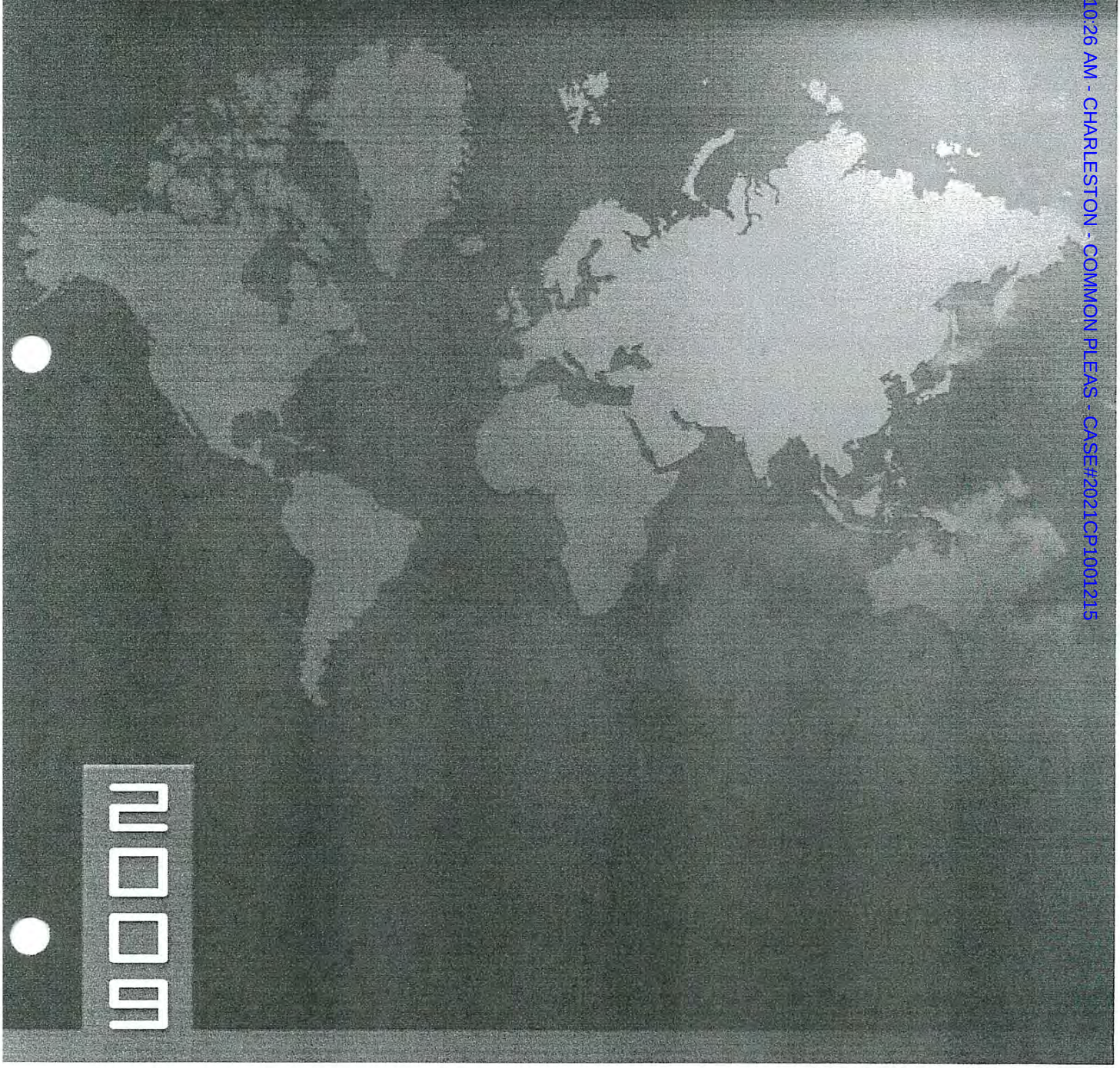
A MEMBER OF THE INTERNATIONAL CODE FAMILY®

IRC®

ICC
INTERNATIONAL CODE COUNCIL®

INTERNATIONAL RESIDENTIAL CODE®

FOR ONE- AND TWO-FAMILY DWELLINGS



2009

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

TABLE R702.3.7
SHEAR CAPACITY FOR HORIZONTAL WOOD-FRAMED GYPSUM BOARD DIAPHRAGM CEILING ASSEMBLIES

MATERIAL	THICKNESS OF MATERIAL (min.) (in.)	SPACING OF FRAMING MEMBERS (max.) (in.)	SHEAR VALUE[a, b] (plf of ceiling)	MINIMUM FASTENER SIZE[c, d]
Gypsum board	1/2	16 o.c.	90	Sd cooler or wallboard nail; 1 5/8-inch long; 0.086- inch shank; 15/64-inch head
Gypsum board	1/2	24 o.c.	70	Sd cooler or wallboard nail; 1 5/8-inch long; 0.086- inch shank; 15/64-inch head

For SI: 1 inch = 25.4 mm, 1 pound per linear foot = 1.488 kg/m.

a. Values are not cumulative with other horizontal diaphragm values and are for short-term loading caused by wind or seismic loading. Values shall be reduced 25 percent for normal loading.

b. Values shall be reduced 50 percent in Seismic Design Categories D_0, D_1, D_2 and E.

c. 1 1/4", #6 Type S or W screws may be substituted for the listed nails.

d. Fasteners shall be spaced not more than 7 inches on center at all supports, including perimeter blocking, and not less than 3/8 inch from the edges and ends of the gypsum board.

R702.3.8 Water-resistant gypsum backing board. Gypsum board used as the base or backer for adhesive application of ceramic tile or other required nonabsorbent finish material shall conform to ASTM C 1396, C 1178 or C1278. Use of water-resistant gypsum backing board shall be permitted on ceilings where framing spacing does not exceed 12 inches (305 mm) on center for 1/2-inch-thick (12.7 mm) or 16 inches (406 mm) for 5/8-inch-thick (16 mm) gypsum board. Water-resistant gypsum board shall not be installed over a Class I or II vapor retarder in a shower or tub compartment. Cut or exposed edges, including those at wall intersections, shall be sealed as recommended by the manufacturer.

R702.3.8.1 Limitations. Water resistant gypsum backing board shall not be used where there will be direct exposure to water, or in areas subject to continuous high humidity.

R702.4 Ceramic tile.

R702.4.1 General. Ceramic tile surfaces shall be installed in accordance with ANSI A108.1, A108.4, A108.5, A108.6, A108.11, A118.1, A118.3, A136.1 and A137.1.

R702.4.2 Fiber-cement, fiber-mat reinforced cement, glass mat gypsum backers and fiber-reinforced gypsum backers. Fiber-cement, fiber-mat reinforced cement, glass mat gypsum backers or fiber-reinforced gypsum backers in compliance with ASTM C 1288, C 1325, C 1178 or C 1278, respectively, and installed in accordance with manufacturers' recommendations shall be used as backers for wall tile in tub and shower areas and wall panels in shower areas.

R702.5 Other finishes. Wood veneer paneling and hardboard paneling shall be placed on wood or cold-formed steel framing spaced not more than 16 inches (406 mm) on center. Wood veneer and hard board paneling less than 1/4 inch (6 mm) nominal thickness shall not have less than a 3/8-inch (10 mm) gypsum board backer. Wood veneer paneling not less than 1/4-inch (6 mm) nominal thickness shall conform to ANSI/HPVA HP-1. Hardboard paneling shall conform to CPA/ANSI A135.5.

R702.6 Wood shakes and shingles. Wood shakes and shingles shall conform to CSSB *Grading Rules for Wood Shakes and Shingles* and shall be permitted to be installed directly to the studs with maximum 24 inches (610 mm) on-center spacing.

R702.6.1 Attachment. Nails, staples or glue are permitted for attaching shakes or shingles to the wall, and attachment of the shakes or shingles directly to the surface shall be permitted provided the fasteners are appropriate for the type of wall surface material. When nails or staples are used, two fasteners shall be provided and shall be placed so that they are covered by the course above.

R702.6.2 Furring strips. Where furring strips are used, they shall be 1 inch by 2 inches or 1 inch by 3 inches (25 mm by 51 mm or 25 mm by 76 mm), spaced a distance on center equal to the desired exposure, and shall be attached to the wall by nailing through other wall material into the studs.

SECTION R703
EXTERIOR COVERING

R703.1 General. Exterior walls shall provide the building with a weather-resistant exterior wall envelope. The exterior wall envelope shall include flashing as described in Section R703.8.

R703.1.1 Water resistance. The exterior wall envelope shall be designed and constructed in a manner that prevents the accumulation of water within the wall assembly by providing a water-resistant barrier behind the exterior veneer as required by Section R703.2 and a means of draining to the exterior water that enters the assembly. Protection against condensation in the exterior wall assembly shall be provided in accordance with Section R601.3 of this code.

Exceptions:

1. A weather-resistant exterior wall envelope shall not be required over concrete or masonry walls

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

designed in accordance with Chapter 6 and flashed according to Section R703.7 or R703.8.

2. Compliance with the requirements for a means of drainage, and the requirements of Section R703.2 and Section R703.8, shall not be required for an exterior wall envelope that has been demonstrated to resist wind-driven rain through testing of the exterior wall envelope, including joints, penetrations and intersections with dissimilar materials, in accordance with ASTM E 331 under the following conditions:

   2.1. Exterior wall envelope test assemblies shall include at least one opening, one control joint, one wall/eave interface and one wall sill. All tested openings and penetrations shall be representative of the intended end-use configuration.

   2.2. Exterior wall envelope test assemblies shall be at least 4 feet (1219 mm) by 8 feet (2438 mm) in size.

   2.3. Exterior wall assemblies shall be tested at a minimum differential pressure of 6.24 pounds per square foot (299 Pa).

   2.4. Exterior wall envelope assemblies shall be subjected to the minimum test exposure for a minimum of 2 hours.

The exterior wall envelope design shall be considered to resist wind-driven rain where the results of testing indicate that water did not penetrate control joints in the exterior wall envelope, joints at the perimeter of openings penetration or intersections of terminations with dissimilar materials.

703.1.2 Wind resistance. Wall coverings, backing materials and their attachments shall be capable of resisting wind loads in accordance with Tables R301.2(2) and R301.2(3). Wind-pressure resistance of the siding and backing materials shall be determined by ASTM E 330 or other applicable standard test methods. Where wind-pressure resistance is determined by design analysis, data from approved design standards and analysis conforming to generally accepted engineering practice shall be used to evaluate the siding and backing material and its fastening. All applicable failure modes including bending rupture of siding, fastener withdrawal and fastener head pull-through shall be considered in the testing or design analysis. Where the wall covering and the backing material resist wind load as an assembly, use of the design capacity of the assembly shall be permitted.

R703.2 Water-resistive barrier. One layer of No. 15 asphalt felt, free from holes and breaks, complying with ASTM D 226 for Type 1 felt or other approved water-resistive barrier shall be applied over studs or sheathing of all exterior walls. Such felt or material shall be applied horizontally, with the upper layer lapped over the lower layer not less than 2 inches (51 mm). Where joints occur, felt shall be lapped not less than 6 inches (152 mm). The felt or other approved material shall be continuous to the top of walls and terminated at penetrations and building appendages in a manner to meet the requirements of the exterior wall envelope as described in Section R703.1.

Exception: Omission of the water-resistive barrier is permitted in the following situations:

1. In detached accessory buildings.
2. Under exterior wall finish materials as permitted in Table R703.4.
3. Under paperbacked stucco lath when the paper backing is an approved water-resistive barrier.

R703.3 Wood, hardboard and wood structural panel siding.

R703.3.1 Panel siding. Joints in wood, hardboard or wood structural panel siding shall be made as follows unless otherwise approved. Vertical joints in panel siding shall occur over framing members, unless wood or wood structural panel sheathing is used, and shall be shiplapped or covered with a batten. Horizontal joints in panel siding shall be lapped a minimum of 1 inch (25 mm) or shall be shiplapped or shall be flashed with Z-flashing and occur over solid blocking, wood or wood structural panel sheathing.

R703.3.2 Horizontal siding. Horizontal lap siding shall be installed in accordance with the manufacturer's recommendations. Where there are no recommendations the siding shall be lapped a minimum of 1 inch (25 mm), or 1/2 inch (13 mm) if rabbeted, and shall have the ends caulked, covered with a batten or sealed and installed over a strip of flashing.

R703.4 Attachments. Unless specified otherwise, all wall coverings shall be securely fastened in accordance with Table R703.4 or with other *approved* aluminum, stainless steel, zinc-coated or other *approved* corrosion-resistive fasteners. Where the basic wind speed per Figure R301.2 (4) is 110 miles per hour (49 m/s) or higher, the attachment of wall coverings shall be designed to resist the component and cladding loads specified in Table R301.2 (2), adjusted for height and exposure in accordance with Table R301.2(3).

R703.5 Wood shakes and shingles. Wood shakes and shingles shall conform to CSSB *Grading Rules for Wood Shakes and Shingles.*

R703.5.1 Application. Wood shakes or shingles shall be applied either single-course or double-course over nominal 1/2-inch (13 mm) wood-based sheathing or to furring strips over 1/2-inch (13 mm) nominal nonwood sheathing. A permeable water-resistive barrier shall be provided over all sheathing, with horizontal overlaps in the membrane of not less than 2 inches (51 mm) and vertical overlaps of not less than 6 inches (152 mm). Where furring strips are used, they shall be 1 inch by 3 inches or 1 inch by 4 inches (25 mm by 76 mm or 25 mm by 102 mm) and shall be fastened horizontally to the studs with 7d or 8d box nails and shall be spaced a distance on center equal to the actual weather exposure of the shakes or shingles, not to exceed the maximum exposure specified in Table R703.5.2. The spacing between adjacent shingles to allow for expansion shall not exceed 1/4 inch (6 mm), and between adjacent shakes, it shall not exceed 1/2 inch (13 mm). The offset spacing between joints in adjacent courses shall be a minimum of 1 1/2 inches (38 mm).

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023-Nov-20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Fastening Tips for HardiePlank® Lap Siding

DECEMBER 2019

TECHNICAL BULLETIN #17

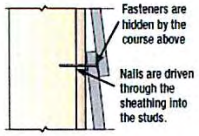
Scope: This Technical Bulletin addresses approved fastening techniques when using HardiePlank® Lap Siding.

HardiePlank® lap siding may be used with fasteners approved in ICC-ES ESR-2290 spaced in accordance with the listed Wind Load Tables. Fasteners must be corrosion resistant, galvanized or stainless steel.

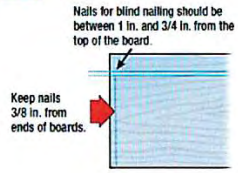
BLIND NAILING (PREFERRED INSTALLATION)

James Hardie prefers and recommends installation of HardiePlank® lap siding by the blind nailing technique, such that fasteners are hidden by the course above. Fasteners shall be installed between 1 in. and 3/4 in. from the top edge and no closer than 3/8 in. from the ends of the plank.

1 Blind Nailing



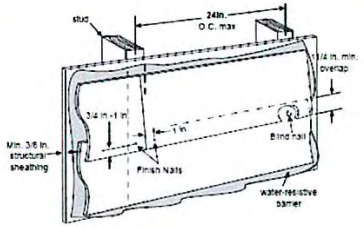
2 Blind Nailing Measurements



PIN BACKS

Pinning the plank down at the bottom edge on either side of a butt joint ("pin back") is used to help correct "high nailing", loose planks, gaps or rattling. Pin backs are not a substitute for proper blind nailing or face nailing - they will not improve wind load resistance. Use pin backs for aesthetic purposes only. Finish nails are recommended for pin backs. Headed siding nails are allowed. Place pin backs no closer than 1 in. from plank ends and 3/4 in. from plank edge into min. 3/8 in. wood structural panel. Pin backs are not a substitute for blind or face nailing. The nail shall be nailed flush to the surface (not countersunk), and must be corrosion resistant (e.g. galvanized or stainless steel). For best results nail heads should be touched-up to color match.

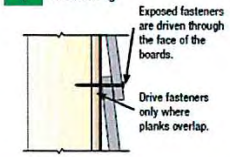
3



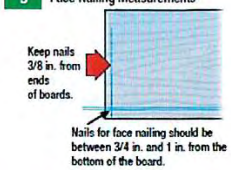
FACE NAILING

Face nailing is applicable where dictated by building code, in high wind areas, and when fastening is to OSB or equivalent sheathing without penetrating into studs. Face nailing exposes the fastener head to the elements and allows for the fastener to penetrate through two sheets of overlapped plank. Fasteners shall be installed between 3/4 in. and 1 in. from the bottom edge of the board and the head must be snug, not counter sunk or overdriven.

4 Face Nailing



5 Face Nailing Measurements



The use of 11 gauge roofing nails are not approved for face nailing. Where ColorPlus® products are used, the fastener head must be touched-up for color match.

DOUBLE NAILING

Double nailing refers to the combined use of blind nailing and face nailing. Double nailing may be appropriate for repairs or when a correction is necessary to meet wind load requirements that would otherwise require replacement of the siding. Additional care must be taken to assure that the face nail does not contact the blind nail when fastening and that face nail spacing does not induce damage to the lapped plank.

With double nailed assemblies, the wind load value for face nailing is not additive to the wind load value for blind nailing. To determine the wind load value for a double nailed assembly, locate the blind nailing and the face nailing wind values as listed in the product's evaluation report (ICC-ES ESR-2290). Use the greater of the two values.

NOTE: *The above is provided for informational purposes only and is not intended to replace James Hardie published installation instructions. If you are uncertain whether this guidance will work for your application, consult a licensed design professional or architect.*

IMPORTANT: Failure to follow James Hardie written installation instructions and comply with applicable building codes may violate local laws, affect building envelope performance and may affect warranty coverage. Failure to comply with all health and safety regulations when cutting and installing this product may result in personal injury.

DESIGN ADVICE: Any information or assistance provided by James Hardie in relation to specific projects must be approved by the relevant specialists engaged for the project eg. builder, architect or engineer. James Hardie will not be responsible in connection with any such information or assistance.

Additional Installation Instructions, Product Warranties and Safety Information are available at JamesHardiePros.com

JamesHardie

1.866.442.7343 | JamesHardiePros.com

© 2019 James Hardie Building Products, Inc. All rights reserved. TM, SM, and ® denote trademarks or registered trademarks of James Hardie Technology Limited. 7/2017 21/19

DOUBLE NAILING

Double nailing refers to the combined use of blind nailing and face nailing. Double nailing may be appropriate for repairs or when a correction is necessary to meet wind load requirements that would otherwise require replacement of the siding. Additional care must be taken to assure that the face nail does not contact the blind nail when fastening and that face nail spacing does not induce damage to the lapped plank.

With double nailed assemblies, the wind load value for face nailing is not additive to the wind load value for blind nailing. To determine the wind load value for a double nailed assembly, locate the blind nailing and the face nailing wind values as listed in the product's evaluation report (ICC-ES ESR-2290). Use the greater of the two values.

NOTE: *The above is provided for informational purposes only and is not intended to replace James Hardie published installation instructions. If you are uncertain whether this guidance will work for your application, consult a licensed design professional or architect.*

IMPORTANT: Failure to follow James Hardie written installation instructions and comply with applicable building codes may violate local laws, affect building envelope performance and may affect warranty coverage. Failure to comply with all health and safety regulations when cutting and installing this product may result in personal injury.

DESIGN ADVICE: Any information or assistance provided by James Hardie in relation to specific projects must be approved by the relevant specialists engaged for the project eg. builder, architect or engineer. James Hardie will not be responsible in connection with any such information or assistance.

Additional Installation Instructions, Product Warranties and Safety Information are available at JamesHardiePros.com

JamesHardie™

1.866.442.7343 | JamesHardiePros.com

© 2019 James Hardie Building Products, Inc. All rights reserved. TM, SM, and ® denote trademarks or registered trademarks of James Hardie Technology Limited.
TB1017 11/19

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Face Nailing (Fig. 4.1)

- It is permissible to install NichiBoard in a face nail type installation to meet certain installation requirements or when specified by local code.

- Position the fastener a minimum distance of 3/4" up from the bottom edge of the board and no more than 1". This ensures the fastener will penetrate through the overlap and through both courses. Place the fastener no closer than 3/8" from board ends.

- Fasten from one end of the board to the other.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

2006 International Residential Code – Section R703, Exterior Covering, R703.10 Fiber Cement Siding:

R703.10.2 Lap siding. Fiber-cement lap siding having a maximum width of 12 inches shall comply with the requirements of ASTM C1186, Type A, minimum Grade II. Lap siding shall be lapped a minimum of 1 1/4 inches and lap siding not having tongue-and-groove end joints shall have the ends sealed with caulking, installed with an H-section joint cover, located over a strip of flashing or shall be designed to comply with Section R703.1. Lap siding courses may be installed with the fastener heads exposed or concealed, according to Table R703.4 or ***approved*** **manufacturers' installation instructions.**

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

TABLE R703.4
WEATHER-RESISTANT SIDING ATTACHMENT AND MINIMUM THICKNESS

SIDING MATERIAL	NOMINAL THICKNESS (inches)	JOINT TREATMENT	WATER-RESISTIVE BARRIER REQUIRED	TYPE OF SUPPORT FOR THE SIDING MATERIAL AND FASTENER[a, c, d]					
				Wood or wood structural panel sheathing	Fiberboard sheathing into stud	Gypsum sheathing into stud	Foam plastic sheathing into stud	Direct to studs	Maximum fastener spacing
Horizontal clapboard	Without insulation	0.375[b]	Lap	Yes	0.120 nail 1½" long	0.120 nail 2" long	0.120 nail 2" long	0.120 nail	Not allowed	Same as stud spacing
		0.625	Lap	Yes	0.120 nail 1½" long	0.120 nail 2" long	0.120 nail 2" long	0.120 nail	Not allowed	
	With insulation	0.875	Lap	Yes	0.120 nail 1½" long	0.120 nail 2" long	0.120 nail 2" long	0.120 nail	0.120 nail 1½" long	
Anchored veneer: brick, concrete, masonry or stone	2	Section R703	Yes	See Section 3.703 and Figure R703.7					
Adhered veneer: concrete, stone or masonry[g]	-	Section R703	Yes Manufacturer	See Section R703.8, as per manufacturer's instructions					
Hardboard[e] Panel siding—vertical	t_p	-	Yes	Nailing	Nailing	Nailing	Nailing	Nailing	6" panel edges 12" field, typ.
Hardboard[e] Lap siding—horizontal	t_p	Butting	Yes	Note c	Note c	Note c	Note c	Note c	Same as stud spacing, 2 per bearing
Shake[f]	38 psu	Lap	Yes	0.113 nail 2½" long	0.113 nail 2½" long, 0.5" dia. head	0.113 nail 2½" long	0.113 nail[c] (length)	Not allowed	Same as stud spacing
Particleboard panels	$t_p \geq \frac{1}{2}$	-	Yes	6d box nail (2" x 0.099")	6d box nail (2" x 0.099")	6d box nail (2" x 0.099")	box nail[c]	6d box nail (2" x 0.099")	6" panel edges, 12" field, typ.
	t_p	-	Yes	6d box nail (2" x 0.099")	6d box nail (2" x 0.113")	8d box nail (2½" x 0.113")	box nail[c]	6d box nail (2" x 0.099")	
Wood structural panel siding (panel grade)	$t_p \geq \frac{3}{8}$	Butting	Yes	0.099 nail[c,f]	0.113 nail[c,f]	0.113 nail[c,f]	0.113 nail[c]	0.099 nail[c,f]	6" panel edges, 12" field, typ.
Wood structural panel lapsiding	$t_p \geq \frac{3}{8}$	Butting Note c	Yes	0.099 nail[c,f]	0.113 nail[c,f]	0.113 nail[c,f]	0.113 nail[c]	0.099 nail[c,f]	6" along bottom edge
Vinyl siding	0.035	Lap	Yes	0.120 nail (shank) with a 0.313 head or 16 gage staple with 7/16" crown[f]	0.120 nail (shank) with a 0.313 head or 16 gage staple with 7/16" crown[f]	0.120 nail (shank) with a 0.313 head or 16 gage staple with 7/16" crown[f]	0.120 nail (shank) with a 0.313 head per Section R703.11.2	Not allowed	24 inches on center or spaced as per the manufacturer instructions or test report
[illegible] siding	t_p Min	Lap	Yes	Fastener penetration into stud[f]				0.120 nail[c,f] (length)	Face nailing at 8" centers, 2 nails per bearing, 8" centers and ends, 2 nails per bearing
Siding	t_p Average	Lap	Yes						
Wood	t_p								
[illegible]	t_p								
Fiber cement panel siding[i]	t_p	Butting	Yes Note c	6d common nail (2" x 0.113")	6d common nail (2" x 0.113")	6d common nail (2" x 0.113")	6d common nail (2" x 0.113")	6d common nail (2" x 0.113")	8" o.c. on edges, 12" o.c. on intermediate studs
Fiber cement lap siding	t_p	Butting	Yes Note c	6d common nail (2" x 0.113")	6d common nail (2" x 0.113")	6d common nail (2" x 0.113")	6d common nail (2" x 0.113")	6d common nail (2" x 0.113") or 11 gage roofing nail	Nailed

For SI: 1 inch = 25.4 mm.

a. Based on stud spacing of 16 inches on center unless studs are spaced 24 inches, siding shall be applied to sheathing approved for that spacing.
b. Wall is a general description and shall be 7/8 inch, nominal wood bevel siding applied horizontally.
c. Engineered shall have a minimum crown width of $\frac{1}{4}$ inch, minimum outside diameter and be manufactured of minimum 16 gage wire.
d. Nails or staples shall be aluminum, galvanized, or stainless steel and shall be driven into the studs for fiberboard or gypsum backing.
e. Aluminum nails shall be used to attach aluminum siding.
f. Aluminum (0.019 inch) shall be permitted only when the maximum panel width is 24 inches and the maximum bar size is 8 inches. The minimum for aluminum siding shall be #6 SMS hole without mechanical fastening.
g. All aluminum shall be coated with a corrosion-resistant coating.
h. Shall be of approved type.
i. Fiber-cement lap siding shall not be applied directly to studs spaced more than 16 inches on center, unless long dimension is parallel to studs. Plywood, fiberboard or gypsum shall not be applied directly to studs spaced more than 24 inches on center. The stud spacing shall not exceed the panel span rating provided by the manufacturer unless the panels are backed with the same panel perpendicular to the studs or over sheathing approved for that stud spacing.
j. Wood panel siding applied vertically shall be nailed to horizontal nailing strips or blocking set 24 inches maximum. Nails shall penetrate 1½ inches into studs, studs and wood sheathing combined or blocking.

(continued)

APPLIED BUILDING SCIENCES

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

TABLE R703.4

WEATHER-RESISTANT SIDING ATTACHMENT AND MINIMUM THICKNESS

SIDING MATERIAL	NOMINAL THICKNESS (inches)	JOINT TREATMENT	WATER-RESISTIVE BARRIER REQUIRED	TYPE OF SUPPORTS FOR THE SIDING MATERIAL AND FASTENERS[b, c, d]					
				Wood or wood structural panel sheathing	Fiberboard sheathing into stud	Gypsum sheathing into stud	Foam plastic sheathing into stud	Direct to studs	Number or spacing of fasteners
Fiber cement lap siding	5/16	Notes	Yes Note	6d common corrosion-resistant nail[e]	6d common corrosion-resistant nail[e]	6d common corrosion-resistant nail[e]	6d common corrosion-resistant (12" x 0.113") nail[e, v]	6d common corrosion-resistant nail or 11 gage roofing nail[e]	Notew

w. Face nailing: one 6d common nail through the overlapping planks at each stud. Concealed nailing: one 11 gage ½ inch long galv. roofing nail through the top edge of each plank at each stud.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

National Association of Home Builders

Residential Construction Performance Guidelines

Consumer Reference

Fifth Edition

2015

APPLIED BUILDING SCIENCES

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

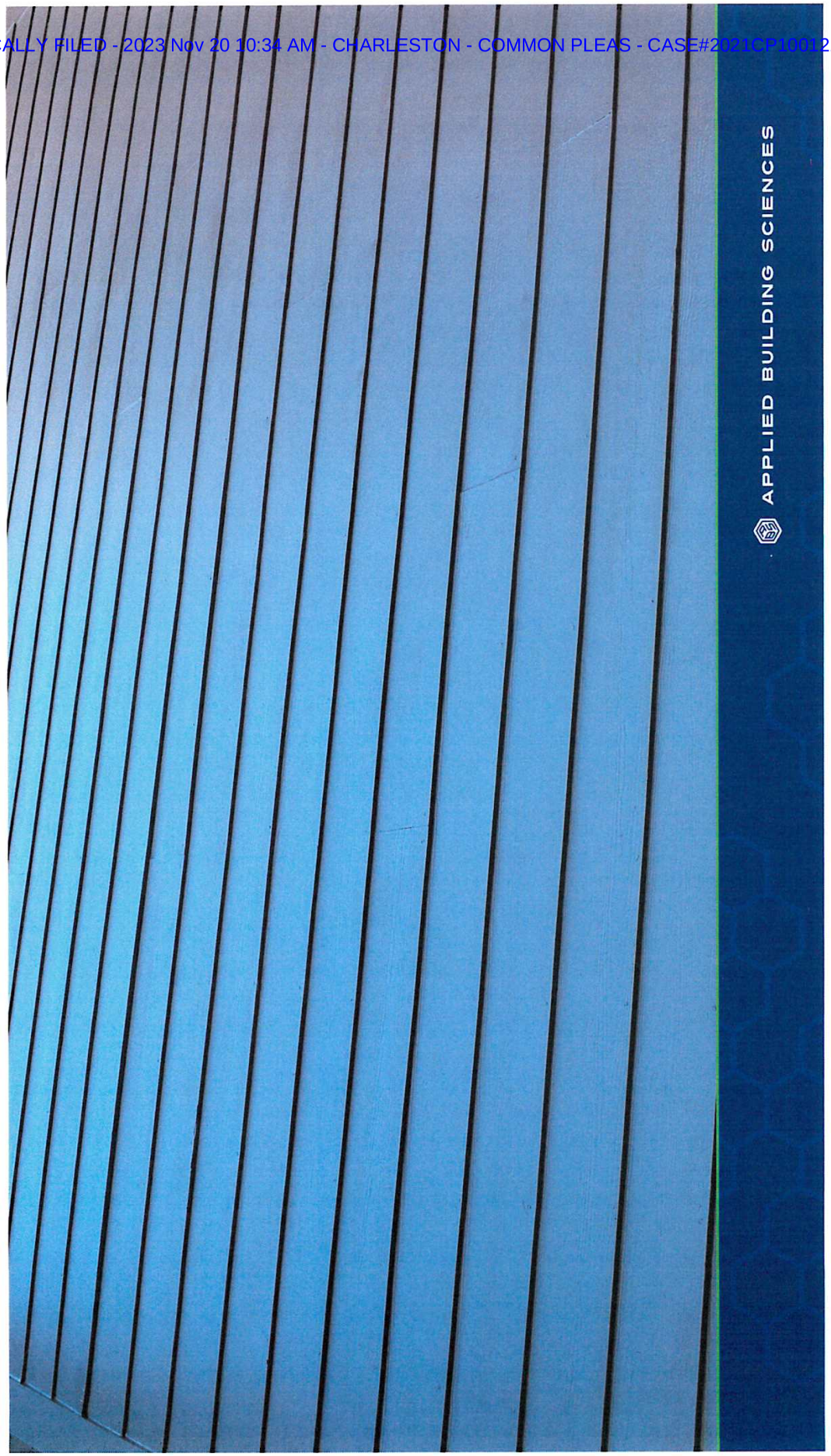
Cement Board Siding

- **Observation:** Cement board siding is cracked or chipped.
  - **Performance Guideline:** As a cement product, this siding is susceptible to the same characteristic limitations as other cement products. Cracks more than 2 inches in length and 1/4 inch in width are considered excessive. Chips or dents not reported at time of substantial completion of the project are not covered.
  - **Corrective Measure:** Cracked or chipped cement board will be repaired or replaced as necessary, as determined by the contractor.
  - **Discussion:** The manufacturer's instructions include guidelines to reduce chipping or cracking of siding.
- **Observation:** Cement board siding is improperly fastened.
  - **Performance Guideline:** Siding should be nailed flush and perpendicular per the manufacturer's instructions. Staples should not be used.
  - **Corrective Measure:** The contractor will correct or repair improperly fastened boards. Overdriven nail heads or nails driven at an angle can be filled with siding manufacturer's specified product.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215



ABS RESPONSE

- Siding is approaching 12-14 years old.
- As of ABS' August 30, 2022, site visit, no siding was observed to be missing or exhibit major installation issues.
- Installation complies with Hardie, CertainTeed, and Nichia installation instructions.
- No further responsibility by DR Horton.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

SHINGLES

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ALLEGATION

- Improper roof assembly installation including:
  - Overdriven and/or angle driven fasteners.
  - Heavily worn shingles with failing seal strips.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Shingles

At the time of ABS' most recent observations, no shingles were observed to be missing or have obvious installation or performance issues.

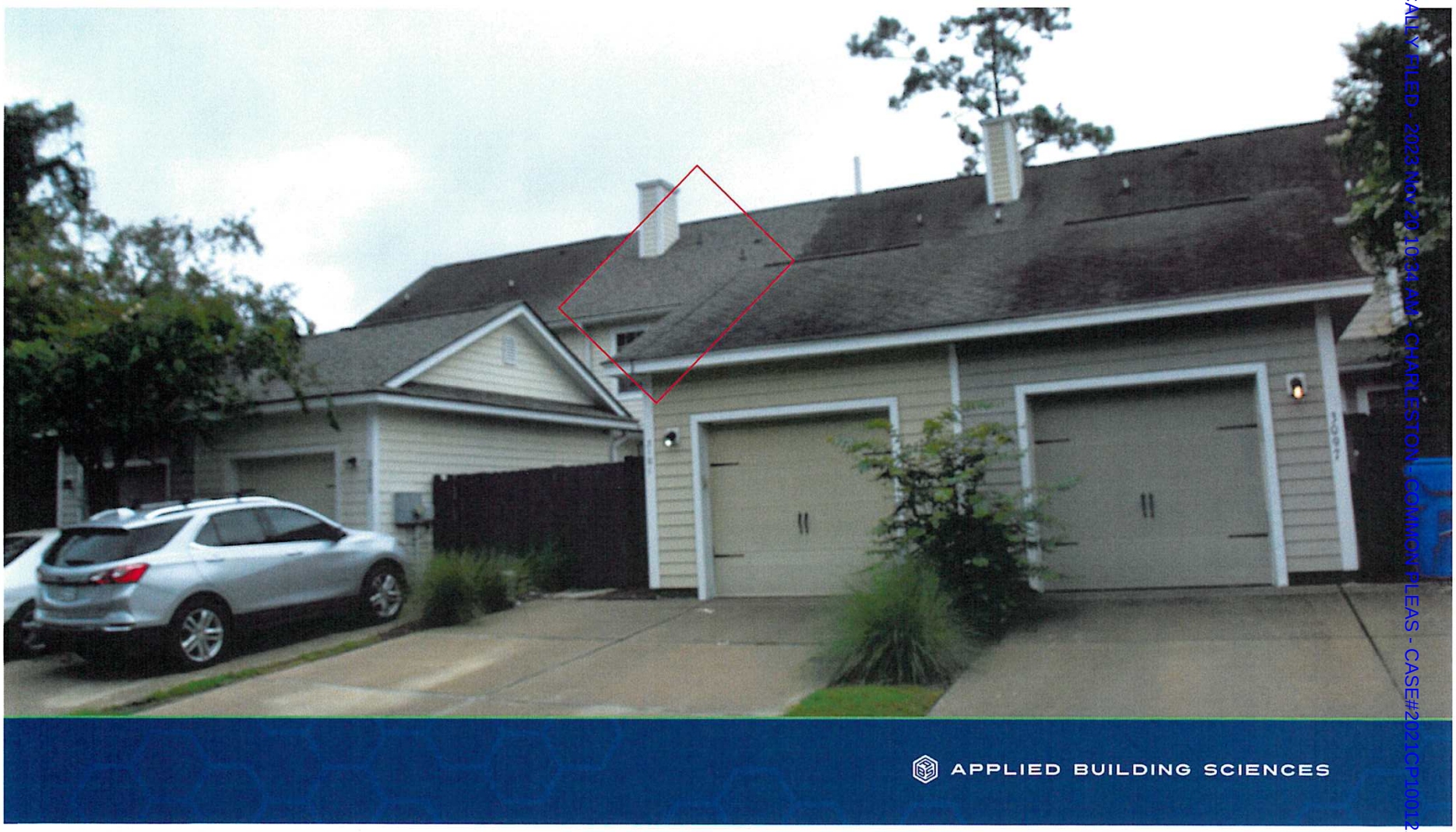
Representative photographs are as follows:

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2021-09-20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

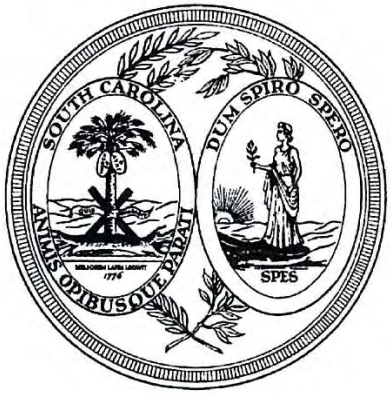
ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215



ELECTRONICALLY FILED - 2023 Nov 20 10:31 AM - CHARLESTON COMMON PLEAS - CASE#2021CP1001215

South Carolina Residential Construction Standards



The Residential Builders Commission of the South Carolina Department of Labor, Licensing and Regulation adopted the Residential Standards as the Guidelines by which all investigations shall be conducted, as approved July 26, 1995 and revised October 29, 1997.

Adopted by the Commission on February 18, 1998.

APPLIED BUILDING SCIENCES

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

CONSTRUCTION STANDARDS

The Construction Standards are intended to specify the minimum performance standards for construction of homes and to set forth the basis for determining the validity of all home buyer complaints related to defective materials and workmanship during the initial one-year warranty period.

Only the most frequent defects of concern to the industry have been addressed in the Construction Standards set forth in the following pages. It is not possible to discuss every conceivable situation that can occur in building. Because of the limitless combinations that can be incorporated into a home, infinite conditions can occur. This manual describes the most common and repetitive situations. Likewise, the validity of any homeowner's complaint for defects for which a standard has not yet been addressed herein shall be determined on the basis of good industry practice, which assures quality of materials and workmanship, and any conciliation or arbitration of such complaints shall be conducted accordingly.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

South Carolina Residential Construction Standards

Common Defect or Problem – Shingles blow off.

Performance Standard – Shingles should not blow off during the **warranty period** except under storm conditions. It should be noted that seal down shingles require heat from the sun to cause their sealing, so that some warm weather is required to affect the full seal.

Builder Repair Responsibility – Builder to repair shingles that have blown off if not due to winds in excess of basic wind speeds (see codes). In a repair situation, the owner is cautioned that a color mismatch in shingles may occur.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

"National Roofing Contractors Association (NRCA) recognizes the proper attachment of laminated strip shingles is an important consideration in the overall performance of an asphalt shingle roof system. However, NRCA is of the opinion that too much emphasis is sometimes placed on manufacturers' exact fastener placement locations. Allowable fastener placement tolerances need to be considered for asphalt shingle installation. Research has shown that once self-sealing asphalt shingles have sealed, fastener placement has little effect on the wind resistance and overall performance of the asphalt shingle roof system."

NRCA Guidelines for Asphalt Shingle Roof Systems. 2017. Pp 66-67.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ABS evaluated the six (6) buildings during its two (2) site visits for wind damaged (missing) shingles.

ABS has also evaluated the shingle photos produced through the RT Mease investigation for wind damaged (creased) or missing shingles. Creased shingles are an indicator of wind related damage.

At the time of ABS' site visits and a review of the RT Mease photos, no shingles were observed to be missing. RT Mease did not include in his report or state during his deposition of any missing shingles.

In addition, based on a review of the RT Mease photos, ABS did not observe any no wind damaged (creased) shingles. RT Mease did not include in his report or state during his deposition of any creased shingles.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ABS RESPONSE

- Shingles are approaching 12-14 years old.
- As of ABS' August 30, 2022, site visit, no roof shingles were observed to be missing.
- Shingles are approaching their expected service life.
- No further responsibility by DR Horton.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

WINDOWS

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ALLEGATION

- Improper single-hung vinyl window installation.
- Of all windows RTM Engineering examined, which has not been disclosed by RTM, only two (2) windows were observed with rusty fasteners and/or WRB staining.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ALLEGATION

- The observed higher water content was below the window weeps and in an area that one might expect to find a higher moisture content.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

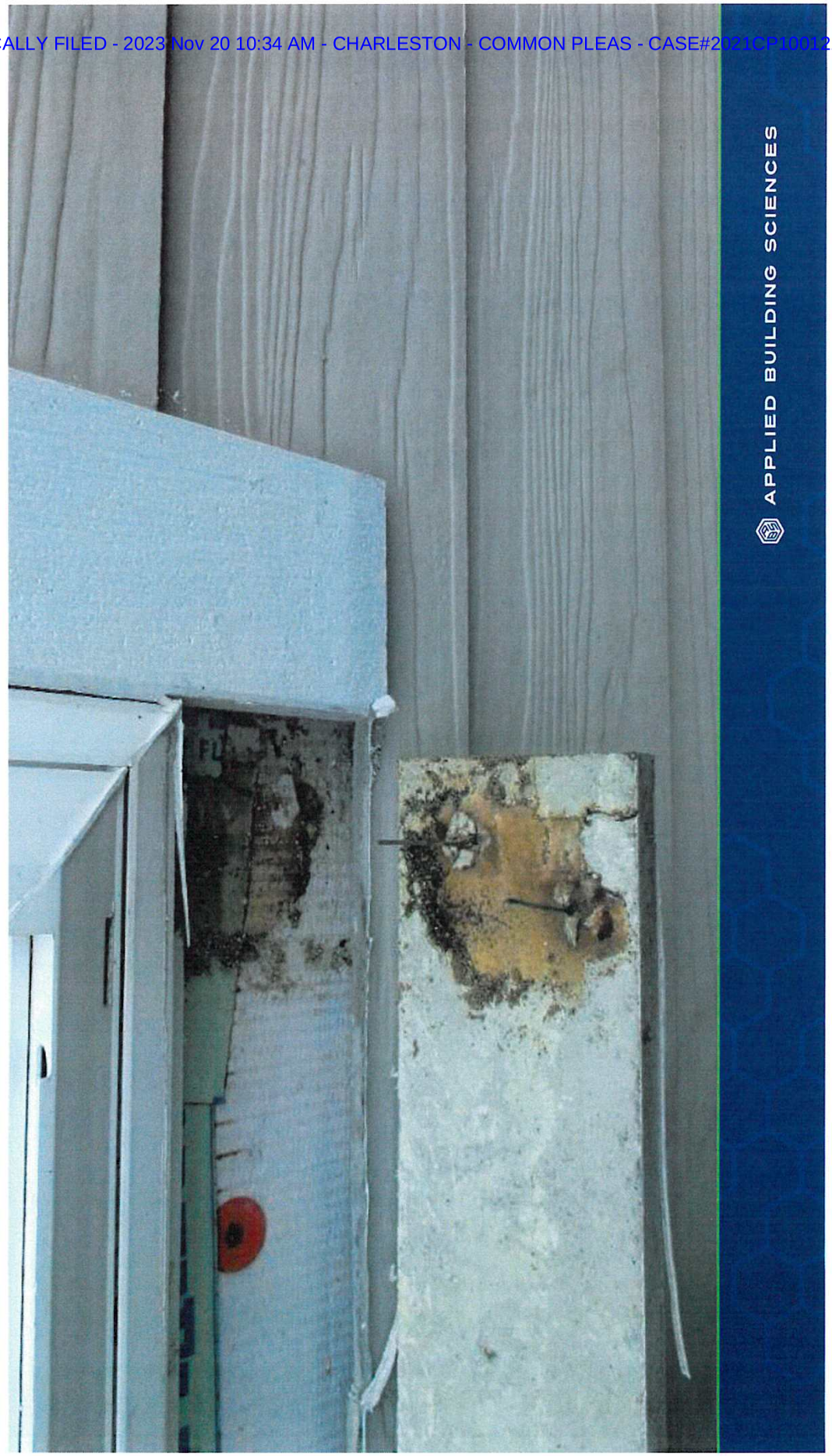
ALLEGATION

- RTM has not identified any issues with the windows nor the flashing, only that the windows have a J-channel component. Yet their response is to remove and replace approximately 430 windows.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215



WINDOWS

At the time of ABS' most recent observations, windows were not observed to exhibit obvious installation or operational issues. Sealant joints which could be observed, exhibited lack of general maintenance.

No operational issues have been identified by the Homeowners.

Representative photographs are as follows:

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

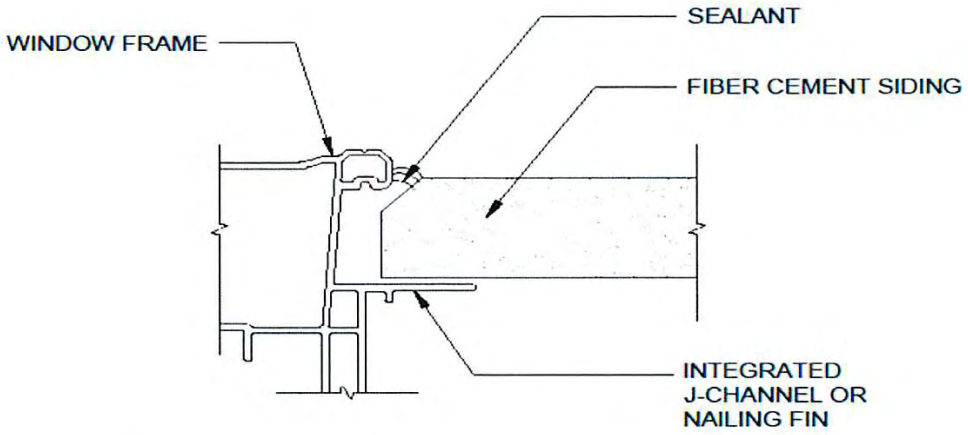
J-Channel Filler Panels

APPLIED BUILDING SCIENCES

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

APPLIED BUILDING SCIENCES

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215



WINDOW SEALANT DETAIL

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

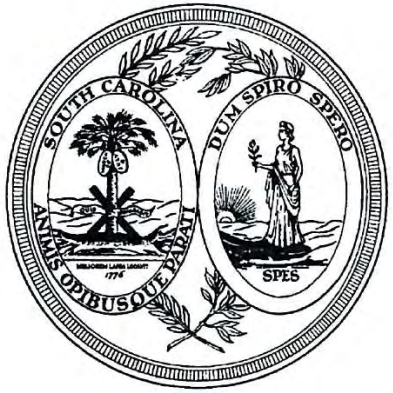
SEALANT JOINTS

The life of sealant joints depends on various conditions including climate, exposure to the sun, building movement, quality of the joint, surface preparation, and execution of the sealant installation. Although sealant can last from 2 to 20 years under ideal conditions, all sealants have a finite life, and most require replacement between 2 and 5 years.

Based on ABS' general observations, the sealant joints at the complex are a maintenance issue, and the lack of an engineering joint is not contributing to any window performance issues.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

South Carolina Residential Construction Standards



The Residential Builders Commission of the South Carolina Department of Labor, Licensing and Regulation adopted the Residential Standards as the Guidelines by which all investigations shall be conducted, as approved July 26, 1995 and revised October 29, 1997.

Adopted by the Commission on February 18, 1998.

APPLIED BUILDING SCIENCES

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

South Carolina Residential Construction Standards

Common Defect or Problem – Caulking cracks.

Performance Standard – All types of caulk will dry out. Builder to remove old caulk and replace with new caulk at cracked areas one time during the first year. After the one repair, caulking becomes an owner maintenance responsibility.

Builder Repair Responsibility – Builder to repair to performance standard one time during the first year.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ABS RESPONSE

- Windows do not exhibit operations issues.
- Existing sealant joints should be maintained by the homeowners.
- No further responsibility by DR Horton.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

WOOD FENCES

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHAPLESTON - COMMON PLEAS - CASE#2021CP1001215

ALLEGATION

- Failure of the wood fencing throughout the property.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

WOOD FENCES

Based on the approximate wood fence age (12-14 years), most of the wood fences were in reasonable condition. Some areas of fence exhibited age or maintenance-related issues.

Representative photographs are as follows:

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ABS RESPONSE

- Most of the fences were in reasonable condition for the 12-14-year life.
- Plaintiffs have not defined any installation or material issues.
- Some wood fences exhibit age and maintenance-related issues.
- No further responsibility by DR Horton.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ABS Recap

Roof Shingles

- In accordance with the SC Residential Standards, only blown off shingles shall be repaired.
- No further responsibility by DR Horton.

Siding

- Installation complies with Hardie, CertainTeed, and Nichia installation instructions.
- No further responsibility by DR Horton.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ABS Recap

Windows

- No performance issues identified with the windows.
- In accordance with the SC Residential Standards, sealant maintenance after one (1) is the homeowner's responsibility.
- No further responsibility by DR Horton.

Fencing

- No material or installation issues defined by Plaintiffs.
- No further responsibility by DR Horton.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

This scope of repair and cost estimate has been prepared based on information available at the time and in accordance with generally accepted engineering practices and standards. This scope of repair and cost estimate represents ABS' review of the items specifically identified and in no means should be taken as liability and/or acceptance of any item not specifically addressed herein. ABS reserves the right to make revisions should additional information become available that affects our observations and conclusions. This scope of repair and cost estimate is for the sole use of the client at mediation and is not transferable to other entities, locations, or projects. If you have any questions regarding this scope of repair and cost estimate, feel free to contact ABS.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Our team of architects, engineers, and consultants specialize in building enclosure, diagnosing and resolving water-related building enclosure issues in coastal and high wind regions.

Our structural engineers specialize in structural condition assessment, investigation and design for projects of all sizes and complexity, from the analysis of sensitive historic structures to innovative modern designs including structural failure and analysis.

We have expertise in roofing, exterior wall claddings, windows, flashings, coatings, curtain walls, and other exterior finishes.

We are architects, engineers, floodplain managers, and civil infrastructure consultants, offering a full range of services for existing or new construction.

APPLIED BUILDING SCIENCES

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1008215

APPLIED BUILDING SCIENCES

MANSFIELD AT PARK WEST
v D.R. HORTON
3057 PARK WEST BOULEVARD
MOUNT PLEASANT, SOUTH CAROLINA

ARBITRATION

July 26 and 31, 2023

PENGAD 800-631-6989
DEFENDANT'S EXHIBIT
5A
7-31-2023

ELECTRONICALLY FILED - 2023 Nov 29 10:24 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

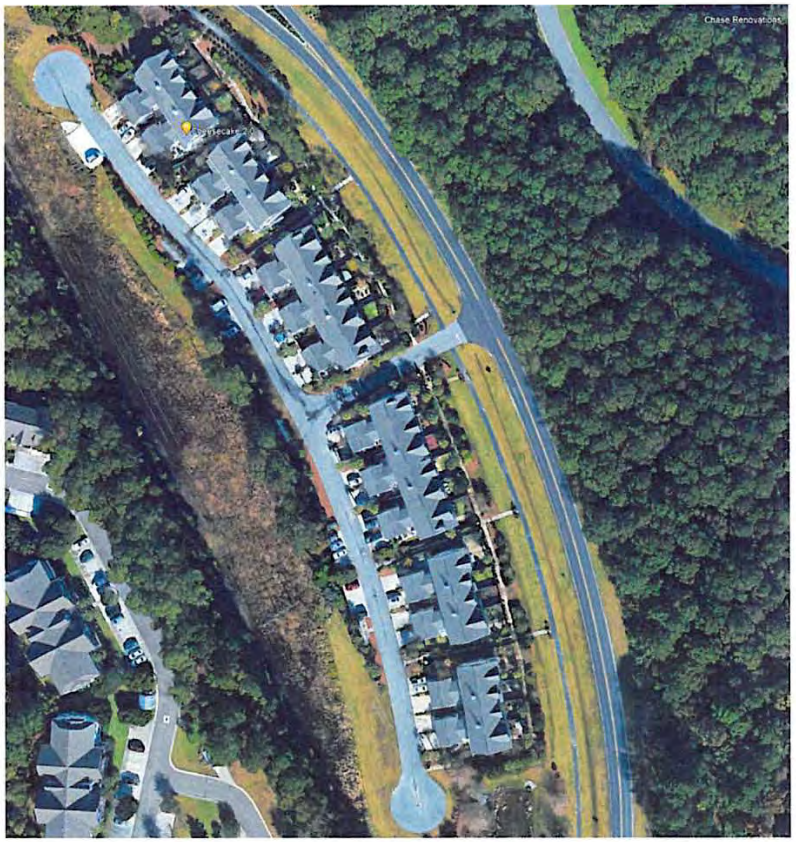


Image courtesy of Google Earth, dated 2022.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

The subject property contains six multi-family, two-story, wood-framed townhome buildings installed on a concrete slab-on-grade foundation. Attached single-story garages are included at each building. There are four (4) buildings with four (4) units and two (2) buildings with six (6) units for a total of 28 units. According to the City of Mount Pleasant online records, the property was purchased in 2006 with homes being purchased as early as 2009; therefore, the buildings are approximately 12 - 14 years old.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Architectural features include second-floor decks at various building corners as well as privacy fencing along portions of each unit's perimeter. The house is clad with fiber cement horizontal lapboard siding and includes single-hung, vinyl windows. The roof is constructed in a traditional gable configuration with multiple dormers and covered with composition asphalt shingles.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

2006 International Residential Code – Section R104 Duties and Powers of the Building Official

R104.1 General. The building official is hereby authorized and directed to enforce the provisions of this code. The building official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in conformance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

"The building official is appointed by the legislative body of the jurisdiction to serve as the employee with the authority and responsibility for the proper administration of the code enforcement agency. The building official establishes policies and procedures that will clarify the applications of the code. The development of those policies and procedures should not be simply for the convenience of the jurisdiction's employees but should be viewed as a way to effectively communicate to all interested parties involved in the construction process how the department will process applications, review construction documents, make inspections, approve projects, and determine and clarify the application of the code provisions. Properly developed, these policies and procedures can make the code enforcement department more predictable for those who are regulated and will also establish improved code compliance and public relations.

When interpretation of the code is needed, the building official is the one individual of the jurisdiction with the legal authority to interpret the code and determine how the provisions should be applied, in both general and specific cases. Some departments formalize the interpretation process and require the person with a question to submit their question in writing. Departments are encouraged to develop policies for both for mal (written) and informal (verbal) requests for code interpretations. Any such interpretations must be in conformance with the intent and letter of the code and may not waive any requirements. It may be necessary in some cases for the building official to write these code interpretations into the permit.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

2006 International Residential Code – Section R703, Exterior Covering:

R703.1 General. Exterior walls shall provide the building with a weather-resistant exterior wall envelope. The exterior wall envelope shall include flashing as described in Section R703.8.

R703.1.1 Water resistance. The exterior wall envelope shall be designed and constructed in a manner that prevents the accumulation of water within the wall assembly by providing a water-resistant barrier behind the exterior veneer as required by Section R703.2 and a means of draining to the exterior water that enters the assembly.

DR Horton's construction of the Mansfield townhomes complied with the IRC building code.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

DR Horton required and relied on their trade partners to be licensed, bonded, and insured, to complete their work timely, meet the required scopes, and comply with all building codes. DR Horton required that trade partners at all times have a supervisor onsite to oversee the work. In addition, all building code inspections were completed and ultimately the certificate of occupancy was approved which meant that the townhome had complied with building code and Mt. Pleasant code enforcement.

DR Horton site specific supervisory personnel were on site generally every day for approximately 1/2 day. The site supervisors made sure that the work was progressing and complying with the scopes. They were available to address questions or schedule work. If not on site, DR Horton personnel were always available by telephone. In addition, DR Horton management personnel made periodic site visits to review progress of work.

No one could be expected to watch every subcontractor every minute to ensure that minor deviations of the work did not occur. It is not reasonable nor expected whether it is DR Horton or a custom builder.

Minor deviations did occur but have not caused damage to the townhomes as no issues of interior damage, blown off roofing, or lost siding has occurred.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Proactive interaction with homeowners for warranty issues:

After completion of the townhome but before closing, DR Horton walks the townhome with the purchaser and prepares a punch list of issues and strives to complete them before closing.

After completion of the sale, DR Horton follows up with all homeowners at 30 days and 11 months for any warranty issues. All items are addressed and signed off by the homeowner.

At the end of the one-year warranty period, with a few exceptions such as the structural warranty, the townhome warranty is now the responsibility of the homeowner.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Hurricanes

- Hurricanes are categorized on a scale of one through five using the Saffir-Simpson scale, which is based on sustained wind speed[1,2].

- The categories are as follows:
  - Category 1: 74-95 mph
  - Category 2: 96-110 mph
  - Category 3: 111-129 mph
  - Category 4: 130-156 mph
  - Category 5: 157+ mph

(Courtesy of Wikipedia.org[1] and Scienbrieffss.com[2])

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

RT Mease during his deposition noted the wind speeds of five (5) named storm events:

- Matthew 48 MPH
- Erma 35 MPH
- Florence 26 MPH
- Dorian 52 MPH
- Ian 43 MPH

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

CoreLogic Wind Speeds

Storm Events

	Estimated Maximum Windspeed			
Date	At Location	Within 1 Mile	Within 3 Miles	Within 5 Miles
May 9, 2023	--	--	58 MPH	70 MPH
Sep 30, 2022	54 MPH	57 MPH	71 MPH	85 MPH
Sep 9, 2022	66 MPH	68 MPH	70 MPH	72 MPH
Apr 5, 2022	62 MPH	63 MPH	65 MPH	66 MPH
Jan 2, 2022	59 MPH	60 MPH	61 MPH	62 MPH
Nov 12, 2020	58 MPH	59 MPH	60 MPH	63 MPH
Apr 13, 2020	54 MPH	56 MPH	58 MPH	58 MPH
Sep 5, 2019	57 MPH	59 MPH	63 MPH	66 MPH
Sep 4, 2019	60 MPH	61 MPH	62 MPH	65 MPH
Jun 21, 2019	61 MPH	63 MPH	65 MPH	65 MPH
Apr 19, 2019	68 MPH	71 MPH	74 MPH	76 MPH
Oct 11, 2018	61 MPH	62 MPH	63 MPH	63 MPH
Oct 10, 2018	56 MPH	58 MPH	60 MPH	60 MPH
Sep 14, 2018	59 MPH	61 MPH	61 MPH	63 MPH
Aug 9, 2018	54 MPH	57 MPH	62 MPH	66 MPH
Sep 11, 2017	57 MPH	58 MPH	61 MPH	64 MPH
Sep 1, 2017	63 MPH	64 MPH	65 MPH	65 MPH
Oct 8, 2016	[illegible]	[illegible]	[illegible]	[illegible]
Oct 7, 2016	71 MPH	73 MPH	73 MPH	71 MPH
Jun 17, 2016	60 MPH	62 MPH	65 MPH	66 MPH
May 3, 2016	61 MPH	64 MPH	65 MPH	65 MPH
Jul 3, 2015	63 MPH	64 MPH	65 MPH	65 MPH
Jun 9, 2015	59 MPH	61 MPH	63 MPH	63 MPH
Nov 26, 2013	47 MPH	55 MPH	58 MPH	58 MPH

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Climatological Data for Charleston Area, SC (ThreadEx) - December 2020.									
Date	Temperature				HDD	CDD	Precipitation	New Snow	Snow Depth
	Maximum	Minimum	Average	Departure					
2020-12-01	48	36	42.0	-12.6	23	0	0.00	0.0	0
2020-12-02	56	29	42.5	-11.9	22	0	0.00	0.0	0
2020-12-03	63	29	46.0	-8.3	19	0	0.00	0.0	0
2020-12-04	75	44	59.5	5.4	5	0	0.06	0.0	0
2020-12-05	64	40	52.0	-1.9	13	0	0.00	0.0	0
2020-12-06	64	38	51.0	-2.7	14	0	T	0.0	0
2020-12-07	62	41	51.5	-2.0	13	0	0.10	0.0	0
2020-12-08	51	33	42.0	-11.4	23	0	0.00	0.0	0
2020-12-09	57	30	43.5	-9.7	21	0	0.00	0.0	0
2020-12-10	65	40	52.5	-0.5	12	0	0.00	0.0	0
2020-12-11	71	38	54.5	1.7	10	0	0.00	0.0	0
2020-12-12	73	48	60.5	7.8	4	0	T	0.0	0
2020-12-13	76	58	67.0	14.5	0	2	0.00	0.0	0
2020-12-14	73	47	60.0	7.6	5	0	0.01	0.0	0
2020-12-15	51	44	47.5	-4.7	17	0	T	0.0	0
2020-12-16	46	43	44.5	-7.5	20	0	0.18	0.0	0
2020-12-17	45	41	43.0	-8.9	22	0	T	0.0	0
2020-12-18	54	34	44.0	-7.7	21	0	0.00	0.0	0
2020-12-19	58	30	44.0	-7.6	21	0	0.00	0.0	0
2020-12-20	56	48	52.0	0.6	13	0	0.52	0.0	0
2020-12-21	62	48	55.0	3.7	10	0	0.17	0.0	0
2020-12-22	67	41	54.0	2.8	11	0	0.00	0.0	0
2020-12-23	67	35	51.0	0.0	14	0	T	0.0	0
2020-12-24	72	45	58.5	7.6	6	0	0.55	0.0	0
2020-12-25	45	29	37.0	-13.8	28	0	0.01	T	0
2020-12-26	46	23	34.5	-16.1	30	0	0.00	0.0	0
2020-12-27	57	28	42.5	-8.0	22	0	0.00	0.0	0
2020-12-28	68	33	50.5	0.1	14	0	0.00	0.0	0
2020-12-29	66	39	52.5	2.2	12	0	0.00	0.0	0
2020-12-30	64	48	56.0	5.8	9	0	T	0.0	0
2020-12-31	75	53	64.0	13.9	1	0	0.12	0.0	0

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

RTM Engineering, LLC, (Russell T. Mease, PE), on behalf of the Mansfield Property Owners Association, conducted investigations on December 29 and 30, 2020 and October 8, 2021, and alleged the following construction defects:

- Improper cement board siding fastener installation including:
  - Improper spacing.
  - Overdriven fasteners.
  - Improper top edge distance.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Alleged construction defects, continued:

- Improper roof assembly installation including:
  - Overdriven and/or angle driven fasteners.
  - Heavily worn shingles with failing seal strips.
- Improper single-hung vinyl window installation.
- Failure of the wood fencing throughout the property.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Applied Building Sciences, Inc., (ABS) on behalf of the general contractor D.R. Horton, visited the site on April 7, 2021, and August 30, 2022, to conduct a visual investigation into the alleged construction defects.

Following are ABS' observations:

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Cementitious Horizontal Siding

RTM Engineering, LLC, identified three (3) distinct cement siding manufacturers:

- JamesHardie
- Certainteed
- One cement siding manufacturer was not identified, possibly Nichia

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ALLEGATION

- Improper siding fastener installation including:
  - Improper spacing.
  - Overdriven fasteners.
  - Improper top edge distance.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Cementitious Horizontal Siding

At the time of ABS' most recent observations, no cementitious horizontal siding was observed to be missing or have performance-related issues.

Representative photographs are as follows:

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

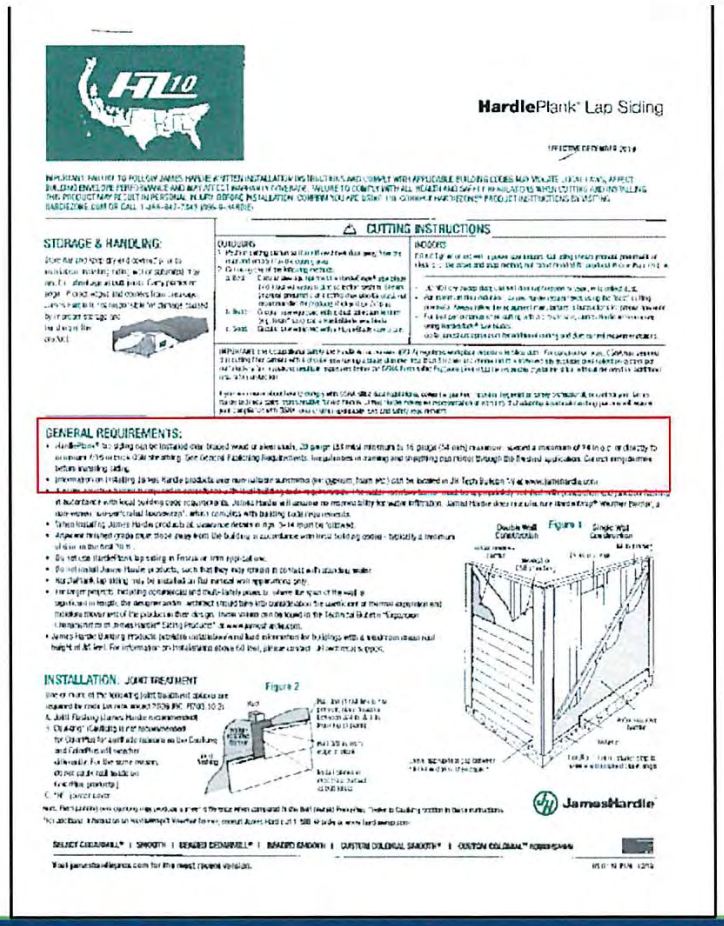
ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

[PREPARED FOR MEDIATION PURPOSES ONLY]

APPLIED BUILDING SCIENCES

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215



HardiePlank® Lap Siding

EFFECTIVE SEPTEMBER 2019

IMPORTANT: FAILURE TO FOLLOW JAMES HARDIE® WRITTEN INSTALLATION INSTRUCTIONS AND COMPLY WITH APPLICABLE BUILDING CODES MAY VOID THE LIMITED WARRANTY AND MAY AFFECT BUILDING ENVELOPE PERFORMANCE AND BUILDING INSURANCE COVERAGE. FAILURE TO COMPLY WITH ALL HEALTH AND SAFETY REGULATIONS WHEN CUTTING AND INSTALLING THIS PRODUCT MAY RESULT IN PERSONAL INJURY. BEFORE INSTALLATION, CONSULT THE CURRENT HARDIEZONE® PROJECT INSTRUCTIONS OR VISIT THE HARDIEZONE.COM OR CALL 1-866-427-3343 (866-9-HARDIE).

STORAGE & HANDLING:

Store flat and level. Cover to protect from moisture. Keep ventilation openings free of obstruction. Inspect for damage before using. Protect edges and coatings from damage. James Hardie is not responsible for damage caused by improper storage or handling.

CUTTING INSTRUCTIONS

OUTDOORS

INDOORS

GENERAL REQUIREMENTS:

- HardiePlank® lap siding must be installed over braced wood or steel studs, 25 gauge (0.5 mm) minimum to 16 gauge (1.54 mm) maximum, spaced a maximum of 24 in (610 mm) directly to minimum 7/16 in (11 mm) thick structural sheathing. See General Fastening Requirements. Irregularities in framing and sheathing must be brought into the finished application. Correct irregularities before installing siding.
- Prevention of Building Science Principles: Hardie products are non-vapour permeable and are not designed to be installed over vapour permeable materials (e.g., gypsum, foam etc.) can be found in the Tech Bulletin 74 at www.jameshardie.com.
- [illegible] in accordance with local building code requirements. James Hardie will assume no responsibility for water infiltration. James Hardie does not allow use of drainage® weather barrier, a non-woven, spunbonded olefin membrane, which complies with building code requirements.
- When installing James Hardie products at clearance below 6 in. (152 mm) to [illegible]
- Anywhere the sheet metal flashing must be away from the building in accordance with local building codes - typically a minimum of 6 in. to the roof [illegible].
- Do not use HardiePlank lap siding in fascia or trim applications.
- Do not install James Hardie products, such that they may remain in contact with standing water.
- HardiePlank lap siding may be installed on flat surfaces with appropriate slope.
- In design projects, including commercial and multi-family projects, where the span of the wall is significant in height, the designer and/or architect should take into consideration the aesthetic effect of thermal expansion and moisture movement of the products in their design. More details can be found in the Technical Bulletin "Expansion Management on James Hardie® Siding Products" at www.jameshardie.com.
- James Hardie® Building Products (excluding soffit/overhang and fascia) are not permitted for buildings with a wood frame mean roof height of 60 feet. For information on installations above 60 feet, please contact James Hardie® Technical Support.

Figure 1

INSTALLATION: JOINT TREATMENT

Figure 2

JamesHardie

SELECT CEDARMILL® | SMOOTH | BEADED CEDARMILL® | BEADED SMOOTH | CUSTOM COLONIAL SMOOTH® | CUSTOM COLONIAL™ ROUGHSAWN

Visit jameshardie.com for the most recent version.

APPLIED BUILDING SCIENCES

GENERAL REQUIREMENTS

HardiePlank lap siding can be installed over braced wood or steel studs, 20-gauge (33 mils) minimum to 16-gauge (54 mils) maximum, spaced a maximum of 24 in. o.c. **or directly to minimum 7/16-inch thick OSB sheathing.**

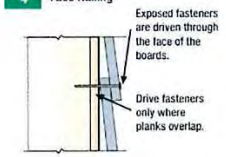
Mease has stated under oath during his deposition that the OSB sheathing was 1/2-inch thick which exceeds the required 7/16-inch thickness requirement.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

FACE NAILING

Face nailing is applicable where dictated by building code, in high wind areas, and when fastening is to OSB or equivalent sheathing without penetration into studs. Face nailing exposes the fastener head to the elements and allows for the fastener to penetrate through two sheets of overlapped plank. Fasteners shall be installed between 3/4 in. and 1 in. from the bottom edge of the board and the head must be snug, not counter sunk or overdriven.

4 Face Nailing

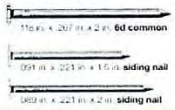


5 Face Nailing Measurements

The use of roofing nails (10A) are not approved in this application. Where ColorPlus® products are used, the fastener head must be touched up for color match.

Fastener Selection For Face Nailing

Wood Framing



Steel Framing

DOUBLE NAILING

Double nailing refers to the combined use of blind nailing and face nailing. Double nailing may be applicable in circumstances of repair or when a correction is necessary to meet fastening requirements that would otherwise require replacement of the siding. Additional care must be taken to assure that fastening of the face nail does not contact the blind nail and that spacing does not induce damage to the lapped plank.

With double nailed assemblies, the wind load value for face nailing is not additive to the wind load value for blind nailing. To determine the wind load value for a double nailed assembly, locate the blind nailing and the face nailing wind values as listed in the product's evaluation report (ICC-ES ESR-2290), the greater of the two wind load values shall be used.

NOTE: *Some installation instructions are intended to be used as a guide only. Refer to the manufacturer's instructions and consult with an architect or licensed design professional.*

IMPORTANT: Failure to install and finish this product in accordance with applicable building codes and James Hardie written application instructions may affect system performance, violate local building codes, void the product-only warranty and lead to personal injury.

DESIGN ADVICE: Any information or assistance provided by James Hardie in relation to specific projects must be approved by the relevant specialists engaged for the project eg. builder, architect or engineer. James Hardie will not be responsible in connection with any such information or assistance.

Additional Installation Information, Warranties, and Warning are available at JamesHardie.com

JamesHardie

1.866.442.7343 | www.jameshardie.com

© 2014 James Hardie Building Products, Inc. All rights reserved. TM, SM, and ® denote trademarks or registered trademarks of James Hardie Technology Limited. The ® is a registered trademark of James Hardie Technology Limited. TS/2017/0014

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

JamesHardie Siding

Face Nailing

Face nailing is applicable where dictated by building code, in high wind areas, and when fastening is **to OSB or equivalent sheathing without penetrating into studs.** Face nailing exposes the fastener head to the elements and allows for the fastener to penetrate through two sheets of overlapped plank.

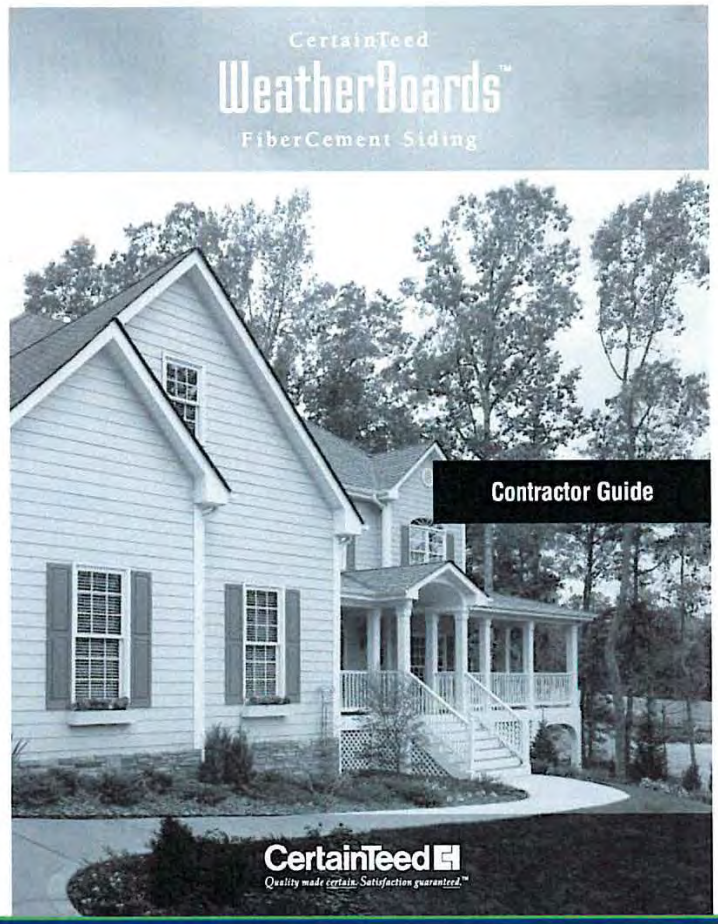
Fasteners shall be installed between 3/4 in. and 1 in. from the bottom edge of the board and the head must be snug, not counter sunk or overdriven.

Double Nailing

Double nailing refers to the combined use of blind nailing and face nailing. Double nailing may be applicable in circumstances of repair or when a correction is necessary to meet fastening requirements that would otherwise require replacement of the siding. Additional care must be taken to assure that fastening of the face nail does not contact the blind nail and that spacing does not induce damage to the lapped plank.

With double nailed assemblies, the wind load value for face nailing is not additive to the wind load value for blind nailing. To determine the wind load value for a double nailed assembly, locate the blind nailing and the face nailing wind values as listed in the product's evaluation report (ICC-ES ESR-2290), the greater of the two wind values shall be used.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215



APPLIED BUILDING SCIENCES

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Installation Tips

Certainteed will provide complete installation instructions, from how to handle the material to which tools provide the best results. These instructions are available by calling the Sales Support Group at 800-233-8990, via Fax-on-Demand or on the web at www.certainteed.com/pro/siding/cfiber.

Safety

Fiber cement products should be cut in open, well-ventilated areas. When cutting fiber cement with a power saw, workers must wear dust masks. If it is necessary to cut siding indoors or in a poorly ventilated area, you must use a NIOSH/MSHA-approved half mask with a HEPA filter cartridge-equipped respirator. Safety glasses are also required.

Storage and Handling

Keep fiber cement siding clean and protect it from direct exposure to the weather. It must be stored on a smooth, flat surface, not directly on the ground. Moisture-saturated fiber cement siding must not be installed. If saturated, let it dry before installation. Carry fiber cement siding on its edge rather than flat. When cutting large pieces, support it at the ends and near the cut.

Cutting

For best results, cut fiber cement siding face down with a circular power saw with a diamond blade. Cut four to five pieces at a time if desired. A diamond blade should last through five to six residential installations. Carbide blades can also be used. These cut faster but wear out quickly. An average-size home may take five or more carbide blades. A power miter saw equipped with a diamond blade works well. For irregular or radius cuts, use a mechanical shear or a jigsaw with medium or coarse-grit carbide blade. Use a standard hole saw for making penetrations such as those needed for plumbing, small vents or wiring. Fiber cement siding can be ripped lengthwise partially or at its full length. For example, a 1-1/2" wide starter strip can be ripped with no problem. Handle and install notched or narrow pieces carefully.

Recommended Diamond Blades:

- WeatherBoards 7-1/4" Diamond Blade

Recommended Power Shears:

- Porter-Cable (Model 6604)
- Kett
- Snapper

Fasteners

For applications through wood sheathing, use 6d (6 penny) smooth shank nails. Over sheathing that is thicker than 1 inch, use 8d (8 penny) nails. This will enable the nails to penetrate the required 1-1/4 inch. Nails must be round head, non-corrosive and either double hot-dipped galvanized or stainless steel. If using screws to fasten fiber cement siding, such as to metal studs, be sure that at least three threads penetrate the studs. Use a self-tapping corrosion-resistant ribbed bugle head screw. Staples must not be used.

Recommended Nails:

- Maze (available in bulk, collated or collated color matched)
- Tree Island (available in bulk or collated)

Recommended Screws:

- ITW BUILDEX Co – "Rock on Screws"

Nailers

Pneumatic nailers work best. They speed installation and help ensure consistent penetration. A pneumatic nailer with a flush mount attachment will set the nails to the proper depth. Do not over-drive nails, particularly when installing fiber cement siding over foam-type sheathing. Adjust tool air pressure to field conditions.

Recommended Pneumatic Nailers:

- Duo-Fast Coil Nailer (RCN60-225)
- Max Coil Nailer
- Hitachi
- Senco Coil Nailer (SCN50)

Preparation

Always consult local building codes for special nailing requirements. For blind nailing fiber cement siding, studs should be 16" on center. For face nailing, spacing can range from 16" to 24" on center. In areas where sustained winds may exceed 80 mph, consult nailing schedules in Certainteed NER-537 or ICBO ER-5735. Before you apply fiber cement siding to studs or over wood sheathing we recommend that you install a house wrap. (Consult local building codes in warm and humid areas as the requirement for house wrap or vapor barriers may vary.) Be sure the wrap extends below the framing onto the rim joist. Overlap and tape all joints before installing siding.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

CERTAINTEED SIDING INSTALLATION INSTRUCTIONS

Preparation

…"For blind nailing fiber cement siding, studs should be 16" on center. For face nailing, spacing can range from 16" to 24" on center. In areas where sustained winds may exceed 80 mph, consult nailing schedules in CertainTeed NER537 or ICBO ER-5735. Before you apply fiber cement siding to studs or over wood sheathing, we recommend that you install a house wrap."

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

General Instructions for All NichiProducts™

Construction Requirements

- NichiProducts® can be installed directly on braced wood or steel stud (20Ga or heavier) construction spaced at a maximum of 24" o.c. or over sheathing with solid wood or steel backing.
- A weather resistive barrier is required in accordance with local building codes when installing NichiProducts. Use the approved weather resistive barrier (WRB) as defined by the 2007 IRC. Nichiha is not liable for water infiltration.
- When installing NichiProducts, it is recommended that an APA rated 7/16" OSB or plywood sheathing be used. NichiProducts may be installed over non-structural sheathing such as foam, fiber builder board, and gypsum type panels. Non-structural sheathing thickness should not exceed 1". Due to the compressive nature of some non-structural sheathings, care must be taken not to overdrive the fastener and compress the sheathing. The fastener length must be increased by the thickness of the non-structural sheathing.
- Please consult with your local dealer or Nichiha directly when using NichiProducts on large projects such as 45' or higher buildings or three (3) stories or greater buildings. Some special considerations may be required.

Product Inspection

- Inspect all products thoroughly prior to installation. Do not install any product which may have been damaged in shipment or displays damage to the primer or finish coat.
- Contact your local dealer or Nichiha Customer Service toll-free at 1-866 424-4421 should you have any questions about NichiProducts.

Storage & Handling

- NichiProducts MUST be stored flat and off the ground prior to installation. Nichiha recommends storing on pallets.
- NichiProducts MUST be kept dry and stored in a covered area or covered with a tarp before installation. Moisture accumulation before installation may cause shrinkage and board damage. Do not install saturated boards.
- Carry the products on edge. Do not carry or lift NichiProducts flat. Improper handling may cause cracking or board damage.
- Nichiha is not responsible for damage caused by improper storage and handling of NichiProducts.

Minimum Clearances

- Maintain a minimum 1" - 2" clearance between NichiProducts and decking, walks, steps and hard surface driveways *(Fig. 1.1)*

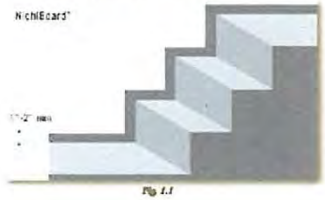


Fig. 1.1

- Maintain a minimum clearance of 6" above finished grade or in accordance with local codes if greater than 6" clearance is required. *(Fig. 1.2)*

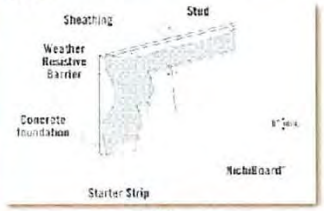


Fig. 1.2

- At roof and wall junctures and according to roofing manufacturer's instructions, flashing and counter-flashing are required. NichiProducts must be installed with a minimum 1" clearance from roofing. *(Fig. 1.3)*

Fig. 1.3

- A "kickout" flashing must be present at roof — wall intersects to direct roof water away from the siding and trim. *(Fig. 1.4)*

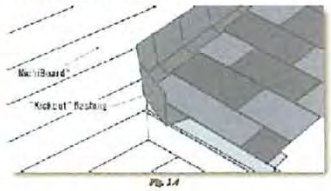


Fig. 1.4

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

NichiProducts™ can be installed directly on braced wood or steel stud spaced at a maximum of 24" o.c. **or over sheathing with solid wood or steel backing.**

When installing NichiProducts, it is recommended that an APA rated 7/16" OSB or plywood sheathing be used. NichiProducts may be installed over non-structural sheathing such as foam, fiber builder board, and gypsum type panels. Non-structural sheathing thickness should not exceed 1". Due to the compressive nature of some non-structural sheathings, care must be taken not to overdrive the fastener and compress the sheathing. The fastener length must be increased by the thickness of the non-structural sheathing.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

NichiBoard™

Preparation

Follow all general instructions on page one of this guide.

- NichiBoard™ can be installed directly on braced wood or steel stud (20GA. or heavier) construction spaced at a maximum of 24" o.c. or over sheathing with vertical solid wood or steel backing. (Fig. 3.1)

Fig. 3.1

- When installing NichiBoard, it is recommended that an APA rated minimum 7/16" OSB or plywood sheathing be used. NichiBoard may be installed over non-structural sheathing such as foam, fiber boards/board and gypsum type panels. Non-structural sheathing thickness should not exceed 1". Due to the compressive nature of some non-structural sheathings, care must be taken not to overdrive the fastener and compress the sheathing. The fastener length must be increased by the thickness of the non-structural sheathing.
- Ensure all weather resistive barriers are in place in accordance with local code.
- Framing misalignment or irregularities in the sheathing application should be corrected prior to siding installation. These irregularities may mirror through the finished installation.

Fastening

- Corrosion resistant fasteners, such as hot-dipped galvanized nails and screws that are appropriate to local building codes and practices must be used. Stainless steel fasteners are highly recommended in high-humidity and high-moisture regions. Nichiha is not liable for corrosion resistance of fasteners. Do not use aluminum fasteners, staples, clipped head or T-head nails, or fasteners that are not sized or designed for intended use.
- Corrosion resistant, full round head siding nails or appropriate screws may be used to install NichiBoard to wood and steel framing members. Fasteners must penetrate into wood a minimum of 1" or into a 20 gauge steel stud a minimum 1/2".
- The fastener head must be flush to the board surface. Do not over drive or under drive fasteners.

Installation

Follow all general instructions on page one of this guide.

Starter Strip & First Course (Fig. 3.2)

- A starter strip is required to set the first course on the proper angle and to create a strip edge at the bottom course of siding. The starter strip material may be a cut piece of NichiBoard, #8 1023 Nichiha Sparrij, PVC, or pressure treated lumber. Do not use untreated lumber, plywood, OSB, or other engineered wood products as a starter strip.
- Install the starter strip level with the bottom of the wall sheathing or mudsill.
- Ensure the first course of boards is level as it will be the guide for entire installation. Use a level and chalk line to establish a level and straight reference point for the first course. Continue to check for level lines throughout installation.

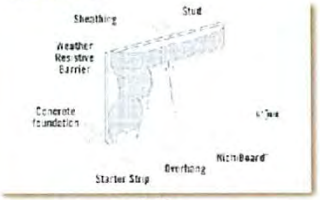


Fig. 3.2

- The first course of siding must hang below the starter strip a minimum of 1/4".
- The siding should not extend below the corner trim.
- The bottom edge of the first course must have at least 6" clearance above finished grade.
- It is recommended the course heights remain aligned and transfer around corners.

Overlap (Fig. 3.3-4.1)

- A minimum overlap of 1-1/4" is required.

Blind Nailing (Fig. 3.3)

- For a more aesthetically pleasing installation, NichiBoard may be installed in a hidden, or blind nail application.
- Position the fastener between 3/4" and 1" down from the top edge of the board and no closer than 5/8" from the board ends.
- Fasten from one end of the board to the other.

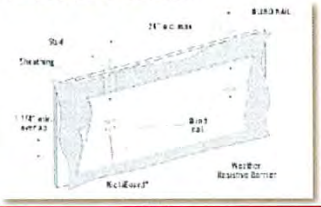


Fig. 3.3

Face Nailing (Fig. 4.1)

- It is permissible to install NichiBoard in a face nail type installation to meet certain installation requirements or when specified by local code.
- Position the fastener a minimum distance of 3/4" up from the bottom edge of the board and no more than 1". This ensures the fastener will penetrate through the overlap and through both courses. Place the fastener no closer than 3/8" from board ends.
- Fasten from one end of the board to the other.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Carl F. Muller, Attorney at Law, P.A.
607 Pendleton Street, Suite 201
Greenville, South Carolina 29601

Post Office Box 1717
Greenville, South Carolina 29602-1717

Phone: 864-991-8490 **carl@carlmullerlaw.com**
Fax: 864-751-2831

November 20, 2023

RE: C.A. NO.: 2021-CP-10-01215 - D.R. Horton, Inc.'s Motion to Vacate
FILING ADDITIONAL EXHIBITS & EMAIL SERVICE

Dear Clerk,

Please find additional exhibits and an email service to be attached to our Motion to Vacate filed this morning. We anticipate the exhibits will be filed in multiple parts.

Respectfully,

s/ Carl F. Muller
Carl F. Muller, SC Bar #4131
Carl F. Muller, Attorney-at-Law, P.A.
PO Box 1717
Greenville, SC 29602-1717
864-991-8904 Phone
864-751-2831 FAX
carl@carlmullerlaw.com

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

EXHIBIT V

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

	DO	DON'T
7 Cutting (continued)	When using a chop saw cut the siding face up. If Fiber Cement Lap Siding with Allura ColorMax® Finish is covered by protective film, leave the film on the siding until it is nailed to the substrate; then remove it before applying the next course. If protective foam is inserted between siding panels, remove it before cutting or installing fiber cement panels.	
8 Butt Joints	Re-seal cut ends with 100% acrylic latex primer or paint. Install all butt ends/joints in contact with one another. Use durable, non-corrosive backflashing that is non-reactive with fiber cement at all butt joints.	Never leave a gap at a butt joint. Do not use uncoated aluminum or metal materials with Allura Fiber Cement Siding.
9 Fastening	Nails must penetrate a minimum of 1-¼" into structural framing. Fasten only to structural rated sheathing like 7/16" OSB or ½" plywood. Keep fasteners proud to the surface of material. Nail 1" down from the top of the board when blind nailing. Nail ¾" up from the bottom when face nailing.	Do not counter sink or angle fasteners.
10 Painting & Caulking	Use high quality 100% acrylic latex paint or stain. Use high quality, exterior grade, color matched or paintable caulk or sealant that meets ASTM standard C-920 and is compatible with both Allura Fiber Cement Siding and the trim materials. Be sure to caulk wherever the siding meets the trim and around non-self-flashing penetrations and all windows and doors.	Never apply oil-based paint or stains. Do not caulk the bottom of the horizontal joint that is above "Z" flashing.

EXHIBIT W

DEFENDANT'S EXHIBIT 56 7-31-2023
PENGAD 800-631-6989

15-Year Limited Factory - Applied Finish Warranty

Nichiha Architectural Wall Panels

1. **Warranty Coverage**

SUBJECT TO THE TERMS, CONDITIONS AND EXCLUSIONS SET FORTH BELOW, Nichiha USA, Inc. ("Nichiha") warrants (a) to the original purchaser of Nichiha FIBER CEMENT PANELS ("Product") and (b) to such original purchaser's first transferee (each, a "Covered Person") that, when properly installed and maintained in accordance with Nichiha's printed instructions, the Product's Nichiha Factory-Applied Finish ("Finish") will, for a period of fifteen (15) years from the date of purchase:

A. Not peel;
B. Not blister;
C. Not wrinkle; and
D. Not significantly lose the product's original colors, patterns or appearance as an exterior wall, as determined by Nichiha.

2. **Warranty Exclusions**

This Limited Warranty does not cover any conditions, qualities, damages or events except as expressly set forth in Section 1 above. For example, this Limited Warranty does not cover, and Nichiha will not be liable for, any defect, damage or failure:

A. In or arising from seal coating, paint or other coating or finish, excluding Nichiha's recommended material, applied to the Product after purchase. These defects, damage or failures include without limitation efflorescence, peeling, blistering and performance of any 3rd party finishes, paints, stains or coatings.
B. Caused by or arising out of the Acts of God including, but not limited to, lightning, hurricanes, tornadoes, floods, earthquakes, mud slides or any other weather or similar natural phenomena.
C. Caused by or which occurs as the result of settlement or structural movement and/or movement of materials to which the Product is attached, incorrect design of the structure, or the structure not conforming to its design drawings, plans or specifications, or to any applicable building codes or standards.
D. Caused by or resulting from or connected with misuse, abuse, improper installation, lack of proper maintenance, improper storage or handling of the Product, vandalism, or other caused beyond Nichiha's control.
E. Caused by or which occurs as a result of use other than the normal, customary and intended use set forth in the installation manual and instruction.
F. To any product installed in the following Canadian provinces or territories: Yukon Territory, Northwest Territories, and Nunavut.

THIS WARRANTY APPLIES ONLY TO THE FINISH, AND DOES NOT COVER OR EXTEND TO (A) THE STUDS, INSULATION, BUILDING WRAP OR OTHER MATERIALS OR COMPONENTS OF THE NICHIHA WALL PANEL SYSTEM OTHER THAN THE PRODUCT, (B) THE STRUCTURE AND/OR MATERIALS TO WHICH THE PRODUCT IS ATTACHED OR APPLIES, OR (C) ANY WARPING, ROTTING, CRACKING OR OTHER DAMAGES CAUSED BY OR ASSOCIATED WITH ANY OF THE FOREGOING, [FOR DETAILS REGARDING WARRANTIES, IF ANY, WITH RESPECT TO THE OTHER COMPONENTS OF THE NICHIHA WALL PANEL SYSTEM, PLEASE SEE THE PACKAGING OR WRITTEN MATERIALS ACCOMPANYING SUCH PRODUCTS AND MATERIALS.]

3. **Conditions**

Nichiha will honor claims under the Limited Warranty **ONLY** if all of the following conditions are satisfied:

A. The Covered Person must provide proof of the date of purchase of the Product and that he or she is a Covered Person under this Limited Warranty. However, Nichiha will waive this requirement if, at the time a claim is made, Nichiha has a completed Warranty Registration Card on file with respect to the Covered Person making such claim.
B. The Product must have been properly stored at all times between purchase and installation.
C. The Product must have been installed and all times maintained in accordance with Nichiha's printed installation and maintenance instructions and all applicable building codes and other laws, rules, regulations and ordinances.
D. The covered person must deliver written notice of any claimed defect or failure covered by this Limited Warranty within thirty (30) days after discovery. Such notice must include the information specified in section 4 below.
E. Upon discovery of the claimed defect or failure, the Covered Person must immediately, and at the Covered Person's own expenses, provide for protection of all property that could be affected by the claimed defect or failure until such claimed defect or failure is remedied in accordance with the terms of this Limited Warranty.
F. Before any permanent repair to the Product, the Covered Person must allow Nichiha or Nichiha's designated representative to enter the property and structure where the Product is installed and examine, photograph and take samples of the Product.

4. **Claims**

To make a claim under the Limited Warranty, the Covered Person shall notify Nichiha in writing of all details regarding the claim within 30 days after discovering a possible Product defect or failure and before beginning any permanent repair. The notice must describe the defect or failure and, if Warranty Registration Cards were not completed and returned by the original purchaser and first transferee, must be accompanied by proof of the date of purchase, the name of builder and that the claimant is the original purchaser of the Product or the original purchaser's first transferee. Photos of the Product, showing the defect or failure, should accompany the notice if possible. All notices concerning this Limited Warranty should be sent to Nichiha USA, Inc. at 6465 E. Johns Crossing, Suite, 250, Johns Creek, GA 30097.

5. **Remedy**

If following inspection and adequate inquiry Nichiha determines that there is a defect or failure in the Finish covered by this Limited Warranty, Nichiha may elect at its discretion to do any one of the following:

A. Repair or arrange for repair of the Finish;
B. Provide replacement product with similar specifications (subject to reasonable variations because Nichiha may modify or discontinue specific product lines and because variations are normal in Product made at different times and/or places); or
C. Provide a refund to the Covered Person. During the first three (3) years that this Limited Warranty is in effect, any refund elected by Nichiha will equal $1.00 per each sq.ft. of affected portion of the Product. During the next twelve (12) years that this Limited Warranty is in effect, any refund made by Nichiha will equal $1.00 per each sq.ft. of the affected portion of the product less 8.34% of the original purchase price for each year commencing with the 4th year that this Limited Warranty is in effect.

Nichiha will not refund or pay and will not be responsible for any costs in connection with accessory materials or labor, such as for fasteners, framing or any other costs, nor will the amount of a refund be based on any amount other than the original purchase price of the affected portion of the Product, regardless of whether Nichiha has previously provided replacement Product or otherwise.

6. **Duration and Covered Person**

This Limited Warranty will commence upon the date of purchase of the Product (irrespective of when the Product is installed) and continue in favor of the Covered Person for the covered period (described in section 1 above), following the initial date of product purchase. This Limited Warranty does not, and shall not be interpreted to extend to any person other than the Covered Person. This Limited Warranty may not be transferred or assigned, and any attempted transfer or assignment shall be null and void.

7. **Disclaimer**

The statements in this Limited Warranty constitute the only warranty extended by Nichiha for or with respect to the Product. NICHIHA DISCLAIMS AND WILL NOT HAVE ANY LIABILITY FOR ANY INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES (SUCH AS INJURY TO PERSONS OR DAMAGE TO ANY STRUCTURE OR ITS CONTENTS) INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ARISING FROM ANY DEFECT OR FAILURE IN THE PRODUCT OR OTHERWISE. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

THE DURATION OF ANY IMPLIED WARRANTY SUCH AS IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR USE OR PURPOSE IS LIMITED TO THE FIRST TO ELAPSE OF THE LIMITED WARRANTY PERIOD PROVIDED HEREIN, OR SUCH SHORTER PERIOD AS APPLICABLE LAW PERMITS OR REQUIRES. Some states do not allow limitation on how long an implied warranty lasts, so the above limitation may not apply to you.

This Limited Warranty gives you specific legal rights and you may also have other rights that may vary from state to state. For further information or questions, please contact NICHIHA at 1-86-NICHIHA-1 (1-866-424-4421).

NICHIHA fiber cement

ELECTRONICALLY FILED - 2023-Nov-20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
:
COUNTY OF CHARLESTON) CASE NO. 2021-CP-10-01215

MANSFIELD AT PARK WEST INC.,
Plaintiff,
vs.
D.R. HORTON INC.,
Defendant.

ARBITRATION HEARING

DATE: Wednesday, July 26, 2023

TIME: 10:04 AM

LOCATION: Wills Massalon & Allen, LLC
97 Broad Street
Charleston, South Carolina 29401

REPORTED BY: KATIE L. GRAFF

FOR: KIRA FERGUSON
113 Cherry Plum Way
Pelzer, South Carolina 29669
k.fergusonreporting@gmail.com

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Q Okay. And tell us what you observed regarding the fiber cement siding installation.

A The majority of the siding that we removed was labeled, and the two brands that we were able to identify from the labeling on the backs of the boards were HardiePlank and CertainTeed. Those are pretty common brands here in town. We see those frequently.

Q And as you were doing your inspection and investigation of the siding, tell us a little bit about your process and what you did to formulate your opinions regarding the siding installation.

A Yes. As I said earlier, we removed siding so that we can see the fasteners. That's the critical component for the attachment of the siding to the buildings. And it's a blind nailed installation, so you can't see the fasteners unless you remove siding.

So when we did, we were able to evaluate the fastener installation. It was very, very poor. The code in table R703.4 requires that the siding fasteners be in the stud framing. The manufacturers also require that the siding fasteners be installed in the stud framing. We found 87 percent of the observed fasteners were not into

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

fastener too close to the top edge of the board. It has to be down at least three-quarters of an inch from the top of the board. When you fasten too high, it reduces wind capacity, and it also gives you a greater potential of damaging the board because you're close to the edge of the board.

Q All right. So just to recap briefly. The building code specifically requires the siding to be nailed into the studs?

A Yes. That's a prescriptive requirement that the building official cannot even waive.

Q And then we also have manufacturers' installation instructions for HardiePlank and CertainTeed that also require the siding to be nailed into the studs, correct?

A That's correct, in order to achieve the wind capacity it would need at this location.

Q And those instructions are associated with the code as well?

A Right. The code says you must follow the manufacturer's requirements.

Q And there's a third brand of siding that you identified -- or that you -- I should say there's a third brand of siding out at Mansfield that's the lesser brand, but nobody's been able to

example, in the middle of that slide that's 21 and a quarter, that's not the 16 inches that one should be looking for?

A Right. And there's a much bigger clue that we always look for when we do this investigation. When you pull the siding off the first board and you don't see lines on the wall where the contractor has marked where the studs are, you know it's going to be wrong. You can't see the stud, so you've got to do a layout on the wall in order to have any chance of putting the fasteners in the stud.

So I think maybe one wall, maybe two walls in this entire project we saw an attempted placement of lines on the wall. The vast majority were like this. I think almost all of them were like this where there was no marking on the house wrap so you would know where to place your fasteners.

And that's just a gross dereliction of duty, because if you don't know where the studs are, you're never going to be able to place the fastener into the stud.

Q Those black lines we're looking at on that house wrap, is that something that you did?

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

A Yes, those are my lines where I'm marking where the fasteners are.

Q Okay. And you say that there's a clue that's pretty readily observable to you, which is the walls are marked. Tell us how they're marked and what that process is all about.

A When a sider comes up to a wall, the first thing they have to do is their layout. So they have to locate the studs, and then measure over and mark where each stud is located. A good quality contractor is going to put a nail at the top and a nail at the bottom, take string line and pop a chalk line, because now you're sure that you've got a nice straight line where that stud is located.

A less stringent method is they'll measure it with their tape measure and just kind of draw it by hand, and it's not as accurate, if you want to call it that. But that's the first thing you're going to do, because everything relies on getting those fasteners into the studs, so we need to know where they're located.

Q So if you don't see a chalk line or a handwritten line, that's a red flag for you?

A Absolutely.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Q And what is AAMA? Tell us what AAMA is. Is that a window industry group?

A Yeah, it's the American Architectural Manufacturers Association is what it stands for. And they are heavily involved in the fenestration world.

The other problem we talked about at this property is the selection. And the windows that were chosen have integrated J-channels which are used for vinyl siding applications primarily. I mean, that's really the only thing that they're for.

So choosing a vinyl siding-style window in a fiber cement siding application creates problems. And we'll see why that's the case here in these next slides.

This is the C1193 standard. The reason I'm showing this is it defines what a proper sealant joint looks like. There's some graphical depiction that shows two materials that you're trying to seal between. Beneath that, you have a backer rod, which is a soft foam material that's been placed in the joint.

Q So it looks like a miniature pool noodle?

A Exactly. And it's very important

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

with regard to the fastener installation.

So if we go forward, you'll see here in the top left corner, there's a diagram. This exact diagram you see over and over again regardless of the brand of shingle. They show this all the time.

It tells you to drive the fastener flush with the shingle and do not drive it crooked or at an angle. Don't underdrive it, which is a fairly uncommon condition. And then the biggest problem that we see all the time is on the right, do not overdrive the fasteners.

And there's a lot of times where you look at that diagram and you're like, well, you know, what's the big deal if it's a little bit overdriven? I carry this is my bag as an example. This is a CertainTeed shingle. People don't realize shingles are about a tenth of an inch thick. They're not -- there's not much meat here.

So when you drive the head of the fastener into the face of this material, there's nowhere for it to go. You're basically going through the product. This has a core of fiberglass mesh that's impregnated with asphaltic materials. And when you drive these aggregate down into that

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

So while it sounds easy to face nail a wall, it's not. It's a lot of work and you're going to damage boards. That's why Hardie warns you about that.

Q Okay. What is your -- what is your scope of repair when dealing with the J-channel windows?

A They're not appropriate for the style of construction. It should never have been chosen, so they need to be replaced.

Q So removal and replacement of the J-channel windows?

A Yes. Because there's no way to properly install them.

Q What kind of windows would you replace them with?

A A like window, but a window that has a shoulder that does not have the integrated J-channel. In other words, it has a solid frame face that you can apply a sealant to between the trim and the window.

Q Okay. How about with regard to the shingle installation?

A Again, there's no way to go back and fix a shingled roof. You have to take the shingles off and install new shingles.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

construction, have you?

A No.

Q Never been your 40-hour-a-week job?

A No.

Q In fact -- all right. With regards to your actual experience in supervising and superintending engineering, you understand that -- that perfection is not the standard for which if you deviate would be a breach of the standard of care. You agree with that statement, don't you?

A Right. Perfection is not necessarily attainable.

Q Right. And it's not attainable, and you would say, too, is that minor deviations in your design, when you do a design as an engineer, minor deviations are acceptable. That's not a breach of the standard of care as a design engineer, is it?

A Right. Key word being minor. Small things can be accommodated.

Q Gotcha. And let's drop back and let's focus on this. So these houses, though -- or these townhouses in Mansfield were built within 2009 and 2011, right?

A Yes.

Q So when you saw it, when you went and

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

over the course of December and then October of 2021.

A From memory, I think that's right.

Q Okay. You didn't go inside any of the units, did you?

A I did not.

Q You didn't observe any interior property damage to any of those units, did you?

A Well, I couldn't because I didn't go in any of them.

Q Right. You could have but you didn't, right?

A Right. I did not go into any of the units.

Q Right. And when you were there over the course of six days, you never spoke specifically to any of the homeowners about what they did or did not do with regards to their units, did you?

A No, I don't think so.

Q Just small talk?

A I believe that's correct.

Q Had the opportunity, didn't do it?

A Yes, I mean, that's what I did. I just spoke with whoever I ran into, but it was usually just --

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

counted 480 from Mr. Dow's -- his takeoff. 480 windows you found, too, that had elevated moisture content?

A Given my sample size is much smaller than 480. So you got to look at how many I looked at versus how many I found that exhibited water intrusion.

Q We don't know how many you looked at?

A Well, we can count them up. I just don't have the number for it.

Q It's not in your report?

A It's in my information. It can be found, it's not a problem.

Q All right. And then with regards to the shingles, one building has already been replaced. One of the units was replaced last year, and it was based on hail damage, right?

A That's my understanding.

Q Okay. And I'm going to drill down on that. All of these units, they're all within -- I mean, they're all next to each other, in the same neighborhood, right?

A Correct.

Q Hail damage to one, pretty good indication they all got damaged by hail?

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

trustworthy.

Q Mount Pleasant Airport is like right down the road from these units.

A Right, but they don't have a reporting in the software that I saw.

Q They're an FAA certified airfield. They've got the data. We could've seen what the wind speeds were like right down the street from these units.

A Okay. Well, we can get that, too, if you want. But it's not going to vary significantly.

Q Right. Gotcha. All right. But with regards to the functioning of these buildings, there's been no interior property damage?

A That I'm aware of.

Q Right. There's been no mass failure of the siding falling off the buildings?

A Right. Which is not unexpected given the wind history.

Q There's been no -- well, and that's it, the idea of these -- the siding to adhere is to stand up to normal wear and tear of the units?

A No. It's designed to resist a certain wind load that the code prescribes. We have to

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

A No. Because if you look in the design documents, they do not give any guidance or leeway for a -- what they call them is pin backs.

Typically what's used for that is a 16-gauge wire finish nail, which is a headless fastener. So it's really just to kind of aesthetically hold the siding, but it's not going to give you significant capacity.

Q Gotcha. So we talked about no interior property damage. No mass failure yet, as you would say, of the siding. No mass failure of the shingles, right, and no mass failure of the windows. None of those have happened yet.

A They have not happened yet. And that's the key word, because they have not been stressed by a storm. Now, as far as the windows, I've not said that the windows are going to fail. I said they were a poor choice.

Q Right. And let's keep drilling down on that piece. When you opened up -- Mr. Chakeris talked to you about like code and then manufacturer's installation manual. Do you remember talking about that?

A Oh, yes.

Q I had a quote. You said that the code,

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

that I use. I don't know -- but you don't need -- you don't need markings at all for that. Have you ever seen those, put the little batteries in and they tell you where the stud is?

A A contractor is not going to walk down the wall with a nail gun in one hand and a stud finder in the other hand.

Q All right. I'm just saying you don't have to chalk every line to get it?

A Yes, you do.

Q All right. Well, we're going to talk about that, about whether or not they have to be in studs or not.

A Well, the code says that it does. So it does.

Q What if the manufacturer's installation says they're okay to be nailed into an OSB?

A Not for this wind zone. It says you can do it in other locations. But for this wind zone, CertainTeed and Hardie specifically tell you they have to be in the studs, which also mirrors the code.

Q Well, we'll look at that.

A There's no discussion about that. That's written in the documents.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

construction deficiencies and evidence of improper installation, the horizontal lap siding must be removed and replaced with proper installed exterior cladding system. And you're saying cement fiberboard?

A Yes, that was the intent of the construction. So I think that's what should be put back.

Q Gotcha. And your opinion was it was a poor selection to choose these windows with cement fiberboard because of the J-channel?

A Right. There's no way to properly install it.

Q Gotcha. And yet, in your last sentence in your recommendations says, the window units must be removed to accomplish this, and the contractor should determine whether to replace or reinstall the Windows.

So you're allowing cement fiberboard to be -- you're allowing the contractor to make the determination whether they should continue to have the vinyl windows with cement fiberboard, which you said was a bad selection?

A Right. That's a poorly worded sentence. They should not be used again.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

some of them look a little bit cumulative. But are those standard percentages and standard charges that Dow Inc. charges its clients today?

A Yes, sir. Every project since 2012, we've charged 27 percent, every job. Most of our projects are cost-plus. We break it down into two categories, overhead and contractors' fee. That's a gross fee. That's before taxes and associated costs. But the only major increase since 2012, we went from $55 an hour to $65 an hour for our men. And that's primarily because of insurances and so forth went up.

Q And even with those -- that 27 percent, Dow gets contracts and does work all over?

A Yeah. We just landed a $4 million one at 27 percent this week down on Kiawah.

Q All right. Let me ask you just a couple more questions, then I'm going to ask for about five minutes with Mr. John here, and then we'll try to wrap up.

Roofing. When these nails are overdriven, do they need to be fixed?

A Common problem, when you're driving by a job site -- I actually laugh when I hear the roofer going, because it sounds like a machine

gun. And when you hear that sound going way too fast, you know that, number 1, they're overdriving the nails; and, number 2, they're probably putting them in the wrong location.

What we have to do is we provide the fasteners, typically, for our -- all of our labor to make sure they're using the right fasteners. We don't allow on our site fasteners that are not compatible with the job.

Part of that is we make sure whatever guns they're using, the pneumatic guns that are connected to compressors, they have the safety to make sure they're not going to blow through your siding or your roofing. Because it's a common problem.

And what happens is over time, you know, those shingles will move. If you overdrive those nails with the expansion/contraction, the heat we have here, they'll start sliding down.

This particular project, there was some shingles blown off. I think there's going to be a lot more if we get a hurricane of some size. But, you know, the challenge I have trying to accept incorrect installation of materials like this,

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Q Gotcha.
A That's how I mean it.
Q Gotcha. And this gross deviation or gross negligence has resulted in zero interior property damage, hasn't it? Zero.
A Okay.
Q Right?
A I never said there was interior damage.
Q That's right, there's no interior property damage.
A Right.
Q The building envelope is performing as expected, isn't it?
A Not when you have 20 percent moisture behind the vapor barrier.
Q Well, you have 20 percent -- you have 22 percent moisture in two readings out of 480 windows. Two.
A He also had 15 to 18 percent in a multitude of other windows, and he only checked the percentage of the property. You know, it's almost -- he had moisture behind every window on a hundred percent that he checked.
Q How do you know?
A That's what he said.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

you've seen the use of HardiePlank in these types of J-channel vinyl windows, haven't you?

A Yeah, and I'm not saying that's correct. It's wrong.

Q Right. Well --

A I've seen people do it wrong before is my point.

Q So here's another one where you said, there's methodologies where you can use in original construction HardiePlank with these windows. It's a little more costly, but you can do it.

A And I think I just testified to that here.

Q No, you testified you couldn't do it. In fact, you just said to me, it's not a good idea and you shouldn't do it.

A When Mr. Leath was questioning, I said -- very clearly I said, look, if you were to use these windows and you cut your trim, took all the trim out, cut the siding back and tried to incorporate the picture frame style trim that they have on these windows, you could try and do that and come up with a methodology to install it, but it's not the right methodology, it's not what the windows were made for.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

methodology the contractor used and just caulk over nothing that could be adhered to. You need a quarter-inch gap, backer rod, it's just not going to work.

Q Well, isn't that an attempt? Attempting to caulk it is better than doing absolutely nothing, isn't it?

A So to install it incorrectly and have failures during that initial installation, you want to try and have more failure? It doesn't make sense.

Q Wait a minute, I'm sorry. Was the interior damage as a result of these windows being installed wrong?

A I'm not saying interior damage, the failure of the window installation and the trim installation, you can see all the fasteners around the windows deteriorated. They're in all the photos we looked at this morning. Every fastener was rusted and deteriorated. That's a failure.

Q I'm sorry, that's two windows, Mr. Dow, out of 480.

A And he offered to show you the other windows.

Q Gotcha. All right. And actually, it's

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
:
COUNTY OF CHARLESTON) CASE NO. 2021-CP-10-01215

MANSFIELD AT PARK WEST INC.,
Plaintiff,
vs.
D.R. HORTON INC.,
Defendant.

ARBITRATION HEARING

DATE: Monday, July 31, 2023

TIME: 09:01 AM

LOCATION: Wills Massalon & Allen, LLC
97 Broad Street
Charleston, South Carolina 29401

REPORTED BY: KATIE L. GRAFF

FOR: KIRA FERGUSON
113 Cherry Plum Way
Pelzer, South Carolina 29669
k.fergusonreporting@gmail.com

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Mansfield project, who designed it?

A I don't know that.

Q All right. Let me ask you this. Is this -- was this the first townhome project you had been on?

A No.

Q Okay. Tell me about what other experience did you have with D.R. Horton and townhomes?

A I built several other townhome communities. And I was also -- in 2006 and '7, I was an area manager as well, so I managed superintendents that were building other townhome communities as well, so.

Q So you had been promoted?

A I was promoted and then went back to being a superintendent during the recession.

Q I was going to say, there was something that -- the recession happened in '08, right?

A Yeah.

Q Okay. So was there anything different about Mansfield project than the other townhome projects you did for D.R. Horton?

A No.

Q All right. With regards to the siding and the windows?

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

A No.
Q All right.
A I'd work on both multifamily or townhome communities that have had vinyl siding and also fiber cement.
Q Gotcha. Did you have any other townhomes that had vinyl windows and fiber cement siding?
A I don't recall.
Q Okay. Let me ask you this. The subcontractors that you used on Mansfield, I think there's -- who was the siding subcontractor, if you recall?
A DVS Incorporated.
Q All right. Tell me what your history was with DVS, if anything, prior to Mansfield.
A They had worked with us for several years in a prior townhome community as well that had fiber cement siding. They also did vinyl siding for us in other communities.
Q So how many years had you worked at DVS?
A At least two. I think they started here in Charleston with us in 2007, I believe.
Q Are you aware of what other big home builders that they also did work for?
A Yes, then they worked for several other

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

in the market. I don't know specifically.
Q Builders FirstSource, are you familiar with them?
A Yes.
Q Were you familiar with them prior to Mansfield?
A Yes.
Q How many did they --
A They supplied windows and doors in the first community I started in 2004. So they had been with us for my entire time.
Q What about Americo, the roofer?
A Americo, as well, they were also my roofing contractor in 2004 when I started.
Q And then Maner Builders Supply for the fence, had you all done any work with them before?
A Yes. They install all of our privacy fences.
Q So let's -- so were any of the subs that are the scopes of work that we're here about today new to, one, D.R. Horton, on the Mansfield?
A No.
Q Were any of them new to you?
A No.
Q Let's talk about like how did -- were you

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

involved in the vetting of subcontractors when you were -- prior to Mansfield or for D.R. Horton?

A I was not.

Q Gotcha. With regards to this specific project, what did y'all do to like set a game plan at the beginning with your subs?

A Well, the office always -- you know, they're the ones that sign on the contracts and did that. When it was given to me, I was given the plans of building Mansfield. So, you know, we would typically have a kickoff meeting in the neighborhood where all the contractors will come in, we'll meet on site with all of that --

Q Did that happen on Mansfield? Do you remember that?

A Yes. And then obviously before each contractor would come out, I would schedule with them and ensure that they knew what they were doing moving forward.

Q Let's talk about your role on Mansfield. Tell me what your role was on Mansfield specifically once things started kicking off.

A I was the superintendent for Mansfield.

Q Tell me what that means.

A That means I'm on site every day. I'm

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

responsible for, you know, obviously, scheduling contractors, meeting with homeowners, calling in inspections, and ensuring that everything on site is moving forward and safely. So I just did the day-to-day operation of the site.

Q Gotcha. And with regards to -- you may have answered this already -- specifically -- I know you've done other townhomes, but was Mansfield the same -- structurally was it the same or different from the other townhomes that you had done?

A They were different floor plans, but overall very similar.

Q Gotcha. All right. Like what about your interface with the subs -- well, let me ask you this. Did you live close to Mansfield, the project?

A I do. I live less than a -- about a half mile away.

Q Do you still live there?

A Yes.

Q Gotcha. And so tell me what -- like the interface you would have with the subs. Who did you talk to on a daily basis?

A On a daily basis, I would speak with the supervisors for each subcontractor. So they were required to have a supervisor on site every day.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

So that's who I would communicate with. You know, obviously sometimes I'd communicate directly with the crew, but I always followed up with the manager for that contractor.

Q Sometimes referred to as chain of command?

A Correct.

Q You follow chain of command. Gotcha.

Was there ever a time when there was a lull in the buildings, like when -- like there were no buildings being built for a while?

A Yes. Obviously with the start space, there were some buildings that started. Or, you know, sometimes one building might be nearing completion. Also waiting on inspection sometimes. Mount Pleasant, you could wait a week or so for inspections to occur. So there wouldn't be any work going on, but obviously I still stop by every day.

Q Sure. Now, is there anything unusual about the Mansfield project itself? I mean, is the construction of these units avant-garde or some other type of construction?

A No.

Q What about the site, anything challenging about the building site?

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

A Yeah, and that one extended well past Mansfield. I think built in there until 2014 or '15.

Q And it was a vinyl siding project, I believe, correct?

A Yes.

Q And you used these same windows as we see in the Mansfield community in this Brookdale project, correct?

A I don't know off -- I mean, very likely we could've, yes.

Q Okay. And you would start your morning leaving the house -- your house, which was about a quarter mile or half mile, somewhere in that -- within a mile of the Mansfield project. And you would swing by and check on the Mansfield project, and then you would go to the Brookdale single-family home community, correct?

A That's correct.

Q And then you would spend the majority -- or the bulk of your day at Brookdale. And then when you came back toward the house, home, the end of the day, you'd swing by Mansfield again to check on things?

A Yes, I spent about -- I split my day

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

between both of them. Not the majority was spent at Brookdale, but half my time was at Brookdale, half my time was at Mansfield.

Q And the Brookdale project you were in charge of is at least 10 times the size of the Mansfield project, correct?

A Not at any given time. We weren't building maybe more than eight to 10 houses at a time in Brookdale.

Q Okay. And you had somewhere between one and three buildings going at Mansfield?

A Correct.

Q So at least -- or at any given time, it was roughly three times bigger. Would that be correct?

A Well, I mean, two buildings equates to eight to 10 units, so it's about half and half.

Q But from a square footage standpoint, it wouldn't be half and half, would it?

A I don't agree with that.

Q So the homes that you all were building in Brookdale were like 12-, 1500 square feet each?

A Yes.

Q Okay. And they have four walls, correct?

A Yes.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

us there as well as other contractors.

Q For how long prior to Mansfield?

A That would've been I think -- I know 1999 and maybe a little bit before that. But definitely in 1999. So for 10 years prior to the start of Mansfield. I don't believe they were doing work for us doing the siding in Charleston. I think it might have been right about 2007 in Charleston.

Q Still a couple of years prior?

A Yes.

Q All right. And in that time frame prior to 2009, the start of Mansfield, were you aware of any lawsuits against DVS for its work?

A No.

Q All right. Americo, the roofer, what was your work history with Americo prior to the start of the Mansfield project in 2009?

A I didn't have as much direct contact with Americo, direct conversation. I mean, I did have conversation with the owner here and there periodically. But if I recall, they were in force at least as early as 2004. Might have been sooner than that. And I'm pretty sure in 2004, they were working for us.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Q Four or five years prior to Mansfield?
A Yeah, four or five years, yes.
Q Are you aware of any lawsuits against Americo prior to Mansfield against Americo for their work?
A No.
Q Builders FirstSource, have you ever heard of them? They're a small outfit, I'm sure.
A Builders FirstSource was working for us prior to my being hired with D.R. Horton.
Q They're a billion -- multiple billion-dollar company?
A Very large company, yes.
Q Builders FirstSource for Mansfield, did they supply and install the windows?
A I believe so, yes.
Q Okay. And so their history with D.R. Horton predates your joining Horton in 1998?
A Yes. One entity or another with different markets because the Builders FirstSource --
Q They do a lot of stuff?
A They bought a lot of companies and they're becoming large.
Q And if you know whether or not prior to

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Mansfield, specifically with regards to supplying installation of windows, any lawsuits complaining about Builders FirstSource work prior to building Mansfield?

A No.

Q Maner Builders Supply, what do they do?

A Fences.

Q All right. And do you know what the work history was between D.R. Horton and Maner Builders Supply prior to Mansfield?

A I know they worked for us as early as 2007. I believe they worked for us prior to that. I didn't have as much direct contact with the fence company. It's -- fencing is typically -- it's either one or two or three types of fences and needs more handled -- it's more the interactions with the field.

Q Okay. We're going to go ahead while I'm here, I'm just going to go through deciding the required homeowner maintenance over time.

A Vinyl siding not as much, but it's got to be -- you know, you got to make sure it's still on. But fiber cement siding does require maintenance, yes.

Q What about windows, do those require

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

if you don't mind.

MR. DUDLEY: Sure.

BY MR. DUDLEY:

Q What do you know about how the level of structure of supervision was for the subcontractors on that job?

ARBITRATOR: That's okay.

A Okay. And that's basically because they're required. So they're supposed to have a supervisor on site.

BY MR. DUDLEY:

Q Okay. And so that's a level of supervision of the work that Nick would deal with?

A Yes, he would deal with that.

Q And then up the chain of command is a -- there's a level for that subcontractor that you deal with?

A Yeah. I mean, Nick has his levels that he would go through above. And then at a certain point, then he would hand it over to a construction manager, then maybe myself.

Q Gotcha. All right. Anything unusual about the Mansfield job? I mean, difficult site conditions, level of the nature of the buildings, anything unusual about them?

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Q Gotcha. Y'all are in agreement on that?
A That part, yes.
Q All right. If you could -- well, let's hit the high level of it first. Your observations of the two times that you were there on the site and in your observation of Mr. Mease's photographs, all of the photographs, not just his report, your evaluation of the structures as they stand today or when you saw them in regards to the longevity they've been in service, tell me what's your observations of them?
A From a shingles standpoint, there was a tab shingle that was replaced. We have no reason why or know why it was, so we can't allude that to when or anything else. Didn't see any shingles missing. We didn't see any creased shingles.
Q What does that mean?
A A creased shingle means that it's lost its adhesion and that the wind has picked up and caused the shingle to flap back over itself, which causes a crease at the hemline. The hemline is where the overlying shingle is at. So you get a crack there. Typically, if you get a couple of them, they'll tear and blow off.
Q And you did not -- in the pictures that

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

you observed and when you were there, you did not see any of --

A Didn't see a single one.

Q And that would be evidence where they lost adhesion?

A That's correct. And there would be evidence of a wind event, which would cause them to be lost.

Q The times that you were there and the pictures that you observed, did you observe any mass blowing off of shingles or missing shingles on those roofs?

A I didn't see any. We walked around and I took pictures as best I could of every building of every slope, front and rear, garages. Didn't see any shingle loss whatsoever.

Q What does that tell you?

A Tells me right here, they're doing their intended purpose, which is to protect the roof, protect the building.

Q Do you know what the life -- what the manufacturer's longevity is for those specific shingles that are up there?

A I think their 20-year. I would be shocked if they were 30, but I think they're

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

20-year shingle.

Q In the 20 years, the manufacturers for the -- for the manufacturer of the material itself, not the installation?

A Right.

Q Okay. All right. So if that's the case, they're about three-quarters of the way through their expected life?

A Typically, correct. And the rule of thumb is -- on the coastal properties, is that if you get 70, 75 percent of the life of the shingle, then you're pretty much there. I mean, those shingles, just based on photographed evidence, are very near the service life.

Q All right. And there is some wear and tear that has been observed on the shingles?

A That's correct. Granule loss is expected. It starts occurring the day the shingle's manufactured. But there was wear and tear on the shingles on just some edges frayed, et cetera.

Q That has nothing to do with the installation?

A Has nothing to do with it, it's just people walking on the roofs, inspections,

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

branches, whatever else might do it. Animals, squirrels, birds.

Q Your observation -- tell me what was your observation of the siding.

A I didn't see any massive siding loss whatsoever. The siding was nailed. It was visible. It was in place. Didn't see any installation -- didn't see any issues with the siding coming off.

Q Given the longevity of the use already of this -- of these buildings?

A Right.

Q All right. With regards to the installation of the siding and given the longevity, what is your opinion as to the observation or the supervision of D.R. Horton's relation to that?

A I would say that D.R. Horton used the typical normal and that the siding is acting in an expected way in providing the cladding for the building.

Q And that's the performance requirement. If it's performing, then there was adequate supervision?

A Right. It's not a massive blowoff.

Q Right. If there had been -- if there had

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

not even been the slightest care of the installation of the siding itself, what would you see? Not even the slightest of care of the installation of the siding, what would you then expect to see?

A I would've expected to have seen siding off the building.

Q And what about intrusion, water intrusion into the building?

A I would expect to hear about water intrusion into the building. And to the best of my knowledge and information provided to me today, there's been no water intrusion in the building.

Q And then with regards if there has not been the slightest of care in the application -- installation of the shingles, what would you expect to see?

A Expect to see blowoff or significant water intrusion. We had the one roof that was replaced with hail damage. If it was hail damage, you would expect to have hail damage on either side. It's not going to stop on an imaginary line. But you've had no allegations of water intrusion in the building that's been provided to us.

Q With regards to the windows -- and let's

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

take step one. With regards to the interface between siding and the vinyl windows, tell me about what you observed first.

A Well, it generally just looks like that the trim butts up against the J-channel but not into it.

Q And if there had not been the slightest of care in the installation of these building component parts, what would you expect?

A Well, you would expect to see water intrusion or issues whatsoever. I do recognize there was two windows that had rusty nails at the bottom in the seal, but that's the only problem we saw. And you got to recall that on these windows, the jambs and the heads are all covered with flashing tape, they're not exposed at all.

MR. DUDLEY: Keep talking. I got to find something.

BY MR. DUDLEY:

Q So the rusty nails, what could you do to remedy that?

A Well, when you take the trim off, you just replace the bottom nails, the ones along the seal, the fin and the seal of the window, the bottom of the window.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Q Okay. With regards to the use of vinyl windows with Hardie siding, what are you aware of where attachments are available for that type of interface?

A Certainly there are different ways to address that. The testimony last week was the fact that you didn't have a shoulder in the window that you could then add the butt joint or the backer rod and the sealant. And there are at least two or three different methods that you can employ to address that issue without removal of the window. You only have to remove the trim.

Q You were here Wednesday with testimony?

A I was.

Q Was there any testimony about the windows themselves failing or needing to be replaced?

A No. And, in fact, Mr. Mease has not identified any issues with the windows. The only issue has been the J-channel and they say that it's not applicable when you have a cement board siding.

Q Last one then we're going to go to the fence. With regards to the use of the HardiePlank with vinyl windows, if even the slightest of care had not been used in that installation, what would

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

you have expected to see?

A Expect to see a significant water intrusion within the heated walls because of the failure of the system, but the system's working.

Q With regards to the two windows, approximately 480 windows?

A 430, 480, it's something of that number, yes, sir.

Q And we've only seen two with rusty nails?

A Correct, sir.

Q Okay. What would you -- what would you do -- how would you fix the rusty nails?

A Like I said, if we had to do anything, if it was required that we would take the trim off and address the butt joint, the shoulder of the window, and the rusty nails at the same time.

Q You probably said that as I was walking over there. I think I remember I asked you that. I apologize I can't multitask.

The fence. Have you observed the fence?

A I've walked the fence. I've walked the perimeter almost every building. The fence was supplied by a fence company. It's for an exterior product. All they're saying -- Mr. Dow said it

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Seven-sixteenths.

Q That's a Dudley error.

A Mr. Mease testified under oath through his deposition that the OSB sheathing was one-half-inch thick which exceeds the required seven-sixteenths-inch-thick requirements of the manufacturer.

Q So one-half-inch is the sheathing that is on Mansfield?

A Correct.

Q The HardiePlank installation manual says it's got to be in excess of seven-sixteenths?

A It's got to be seven-sixteenths. A minimum seven-sixteenths to drive the nail directly into the sheathing.

Q So the manufacturer specifications allows nailing to be into the sheathing?

A That's correct.

Q So regardless of what Mr. Disk or Mr. Bunner said, nailing into the sheathing is allowed?

A Is allowed.

Q And even as of 2006?

A 2006. This is the 2006 code.

Q All right. But even if we're out there

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

today looking at it, even if the codes had been enhanced --

A Still you go back to the code that was applicable under your building permit.

Q But right now, that's acceptable installation of Hardie?

A Correct.

Q All right. That does not meet the -- that does not violate the building code?

A Does not violate the building code.

Q Okay.

A All right. Continuing on --

Q And so why does it have pictures of it driving into the studs?

A I'll get to that in a moment.

Q Thank you.

A All right. So we're going on, continuing on, and it says that face nailing is applicable where talking about building codes and high wind areas and when fastened to OSB or equivalent sheathing without penetrating into the studs.

Q What does that mean?

A It means that you're allowed to do it. You're allowed to face nail. And, in fact, I will

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

tell you the buildings on the coast are required to be face nailed. It also says, double nailing refers to the combined use of blind nailing and face nailing.

Double nailing may be applicable in circumstances of repair or when an extraction is necessary to meet fastening requirements that otherwise require the replacement of the siding.

Q So if -- if it were to be determined that the nailing needs to be addressed, face nailing per the manufacturer is okay?

A Is allowed. Absolutely. And right here, they state -- James Hardie states absolutely can use them. They talk about wind loads, you can't use a double nailing, the blind nail, and face nailing to determine the loads, but you use one or the other. And that's not an issue here.

Q One of the issues that Mr. Mease made was about you can't face nail because you don't want to nail directly onto the blind nail that you can't see. How would you do that?

A Well, he also said the nailing was high. Was too high. So you would be able to go right below that and double nail it.

Q You just drop below --

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

A Yes. CertainTeed was the second manufacturer. Here again, I don't expect you to read that. But again, it says face nailing or blind nailing is allowed. No problem there. And it also says that Nichiha allows you to install sheathing with solid wood or steel backing. All three manufacturers say that you can put it in the sheathing without driving it into the studs.

Q But that's if you have at least seven-sixteenths or through greater OSB?

A Correct. All size seven-sixteenths.

Now --

Q Hold on. So if the sheathing below that is foam, you can't nail into --

A Can't nail in foam.

Q If the sheathing that's below it is something less than seven-sixteenths, you can't nail it in just the sheathing?

A If it was three-eighths, you could, six-sixteenths.

Q I'm sorry, if it was less than what it says there. I'll stop --

A If it's less than seven-sixteenths, then the manufacturer does not allow you to drive it into the sheathing.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Q Fair enough. What we have on Mansfield exceeds what the manufacturer says, driving into the sheathing is acceptable?

A Right. We have one half inch versus the seven-sixteenths.

Q Please continue.

A This is Nichiha. Just here again, it allows you to face nail the Nichiha board. Here again, this is the code, and the lap siding says what you do are the approved manufacturer's installation instructions.

Q So we were just on the manufacturer's --

A A manufacturer is always going to take priority over the code.

Q What does the code say?

A All right. Now, let's talk about this a minute. This is the same chart that was provided by Mr. Mease in his testimony.

Q All right. Hard to read.

A And this is -- that's why we redid it. It actually has W, which is -- Mr. Mease brought up. Mr. Mease was correct in that you have to follow the code if that's all you do. I'll tell you that if you like right here -- it doesn't point out -- the red, nominal thickness is

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

five-sixteenths.

Q I see that.

A In other words, if you only put five-sixteenth-inch sheathing on the wall, then you have to drive the nails into the stud. You're not allowed to use the sheathing, because you don't meet the requirements as specified by the manufacturer of seven-sixteenths, which Horton exceeded with the half-inch sheathing.

Q Okay. So the code says if you didn't have the manufacturers -- we don't know what that last one was. If it's greater than five-sixteenths, you don't have to go into the stud?

A As long as it meets the seven-sixteenths that you're aware of from an industry standard.

Q So its only requirement into the stud if it's five-sixteenths or less.

A Just five-sixteenths or less, you absolutely have to drive it into the studs to meet the -- comply with the code.

Q So with regards to the conditions in Mansfield, it complies with the code and it exceeds the code and it exceeds the manufacturer --

A Complies with the manufacturer's installation instructions.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Q It's been painted, though?
A It's been painted. But there was a comment that it looked terrible, reflects through 5,000 nails --
Q Freckles?
A This is -- these are both face nail projects. 100 percent face nail.
ABS states that the siding is approaching 12 to 14 years old. As of our last visit of August 30th, 2022, no siding was observed to be missing or exhibit major installation issues. The installation complies with Hardie, CertainTeed, and Nichiha installation instructions and the code, the IRC. And we believe there is no further responsibility by D.R. Horton.
Q All right.
A Shingles.
Q Well, I guess the same is like if that's your conclusion, then the oversight that D.R. Horton did with the sub- -- siding subcontractor was more than adequate?
A Adequate. It was more than adequate. Met the intent.
Q Gotcha.
A We were told, heavily-overdriven or

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

angle-driven fasteners and heavily worn shingles with failing seal strips. We walked it and we did not see missing or installation performance issues. The shingles were in place. There was the one shingle pointed out the other day. I didn't notice that one, but --

Q That had been replaced?

A Been replaced.

And then, of course, you had the one roof that, like I said, had hail damage and was a free roof job. And these are the shingles.

Q Not free.

A Huh?

Q Not, free but --

A The insurance company will take care of it.

Just -- this is typical residential shingles. That's the one that was replaced. You can see certainly a different color of the roof and of the main structure.

Q So hold on, Steve, go back to the roof.

All right. That roof, if it got replaced last year, was 12 to 14 years old?

A Correct.

Q Insurance companies give you depreciation

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

less than normal?

A Correct. There were minor deviations, but there were no performance issues shown by Mr. Mease.

Q And nothing to say, well, if it's done this way, you've got some diminution of that?

A Right. In fact, the National Roofing Contractors Association recognizes the proper attachment of laminated stripped shingles is an important consideration for the performance of an asphalt shingle roof system.

However, NRCA has the opinion that too much emphasis is placed on manufacturers' exact fastener placement locations. Allowable fastener placement tolerances need to be considered. Research has shown that once self-sealing asphalt shingles have sealed, fastener placement has little effect on the wind resistance and the overall performance of the asphalt shingle roof system.

Q And that's the adhesion?

A That's the adhesion, and that's what you're seeing. You're seeing that you have -- the wind is not addressing or causing issues with the shingle causing them to fly up or the creased shingles because they're adhered.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

their intent of responsibility of supervision.

Q And at least with regards to the installation -- or the supervision of installation of the roof, more than the slightest of care was given?

A Correct.

Q Based on the performance --

A Performance of the shingles to date.

Q For the 12 to 14 years. Thank you.

A Windows. Improper single-hung vinyl window installation, he disclosed two windows with rusty fasteners and/or WRB staining. He being Mr. Mease, of course.

Q Okay.

A We did observe a higher water content below the window ease. And, of course, where the J-channel, the water would come off of the top of the window down the side. You would expect to have a little higher water content there, because that's the way the building removes the water in accordance with the code.

Q Water content at that level of the cladding is acceptable, it's just it doesn't get beyond that?

A Right. You're going to have water level

on the cladding there. And then you're going to have it on the WRB there, because it's not a waterproof system, and the J-channel will evacuate the water from the system.

Q Gotcha.

A RTM has not identified any issues with the windows nor the flashing. The only fact that the windows have a J-channel component, and they're wanting to remove the 43 windows based on that.

Q Could you dive into that a little bit more, the J-channel component of the windows and the interface with the siding?

A Because they said there's not a shoulder that the windows have so that you could then butt up to it and install a backer rod and a sealant joint.

Q Some vinyl window manufacturers have an attachment to do that?

A Yes.

Q That you could put in in initial construction?

A Yeah. Why don't we look at that.

Q Okay.

A First off, this is one of the windows

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

the trim is butt up to the J-channel window.

Can you hit go -- there we go. Can you hit go, John?

MR. CRAWFORD: I can.

A All right. We've talked about there are ways to fix these windows. This is applied to them but this is different ways that you can address the window.

(Instructional video played.)

BY MR. DUDLEY:

Q There's nothing at the bottom, right?

A That's right. This is the second way to do it. I think. This is the second way of doing this. It's a different type of J-channel.

(Instructional video played.)

A Okay. You will note that they didn't do anything at the seal. You can't cover the seal up because that's where the water vacates from the window.

Q Right.

A What these two options did was provide -- depending on actual window, provides you a means to build a shoulder. This is an option we designed. You know, you take off the siding, the trim. You notch it so that it would

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

then fit into the J-channel and provide you a means to add a backer rod and sealant joint.

Mr. Dow made the comment that he couldn't see how this would be so much more -- so much cheaper than tearing out all the windows, tearing out all the siding. All we're doing here is removing the trim, adding the piece or modifying the trim, and then putting it back in on the four sides without having to take the window, the door out, the door off, or take the siding off the wall as well.

Q And you sure don't need to replace the window if you do this?

A Don't need to replace the window here. Here, again, the problem was you don't have a shoulder. We were providing either a shoulder or providing the joint -- the backer rod and the sealant joint.

Q And even with this, I mean, you're just -- you're modifying the existing siding. You're not replacing the siding?

A Right, you replace the siding. You'd have to replace the siding to get a longer piece that you could trim back.

Q Just at the ones that go into the windows --

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

what the documents say.

Q Okay. Well, let's look back at this building code. You got that handy?

A Yes.

Q We can talk just briefly about it. And it specifically says, although it's showing five-sixteenth-inch thickness of the sheathing, it also says that you've got to nail into the studs?

A Right. If you only have five-sixteenth-inch sheathing, you have to use the studs.

Q But this is not what this says. Where does it say if you only have five-sixteenth-inch sheathing that you have to nail into -- that's the only time you have to nail into the studs?

A Because that's the -- that's if you only use the code at the bare minimum, if you do A, you have to use B.

Q So where in here does it say if you use seven-sixteenth-inch sheathing that you don't have to nail into the studs? It doesn't, does it?

A Says that you have to follow the manufacturer's installation instructions. Those say if you have seven-sixteenth-inch sheathing or greater, you can use face -- or you can nail into

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

the sheathing.

Q Well, the -- the ESR that we're talking about specifically says you've got to nail into the wood framing members.

A Wood framing members, this would be sheathing.

Q Do your colleagues believe that?

A I have not discussed this with my colleagues.

Q Can you show us where the depictions say that you only have to nail into the sheathing?

A Those are depictions.

Q You can show us any depictions that say nailing into the sheathing alone is okay?

A If you show me written language.

Q And this CertainTeed, it's -- you said there might be a conflict. There's an 800 number on these.

A There's what?

Q There's an 800 number on all these installation instructions. Isn't it easy enough for a contractor to say, hey, buddy, hey, you at HardiePlank, I got a question, what should I do?

A Either that or the building code official.

A Yes.
Q Right. And that's establishing if you only have five-sixteenths, you must nail into the stud. Is that correct?
A That's correct.
Q All right. Then there's a gradation above that, isn't there?
A Yeah.
Q And then there is -- the manufacturers all say seven-sixteenths?
A Seven sixteenths was the minimum the manufacturers would allow you to use the sheathing as nailing.
Q And the sheathing is nailed into the stud?
A Right. And Mr. Mease never noted any issues with the nailing of the sheathing to the studs. It was only the Hardie or cement board to the sheathing.
Q Nailing of the sheathing to the stud creates -- that's the framing. That's a part of the framing?
A Yes.
Q All right. And that's why it would make sense if you nailed it into the sheathing, you're nailing into a half-inch piece of wood that's nailed

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

to the studs?
A Which provides you the resistance, a greater resistance in pullout than the five-sixteenths would.
Q And, again, I don't know what half-inch -- is that eight-sixteenths?
A That's eight-sixteenths.
Q So the delta between five-sixteenths and eight-sixteenths is --
A Three-sixteenths.
Q It's almost half, isn't it?
A Right.
Q Isn't it twice as much resistance in what's actually on Mansfield from what the code requires?
A Yes.
Q All right. We have not seen anything from Mr. Mease or Mr. Dow that says eight-sixteenths sheathing is still inadequate to resist the wind loads in this area, have we?
A No.
Q All right.
MR. DUDLEY: Do you have the voiding of the warranty bit? What was the sheet you have?

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

MR. DUDLEY: You talked about the -- you showed us pictures by implication.

MR. CHAKERIS: That's fine. I'm just giving you a hard time.

MR. DUDLEY: I don't have anything else. That's all.

EXAMINATION

BY ARBITRATOR:

Q You were here, I think, when there were estimates as much as 89 percent of the siding had been nailed improperly and it wasn't in the studs. What's your thought about that?

A Well, the term is alleged improper nailing. Our basis is that if it was in the sheathing which is allowed by code and allowed by the manufacturers, it's not improper. Because we had half-inch sheathing, you can nail directly to the sheathing, it does not have to be into the studs.

Q One question. Let me be clear. You assume -- I'll just assume this. The opinion expressed was that 89 percent of the siding out there was nailed in places other than the studs. Do you have any reason to think that's incorrect?

A No, sir.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Mr. Mease admitted that the building code has factors of safety built into it. So slight deviations are built into that so that you don't have catastrophic failure.

And he -- this is, I guess, the best example that after 14 years, no interior -- no interior damage that the systems, that if there were deviations, they were only slight as opposed to -- because, again, I guess the gross negligence, not even the slightest of care, you would see catastrophic failure.

ARBITRATOR: Well, if the -- well, frankly, from what I've seen here, you wouldn't necessarily expect rot or even water intrusion if the fault is the stability of it ultimately. Not that it falls off but that it gives way in wind conditions that are a problem.

And, you know, it's a hard part of the case. Things are performing. That's no question they're performing okay. I mean, there are problems, but not catastrophic -- not widespread problems.

But the problem is,

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

that's a difference. So being -- it's not just that you have 80 percent deviations, it is then you have -- would have to look and say, all right, 80 percent deviations, and then show how it was prematurely failing. And we don't have that.

ARBITRATOR: You and I are miscommunicating. I'm not saying it's prematurely failing. I'm not even arguing that because there's very little proof. There's leaks around the windows maybe and there's some problem with the shingle issue.

It's really a fundamental issue of whether or not -- not being attached to the studs creates a structural deficiency in light of the conditions we have in this area. That's my issue. That's my problem.

MR. DUDLEY: Yes, sir.

ARBITRATOR: And I'm not -- by asking these questions, I know you know I'm not -- these aren't conclusions. These are issues that have arisen.

MR. DUDLEY: Yes, sir. And I just

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

So everyone does it differently. Mr. Dow, Mr. McElmore, they have -- they've talked about how they do it and what they think is fine. Mr. Bunner and Mr. Disk both talked about what D.R. Horton does. But there has been zero standard to say an evaluation of this standard, this is how D.R. Horton was grossly negligent and not doing that supervision.

And now Mr. Crawford.

MR. CRAWFORD: Your Honor, we briefed the issue related to the real party and the interest and the standing issue. We've argued it almost ad nauseam. I won't go into it -- well, I'll be brief on it. But I do think it's very important, because this plaintiff does not have the ability to the right to bring this action. And without that, the rest of this goes away regardless of the claims that are being made here.

If you start at the very beginning, this is not your typical townhome community. This townhome

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

community, the actual owners got deeds to the exterior of the property. They own and have a requirement to maintain the exterior siding as well as the roof of all of these units. That is their obligation.

That's pretty different from most of the HOA work that we see around here. And I think even Johnny and his group would have to admit that that is not the typical setup. But that is the setup here. And, in fact, the covenants provide that the owner obligation is to maintain and replace those exterior surfaces whenever there is an issue with them. And it is not an obligation of the townhomes.

What they ended up doing here is -- and when we filed our answer, we filed our typical 12(b)(6), which is failure to state a claim, and we also raised the affirmative defense of standing. So these were issues that were always here and they were always raised to the court or to the arbitrator.

What happened here is within mere days of filing this lawsuit, the

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

homeowners, presumably 75 percent, had a meeting where they agreed that they were going to shift this liability -- they were going to make it the ability of the association to be able to bring claims for the exteriors of these buildings. And that's a right they otherwise would not have had.

I like to tell folks that these townhome communities or HOA communities are control -- the covenants are the Bible. You can only go within the construct of what's contained in those documents. This particular document provided that it could be amended. I agree with Johnny when he said that there's actually language in the covenants that assumes that they can be assigned or they could be amended. And that is true.

But because the document controls, you have to follow the amended procedure that's provided for in the document. In this particular document, in 18.1, you will see that the covenant that the -- it is listed under duration and

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

amendment.

So when Johnny talks about the fact that the first part of it talks about the duration and how long it lasts, that is completely true because that is what the paragraph deals with, duration. But then it goes further to say, you can amend this, that the homeowners can amend this with 75 percent of the folks there. Period. Provided. Provided that it is -- that the amendment -- or the action of the amendment will not take place three years from the filing. That becomes important because that did not happen here.

I'll go back, because Johnny seemed to indicate that to -- I wanted you to read that, and I would welcome you to read it. But he seems to say that that provision related to making that change was only related to duration. Well, that's not what it says.

It says, has been recorded and agreed to change said code restrictions in whole or in part. It did not limit it to just a duration provision. It said, if

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

you're going to change this thing in whole or in part, you have to do a couple things. 75 percent of the people. You can't make it go into place until three years after recording.

They made the provision here within days. And then they moved forward to file the suit in the name of the association, and it would not have been able to do that without the amendment. The amendment was not proper; and therefore, the ability to bring this suit is also not proper.

Now, what's also interesting is that Johnny indicated, well, you know, you can't get homeowners to agree to do anything. Well, that's a little contrary, because he said he'd gotten all 28 homeowners to agree to your order, he got all 28 homeowners to agree to get you your surveys. But here -- and he also said that, well, the reason we want to do this is because architectural control.

You don't want people painting green buildings or orange buildings with

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

their money they're taking. Well, that's not true. Even with the owners having the obligation, these covenants provide that the architectural review committee, the association, still has to sign off on any exterior improvements that are done on the home.

So this whole idea that we have to do this so that the -- so that they control what it's going to look like out there is just not correct. It's not true, because the association always had that right. Always had that ability to control those items that were out there.

The second thing is if you have 28 folks in agreement that this is something you could have done, the easiest thing would have been -- to do would have been to have a case with 28 Plaintiffs out there. And the same bowl of money could've come out there, and this issue could have been easily addressed since we got all these folks who are willing to participate and willing to go in the same direction. But that didn't happen.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

There was this idea that the covenants needed to be amended to bring this lawsuit. And that actually is a problem, because, again, you can't amend it and it take effect in that time period. And then we're talking about not only did it give that covenant change, it changed 5.1, which is association's responsibility. It gave them the ability to be in pursuit of the sanction.

But here's the other thing that it did. It took away the entire dispute resolution provision in here. There were conditions that needed to be met. There had to be notice. There had to be opportunity to get out and meet. There had to be opportunity for -- with D.R. Horton as a declarant to be able to address these items. They were not provided the opportunity to come out, have those things in writing, discuss it. And it specifically -- I'll ask Your Honor to look through the original covenants 17.1 through 17.6 all were right out there at D.R. Horton.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

And though Johnny indicates that they lost the ability because they somehow didn't own any property out there, again, that's not accurate. Those cases, if you look at those cases, surround the declarant tried to be able to amend the covenants after they'd given up all the property.

We're not talking about amending the codes. We're talking about being able to enforce the covenants. And, you know, the best evidence are the fact that D.R. Horton was still -- should be able to enforce the covenants. Well, the section of the covenants itself, if you look at 1.2 of the covenants, it actually says, the declarant as it may be -- the declaration as it may be amended and supplemented from time to time shall remain and remain in effect and shall be enforceable by the declarant, the townhome association, any homeowner for a term of 20 years from the date this declaration is recorded.

The document itself says that

D.R. Horton would remain able to enforce it. And why is that important? Well, because you got that dispute resolution that specifically dealt with how you deal with construction defects. Sure, they expect to be able to enforce these provisions because that's what they bargained for. And when they sold those homes, those folks got taken a deed to those properties, agreed to be bound by those covenants.

So we think that this real party of interest that we've argued about a lot, it was raised on our initial pleadings. It is something that we certainly think is important, and we think that you never get to the rest of this part. You don't have to worry -- you don't have to struggle with this idea of whether there's gross negligence or whether these are minor deviations, all the other things that we've heard evidence of because if you don't get here to this part, then they don't have the ability to bring this suit.

And it's still somewhat curable.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Well, it appeared at the time, it would seem. Because you would think that the clock would start when they got the Mease report. The Mease report was only granted, I think, in October. And that time frame doesn't expire until the latter part of this year. So those plaintiffs can still bring this suit and still bring these actions today and still be fine.

MR. DUDLEY: I only have three things to add to that, John.

MR. CRAWFORD: You just couldn't let it stay.

MR. DUDLEY: The first one is, the first amendment happened in 2009. They're still just building that stuff. So that amendment that Johnny says, well, what's good for the goose is good for the gander, that amendment was done in 2009, but they're still building it. There's nobody there to be affected by that.

But the more important part about it is, why have a three-year waiting plan is to give people that are buying it to know what's coming. So there's a

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

window in there that is for the benefit of the homeowners.

The most important piece that I'm going to add here is that it says 75 percent vote. Zero evidence of that vote. There is no written document to show that vote. Does not exist. They went and -- the board members went and talked to owners. There is no evidence of a vote. Critical piece.

That's it. That's all I got.

MR. CHAKERIS: Tom sent you all the votes. Y'all requested the votes, we have sent them to y'all.

MR. DUDLEY: We took the deposition of Mr. Frappier. And there was -- he said no votes.

MR. CHAKERIS: I'd be happy to forward you the email again.

MR. DUDLEY: So did it happen after his deposition?

MR. CHAKERIS: I can't tell you exactly when y'all requested it. But we have sent y'all the ownership votes that demonstrate that more than 75 percent

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

voted for the amendment.

MR. CRAWFORD: I wouldn't want us to follow part of that -- I mean, over that idea if you sent us the votes, so we have the votes. So we certainly consent that that part occurred on there.

But Tom did make me think of one thing, and I apologize for coming back. Johnny said, what's good for the goose is good for the gander, which is a great saying; however, it's not the case here. The actual covenants provide two different amendment procedures. One for the homeowners association, provision from the very beginning, which was 75 percent in three years.

And then the next revision was related to how the declarant would amend it. And his did not require it. If you look at it it's the next provision to this 18.2 which specifically said it does not require this three-year period.

So this idea that D.R. Horton did something wrong because they admit that there's -- that they didn't wait for

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

the three years is not correct. Because they complied correctly with the appropriate provision which did not require the three-year wait time.

MR. DUDLEY: Johnny, I apologize. I was doing it based on my review of Mr. Frappier's deposition.

ARBITRATOR: You all can straighten me out on that. If it's not an issue, you can tell me.

MR. CHAKERIS: Yeah, I don't think it's an issue.

MR. DUDLEY: You said it happened, then it did. I just went on what his testimony was. I got nothing else.

MR. CHAKERIS: I just got one very slight minor comment to Mr. Crawford's comments about the second amendment removing the dispute resolution provision within the governing documents. And it did, there's no question about that.

But prior to filing suit, D.R. Horton was given the right to care for the entirety of the projects. They chose not to do that, submitted through

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **MANSFIELD AT PARK WEST, INC.,** **Plaintiff,** **vs.** **D.R. HORTON, INC.,** **Defendant.**	**IN ARBITRATION** **2021-CP-10–01215** **MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO VACATE**

INTRODUCTION

The arbitration award that D.R. Horton now seeks to vacate or modify is a result of an arbitration proceeding pursuant to a valid arbitration agreement and an order of this Court referring this construction defect matter to arbitration with the consent of the parties. The single arbitrator, Thomas J. Wills, IV, is an experienced and well-respected lawyer and arbitrator chosen by consent of the parties. The basis of D.R. Horton's Motion to Vacate are both procedural, which by the terms of this Court's Order referring the case to arbitration are within the sole discretion of the arbitrator, and factual – both of which are not grounds to vacate an arbitration award under South Carolina law. The arbitrator heard motions, examined briefs, memorandums, exhibits, statutes, legal opinions, building codes, and manufactures' installation instructions, and heard testimony from live witnesses. At the conclusion of the arbitration, Mr. Wills asked the parties to submit proposed awards which both parties did. After the issuance of the Arbitration Award and the denial of D.R. Horton's two post award motions requesting a more detailed Award and a different manner of allocating the damage award, D.R. Horton now argues that this Court should overturn the Arbitrator's ruling on nearly every issue in the arbitration – except for one finding of the lack of gross negligence related to the fence at issue that was ruled upon in D.R. Horton's favor. Under

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

the law of South Carolina, though, the question is not whether Mr. Wills made a wrong decision, which he did not, ***but whether the arbitrator knew what the law was and simply consciously disregarded it.*** There is no basis for this argument that this experienced and accomplished lawyer and arbitrator made any errors and certainly did not knowingly choose to disregard the law. D.R. Horton now seeks to relitigate the matter before this Court, in its Motion to Vacate. D.R. Horton cannot have this under the law of this state.

SUMMARY

- **Under any standard of review this arbitrator's Award is not subject to being vacated and certainly not under the narrow and limited circumstances allowable under South Carolina law.** The arbitrator did not exceed the powers granted to him by the Consent Order for Arbitration which gave him full discretion of procedural and scheduling matters. Exhibit A. Further, there is no evidence the arbitrator consciously disregarded the law in issuing the arbitration Award. A more detailed discussion is set forth below.
- **The Association had Standing to bring this lawsuit as the arbitrator found.** A more detailed discussion of Standing is in Section A below.
- **The format of the arbitration Award is fully compliant with the Consent Order to Arbitrate and all applicable South Carolina law.** Large portions of the arbitrator's Award are substantially similar to the proposed award submitted to him by DRH for which DRH now complains. The Award contains far more reasoning than DRH's proposed award. A more detailed discussion of the Award format is in Section A(ii) and B(i) below.
- **The damages awarded are in the purview of the arbitrator and are supported by more than ample evidence in the record.** Evidence includes improper siding installation, cracking siding, siding having fallen off the building exteriors, shingles having previously

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

blown off because of improper installation, and water in the wall assemblies in ten (10) out of the eleven (11) locations were among just some of the testimony presented to the arbitrator. A more detailed discussion of Damages is in Section B(ii) below.

- **DRH was grossly negligent based on the factual determination of the arbitrator which is supported by ample evidence in the record.** DRH now seeks to reargue its view of the facts as to why it believes it was not grossly negligent once again. A more detailed discussion of Gross Negligence is set forth in Section C below.

FACTS

Mansfield at Park West is a townhome community located in Mount Pleasant, South Carolina, developed and constructed by D.R. Horton, Inc. (hereinafter "DRH") in the 2009-to-2011-time frame. There are twenty-eight townhomes contained in six buildings for which construction was completed on the last townhome on September 1, 2011, according to the applicable Certificates of Occupancy. DRH sold each of the 28 townhomes to members of the public after construction of the respective townhome was completed. The townhome community is subject to the Declarations of Covenants, Conditions, and Restrictions for Mansfield at Park West recorded in the Charleston Register of Deeds in Book P 638 Page 409 and later amended by DRH with the Amendment being recorded in Book 0032 Page 997.

Following concerns about aspects of construction of the townhome buildings, the Plaintiff hired Russell T. Mease, P.E., of RTM Engineering, LLC, to perform an investigation of the exteriors of the six townhome buildings. Mr. Mease's investigation took place on December 29-30, 2020, and October 8, 2021. Mr. Mease identified the siding and roof shingles had not been properly installed and the windows were J channel windows that by their configuration did not allow for a required engineered sealant joint. 7/26/23 Tr. 24:18-25. Mr. Mease observed a siding

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

board had fallen off of a building and lay on the roof below during his inspection. 7/26/23 Tr. 43:15-25. Mr. Mease also noted other locations where siding had been re-nailed from what appeared to have also previously fallen off the buildings. 7/26/23 Tr. 48:15-49:14. Siding looseness was observed throughout the community and documented both by photographs and videos showing the ease of pulling the siding away from the building with his fingertips. 7/26/23 Tr. 45:6-48:14. The siding installation violated the building code and manufacturers' installation instructions. Mr. Mease found that 87% of the fasteners were not nailed into the studs. 7/26/23 Tr. 25:19-26:1. A finding that the Arbitrator noted DRH's expert did not dispute. Exhibit B, p. 2. Mr. Mease also observed several areas where shingles had been replaced on buildings which were consistent with prior shingle blow off from improper shingle installation. 7/26/23 Tr. 72:1-6. The shingle installation throughout the Mansfield community was in violation of the building code and manufacturer installation requirements. Mr. Mease testified that 86% of the nails in the roof shingles were nailed improperly. 7/26/23 Tr. 64:17-21. The Arbitrator noted that DRH's expert did not present any evidence to challenge this percentage. Exhibit B, p. 3. Additionally, water was identified to have intruded into the wall system at ten (10) of the eleven (11) window locations Mr. Mease exposed in his investigation as corroborated by testimony of DRH's expert. 7/31/23 Tr. 189:2-193:21. As a result of the widespread and pervasive building code and industry standard violations identified by Mr. Mease, the owners voted to amend the governing documents to empower the Association to handle addressing these defects, file suit against DRH if necessary and ultimately perform repairs to the exteriors of the buildings. In excess of seventy-five (75) percent of the owners as required in the governing documents voted in favor of the proposed amendment empowering the Association to handle this matter. Not a single owner voted against the amendment. This Amendment was then signed by the Association President on March 1, 2021,

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

and recorded in the Charleston Register of Deeds on March 9, 2021, in Book 0968 page 950. Exhibit C. Once the owners agreed to amend the governing documents to empower the Association to handle the construction defect issues, the Association through its President, Michael Frappier, requested DRH inspect the construction conditions at Mansfield, and thereafter, schedule a time to perform repairs. Exhibit D. Following DRH's refusal to perform an inspection at Mansfield and declining to make any repairs, the Association filed a Complaint for arbitration.

The parties agreed to arbitrate by Consent Order for Arbitration providing that a single arbitrator would resolve all claims between the parties by binding arbitration conducted pursuant to South Carolina law. The arbitrator would also hear arguments and rule upon DRH's previously filed Motion to Dismiss and determine all procedural and scheduling issues. Exhibit A. The parties agreed on Thomas J. Wills, IV, Esquire, to serve as the sole arbitrator because of his experience arbitrating cases of this nature and his reputation for fairness. Motions were heard by the arbitrator, and the matter was arbitrated with live testimony over two days – July 26 and 31, 2023, at the arbitrator's office. At the conclusion of the arbitration, the arbitrator asked the parties to submit proposed awards. The Plaintiff submitted one proposed award finding in its favor containing two pages attached as Exhibit E. DRH submitted three different alternative versions of a proposed award and requested the arbitrator select one of the three. Version 1 of DRH's proposed Award was a 21-page proposed award with findings of fact and conclusions of law finding in DRH's favor. Version 2 of DRH's proposed award was a three (3) page proposed award finding in favor of DRH. Version 3 of DRH's proposed award was also a three (3) page proposed award finding in favor of the Plaintiff. There was no objection to the format of any of the proposed awards submitted to the arbitrator by either party at the time of the submittals. After reviewing the proposed awards submitted by the parties, the arbitrator chose to author his own five-page Award, which he entered

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

on August 22, 2023. Exhibit B.

Following the entry of the arbitrator's Award, DRH sought clarification solely as to two issues: 1) itemization of the award based on the building system; and 2) modification of the Award to reflect the life of the siding and window. The arbitrator denied DRH's Motion to Clarify.

ARGUMENT

"Arbitration is a favored method of settling disputes in South Carolina." *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 75, 488 S.E.2d 335, 337 (1997) (citing *Batten v. Howell*, 300 S.C. 545, 389 S.E.2d 170 (Ct. App. 1990); *Trident Technical College v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 333 S.E.2d 781 (1985)). "When a dispute is submitted to arbitration, the arbitrators determine questions of both law and fact." *Id.* at 76, 488 S.E.2d at 337 (citing S.C. Code Ann. § 15-48-180). "Generally, an arbitration award is conclusive and courts will refuse to review the merits of an award." *Id.* "Arbitration is not litigation carried on by other means." *Lauro v. Visnapuu*, 351 S.C. 507, 516, 570 S.E.2d 551, 555 (Ct. App. 2002) (citing *White v. Preferred Research, Inc.*, 315 S.C. 209, 212, 432 S.E.2d 506, 508 (Ct. App. 1993)). "Judicial review of an arbitration award is [therefore] limited in scope, and any attempt to convert arbitration into a trial-like judicial proceeding is looked upon with disfavor." *Id*. "'The judiciary should minimize its role in arbitration as judge of the arbitrator's impartiality.'" *Crouch Constr. Co. v. Causey*, 405 S.C. 155, 163, 747 S.E.2d 482, 486 (2013) (quoting *Commonwealth Coatings Corp. v. Cont'l Cas. Co.,* 393 U.S. 145, 151 (1968)). "In reviewing arbitration awards, 'the standards for judicial intervention are . . . narrowly drawn to assure the basic integrity of the arbitration process without meddling in it.'" *Id.* (quoting *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 681 (7th Cir. 1983)). "An award will be vacated only under narrow, limited circumstances, *inter alia*, 'when the arbitrator exceeds his or her powers and/or manifestly disregards or perversely misconstrues the law.'" *C-*

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Sculptures, LLC v. Brown, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013) (quoting *Gissel v. Hart*, 382 S.C. 235, 240, 676 S.E.2d 320, 323 (2009)). "However, for a court to vacate an arbitration award based upon an arbitrator's manifest disregard of the law, the governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable." *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009) (citations omitted). "Case law presupposes something beyond a mere error in construing or applying the law. Even a 'clearly erroneous interpretation of the contract' cannot be disturbed." *Id.* (quoting *Trident Tech. College v. Lucas & Stubbs*, 286 S.C. 98, 108, 333 S.E.2d 781, 787 (1985)). "An arbitrator's 'manifest disregard of the law,' as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it." *Id.* (citing *Weimer v. Jones,* 364 S.C. 78, 610 S.E.2d 850 (Ct. App. 2005)). "Factual and legal errors by arbitrators do not constitute an abuse of powers, and a court is not required to review the merits of a decision so long as the arbitrators do not exceed their powers." *Id.* at 242, 676 S.E.2d at 324. "Arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.' If the grounds for the award can be inferred from the facts, the award should be confirmed." *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 77, 488 S.E.2d 335, 338 (1997) (citing *Batten v. Howell*, 300 S.C. 545, 389 S.E.2d 170 (Ct. App. 1990)).

Here, DRH argues that the award should be vacated because the arbitrator exceeded his powers and manifestly disregarded the law in this matter. DRH's burden, therefore, in this motion to vacate, is to prove that as a matter of law the arbitrator ***consciously ignored the law and then decided the arbitration proceeding in knowing and manifest disregard of that law***. DRH clearly cannot do this.

A. AS TO STANDING AND REAL PARTY IN INTEREST

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

i. The Arbitrator Did Not Exceed His Authority or Manifestly Disregard the Law in Denying D.R. Horton's Motion for Summary Judgment

The arbitrator's denial of DRH's Motion for Summary Judgment was proper with regards to the issues DRH raised on both Standing/Real Party in Interest and on the Statute of Repose/Gross Negligence. In its Motion to Vacate, DRH seems to contest the denial of its Motion for Summary Judgment on the grounds of Standing/Real Party in Interest only. The legal standard of review to vacate an arbitration award based on this argument is not simply second guessing and revisiting whether the arbitrator made an error as to whether "a genuine issue of material fact existed." To vacate an arbitration award, DRH must show "'something beyond and different from a mere error of law or failure on the part of arbitrator[] to understand or apply the law.'" *Batten v. Howell*, 300 S.C. 545, 549, 389 S.E.2d 170, 172 (Ct. App. 1990) (quoting *Trident Tech. College v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 108-109, 333 S.E.2d 781, 787 (1985)). "Case law presupposes something beyond a mere error in construing or applying the law. Even a 'clearly erroneous interpretation of the contract' cannot be disturbed." *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009) (quoting *Trident Tech. College v. Lucas & Stubbs*, 286 S.C. 98, 108, 333 S.E.2d 781, 787 (1985)). The issue of Standing and Real Party in Interest is a matter of contract interpretation of the Declarations of Covenants, Conditions, and Restrictions and Second Amendment filed by the Association after obtaining seventy-five (75%) of the vote of the ownership. To show Thomas J. Wills, IV, manifestly disregarded the law, DRH has the burden of showing that Mr. Wills ***knew the law and intentionally refused to apply it*** – a standard that DRH simply cannot meet. "An arbitrator's 'manifest disregard of the law' as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it." *Gissel v. Hart,* 382 S.C. 235, 241, 676 S.E.2d 320, 323-324 (2009) (citing *Weimer v. Jones*, 364 S.C. 78, 610 S.E.2d 850 (Ct. App. 2005)). DRH cannot satisfy the narrow and limited

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

circumstances of vacating an arbitration award by showing the arbitrator knew the law and simply chose not to apply it when denying its Motion for Summary Judgment.

The South Carolina Arbitration Act and South Carolina law govern this arbitration. The DRH drafted Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West states on the first page that it is "subject to The South Carolina Arbitration Act, Section 15-48-10, et. seq." DRH initially opposed the Plaintiff's Motion to Compel Arbitration, and in its Memorandum in Opposition, DRH discusses the application of the South Carolina Arbitration Act to issues in the case including its challenge of the Plaintiff being the real party in interest. For the first time in this case, DRH now incorrectly alleges in its Motion to Vacate that the Federal Arbitration Act applies instead of the South Carolina Arbitration Act although the result is the same in that the arbitration award should not be vacated.

The DRH drafted Declaration Covenants, Conditions, and Restrictions were executed by DRH's Division President, R. Doug Brown, on September 10, 2007. DRH, while still in control of the Association, filed the First Amendment to the Covenants on February 3, 2009. The Second Amendment to the Covenants, the Amendment at issue, was filed on March 9, 2021, after DRH was given the statutory right to cure construction deficiencies at issue in this case and refused to do so. Exhibit D. After DRH declined to send a representative out to Mansfield to look at the construction defects, it was clear to the Association and its members that they both wanted and needed the Association to pursue claims for the defective construction of the building exteriors and fencing. The Association membership also wanted the Association to be charged with making the building repairs and replacing the fence thereafter. The memberships reason for this was not as DRH contends to pull an end run around any class action restriction as there is no class action restriction in these Covenants, but rather to ensure the aesthetics and quality of the repair

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

construction, uniformity and consistency in the use of the same materials and scopes of repair on each unit and building, and a means to manage the claim most effectively. This could all best be done through the administration of the Board of Directors of the Association made up by its owners. More than seventy-five percent (75%) of the members voted in favor of this amendment to empower the Board to accomplish the ownerships wishes in managing its community. No owners opposed or objected to this amendment. In fact, each and every one of the twenty-eight (28) townhome owners completed a DRH created questionnaire about their townhome as ordered by the arbitrator. Not a single owner refused. No owner was "running and hiding" or seeking to end run a class claim as DRH now asserts.

DRH incorrectly asserts that no amendment to the Covenants is allowed for a period of twenty years after initial filing of the Covenants. There, however, is no prohibition against amending the content of the Covenants prior to the expiration of the effective twenty-year duration of the Covenants. In fact, Article I of the covenants provides the following:

> No Person shall record additional covenants, conditions, or restrictions affecting any portion of Mansfield at Park West without declarant's written consent, so long as Declarant owns any portion of the real property described in Exhibit "A" or "B". *Thereafter, Owners representing at least Seventy-Five (75%) percent of the Townhome Association's total votes must consent to such additions.* Any instrument Recorded without the required consent is void and of no force and effect.

Article I, § 1.3 (emphasis added). DRH has agreed that it "has not been an owner or a member of the homeowners' association since 2011 and does not have voting rights or a relationship with the association since approximately 2011." *See* DRH Memo in Support of Motion to Dismiss. Therefore, the Second Amendment, which was recorded with consent of at least 75% of the owners, followed the rules outlined within the Covenants.

In defense of its argument DRH relies on the following section:

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

> 18.1 Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Townhome Association, any Member, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, until September 30, 2027, unless otherwise expressly limited herein, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by Seventy-five (75%) percent of the Unit Owners has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken. Notwithstanding the foregoing, the easements, licenses, rights and privileges established and created with respect to the Properties shall be perpetual, run with the land and shall survive any destruction, reconstruction and relocation of the physical structures, unless said provision is abrogated by the unanimous written consent of all the Unit Owners. Unless specifically prohibited herein, the Declaration may be amended by an instrument signed by Members holding not less than Seventy-five (75%) percent of the votes of the membership. Any amendment must by properly recorded to be effective.

DRH seeks to interpret this section of the Covenants to mean in addition to having to wait twenty-years before the Covenants can be amended at all, the amendment must be recorded for three years prior to it being effective unless written notice of the proposed agreement is sent to every owner at least 90 days in advance. This sentence, however, is a continuation of the subject matter of the prior two sentences referring to changing the twenty-year duration and the ten-year automatic duration extension respectively as can be discerned by the sentence at issue starting with "Provided, however . . ." The last sentence of the section allowing amendments with seventy-five (75%) of the vote is consistent with the voting requirements for the Association to take certain actions including filing suit and amending the Covenants as set forth in Article I, § 1.3. Once the Declarant (DRH) doesn't own any real property described in the Covenants, the only requirement to file additional covenants is a vote of seventy-five (75%) of the owners – as done with the Second Amendment.

DRH's membership and voting rights in the Association as defined by Article IV of the Covenants has ceased to exist years ago. Without membership, which shall be appurtenant to and not separated from ownership, one has no vote or say in the Association. Contrary to DRH's

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

contention, DRH envisioned amendments to the Covenants prior to the expiration of the twenty-year duration. For example, DRH envisioned the possibility of the Association changing the maintenance and repair responsibilities of the unit owners and the Association as the Association contemplated doing previously and as well as currently following the Association's repair of the buildings pursuant to the Second Amendment of the Covenants. Section 5.2 of the Covenants sets forth the owners' maintenance and repair responsibilities and states ". . . unless such maintenance responsibility is otherwise assumed by or assigned to the Townhome Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such unit." There is no prohibition or limitation contained in Section 5.2 that restricts or prohibits this change in maintenance or repair responsibility for a period of twenty-years as DRH would assert.

Further, DRH contemplated the Association bringing claims against it for construction defects despite it now contending that the arbitrator manifestly disregarded the law and exceeded his authority in not granting DRH's motion for summary judgment. Article XVII of the original Covenants states, "Prior to the Townhome Association or any Owner commencing any judicial or administrative proceeding to which the Declarant (DRH) is a party and which arises out of an alleged defect at the Community or improvement constructed on the Property, Declarant (DRH) shall have the right to meet in good faith and discuss the subject of the proceedings with the Owners, or the particular Owner, and to access, inspect, correct the condition of, or redesign any portion of the Community including any improvements as to which a defect is alleged. In addition, the Townhome Association or the Owner, shall notify the builder who constructed such improvements prior to retaining any other expert or for other litigation purposes." In addition, the Bylaws provide, "The Board's duties shall include, without limitation: (i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

on behalf of or against the Owners concerning the Association. . .” Bylaws § 3.17(l). The President of the Association and owner Michael Frappier sought to meet with DRH to discuss the issues presented in the arbitration as part of providing DRH the right to cure, however, DRH refused leaving no alternative but to proceed with the arbitration. *See* Exhibit D.

While the Association does not believe there is an ambiguity in the Covenants and that by obtaining in excess of seventy-five percent (75%) of its ownership voting in favor of the Second Amendment to the Covenants such amendment was proper, to the extent there is any ambiguity in the Covenants as to when, how and by whom amendments can be made, such ambiguities should be construed against DRH, the drafter. “Generally, if the terms of a contract are clear and unambiguous, this Court must enforce the contract according to its terms regardless of its wisdom or folly.” *S. Atl. Fin. Servs. v. Middleton*, 356 S.C. 444, 447, 590 S.E.2d 27, 29 (2003) (citing *Ellis v. Taylor*, 316 S.C. 245, 449 S.E.2d 487 (1994)). “Ambiguous language in a contract, however, should be construed liberally and interpreted strongly in favor of the non-drafting party.” *Id*. (citing *Myrtle Beach Lumber Co., Inc. v. Willoughby*, 276 S.C. 3, 274 S.E.2d 423 (1981)). Additionally, DRH has no standing to challenge the Association’s amendment pursuant to the terms of the Covenants it created. DRH’s rights and interest in the townhome units and in the Association have long expired as it does not own a townhome within the Association, and it doesn’t possess any voting rights in the Association.

For the reasons set forth above, it was clear to the arbitrator that the Plaintiff had the requisite standing and was a real party in interest, and the denial of the Motion for Summary Judgment was proper. While the arbitrator was correct in his determination of the Plaintiff’s standing and being a real party in interest, the South Carolina case law is clear that even if he wasn’t (which he was) a “‘clearly erroneous interpretation of a contract’ cannot be disturbed.”

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009) (quoting *Trident Tech. College v. Lucas & Stubbs*, 286 S.C. 98, 108, 333 S.E.2d 781, 787 (1985)). In deciding if DRH met the limited and narrow circumstances of vacating an arbitration award, the focus is on the conduct of the arbitrator, and DRH would have to show something beyond a mere error in construing or applying the law. *Id.* The question is not whether the arbitrator made a wrong decision or made an error in construing or applying the law, which he didn't, but DRH must show that Mr. Wills ***knew the law and intentionally refused to apply it*** – something that DRH cannot show.

ii. The Arbitrator Did Not Exceed His Authority or Manifestly Disregard the Law in the Format of the Award he Issued.

This Court does not need to look far to see the disingenuousness of DRH's argument. DRH's efforts to manufacture a basis for this Court to vacate the arbitrator's Award fails by simply looking at the proposed award finding for the Plaintiff submitted by DRH itself to the arbitrator that is captioned as "DRH PROPOSED #2". Exhibit F. DRH's own proposed award is essentially the identical language that DRH now astonishingly complains of as being not sufficiently reasoned and a conclusory statement that is in contradiction to an alleged agreement for a reasoned award.

The DRH PROPOSED AWARD #2 submitted to the arbitrator contains the following regarding Standing:

> I. STANDING
>
> I have reviewed the Declarations of Covenants, Conditions and Restrictions for Mansfield at Park West, along with the First and Second Amendments thereto and considered the testimony and arguments of counsel. After such consideration, I find the Plaintiff have standing to pursue the claims.

Whereas, the arbitrator's Award regarding Standing states:

> I. STANDING
>
> I have reviewed the Declarations of Covenants, Conditions and Restrictions for Mansfield at Park West, along with the First and Second Amendments thereto and considered the testimony and arguments of counsel. After such consideration, I find the Plaintiff have standing to pursue the claims it has

asserted.

The only difference between the DRH submitted DRH PROPOSED #2 award and the actual arbitrator's Award regarding the issue of Standing and Real Party in Interest is the arbitrator's Award includes the words "it has asserted." DRH's Motion to Vacate goes on for nearly five (5) pages deeply criticizing Thomas J Wills, IV, Esquire, a well-respected member of the South Carolina Bar and an eminently fair arbitrator, for allegations of him exceeding his authority and manifestly disregarding the law even though Mr. Wills' Award language on Standing/Real Party in Interest nearly mirrors identically DRH's own submitted proposed award. *See* Exhibit F. In the nearly five (5) pages of its Motion related to Standing/Real Party in Interest, DRH hurls allegations of ethical violations at Mr. Wills alleging he violated the South Carolina Code of Ethics for Arbitrators – something that is not only baseless and untrue, but also uncalled for.

The Consent Order for Arbitration that both the Plaintiff and DRH agreed to gives the arbitrator sole discretion over all procedural issues of the arbitration. *See* Exhibit A. This includes the format of the Award. The arbitrator's Award format is substantially similar to the proposed awards submitted to the arbitrator by both Plaintiff and DRH's PROPOSED #2 with the main difference being the inclusion by the arbitrator of a lengthier discussion of the Statute of Repose/Gross Negligence in the arbitrator issued Award. The Consent Order for Arbitration also states that the arbitration will be pursuant to the laws of the State of South Carolina. *See* Exhibit A. The Declarations of Covenants, Conditions, and Restrictions for Mansfield at Park West state at the top of the first page that disputes are subject to the South Carolina Arbitration Act. The South Carolina Arbitration Act provides the statutory requirements of an award shall include that the award be in writing and signed by the arbitrator per Section 15-48-90 for which the arbitrator's Award clearly complies. DRH has not, nor can it show that Mr. Wills exceeded his authority or

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

manifestly disregarded the law.

B. AS TO DAMAGES

i. The Arbitrator Did Not Exceed His Authority or Manifestly Disregard the Law in the Format of the Award he Issued.

The Consent Order for Arbitration that both the Plaintiff and DRH agreed to govern this arbitration gives the arbitrator sole discretion over all procedural issues of the arbitration. *See* Exhibit A. This includes the format of the Award. Despite DRH's contention to the contrary, the arbitrator's Award was in fact reasoned. As previously mentioned, a simple comparison of the arbitrator's Award to that of the proposed award submitted by DRH with the Plaintiff prevailing (DRH Proposed Order #2) shows the Awards are similar in format. A full reading of the arbitrator's Award in its entirety shows the Arbitrator's Award contains far more reasoning on the issues complained of than the proposed order #2 submitted by DRH. Yet despite this, DRH continues to hurl even more allegations of ethical violations at Mr. Wills alleging he violated the South Carolina Code of Ethics for Arbitrators.

The Damages Section of the proposed award submitted by the Plaintiff for the arbitrator's consideration contained a single blank line for the arbitrator to fill in the amount of collective damages for the siding, roofing and windows damages and a second separate blank line for the damage award for the fence to which DRH did not object. *See* Exhibit E. There was no other itemization of damages amongst building components in the Plaintiff's proposed award. The general format of the arbitrator's Award was substantially similar to that of Plaintiff's submitted proposed award regarding the Damages section except for the arbitrator's included the damage amount he awarded and finding in favor of DRH on the fence claim. The Plaintiff's proposed arbitration award was submitted to the arbitrator two weeks prior to DRH's submitted proposed awards, and at no time prior to the issuance of the arbitrator's Award did DRH object or complain

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

about the format of the Plaintiff's submitted proposed award for which the arbitrator's Award format regarding damages was substantially similar. It was only after the arbitrator issued his Award finding against DRH that DRH then attempts to create this argument that it was entitled to a different award format. This is simply not the case. The arbitrator was well within his authority and discretion to provide the Damages Section of his Award as he did.

DRH's argument to vacate the arbitrator's Award because the arbitrator failed to provide a reasoned award on issues of damages exceeding his authority and manifestly disregarding the law fails for the reasons discussed above. The arbitrator's Award complies with the agreement of the parties contained in the Consent Order to Arbitrate and the requirements of an arbitration award contained in S.C. Code Ann. § 15-48-90. Our Courts have held "Arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.'" *Pittman Mortg. Co. v. Edwards,* 327 S.C. 72, 77, 488 S.E.2d 335, 338 (1997) (quoting *Batten v. Howell*, 300 S.C. 545, 549, 389 S.E.2d 170, 172 (Ct. App. 1990)).

ii. <u>The Damages Are Not Speculative</u>

In the Plaintiff's case in chief, the Plaintiff introduced testimony of a qualified expert engineer, Russell T. Mease, P.E., of the numerous building code and industry standard violations related to the installation of building components at issue in this case. Mr. Mease's testimony also included that during his three (3) days of investigation of the construction at Mansfield, he identified evidence that siding had fallen off the buildings from being improperly installed, shingles had been replaced because of improper installation as well as water entering into the wall assemblies. Further, DRH's own engineer expert, Steven Moore, P.E., who performed no intrusive testing admitted based on Mease's photographs that there was evidence of water entering into the

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

wall assemblies in ten (10) out of the eleven (11) different window locations where Mr. Mease removed siding to observe construction conditions. 7/31/23 Tr. 189:2-193:21. Mease further testified as to what repairs he believed were necessary to correct these construction deficiencies and building code and industry standard violations. Plaintiff's estimating expert, local contractor Scott Dow, testified as to the cost of repair based on the repair scope and recommendations of engineer Mr. Mease and his own experience.

To argue that the Plaintiff's damages are speculative, and that the arbitrator manifestly disregarded the law in awarding the Plaintiff damages is contrary to the evidence presented and is nothing more than an attempt by DRH to relitigate its view of the facts in this case. This argument contained in DRH's Motion to Vacate was heard by the arbitrator, and the arbitrator disagreed and didn't find DRH's position credible including the change in testimony of DRH's witnesses. The evaluation of the evidence and factual determination is in the sole purview of the arbitrator. "[W]hen a dispute is submitted to arbitration, the arbitrator[] shall determine questions of both law and fact." S.C. Code Ann. § 15-48-180. Disagreeing with the factual determination of the arbitrator is not grounds to vacate an arbitration award. "Factual and legal errors by arbitrators do not constitute an abuse of powers, and the court is not required to review the merits of the decision so long as the arbitrators do not exceed their powers. A party may not attempt to relitigate the merits of the arbitrators resolution of the arbitrable issues under the guise of questioning the arbitrators' power." *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 76-77, 488 S.E.2d 335, 338 (1997).

DRH's reliance on a Colorado statute cited in a Colorado District Court case stating that one cannot recover for a building code violation alone is not the law in South Carolina. DRH cites the holding of this Colorado case to try to manufacture a basis to vacate the arbitrator's Award although Colorado law differs dramatically from three decades of well settled South Carolina law.

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Notably, in an effort to contort the facts of this case to fit into the Colorado holding, DRH conveniently ignores the evidence of cracking siding, siding having fallen off of the building exteriors, shingles having previously blown off because of improper installation and water in the wall assemblies in ten (10) out of the eleven (11) locations where engineer Mease removed the siding. DRH further attempts to say the warranty on the siding is fifteen years; however, a closer look at their exhibit shows the warranty applies to the paint on the siding – not the siding itself. *See* DRH Exhibit W. The law in South Carolina is clear. "A builder is no less blameworthy in such a case where lady luck has smiled upon him and no physical harm has yet occurred." *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 347, 384 S.E.2d 730, 737 (1989). Therefore, "[a] builder may be liable to a home buyer in tort despite the fact that the buyer suffered only 'economic losses' where: (1) the builder has violated an applicable building code; (2) the builder has deviated from industry standards; or (3) the builder has constructed housing that he knows or should know will pose serious risks of physical harm." *Id.* at 347, 384 S.E.2d at 738.

Although the Plaintiff's damages are undoubtedly not speculative, even if they were DRH cannot meet its burden to vacate the arbitration Award. Our Courts have held "Arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.'" *Pittman Mortg. Co. v. Edwards,* 327 S.C. 72, 77, 488 S.E.2d 335, 338 (1997) (quoting *Batten v. Howell*, 300 S.C. 545, 549, 389 S.E.2d 170, 172 (Ct. App. 1990)). Further, DRH would have to show that the arbitrator knew of a governing legal principle yet refused to apply it. *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E. 2d 320, 324 (2009) (citing *Weimer v. Jones*, 364 S.C. 78, 610 S.E.2d 850 (Ct. App. 2005)). DRH cannot meet this standard.

C. As to Gross Negligence

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

i. The Arbitrator Did Not Manifestly Disregard the Law by Finding DRH Grossly Negligent

South Carolina Courts have held that "[i]n most cases, gross negligence is a factually controlled concept whose determination bests rests with the jury." *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 332, 556 S.E.2d 536, 545 (2002). Further, a violation of a building code may be admissible as evidence of gross negligence. S.C. Code Ann. § 15-3-670(b). The finding of DRH being grossly negligent is a factually controlled inquiry that rests with the arbitrator. There are no statutory or case law grounds in South Carolina for vacating an arbitration award based solely on factual determinations by the arbitrator.

In its Motion to Vacate before this Court, DRH continues on for nearly six (6) pages of what DRH believes the facts are that it argued to the arbitrator against a finding of gross negligence. While this is simply a regurgitation of DRH's arguments to the arbitrator as viewed through DRH's lens of the case, the arbitrator did not agree with DRH's factual analysis and found DRH grossly negligent. The testimony regarding siding that had fallen off of the buildings, the existence of cracked and loose siding throughout the community, shingles that had been replaced from likely shingle blow off, and evidence of moisture in the wall cavity in ten (10) of the eleven (11) locations that Mr. Mease removed siding under the windows was some of the testimony evaluated by the arbitrator. Further, there was a significant amount of testimony regarding violations of the building code, industry standards and manufacturers' installation instructions in the construction of the Mansfield project.

In fact, the arbitrator's analysis of why he found DRH grossly negligent regarding the installation of the siding, roofing and windows is contained in several pages of the arbitration Award. The arbitrator evaluated the testimony of the witnesses including that of DRH's

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

superintendent, John Disk. For example, the arbitrator stated in his Award regarding Disk's testimony that, "In his testimony at the arbitration hearing before me, he stated that he had changed his opinion and had decided that the siding was not required to be nailed into the studs." Exhibit B, p. 2. This testimony was completely at odds with his deposition testimony that at the time of construction of the project that he believed that building code and manufacturer's instructions required the siding to be nailed into the studs. *Id.* This factual determination and every other factual determination whether specifically detailed in the Award or not is within the purview of the arbitrator and is not grounds for vacating the arbitration award.

Generally, an arbitration award is conclusive, and courts will refuse to review the merits of an award. *Gissel v. Hart*, 382 S.C. 235, 242, 676 S.E. 2d 320, 324 (2009) (citing *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 75-76, 488 S.E.2d 335, 337 (1997)). An unhappy party disagreeing with the arbitrator's factual determination as to whether gross negligence exists is not grounds for vacating this Award. DRH makes no showing that it has met any statutory grounds of vacating the Award. Further, DRH can't meet the legal standard of showing that the arbitrator knew the law and knowingly chose to disregard it.

CONCLUSION

For all the reasons stated above, the Plaintiff respectfully requests that the Court deny the Defendant, D.R. Horton, Inc.'s Motion to Vacate or modify and confirm the arbitration Award.

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Respectfully submitted,

THE CHAKERIS LAW FIRM

By: s/ *John T. Chakeris*
John T. Chakeris
S.C. Bar No.: 7060
Alicia D. Pullano
S.C. Bar No.: 102801
234 Seven Farms Drive, Ste. 128
Daniel Island, SC 29492
(843) 853-5678

AND

JEFFERSON LEATH, ESQ. LLC
W. Jefferson Leath, Jr.
S.C. Bar No.: 3244
211 King Street, Suite 207
Charleston, SC 29401
jeff@leathesq.com

Attorneys for Plaintiff

Charleston, South Carolina
Dated: July 3, 2024

Exhibit A

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2021 Jul 08 3:38 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **MANSFIELD AT PARK WEST, INC.,** **Plaintiff,** **vs.** **D.R. HORTON, INC.,** **Defendant.**	**IN THE COURT OF COMMON PLEAS** **2021-CP-10–1215** **CONSENT ORDER FOR ARBITRATION**

This matter comes before the Court upon the Motion to Compel Arbitration of the Plaintiff, Mansfield at Park West, Inc., and the Motion to Dismiss of the Defendant, D.R. Horton, Inc. The Plaintiff and Defendant agree and consent to resolve all claims among the parties by binding arbitration.

Plaintiff and Defendant agree and consent to Plaintiff's claims against D.R. Horton, Inc., being referred to binding arbitration with a sole arbitrator to be agreed to upon the parties, and to the extent the parties cannot agree on an arbitrator then the Court will select the arbitrator.

Accordingly, and upon motion and by consent of the parties, IT IS HEREBY ORDERED that:

1) All said issues in dispute between Plaintiff and Defendant are referred to and shall be resolved by binding arbitration, including the Defendant D.R. Horton's Motion to Dismiss, with the arbitrator to also determine all procedural and scheduling issues with the arbitration.
2) The arbitration shall further be conducted by a sole arbitrator to be agreed to upon by the parties pursuant to the laws of the State of South Carolina and to the extent the parties cannot agree on an arbitrator then the Court will select the arbitrator.

3) The claims in this case are hereby stayed pending the arbitration, and this Court shall retain jurisdiction of this matter.

AND IT IS SO ORDERED.

WE SO MOVE:

THE CHAKERIS LAW FIRM

By: s/ *Alicia D. Pullano*
John T. Chakeris
S.C. Bar No.: 7060
Alicia D. Pullano
S.C. Bar No.: 102801
234 Seven Farms Drive, Suite 128
Charleston, SC 29492
(843) 853-5678
john@chakerislawfirm.com
alicia@chakerislawfirm.com

Attorneys for Plaintiff

WE SO CONSENT:

By: s/ *Jason M. Imhoff (with consent given)*
John T. Crawford, Jr., Esquire
S.C. Bar No.: 69355
Jason M. Imhoff, Esquire
S.C. Bar No.: 69682
F. James Warmoth, Esquire
S.C. Bar No.: 101072
Kenison, Dudley & Crawford, LLC
704 E McBee Ave.
Greenville, SC 29601
crawford@conlaw.com
imhoff@conlaw.com
warmoth@conlaw.com

Attorneys for D.R. Horton, Inc.

ELECTRONICALLY FILED - 2024 Jul 08 3:38 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2021 Jul 08 3:38 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Charleston Common Pleas

Case Caption: Mansfield At Park West Inc VS Dr Horton Inc

Case Number: 2021CP1001215

Type: Order/Consent Order

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Exhibit B

ELECTRONICALLY FILED - 2023 Aug 02 3:23 PM - CHARLESTON - COMMON PLEAS - CASE# 2021CP1000225

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **MANSFIELD AT PARK WEST, INC.,** **Plaintiff,** **vs.** **D.R. HORTON, INC.,** **Defendant.**	**IN ARBITRATION** **AWARD**

This matter came before me on July 26 and 31, 2023, for an arbitration hearing pursuant to the Consent Order dated July 27, 2021, and entered by the Honorable R. Ferrell Cothran, Jr. The Plaintiff alleges that the Defendant was grossly negligent in the construction of the townhomes at Mansfield at Park West as it relates to the installation of cementitious siding (siding), roof shingles, J channel windows, and the premature deterioration of the wood fencing. Plaintiff contends these defects violate the building code, manufacturers' installation instructions and industry standards. Defendant admits that there may be violations of manufacture's installation instructions and the building code but argues any such violations were only minor deviations and immaterial. Defendant further argues that any water intrusion, damage below window locations and/or deteriorated fencing are a result of lack of maintenance which is not its responsibility, and the overall performance of the buildings is satisfactory. Additionally, the Defendant argues the Plaintiff lacks standing to pursue this claim and that the Statute of Repose bars any recovery as it was not grossly negligent. Both parties introduced substantial evidence of the cost of repair for the siding, shingles and J Channel by their respective qualified experts.

ELECTRONICALLY FILED 2002 Aug 02 3:23 PM CHARRESTON COMMON PLEAS CASE# 2002CP1000225

I. STANDING

I have reviewed the Declaration of Covenants, Conditions, and Restrictions for Mansfield at Park West, along with the First and Second Amendments thereto and considered the testimony and arguments of counsel. After such consideration, I find the Plaintiff has standing to pursue the claims it has asserted.

II. STATUTE OF REPOSE

Plaintiff presented evidence and testimony by qualified experts of violations of the building code, manufacturers' installation instructions and industry standards that constituted evidence of gross negligence. Through the expert testimony of Russell T. Mease, P.E.(Mease) and Scott W. Dow(Dow), regarding code requirements relating to the installation of the cementitious siding, the roofing shingles and the windows, the plaintiff's presented proof that the Defendant engaged in grossly negligent conduct with respect the installation of those components of the project. In his testimony, Mease established that the defendant had an obligation to ensure that the project would be built in compliance with the applicable building codes. He also testified that the manufacturer's instructions are part of the building code.

As to the siding, Mease and Dow testified that the applicable building code (including the manufacturer's instructions) required that the fasteners (nails) were to be nailed into the studs. On inspection Mease found that 87% of the fasteners were not nailed into the studs (Defendant's expert did not dispute this estimate). Defendant's superintendent, John Disk testified that at the time the project was under construction, he was of the belief that the building code and manufactures instructions required that the siding be nailed into the studs. He so testified in his deposition. In his testimony at the arbitration hearing before for me, he stated that he had changed his opinion and had decided that the siding was not required to be nailed into the studs. Defendant's

ELECTRONICALLY FILED 2022-Aug-02 3:23:31 PM CHARLESTON COMMON PLEAS CASE #2022CP1002255

Vice President for Operations of Charleston and Hilton Head, Ronald Keith Bunner also testified that at the time the project was under construction that he was of the opinion the siding was supposed to be nailed into the studs and expressed that opinion in his deposition. He too changed his mind and testified at the arbitration hearing that nailing into the studs is not required. Although the defendant did not perform the installation itself, it had a duty to supervise the responsible subcontractor. Plaintiff presented expert testimony from Dow that the Defendant had a duty to properly supervise and oversee the project, this would include periodic inspection of the siding, roof and window installations. He testified that in his opinion the Defendant was grossly negligent as to the supervision of the installation of the siding, roofs and windows. According to the testimony, a supervisor would only have had to step inside the building from time to time to observe the nails protruding, having not struck the studs. To have failed to detect a small percentage of improper nailing might constitute negligence. I find that to have failed to detect 87% of the code violations regarding the nailing constitutes gross negligence. According to the testimony and evidence, despite the improper nailing, most boards have stayed in place and are not allowing water intrusion. However, plaintiffs experts testified that nailing into the studs enhances the structural integrity of the buildings to guard against damage from extreme wind conditions which exist in this area. The damage created by the nearly complete failure to meet the building code and manufacturers requirements is that the buildings are more subject to failure in extreme wind conditions.

Regarding the roof installation, plaintiffs' experts testified that 86% of the roof shingles were nailed improperly, in violation of code requirements. Defendant did not present evidence to challenge this percentage of failure. The defendant takes the position that since the roofs have only failed in a limited number of areas and that limited evidence of water intrusion has been found,

ELECTRONICALLY FILED 2002-Aug-02 3:23 PM CHARRESS CONNOR COMMON PLEAS CASE #2002CP000225

that the improper nailing has caused no appreciable damage. However, the plaintiffs' expert testimony established that the shingles are more prone to fail in high wind conditions than they would be if they had been nailed properly. The defendant was not directly responsible for the installation of the roof. However, the expert testimony established that the defendant had supervisory responsibility. Failure to detect a small percentage of the roof nailing code violations might be understandable or may have constituted mere negligence. However, I find that failure to detect that 86% of the roofing nails were nailed in violation of the building code requirements constitutes gross negligence. Defendant argues that the shingles have substantially performed their function in that there have been no widespread leaks from the roof. Defendant also points out that the warranty on the shingles is nearing its expiration. The testimony establishes that there have been some shingles that have been replaced over time. Some reduction in the cost of replacement is appropriate and will be reflected in the award.

Regarding the windows, Plaintiffs' experts presented testimony and evidence that the windows installed throughout the project were not appropriate for use with cementitious siding. Plaintiffs' construction expert, Dow, testified that as a result of the incompatibility of the windows with the siding, the windows cannot be properly maintained. The Defense presented expert testimony that a satisfactory fix for this problem could be designed. This testimony is unpersuasive. The superintendent's conduct in failing to detect that 100% of the windows installed in this project were not designed to be installed with cementitious board, but rather were designed to be installed with vinyl siding, constitutes gross negligence.

Regarding the fencing, Plaintiffs' presented photographs of fencing which shows substantial rot in some places. However, the record does not support a finding of negligence or gross negligence on the part of the Defendant with regard to the fencing.

ELECTRONICALLY FILED 2023-Aug-02 13:23:11 PM CHARLESTON COMMON PLEAS CASE#2022CP1002255

I find the Plaintiff has met the gross negligence exception of S.C. Code Ann. § 15-3-670, and therefore, the Statute of Repose is not a complete bar to the Plaintiff's claims as to the siding, roof, and windows.

III. ACTUAL DAMAGES

The Plaintiff is awarded actual damages in the amount of $3,057,112.48 against D.R. Horton, Inc., for its claims of gross negligence related to the cementitious siding, roof shingles and J channel windows.

With respect to the claims relating to the fencing I find in favor to the Defendant DR Horton and award no damages.

Thomas J. Wills, IV
Arbitrator

August 12, 2023

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Exhibit C

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

BP0968950

PGS: 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MANSFIELD AT PARK WEST

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West are recorded in the office of the Charleston County Register of Deeds in Book P638 Page 409; and

WHEREAS, these Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West have been previously amended and the First Amended is recorded in the office of the Charleston County Register of Deeds in Book 0032 Page 997; and

WHEREAS, in excess of Seventy-Five Percent (75%) of the members of the Association have voted to amend the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West as set forth herein; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West are amended as follows:

AMENDMENTS

1. The following language shall be added and inserted in Section 5.1 entitled "**Townhome Association's Responsibility**":

> The Association at its sole discretion shall have the right and obligation to pursue claims for faulty design and construction of the townhome exteriors and exterior building components and installation thereof. Any and all funds recovered and received by the Association after expenses of the claim shall be placed in a separate interest-bearing account and used for the sole purpose of making repairs to the townhome exteriors and exterior building components. Any such repairs made with these collected funds shall be prioritized and made at the sole discretion of the Association.

2. Article XVII entitled "**Dispute Resolution and Limitation on Litigation**" and all of its subsections to include 17.1, 17.2, 17.3, 17.4, 17.5, and 17.6 shall be deleted in its entirety and in its place shall be inserted:

ARTICLE XVII
Dispute Resolution

Any dispute between the Association and the Declarant shall be submitted to binding

arbitration with a single arbitrator agreed to by the parties or appointed by the Court. The arbitrator shall have the sole discretion to determine the rules and procedures of the arbitration and any law applicable thereto. The award of the arbitrator shall be final and binding.

To the extent that there is any provision in the Declarations that conflict with this Amendment, the terms of this Amendment shall govern. The Board of the Association shall have the right to give the final meaning and interpretation of any term of the Declaration and Amendments thereto and shall have the right to modify any provision for which it determines impedes it from fulfilling its duties and obligations to the members of the Association provided that at least two-thirds (2/3) of the Board votes in favor of such interpretation and/or modification.

IN WITNESS WHEREOF, Mansfield at Park West Inc. (the Townhome Association) by its President, has executed this Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Mansfield at Park West this 1 of ~~February~~ March 2021.

MANSFIELD AT PARK WEST, INC.

By: _____
Mike Frappier, Its President

_____
Signature of 1st Witness

_____
Signature of 2nd Witness

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I, _____ (Notary Public), do hereby certify that Mansfield at Park West, Inc., by Mike Frappier, its President personally appeared before me this day and acknowledged that due execution of the foregoing instrument.

Witness my hand and seal this the 1 day of ~~February~~ March 2021.

_____
Notary Public for South Carolina
My commission expires: 3/28/26

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

RECORDER'S PAGE

***NOTE*: This page MUST remain with the original document**

Filed By:

CHAKERIS LAW FIRM

231 CALHOUN ST.
CHARLESTON SC 29401

RECORDED

Date:	March 9, 2021
Time:	2:38:20 PM

Book	Page	DocType
0968	950	Amend/Misc

Michael Miller, Register
Charleston County, SC

MAKER:
MANSFIELD @ PARK WEST

RECIPIENT:
NA

Original Book: P638

Original Page: 409

# of Sats:

Note:

# of Pages:	3
# of References:	
Recording Fee	$ 25.00
Extra Reference Cost	$ -
Extra Pages	$ -
Postage	$ -
TOTAL	$ 25.00

DRAWER	Drawer 4
CLERK	SLW

0968	950	03/09/2021	3
Book	Page	Recorded Date	# Pgs

P638	409	D	14:38:20
Original Book	Original Page	Doc Type	Recorded Time

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Exhibit D

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

[redacted]

Forwarded email

From: DHICustomerCare@drhorton.com
Date: March 2, 2021
To: mfrappier@email.com
Cc:
Subject: Your D.R. Horton Customer Care Request has been assigned ticket number [TicketId]

3/2/2021

Dear Michael Frappier,

We are writing to let you know we received the following customer care request:

I am a board member at Mansfield at Park West and it has recently been brought to our attention that the siding installed throughout our community is not installed properly and is very loose and not nailed into studs. The contractor advised it is a significant repair. Our shingles need repair too. When can a DR Horton representative meet at Mansfield at Park West to inspect these conditions and schedule repair? Thank you.

A Customer Service Representative will contact you within one business day.

If you have any questions or concerns please email CharlestonWarranty@drhorton.com

Sincerely,

D. R. Horton Customer Care Team

PLEASE do not respond to this email. Instead, contact your local Customer Care representative for further assistance.

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Sent: Friday, March 05, 2021 at 8:10 AM
From: "CharlestonWarranty" <CharlestonWarranty@drhorton.com>
To: "michael frappier" <mfrappier@email.com>, "CharlestonWarranty" <CharlestonWarranty@drhorton.com>
Subject: RE: Warranty Request - Frappier - Mansfield At Park West 51068 Lot 18 - 3041 Park West Blvd

Hello Mr. Frappier,
We do not accept requests for work to be done from people who do not currently own the home work is being requested at. Additionally, since the original closing date on your home is 11/30/2010 you are outside the D.R. Horton warranty and we will not be assessing your concerns.

Thank You,

Josh
Charleston Customer Service
D.R. HORTON
PO Box 1545, Mount Pleasant SC 29465
o: 843-284-5000
Home for every stage in life. | D.R. Horton · Express · Emerald · Freedom

---

From: michael frappier <mfrappier@email.com>
Sent: Thursday, March 4, 2021 6:26 PM
To: CharlestonWarranty <CharlestonWarranty@drhorton.com>
Subject: Re: Warranty Request - Frappier - Mansfield At Park West 51068 Lot 18 - 3041 Park West Blvd

[External]

Josh,

I'm disappointed in your reply that DR Horton won't repair these problems. My request for inspection and repairs was not just for my townhome but for the entire Mansfield at Park West community. Wil DR

Horton please reconsider the repair request. I'm happy to meet with your or send you pictures if that will be helpful.

Thank you,
Mike

> Sent: Wednesday, March 03, 2021 at 8:33 AM
> From: "CharlestonWarranty" <CharlestonWarranty@drhorton.com>
> To: "mfrappier@email.com" <mfrappier@email.com>
> Cc: "CharlestonWarranty" <CharlestonWarranty@drhorton.com>
> Subject: Warranty Request - Frappier - Mansfield At Park West 51068 Lot 18 - 3041 Park West Blvd
>
> Hello Mr. Frappier,
>
> Thank you for submitting your warranty request. I see that the original closing date on your home is 11/30/2010. The D.R. Horton Warranty on your home has expired and we will not be assessing this item. You will need to take the appropriate actions to resolve this.
>
> Thank You,
>
> **Josh**
> **Charleston Customer Service**
> **D.R. HORTON**
> PO Box 1545, Mount Pleasant SC 29465
> o: 843-284-5000
> **Home for every stage in life. | D.R. Horton · Express · Emerald · Freedom**

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Exhibit E

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **MANSFIELD AT PARK WEST, INC.,** **Plaintiff,** **vs.** **D.R. HORTON, INC.,** **Defendant.**	**IN ARBITRATION** **AWARD**

This matter came before me on July 26 and 31, 2023, for an arbitration hearing pursuant to the Consent Order dated July 27, 2021, and entered into by the Honorable R. Ferrell Cothran, Jr. The Plaintiff alleges that the Defendant was grossly negligent in the construction of the townhomes at Mansfield at Park West as it relates to the cementitious siding, roof shingles, J channel windows, and the premature deterioration of the wood fencing. Plaintiff contends these defects violate the building code, manufacturers' installation instructions and industry standards. Defendant admits that there may be violations of manufacture's installation instructions and the building code but argues any such violations were only minor deviations and immaterial. Defendant further argues that any water intrusion, damage below window locations and/or deteriorated fencing are a result of lack of maintenance which is not its responsibility, and the overall performance of the buildings is satisfactory. Additionally, the Defendant argues the Plaintiff lacks standing to pursue this claim and that the Statute of Repose bars any recovery as it was not grossly negligent. Both parties introduced substantial evidence of the cost of repair for the siding, shingles and J Channel by their respective qualified experts.

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

I. STANDING

I have reviewed the Declaration of Covenants, Conditions, and Restrictions for Mansfield at Park West, along with the First and Second Amendments thereto and considered the testimony and arguments of counsel. After such consideration, I find the Plaintiff has standing to pursue the claims it has asserted.

II. STATUTE OF REPOSE

There was evidence and testimony of qualified experts of violations of the building code, manufacturers' installation instructions and industry standard that is evidence of gross negligence. After consideration of the testimony and arguments of counsel, I find the Plaintiff met the gross negligence exception of S.C. Code Ann. § 15-3-670, and therefore, the Statute of Repose is not a complete bar to the Plaintiff's claims.

III. ACTUAL DAMAGES

The Plaintiff is awarded actual damages in the amount of _____ against D.R. Horton, Inc., for its claims of gross negligence related to the cementitious siding, roof shingles and J channel windows.

The Plaintiff is awarded actual damages in the amount of _____ against D.R. Horton, Inc., for its claims of gross negligence related to the fence.

_____
Thomas J. Wills, IV
Arbitrator

August ____, 2023

Exhibit F

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

TATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **MANSFIELD AT PARK WEST, INC.,** **Plaintiff,** **vs.** **D.R. HORTON, INC.,** **Defendant.**	**IN ARBITRATION** **DRH' PROPOSED #2** **AWARD**

This matter came before me on July 26 and 31, 2023, for an arbitration hearing pursuant to the Consent Order dated July 27, 2021, and entered into by the Honorable R. Ferrell Cothran, Jr. The Plaintiff alleges that the Defendant was grossly negligent in the supervision of the construction of the townhomes at Mansfield at Park West as it relates to the cementitious siding, roof shingles, caulking the trim around the windows, and the deterioration of the wood fencing. Plaintiff contends these defects violate the building code, manufacturers' installation instructions and industry standards. Defendant contends it was not grossly negligent in its supervision of its subcontractors. Defendant also disputes that there are violations of building code, manufacture's installation instructions and industry standards but argues that if there were any such violations, they were only minor deviations and immaterial. Defendant points to the undisputed facts that the buildings have been lived in for 12-14 years and that there has been no mass failure of the building cladding or interior water damage as evidence that the deviations have not compromised the buildings. Defendant further argues that any high moisture below window locations and/or deteriorated fencing are a result of lack of maintenance which is not its responsibility, and the overall performance of the buildings is satisfactory.

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Additionally, the Defendant argues that based on the Covenants and Restrictions, the Plaintiff lacks standing to pursue this claim.

Both parties introduced substantial evidence of the cost of repair for the siding, shingles and trim around the windows by their respective qualified experts.

I. STANDING

I have reviewed the Declaration of Covenants, Conditions, and Restrictions for Mansfield at Park West, along with the First and Second Amendments thereto and considered the testimony and arguments of counsel. After such consideration, I find the Plaintiff have standing to pursue the claims.

II. STATUTE OF REPOSE

It is undisputed that the present claims are outside the Statute of Repose. There was evidence and testimony of qualified experts about alleged violations of the building code, manufacturers' installation instructions and industry standard and whether the work rose to the level to prove that Defendant was grossly negligent in the supervision of the subcontractors. After consideration of the testimony and arguments of counsel, I find the Plaintiff did prove the gross negligence exception of S.C. Code Ann. § 15-3-670. However, I am mindful that owners have lived in and obtained use of the buildings for the last 12-14 years. I find the repair estimate submitted by Defendant's damages expert is most reasonable and award Plaintiff:

I find specifically that the following work was performed in a grossly negligent manner:

I award _____damages for the gross negligent nailed cement fiber board
I award _____ damages for the gross negligently applied shingles
I award _____ damages for the gross negligently installed windows and cement fiber window trim boards
I award _____damages for the gross negligently installed wooden fences.

_____

Thomas J. Wills, IV
Arbitrator

August ____, 2023

ELECTRONICALLY FILED - 2024 Jul 03 3:23 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2024 Sep 16 4:10 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

STATE OF SOUTH CAROLINA	)	IN THE ARBITRATION OF
	)	
COUNTY OF CHARLESTON	)	C.A. NO.: 2021-CP-10-01215
	)	
MANSFIELD AT PARK WEST, INC., PLAINTIFF,	)	**D.R. HORTON, INC.'S MOTION FOR RECONSIDERATION**
vs.	)	
D.R. HORTON, INC.,	)	
DEFENDANT.	)	

Defendant D.R. Horton, Inc. files this Motion for Reconsideration of the Court's Order denying D.R. Horton's Motion to Vacate the Arbitration Award, filed September 4, 2024, and the judgment entered pursuant to this Court's Form 4 Order dated September 5, 2024, pursuant to Rules 52, 59, 60 and all other applicable Rules of the South Carolina Rules of Civil Procedure. Defendant believes the Court did not fully consider and address: (a) the parties' agreement for a reasoned award, (b) Plaintiff's lack of standing, and (c) speculative future damages contrary to law. As a result, Defendant asks the Court to amend its decision, vacate the Arbitration Award, and remand for proceedings before a new arbitrator.[1] In addition to its Motion to Vacate and Exhibits filed November 20, 2023, which are incorporated herein and which Defendant asks the Court to revisit along with this Motion,[2] D.R. Horton, provides the following additional discussion in support of its Motion for Reconsideration.

[1] *See* S.C. Code Ann. § 15-48-130(c) (stating that when a court vacates an arbitration award it "may order a rehearing before new arbitrators").

[2] Defendant is concerned that Plaintiff has attempted to circumvent the arbitration constraints on involuntary class action lawsuits in its attempt to imbue Plaintiff with standing on the eve of filing the lawsuit. If this maneuver is upheld, the judicial system should expect to see this questionable practice flourish in South Carolina.

ELECTRONICALLY FILED - 2024 Sep 16 4:10 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

First, the Court's decision suggests that a reasoned award was not required and simultaneously, that the award was somehow reasoned enough because Defendant's two short form proposed awards were not "more reasoned."[3] The parties and the arbitrator agreed that a reasoned award would be issued prior to the arbitration hearing commencing. That is not disputed. That was their contract. It must be respected. Neither the arbitrator nor Plaintiff's counsel has stated otherwise. However, the Plaintiff's counsel dances around the issue by saying that the arbitrator decides procedure. That is not the same thing as saying there was no agreement for a reasoned award before the hearing began. Unless and until the arbitrator and Plaintiff's counsel explicitly state otherwise, the Court should accept that the parties agreed to a reasoned award because counsel has made that representation and neither the arbitrator nor opposing counsel has disputed the veracity of Defendant's statement.[4] Defendant has also included an Affidavit confirming that a reasoned award was agreed to. See Attachment A.

Because a reasoned award was agreed to, the arbitrator's scope was defined to include a reasoned award as to all the issues and the damages – not just the question of gross negligence. Any award other than that exceeds the arbitrator's authority and violates the arbitrator's requirements. *See Stage Stores, Inc v. Gunnerson,* 477 S.W.3d 848 (Tex. App. 2015) (finding that an award was not a reasoned award when it failed to discuss an issue that was thoroughly discussed during the arbitration proceedings); *Vold v. Broin & Assocs.* 2005 S.D.80, 699 N.W.2d 482 (S.D. 2005) (The arbitrator's decision to issue a reasoned award bestowed a substantive right on Broin and, at the same time, imposed a substantive duty upon the arbitrator). The South Carolina Code of Ethics for Arbitrators, Canon I (F) supports the rights of parties to an arbitration to receive the

[3] It is the arbitrator who has the obligation to issue the reasoned award, not the parties.
[4] Therefore, the Court's reliance on cases where the parties did not agree to a reasoned award—such as *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 488 S.E.2d 335 (1997), does not apply.

ELECTRONICALLY FILED - 2024 Sep 16 4:10 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

type of award the parties agree should be issued. Canon I (F) requires that "[w]hen an arbitrator's authority is derived from an agreement of the parties, the arbitrator should neither exceed that authority nor do less than is required to exercise that authority completely. Where the agreement of the parties sets forth procedures to be followed in conducting the arbitration or refers to rules to be followed, it is the obligation of the arbitrator to comply with such procedures or rules." When parties agree to a reasoned award, they have a *right* to the reasoned award – it is not at the discretion of the arbitrator.

Second, the Court misunderstood the nature and purpose of Defendant's counsel providing the two short draft proposed orders to the arbitrator along with the 21-page reasoned award in which D.R. Horton would prevail. When a court or an arbitrator asks counsel to prepare proposed orders, counsel prepare them to assist the court or arbitrator *and* to strengthen their client's position in the litigation. Requiring counsel for any litigant to draft a fully reasoned order in which they argue against their client's interest by way of a fully developed reasoned award with facts and legal analysis as to why their client *should not prevail* is not appropriate. It could be said to: (a) breach the duty counsel has to their client to represent the client's best interest, (b) breach the attorney-client privilege, and (c) breach the work-product privilege. Expecting D.R. Horton's counsel to provide the arbitrator a reasoned award detailing how D.R. Horton should *lose* the arbitration factually and legally is not appropriate and counsel complying with such a request may violate counsel's ethical duty to his client. The arbitrator in this case did not require that. The barebones draft award with Defendant losing (Short Form 2) as a starting point from which the arbitrator could begin to draft his reasoned award was the most counsel thought he could provide to assist the arbitrator's drafting. He provided such short form draft awards with D.R. Horton losing and prevailing, respectively, as well as the 21-page reasoned award with D.R. Horton prevailing, in

ELECTRONICALLY FILED - 2024 Sep 16 4:10 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

case the arbitrator found too much he wanted to change in the 21-page reasoned draft award counsel prepared. The two shorter draft awards were never intended to be "reasoned awards" on their own – they were intended to be starting points for the arbitrator from which the arbitrator would build his award. Of course, those were not "reasoned awards." A reasoned award includes facts, references to the evidence, and legal analysis as to all issues. Providing the proposed awards the parties were asked to provide should not be the basis for denying Defendant the reasoned award the arbitrator and parties agreed would be issued. Counsel was merely complying with what it understood the arbitrator had asked for without violating its duty to its client – hence the short forms as a starting point for the arbitrator and the 21-page reasoned award as a complete award.

The arbitrator's failure to issue a reasoned award impacts the discussion of every other facet of this case because so little is provided for review. Additionally, D.R. Horton made it clear that a reasoned award is necessary for it to be able to seek contribution from the contractors it hired to perform the work at the development. A simple itemization by category of the damages was not even provided, even when asked for specifically. Why? A simple ask. Was it because of lack of evidence? Or was it to punish Defendant? No other purposes come to mind. Either would exceed the arbitrator's authority. When parties agree to arbitration, "they do not bargain to have their dispute resolved by whim." *Waldo v. Cousins*, 442 S.C. 662, 668, 901 S.E.2d 276, 279 (2024). An award should be vacated "when an arbitrator substitutes his personal policy views in place of a plainly binding legal principle." *Id.* at 669, 901 S.E.2d at 279–80. In *Waldo*, this occurred when an arbitration panel relied on common law rules that had clearly been superseded by statute. *See id.* at 668, 901 S.E.2d at 279. In this case it occurred when the arbitrator ignored the parties' agreement for a reasoned award as discussed above and manifestly disregarded the legal standard

ELECTRONICALLY FILED - 2024 Sep 16 4:10 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

for proving future damages discussed in this section.[5]

The Court's failure to require a reasoned award makes it impossible to determine what portion of the award is allocated to future damages. Under South Carolina law, a party can only recover for "damages that the evidence shows will *be reasonably certain* to occur in the future"; a party cannot recover damages based on "conjecture, speculation or guess." *Pearson v. Bridges*, 344 S.C. 366, n.5, 544 S.E.2d 617, n.5 (2001) (emphasis added). "Now an injured party may also recover for such future damages as it is reasonably certain *will of necessity* result from the injury received." *Boan v. Blackwell*, 343 S.C. 498, 501, 541 S.E.2d 242, 244 (2001) (emphasis added). Here it is clear from the arbitrator's comments during closing that this basic rule of law was not followed and that the arbitrator knew he was not following the law. The arbitrator agreed that in the 12-14 years since the buildings were completed there has been no interior damage to the townhomes, which is what the siding, roof and windows are required to prevent. "I'm not saying it's prematurely failing. I'm not even arguing that because there's very little proof. There's leaks around the windows maybe and there's some problems with the shingle issue." (Motion to Vacate, Exhibit Y, 7/31/2023 Tr. pp 274 lines 20-24 and p. 279 lines 7-13) Despite no evidence of the complained about systems prematurely failing, the arbitrator then finds D.R. Horton grossly negligent and awarded more than three million dollars in damages. Accordingly, it would be impossible for the arbitrator to rule for the Plaintiff based on the evidence before him without showing a manifest disregard for the law. This runs afoul of *Waldo v. Cousins*, 442 S.C. 662, 669, 901 S.E.2d 276, 280 (2024).

> We have progressed from the days, described by the 19th century Scottish judge, when an arbitrator "may believe what nobody else believes, and he may disbelieve what all the world believes. He may overlook or flagrantly misapply the most ordinary principles of law, and there is no appeal for those who have

[5] It occurred with the arbitrator ignoring plain terms of the Covenants, Conditions and Restrictions ("CCRs") discussed below, as well.

ELECTRONICALLY FILED - 2024 Sep 16 4:10 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

> chosen to submit themselves to his despotic power." Noah Rubins, "Manifest Disregard of the Law" and Vacatur of Arbitral Awards in the United States, 12 Am. Rev. Int'l Arb. 363, 367 (2001) (quoting Mitchell v. Cable, [1848] 10 D. 1297). Courts may now vacate an arbitration award, but only when it is untethered from controlling legal principles known to, but shrugged off by, the arbitrator. This may occur when an arbitrator substitutes his personal policy views in place of a plainly binding legal principle.

How do we know the arbitrator substituted his own personal view in place of plainly binding legal principle? Plaintiff has told this Court that the arbitrator is a highly competent, well-respected, lawyer in South Carolina. He is knowledgeable and experienced. Defendant does not disagree. The arbitrator knows the law regarding future damages. The arbitrator knows the law regarding reasoned awards. He knows how to read a contract and understand it. If this arbitrator gets the simple law wrong in this case, it is not because he does not know the law. It is manifest disregard of the law. We also know because it would have been a simple task for the arbitrator to provide at least a breakdown by category as to the damages, as Defendant requested. This was needed by Defendant and the arbitrator was made aware of this. The arbitrator declined. This has likely foreclosed Defendant's legal rights as Defendant made the arbitrator aware. This was also a manifest disregard.

Finally, Defendant requests the Court to reconsider its Order and rule on the section of the Covenants, Conditions and Restrictions ("CCRs") that Defendant argued showed Plaintiff did not have standing and was not a real party in interest in this case. The Court looked at only one provision, but that misunderstands the situation. Additionally, whether D.R. Horton is a current owner or not does not deprive it of its rights under the CCRs. Specifically, the Court did not address the provision stipulating that

> [t]he covenants and restrictions of this Declaration shall run with and bind the land . . . until September 30, 2027, unless otherwise expressly limited herein, *after which time* said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an

ELECTRONICALLY FILED - 2024 Sep 16 4:10 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

> instrument signed by Seventy-five (75%) percent of the Unit Owners has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that *no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change*, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

CCR § 18.1 (emphases added).

It is undisputed that Plaintiff did NOT comply with this provision of the CCRs. Moreover, the Court did not address how this provision interacts with section 1.3 of the CCRs, upon which Plaintiff relies. Specifically, Article I describes *who* can amend the CCRs. When D.R. Horton owned any of the property only D.R. Horton could amend the CCRs. After D.R. Horton no longer owned any of the property, then 75% of property owners could amend the CCRs if they followed the procedures. *See* CCR § 1.3. That is the who. There is also the when and how.

Article XVIII describes the *when* and *how* the CCRs can be amended by the homeowners — the when is after 2027, and the how requires the amendment be recorded for three years and with 90-days prior notice to owners before it has any effectiveness. *Id.* § 18.1.[6] Every single requirement was violated. The Arbitrator's Award reflects manifest disregard of this distinction and frustrates the parties' intent in creating the CCRs. The CCRs protect not only the current owners, but also the developer, D.R. Horton. It retains an interest in the CCRs being followed. The initial 20 year period is purposely chosen. The Court's failure to address this interaction perpetuates that error. It is difficult to not look at how it also encourages other homeowner associations to engage in similar tactics, which if Defendant's assessment of what occurred is correct, the Plaintiff, the townhome owners, and their counsel colluded to amend the CCRs to

[6] Plaintiff and the homeowners did not follow this procedure, nor was there any amendment to the procedure.

ELECTRONICALLY FILED - 2024 Sep 16 4:10 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

attempt to imbue the Plaintiff with standing as a subterfuge to overcome the fact that they could not bring a class action in arbitration. The United States Supreme Court decided that parties cannot be forced to arbitrate class claims unless they have specifically agreed to that issue. *Lamps Plus. Inc. v. Varela*, 139 S.C. 1407 (2019).The second amendment to the CCRs was a thinly veiled end run around restrictions on class actions in arbitrations. The HOA also amended the dispute resolution provision in violation of the CCRs. D.R. Horton has rights under that provision, as well. Compare CCR §§ 17.1-17.6 in Exhibit B with Second Amended CCR Article XVII in Exhibit A. D.R. Horton's. rights under the CCRs were simply whisked away by the arbitrator and by the Court in manifest disregard of the contracts.

The amendment to the CCRs, § 5.1, that the HOA uses to attempt to acquire standing in this case was passed on March 1, 2021, just *three days* before the lawsuit was filed. The amendment purported to provide that "at its sole discretion [Plaintiff] shall have the right and obligation to pursue claims for faulty design and construction of the townhome exteriors and exterior building components and installation thereof[.]" Motion to Vacate, Exhibit A, § 5.1. Such an amendment may only be applied prospectively, three years after the amendment is recorded by the terms of the CCRs and after the initial twenty-year term.[7] Accordingly, Plaintiff is not, and for three years after September 30, 2027 cannot be, the plaintiff in the case and it does not have standing to bring the case as a real party in interest. Applying the modification to this case violated the very CCRs that Plaintiff uses to attempt to create standing. Additionally, because the townhome owners retained all rights and obligations to maintain and repair the interior and exterior of each townhome, including their individual roofs, the putative Plaintiff had no legitimate interest in the lawsuit – no obligation to repair, replace, or modify any building

[7] Prospective amendment requirements in CCRs, like the initial twenty-year term and three-year prior notice in this case, allow parties to prepare for any upcoming changes.

components, no obligation to provide any lawsuit funds to any individual townhome owner, and no obligation to disburse the funds in any way. The Plaintiff simply has no real stake in the lawsuit and no right to damages for which it has suffered no harm. Rule 17(a), SCRCP requires that every action be brought by the real party in interest to have standing. "Generally, a party must be a real party in interest to the litigation to have standing." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 28, 630 S.#. 2d 474, 479 (2006). "Standing is a fundamental requirement in instituting an action." *Hawkins v. Hammond*, 437 S.C. 36, 43, 875 S.E. 2d 60, 63 (Ct. App. 2022). A real party in interest is "the party who, by the substantive law, has the right sought to be enforced. It is ownership of the right sought to be enforced which qualifies one as a real party in interest." *Bank of Am. , N.A. v. Draper*, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013). That is not this Plaintiff. Plaintiff has not been harmed, has no obligation to use any proceeds from the lawsuit for the benefit of the real parties in interest, and attempted to insert itself into this lawsuit through breach of an agreement. Plaintiff is not a real party in interest. "[A] party's lack of standing as a real party in interest deprives a court of subject matter jurisdiction." *Bardoon Properties v. Eldolon Corp., 326 S.C. 166, 485 S.E.2d 371, 373 (1997).*

Another change to the CCRs that should have been declared null and void is the deletion of Article XVII, entitled Dispute Resolution and Limitations on Litigation, and its subsections 17.1 - 17.6. Replacement Article XVII requires Declarant (D.R. Horton) to resolve disputes in arbitration with a single arbitrator.

D.R. Horton retains an interest in the CCRs and has a right to enforce the terms of the amendment process as the Declarant. The arbitrator manifestly disregarded D.R. Horton's rights and the law when it failed to grant Defendant summary judgment on this issue and then failed to find for Defendant on the CCR issues in the award.

ELECTRONICALLY FILED - 2024 Sep 16 4:10 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Defendant discusses the CCR issues in its Motion to Vacate and incorporates those herein and it is manifestly clear that the amendments violated the CCRs in an attempt to gain standing to create a class action in arbitration to violate arbitration prohibitions against such lawsuits and to strip Defendant of its rights under the CCRs in violation of the terms of the CCRs. The arbitrator manifestly disregarded the contracts, D.R. Horton's rights under the CCRs, and its rights to a reasoned award on this issue.

For the reasons addressed above and in Defendant's Motion to Vacate Arbitration Award, the Court's Order should be reversed, and this matter remanded for further proceedings before a newly appointed arbitrator.

Dated September 16, 2024

s/ Carl F. Muller
Carl F. Muller, SC Bar #4131
Carl F. Muller, Attorney-at-Law, P.A.
PO Box 1717
Greenville, SC 29602-1717
864-991-8904 Phone
864-751-2831 FAX
carl@carlmullerlaw.com

Thomas E Dudley, III (S.C. Bar No.: 66154)
John T. Crawford, Jr. (S.C.Bar No.: 69682)
Kenison, Dudley, & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
(864)- 242-4899

Attorneys for D.R. Horton, Inc.

ELECTRONICALLY FILED - 2024 Sep 16 4:10 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2024 Sep 16 4:10 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

STATE OF SOUTH CAROLINA	)	IN THE ARBITRATION OF
	)	
COUNTY OF CHARLESTON	)	C.A. NO.: 2021-CP-10-01215
	)	
MANSFIELD AT PARK WEST, INC., PLAINTIFF,	)	
	)	
vs.	)	**AFFIDAVIT OF JOHN T. CRAWFORD, JR.**
	)	
D.R. HORTON, INC.,	)	
	)	
DEFENDANT.	)	
	)	

PERSONALLY appeared before me, John T. Crawford, Jr., Esquire, who being duly sworn, deposes and says as follows:

1. Myself along with my partner Thomas Dudley represented the Defendant D.R. Horton, Inc. ("D.R. Horton") in the arbitration that took place before Tom Wills.

2. At the outset of the arbitration D.R. Horton requested a reasoned award and the plaintiff and the arbitrator agreed to this request and the proceedings were conducted on the basis of D.R. Horton's request for a reasoned award. This fact is not disputed.

3. This fact is further evidenced by the fact that:

   a. D.R. Horton paid for a court reporter to take testimony at the hearing.

   b. At the close of the proceedings, the arbitrator requested proposed orders for the award and in response D.R. Horton provided a 21- page reasoned award.

c. The arbitrator in fact provided a partially reasoned award but failed to address all issues.

FURTHER AFFIANT SAYETH NAUGHT.

SWORN to before me this 16th day of September, 2024.

Cara Smith
Notary Public for South Carolina
My Commission Expires: 5-14-2030

John T. Crawford, Jr., Esq.
KENISON, DUDLEY & CRAWFORD, LLC

CARA SMITH NOTARY PUBLIC MY COMM. EXP. 5/14/2030 SOUTH CAROLINA

ELECTRONICALLY FILED - 2024 Sep 16 4:10 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

RECEIVED
Oct 24 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Thomas W. McGee, III, Circuit Court Judge

Case No. 2021-CP-10-01215

MANSFIELD AT PARK WEST, INC.,

Respondent,

v.

D. R. HORTON, INC.,

Appellant.

NOTICE OF APPEAL

D. R. Horton, Inc. appeals the Order of the Honorable Thomas W. McGee, III dated October 3, 20224 denying D. R. Horton's Motion to Alter or Amend the September 4, 2024 Order Denying Defendant's Motion to Vacate Arbitration Award, and also appeals his September 4 Order. Appellant received written notice of entry of the October 3, 2024 order on October 3, 2024.

October 24, 2024

s/Carl F. Muller, SC Bar #4131
Carl F. Muller, Attorney-at-Law, P.A.
PO Box 1717
Greenville, SC 29602-1717
864-991-8904 Phone
864-751-2831 FAX
carl@carlmullerlaw.com
Attorney for Appellant
D. R. Horton, Inc.

John T. Crawford, Jr., (S.C. Bar No, 69682)
Thomas E. Dudley, III (S.C. Bar No. 66154)
Kenison, Dudley & Crawford, LLC
704 McBee Ave.
Greenville, South Carolina 29601
(864) 242-4899
(864) 242-4844 (fax)
crawford@conlaw.com
dudley@conlaw.com
Attorneys for Appellant
D. R. Horton, Inc.

Other Counsel of Record:

John T. Chakeris,SC Bar#7060
Alicia D. Pullano SC Bar#102801
The Chakeris Law Firm
234 Seven Farms Drive, Ste. 128
Daniel Island, SC 29492
(843)853-5678
john@chakerislawfirm.com
alicia@chakerislawfirm.com
Attorneys for Plaintiff
Mansfield At Park West, Inc.

W. Jefferson Leath, Jr.
Jefferson Leath Esquire, LLC
106 Tradd Street
Charleston, SC 29401
jeff@leathesqu.com
Attorney for Plaintiff
Mansfield At Park West, Inc

Stephen P. Hughes
Howell, Gibson and Hughes
P.O. Box 40
Beaufort, SC 29901
sphughes@hghpa.com
Attorney for Plaintiff
Mansfield At Park West. Inc.

RECEIVED
Oct 24 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Thomas W. McGee, III, Circuit Court Judge

Case No. 2021-CP-10-01215

MANSFIELD AT PARK WEST, INC.,

Respondent,

v.

D. R. HORTON, INC.,

Appellant.

CERTIFICATE OF SERVICE AND FILING

The undersigned does hereby certify that on October 24, 2024 a copy of the Notice of Appeal was served by email on counsel for the Respondent as follows and filed by email with the Clerk of Court for the South Carolina Court of Appeals in this proceeding:

s/Carl F. Muller, SC Bar #4131
Carl F. Muller, Attorney-at-Law, P.A.
PO Box 1717
Greenville, SC 29602-1717
864-991-8904 Phone
864-751-2831 FAX
carl@carlmullerlaw.com
Attorney for Appellant
D. R. Horton, Inc.

John T. Crawford, Jr., (S.C. Bar No, 69682)
Thomas E. Dudley, III (S.C. Bar No. 66154)
Kenison, Dudley & Crawford, LLC
704 McBee Ave.
Greenville, South Carolina 29601
(864) 242-4899
(864) 242-4844 (fax)
crawford@conlaw.com
dudley@conlaw.com
Attorneys for Appellant
D. R. Horton, Inc.

Other Counsel of Record:

John T. Chakeris,SC Bar#7060
Alicia D. Pullano SC Bar#102801
The Chakeris Law Firm
234 Seven Farms Drive, Ste. 128
Daniel Island, SC 29492
(843)853-5678
john@chakerislawfirm.com
alicia@chakerislawfirm.com
Attorneys for Plaintiff
Mansfield At Park West, Inc.

W. Jefferson Leath, Jr.
Jefferson Leath Esquire, LLC
106 Tradd Street
Charleston, SC 29401
jeff@leathesqu.com
Attorney for Plaintiff
Mansfield At Park West, Inc

Stephen P. Hughes
Howell, Gibson and Hughes
P.O. Box 40
Beaufort, SC 29901
sphughes@hghpa.com
Attorney for Plaintiff
Mansfield At Park West, Inc

RECEIVED
Oct 24 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Thomas W. McGee, III, Circuit Court Judge

Case No. 2021-CP-10-01215

MANSFIELD AT PARK WEST, INC.,

Respondent,

v.

D. R. HORTON, INC.,

Appellant.

CERTIFICATE OF SERVICE AND FILING

The undersigned does hereby certify that on October 24, 2024 a copy of the Notice of Appeal was served by email on counsel for the Respondent as follows and filed by email with the Clerk of Court for the South Carolina Court of Appeals in this proceeding:

s/Carl F. Muller, SC Bar #4131
Carl F. Muller, Attorney-at-Law, P.A.
PO Box 1717
Greenville, SC 29602-1717
864-991-8904 Phone
864-751-2831 FAX
carl@carlmullerlaw.com
Attorney for Appellant
D. R. Horton, Inc.

John T. Crawford, Jr., (S.C. Bar No, 69682)
Thomas E. Dudley, III (S.C. Bar No. 66154)
Kenison, Dudley & Crawford, LLC
704 McBee Ave.
Greenville, South Carolina 29601
(864) 242-4899
(864) 242-4844 (fax)
crawford@conlaw.com
dudley@conlaw.com
Attorneys for Appellant
D. R. Horton, Inc.

Other Counsel of Record:

John T. Chakeris,SC Bar#7060
Alicia D. Pullano SC Bar#102801
The Chakeris Law Firm
234 Seven Farms Drive, Ste. 128
Daniel Island, SC 29492
(843)853-5678
john@chakerislawfirm.com
alicia@chakerislawfirm.com
Attorneys for Plaintiff
Mansfield At Park West, Inc.

W. Jefferson Leath, Jr.
Jefferson Leath Esquire, LLC
106 Tradd Street
Charleston, SC 29401
jeff@leathesq.com
Attorney for Plaintiff
Mansfield At Park West, Inc

Stephen P. Hughes
Howell, Gibson and Hughes
P.O. Box 40
Beaufort, SC 29901
sphughes@hghpa.com
Attorney for Plaintiff
Mansfield At Park West, Inc

Gmail

Kay Kelly <kay@carlmullerlaw.com>

Mansfield At Part West, Inc. v DR Horton Case No: 2021-CP-10-01215

Kay Kelly <kay@carlmullerlaw.com>
To: jeff@leathesq.com

Thu, Oct 24, 2024 at 4:18 PM

Hey Jeff,
The below email was sent earlier and we inadvertently had your email incorrect. That has now been rectified.
Thank you,
Kay Kelly

---------- Forwarded message ---------
From: **Kay Kelly** <kay@carlmullerlaw.com>
Date: Thu, Oct 24, 2024 at 3:57 PM
Subject: Mansfield At Part West, Inc. v DR Horton Case No: 2021-CP-10-01215
To: Court Of Appeals Filings <ctappfilings@sccourts.org>
[Quoted text hidden]
[Quoted text hidden]

--
[Quoted text hidden]

2 attachments

Notice of Appeal Mansfield v DR Horton 2021-CP-10-01215.pdf
322K

Notice of Appeal COS COA Mansfield v DR Horton 102424.pdf
320K

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1001215

Mansfield At Park West Inc
PLAINTIFF(S)

Dr Horton Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

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

The court has received and reviewed Defendant D.R. Horton's Motion to Alter or Amend the September 4, 2024, Order Denying Defendant's Motion to Vacate Arbitration Award. After reviewing the Motion, accompanying affidavit of John T. Crawford, prior submissions by the parties, and other matters properly before the court, I respectfully deny the Motion to Alter or Amend.

ORDER INFORMATION

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

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/03/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2024 Oct 03 11:25 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Court Reporter:

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

ELECTRONICALLY FILED - 2024 Oct 03 11:25 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2024 Oct 03 11:25 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Charleston Common Pleas

Case Caption: Mansfield At Park West Inc VS Dr Horton Inc

Case Number: 2021CP1001215

Type: Order/Electronic Form 4

So Ordered

s/ Thomas W. McGee III, Judge Code 2786

ELECTRONICALLY FILED - 2024 Sep 04 11:43 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **MANSFIELD AT PARK WEST, INC.,** **Plaintiff,** **vs.** **D.R. HORTON, INC.,** **Defendant.**	**2021-CP-10–01215** **ORDER DENYING DEFENDANT'S MOTION TO VACATE AND CONFIRMING THE ARBITRATION AWARD**

This matter came before me for a hearing on July 12, 2024, upon a Motion to Vacate the Arbitration Award entered by Thomas J. Wills, IV, in this matter. After hearing arguments of counsel from both sides and reviewing the Motion, memoranda, exhibits, and all other evidence properly before the Court, for the foregoing reasons, Defendant, D.R. Horton, Inc.'s Motion to Vacate is hereby **DENIED** and the Award of the arbitrator is hereby **CONFIRMED**.

STANDARD OF REVIEW

"Arbitration is a favored method of settling disputes in South Carolina." *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 75, 488 S.E.2d 335, 337 (1997) (citing *Batten v. Howell*, 300 S.C. 545, 389 S.E.2d 170 (Ct. App. 1990); *Trident Technical College v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 333 S.E.2d 781 (1985)). "When a dispute is submitted to arbitration, the arbitrators determine questions of both law and fact." *Id.* at 76, 488 S.E.2d at 337 (citing S.C. Code Ann. § 15-48-180). "Generally, an arbitration award is conclusive and courts will refuse to review the merits of an award." *Id.* "Arbitration is not litigation carried on by other means." *Lauro v. Visnapuu*, 351 S.C. 507, 516, 570 S.E.2d 551, 555 (Ct. App. 2002) (citing *White v. Preferred Research, Inc.*, 315 S.C. 209, 212, 432 S.E.2d 506, 508 (Ct. App. 1993)). "Judicial review of an arbitration award is

ELECTRONICALLY FILED - 2024 Sep 04 11:43 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

[therefore] limited in scope, and any attempt to convert arbitration into a trial-like judicial proceeding is looked upon with disfavor." *Id*. "'The judiciary should minimize its role in arbitration as judge of the arbitrator's impartiality.'" *Crouch Constr. Co. v. Causey*, 405 S.C. 155, 163, 747 S.E.2d 482, 486 (2013) (quoting *Commonwealth Coatings Corp. v. Cont'l Cas. Co.,* 393 U.S. 145, 151 (1968)).

"In reviewing arbitration awards, 'the standards for judicial intervention are . . . narrowly drawn to assure the basic integrity of the arbitration process without meddling in it.'" *Id.* (quoting *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 681 (7th Cir. 1983)). "An award will be vacated only under narrow, limited circumstances, *inter alia*, 'when the arbitrator exceeds his or her powers and/or manifestly disregards or perversely misconstrues the law.'" *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013) (quoting *Gissel v. Hart*, 382 S.C. 235, 240, 676 S.E.2d 320, 323 (2009)). "However, for a court to vacate an arbitration award based upon an arbitrator's manifest disregard of the law, the governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable." *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009) (citations omitted). "Case law presupposes something beyond a mere error in construing or applying the law. Even a 'clearly erroneous interpretation of the contract' cannot be disturbed." *Id.* (quoting *Trident Tech. College v. Lucas & Stubbs*, 286 S.C. 98, 108, 333 S.E.2d 781, 787 (1985)). "An arbitrator's 'manifest disregard of the law,' as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it." *Id.* (citing *Weimer v. Jones,* 364 S.C. 78, 610 S.E.2d 850 (Ct. App. 2005)). "Factual and legal errors by arbitrators do not constitute an abuse of powers, and a court is not required to review the merits of a decision so long as the arbitrators do not exceed their powers." *Id.* at 242, 676 S.E.2d at 324.

ELECTRONICALLY FILED - 2024 Sep 04 11:43 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

"Arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.' If the grounds for the award can be inferred from the facts, the award should be confirmed." *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 77, 488 S.E.2d 335, 338 (1997) (citing *Batten v. Howell*, 300 S.C. 545, 389 S.E.2d 170 (Ct. App. 1990)). To vacate the arbitration award, DRH must show "'something beyond and different from a mere error of law or failure on the part of arbitrator[] to understand or apply the law.'" *Batten v. Howell*, 300 S.C. 545, 549, 389 S.E.2d 170, 172 (Ct. App. 1990) (quoting *Trident Tech. College v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 108-109, 333 S.E.2d 781, 787 (1985)).

A. REASONED AWARD

D.R. Horton contends that the parties had an agreement for a reasoned award and that the reasoning in the award was insufficient. The Plaintiff contends that the award was reasoned, but that there was no requirement for a reasoned award because the arbitrator had the sole discretion as to the format of the award. The Consent Order for Arbitration gives the arbitrator sole discretion over all scheduling and procedural issues of the arbitration. This includes the format of the Award.

At the conclusion of the arbitration, the arbitrator asked the parties to submit proposed Awards. The Plaintiff submitted a proposed Award and DRH submitted three different alternative proposed Awards, with only one captioned DRH PROPOSED #2 with the Plaintiff prevailing. The arbitrator didn't choose the proposed awards submitted by either of the parties, but rather drafted his own Award. The arbitrator's Award format is substantially similar to the proposed awards submitted by both the Plaintiff and DRH's PROPOSED #2, with the main difference being the inclusion by the arbitrator of a lengthy discussion of significant factual findings in determining DRH was grossly negligent.

ELECTRONICALLY FILED - 2024 Sep 04 11:43 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

DRH argues that the Standing Section of the arbitrator's award lacks sufficient reasoning, yet the language of the Standing Section of the Award is essentially identical to DRH's own language in its DRH PROPOSED #2. The reasoning and findings contained in the Statute of Repose/Gross Negligence Section of the Award determining DRH's gross negligence and support the damage award is far more extensive than the four sentences DRH submitted in its Statue of Repose/Gross Negligence section of its DRH PROPOSED #2. Further, DRH's PROPOSED #2 contains no reasoning to support any awarded damages for which it now complains. "Arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.'" *Pittman Mortg. Co. v. Edwards,* 327 S.C. 72, 77, 488 S.E.2d 335, 338 (1997) (quoting *Batten v. Howell*, 300 S.C. 545, 549, 389 S.E.2d 170, 172 (Ct. App. 1990)).

The Consent Order for Arbitration also states that the laws of the State of South Carolina shall apply to the proceeding. The South Carolina Arbitration Act provides that the final award be in writing and signed by the arbitrator per Section 15-48-90, with which the arbitrator's Award complies. "Arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.'" *Pittman Mortg. Co. v. Edwards,* 327 S.C. 72, 77, 488 S.E.2d 335, 338 (1997) (quoting *Batten v. Howell*, 300 S.C. 545, 549, 389 S.E.2d 170, 172 (Ct. App. 1990)). DRH has failed to show that Mr. Wills manifestly disregarded the law, exceeded his authority, or violated the South Carolina Supreme Court's Code of Ethics for Arbitrators as it contends.

B. STANDING AND REAL PARTY IN INTEREST

The issue of Standing and Real Party in Interest is a matter of contract interpretation of the Declarations of Covenants, Conditions, and Restrictions and Second Amendment filed by the

ELECTRONICALLY FILED - 2024 Sep 04 11:43 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Association. The Second Amendment was filed after obtaining seventy-five (75%) of the vote of the ownership with no objection from any owner. DRH had no ownership interest in the Mansfield community since 2011. To show that Arbitrator Wills manifestly disregarded the law, DRH has the burden of showing that Mr. Wills knew the law and intentionally refused to apply it – a standard that DRH has not met. "An arbitrator's 'manifest disregard of the law' as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it." *Gissel v. Hart,* 382 S.C. 235, 241, 676 S.E.2d 320, 323-324 (2009) (citing *Weimer v. Jones*, 364 S.C. 78, 610 S.E.2d 850 (Ct. App. 2005)).

DRH asserts that no amendment to the Covenants is allowed for a period of twenty years after initial filing of the Covenants. The Plaintiff contends this relates to the duration of the governing documents and the manner in which the effective duration can be extended. The arbitrator found no prohibition against amending the content of the Covenants prior to the expiration of the effective twenty-year duration of the Covenants. Article I of the covenants provides the following:

> No Person shall record additional covenants, conditions, or restrictions affecting any portion of Mansfield at Park West without declarant's written consent, so long as Declarant owns any portion of the real property described in Exhibit "A" or "B". *Thereafter, Owners representing at least Seventy-Five (75%) percent of the Townhome Association's total votes must consent to such additions.* Any instrument Recorded without the required consent is void and of no force and effect.

Article I, § 1.3 (emphasis added).

It is undisputed that DRH has not been an owner or a member of the homeowners' association since 2011 and has not had voting rights or a relationship with the Association since approximately 2011. Therefore, it was not a manifest disregard of the law by the arbitrator to find that the Second Amendment, which was recorded with consent of at least 75% of the owners,

ELECTRONICALLY FILED - 2024 Sep 04 11:43 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

followed the rules outlined within the Covenants.

Given the content of the Award, the arbitrator's findings, and the evidence on which he based his rulings, DRH has not met its burden of proving a manifest disregard of the law.

For the reasons set forth above and in Plaintiff's memorandum, it was not a manifest disregard of the law for the arbitrator to find that the Plaintiff had the requisite standing and was a real party in interest. "Case law presupposes something beyond a mere error in construing or applying the law. Even a 'clearly erroneous interpretation of the contract' cannot be disturbed." *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009) (quoting *Trident Tech. College v. Lucas & Stubbs*, 286 S.C. 98, 108, 333 S.E.2d 781, 787 (1985)). The question is not whether the arbitrator made a wrong decision or made an error in construing or applying the law. Under South Caroling law, DRH has the burden of showing that Mr. Wills knew the law and intentionally refused to apply it. DRH has not met its burden or met this standard.

C. DAMAGES

The evaluation of the evidence and factual determination is in the sole purview of the arbitrator. "[W]hen a dispute is submitted to arbitration, the arbitrator[] shall determine questions of both law and fact." S.C. Code Ann. § 15-48-180. Disagreeing with the factual determination of the arbitrator is not grounds to vacate an arbitration award. "Factual and legal errors by arbitrators do not constitute an abuse of powers, and the court is not required to review the merits of the decision so long as the arbitrators do not exceed their powers. A party may not attempt to relitigate the merits of the arbitrators resolution of the arbitrable issues under the guise of questioning the arbitrators' power." *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 76-77, 488 S.E.2d 335, 338 (1997).

ELECTRONICALLY FILED - 2024 Sep 04 11:43 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

In its Motion to Vacate, DRH argues that the Plaintiff's damages are speculative and that the arbitrator manifestly disregarded the law in awarding the Plaintiff damages. This argument was also raised by DRH and heard by the arbitrator. The arbitrator disagreed and didn't find DRH's position credible based on the evidence presented and certain inconsistencies in testimony of DRH's witnesses.

The arbitrator heard testimony of a qualified expert engineer, Russell T. Mease, P.E., regarding the building code and industry standard violations related to the installation of building components at issue in this case. Mr. Mease also testified that during his three (3) days of investigation of the construction at Mansfield, he identified evidence that siding had fallen off the buildings from being improperly installed, shingles had been replaced because of apparent shingle blow-off due to improper installation, and water entering into the wall assemblies. Further, DRH's own engineer expert, Steven Moore, P.E., did not perform intrusive testing and admitted there was evidence of water entering into the wall assemblies in ten (10) out of the eleven (11) different window locations where Mr. Mease removed siding to observe construction conditions. Plaintiff's estimating expert, local contractor Scott Dow, testified as to the cost of repair based on the repair scope and recommendations of engineer Mr. Mease and his own experience. The experts testified to the defects and damages to a reasonable degree of certainty.

Although there was evidence that water had intruded into the walls at ten (10) out of the eleven (11) locations where siding was removed during Mr. Mease's investigation, along with evidence that siding had cracked and fallen off and shingles had blown off of the buildings because of improper installation, DRH contends that the damages are speculative because the buildings are generally performing. "A builder is no less blameworthy in such a case where lady luck has smiled upon him and no physical harm has yet occurred." *Kennedy v. Columbia Lumber & Mfg. Co.*, 299

ELECTRONICALLY FILED - 2024 Sep 04 11:43 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

S.C. 335, 347, 384 S.E.2d 730, 737 (1989). Therefore, "[a] builder may be liable to a home buyer in tort despite the fact that the buyer suffered only 'economic losses' where: (1) the builder has violated an applicable building code; (2) the builder has deviated from industry standards; or (3) the builder has constructed housing that he knows or should know will pose serious risks of physical harm." *Id.* at 347, 384 S.E.2d at 738.

DRH does not meet its burden to vacate the arbitration Award in claiming the damages awarded are speculative. "Arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.'" *Pittman Mortg. Co. v. Edwards,* 327 S.C. 72, 77, 488 S.E.2d 335, 338 (1997) (quoting *Batten v. Howell*, 300 S.C. 545, 549, 389 S.E.2d 170, 172 (Ct. App. 1990)).

D. GROSS NEGLIGENCE

DRH contends it was not grossly negligent and seeks to disturb the factual findings of the arbitrator. "In most cases, gross negligence is a factually controlled concept whose determination bests rests with the jury." *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 332, 556 S.E.2d 536, 545 (2002). Further, a violation of a building code may be admissible as evidence of gross negligence. S.C. Code Ann. § 15-3-670(b). The finding that DRH was grossly negligent is a factually controlled inquiry that rests solely with the arbitrator and is not grounds to vacate an arbitration award.

Generally, an arbitration award is conclusive, and courts will refuse to review the merits of an award. *Gissel v. Hart*, 382 S.C. 235, 242, 676 S.E. 2d 320, 324 (2009) (citing *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 75-76, 488 S.E.2d 335, 337 (1997)). DRH has not meet its burden to vacate the arbitration award in claiming the arbitrator erred in finding DRH grossly negligent.

ELECTRONICALLY FILED - 2024 Sep 04 11:43 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

CONCLUSION

For all the reasons stated above, Defendant, D.R. Horton, Inc.'s Motion to Vacate or modify is **DENIED**. Having heard and resolved the Motion to Vacate the arbitration award, the Court **CONFIRMS** the arbitration award under S.C. Code Ann. § 15-48-130(d).

IT IS SO ORDERED.

ELECTRONICALLY FILED - 2024 Sep 04 11:43 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Charleston Common Pleas

Case Caption: Mansfield At Park West Inc VS Dr Horton Inc

Case Number: 2021CP1001215

Type: Order/Confirm

So Ordered

s/ Thomas W. McGee III, Judge Code 2786

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021 **CP**-10-01215

Mansfield at Park West, Inc.
PLAINTIFF(S)

D.R. Horton, Inc.
DEFENDANT(S)

Submitted by: Alicia D. Pullano

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

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

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Mansfield at Park West, Inc.	D.R. Horton, Inc.	$3,057,112.48
		$
		$

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

RECEIVED
Oct 29 2024
SC Court of Appeals

ELECTRONICALLY FILED - 2024 Sep 05 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

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

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

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

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

Court Reporter:

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

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

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

ELECTRONICALLY FILED - 2024 Sep 05 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2024 Sep 05 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2024 Sep 05 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Charleston Common Pleas

Case Caption: Mansfield At Park West Inc VS Dr Horton Inc

Case Number: 2021CP1001215

Type: Order/Form 4

So Ordered

s/ Thomas W. McGee III, Judge Code 2786

Gmail

Kay Kelly <kay@carlmullerlaw.com>

Courtesy NEF RE: 2021CP1001215

1 message

efiledonotreply@sccourts.org <efiledonotreply@sccourts.org> Thu, Sep 5, 2024 at 1:38 PM
To: carl@carlmullerlaw.com
Cc: kay@carlmullerlaw.com

****** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2021CP1001215

Official File Stamp:	09-05-2024 01:38:02 PM
Court:	CIRCUIT COURT Common Pleas Charleston
Case Caption:	Mansfield At Park West Inc VS Dr Horton Inc
Document(s) Submitted:	Order/Judgment and Form 4 Order/Judgment and Form 4. Case Ended
Filed by or on behalf of:	Thomas Mcgee, III

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Thomas Elihue Dudley, III for Dr Horton Inc
Carl F. Muller for Dr Horton Inc
John T. Crawford, Jr. for Dr Horton Inc
Jason Michael Imhoff for Dr Horton Inc
Francis James Warmoth for Dr Horton Inc
John T. Chakeris for Mansfield At Park West Inc
Alicia Denise Pullano for Mansfield At Park West Inc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
C.A. NO. 2021-CP-10-01215

Mansfield at Park West, Inc.,

Plaintiff,

vs.

D.R. Horton, Inc.,

Defendant.
_____/

30(b)(6) DEPOSITION OF MANSFIELD AT PARK WEST, INC.
(MICHAEL JOSEPH FRAPPIER)

Pursuant to Notice of Deposition and/or agreements in the above entitled case, the Deposition of Michael Joseph Frappier was taken on July 22nd, 2022 at Clawson and Staubes, 126 Seven Farms Road, Suite 128, Charleston, South Carolina, commencing at 10:06 a.m.

KAREN A. BELANGER, CVR-M

Q. What was in them? What types of documents?
A. It was information pertaining to the association with Mansfield.
Q. Was there financial documents in there?
A. Yes.
Q. I'm going to let you off the hook a little bit here, and we're going to look at some of this stuff. We'll go through as many documents as I can, okay? Did you look at the covenants and restrictions and bylaws in preparation for this deposition?
A. No.
Q. Have you ever read them?
A. Yes.
Q. What is the owners association opinion or position on the obligation of the owners or owners association to maintain and repair the exterior of the units including the roofs and the exterior cladding or exterior siding?
A. Can you say that again?
Q. Sure. Who has to do the maintenance and repairs of the individual units?
A. The exterior is the homeowners.
Q. As far as you could tell, has it been the owners association's position that the maintenance and

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

repair of the exterior of the townhomes is the owner's responsibility?

A. Yes.

Q. Do you know if that has ever changed?

A. No.

Q. In reviewing the documents and preparing for today's deposition, is the owners association ever provided maintenance and repair for the exterior of the townhomes?

A. I'm sorry. Say that again.

Q. Sure. In preparing for today's deposition, reading documents and looking at different things, could you determine whether the owners association has ever paid for or provided maintenance or repairs for the exterior of the townhomes?

A. I'm not aware of that.

Q. We may be able to look at some of these financial documents, but it appeared to me that the owners association has never had a line item for each year that the owners association has been a going concern. It has never had a line item for exterior maintenance of the townhomes. Can you confirm that?

A. No.

Q. Can you tell me how the owners association is the

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

plaintiff in a case for the exteriors of the units that it does not either have a responsibility for, has not maintained, and has not repaired for over a decade?

MR. CHAKERIS:

Objection. You can answer that question.

WITNESS:

Excuse me?

MR. CHAKERIS:

You can answer.

EXAMINATION RESUMED BY MR. IMHOFF:

Q. He objected. It's on the record --

A. Okay.

Q. -- but you can answer it, if you can.

A. I'm sorry. The question again?

Q. Sure. Are you here today as a representative of the owners association?

A. Yes, I am.

Q. Do you understand that the owners association is the plaintiff in this case?

A. Yes.

Q. Do you also understand that the owners association is not responsible for the repair or maintenance of the exterior components that is at issue in this case?

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

A. Yes.
Q. How is the homeowners association the plaintiff in this case for things at your property that it is not responsible for, has not maintained, and does not have a responsibility to repair?
MR. CHAKERIS:
Objection. You can answer that.
WITNESS ANSWERS:
A. The repairs are the responsibility of the homeowner.
EXAMINATION RESUMED BY MR. IMHOFF:
Q. I don't want to cut you off. Is that your answer or are you still thinking?
A. I'm still thinking.
Q. Okay.
A. I'm sorry. One more time.
Q. Sure. Let me change the question a little bit for you. What damages do you believe the owners association has in this case?
A. The damages for the roof and for the siding, for the faulty fencing.
Q. But my question was what damage does the owners association have, as we have just established that the owners association is not responsible to repair those components or maintain those components per

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

the legal documents filed on the owners association property?

MR. CHAKERIS:

Objection.

EXAMINATION RESUMED BY MR. IMHOFF:

Q. What damage does the owners association have?

A. They'll be required to be repaired. They'll need repairing.

Q. What will?

A. The roof, the fencing, and the siding.

Q. Is the owners association responsible to repair those three things you just said? The roof, the siding, and the fencing?

MR. CHAKERIS:

Objection.

WITNESS ANSWERS:

A. No.

EXAMINATION RESUMED BY MR. IMHOFF:

Q. Let me ask you this. Who at the owners association decided to file this lawsuit? Was it a vote? Was it you? How did this come to be?

A. This came to be –- there was the property manager, was on site checking, doing a routine check. Was there on site. Something was noticed, and they called in help to determine if there was

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

the right to sue anyone for faulty design and construction of the townhome exteriors and exterior building components?

MR. CHAKERIS:

Objection.

EXAMINATION RESUMED BY MR. IMHOFF:

Q. Sir?

A. I'm thinking. I'm not clear.

Q. Are the homeowners still responsible for exterior repairs and maintenance under the covenants and restrictions?

A. Yes.

Q. Have you gone and canvassed the 28 owners to determine what repairs, maintenance, or modifications have been made to these townhomes since they were initially purchased from DR Horton?

A. No.

Q. Why not?

A. Can you rephrase the question?

Q. Sure. Have you gone and asked the individual townhome owners if their townhomes have been maintained, repaired, or modified in the last decade?

A. It was –- no, it was the responsibility of the homeowner to repair, make –- responsible for their

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

repairs.
Q. Do you know which of the townhomes have been painted since they were originally transferred from DR Horton to the individual homeowners?
A. I do not.
Q. Do you know which of the townhomes have had their roofs either replaced or repaired since the townhomes were transferred to the original townhome purchasers?
A. No.
Q. Do you know which homeowners have painted, repaired, modified, or changed the fences on their property?
A. No.
Q. Do you know if any of the homeowners have replaced windows on their townhomes?
A. No.
Q. Do you know if any of the townhome owners have had insurance claims on the exterior of the townhomes?
A. No.
Q. Do you know if any of the townhome owners have maintained the exterior of their townhomes by caulking, scraping, painting, or otherwise maintaining them?
A. No.

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Q. Yes.
A. With the siding, the fencing. There is some rotting in the fencing in the wood.
Q. Anything else?
A. The door. The door. The fence door leading in and out to the property that's come off align.
Q. Anything else?
A. No.
Q. Have you or anyone else done anything to repair or maintain the fence since you've been there?
A. Put some screws in to –- yes.
Q. You did?
A. Yes.
Q. Put some screws into what?
A. The boards in the gate.
Q. Anything else?
A. No.
Q. Whose responsibility is it to paint the insides of the fences?
A. Inside of the fences?
Q. Yes.
A. To my knowledge, the homeowners.
Q. Is it also the homeowner's responsibility to make sure that the grade around the fences stays consistent and make sure that the fence doesn't

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

touch the ground?
A. Again the question?
Q. Is it the homeowner's responsibility to maintain the fences including the landscaping and the interior, water drainage, and grading on the interior to prevent the fence from touching the ground?
A. Yes.
Q. Do you know if the homeowners association ever painted or maintained the fence in its entire existence?
A. I'm not aware.
Q. Who is in charge of the litigation at the homeowners association?
A. The litigation with John?
Q. Right, handling the lawsuit. Are you handling it? Is the board handling it? Have you set up a litigation sub-committee? Are you communicating with the homeowners? Who handles homeowner questions about what's going on with the litigation, any of that?
A. The board.
Q. The whole board? All three of you?
A. In general, yes.
Q. And so are you keeping minutes or notes of what's

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

A. The document. The document and the homeowner vote to change the homeowners to the association.
Q. The document that was executed in 2021?
A. Correct.
Q. Okay, but that document didn't change the responsibility for repairs and maintenance of the exterior of the units to the owners association; did it?
A. No.
Q. So other than that, did you do any investigation to determine why the board was talking about doing this back in 2015 and what happened with the vote or the decision or the discussion?
A. No.
Q. Who is Rosanne Nastro?
A. She's a homeowner.
Q. She was elected to serve a term starting December 16th, 2021. Is she on the board?
A. She was on the board.
Q. Until when?
A. Till this year.
Q. Till when this year?
A. Somewhere in early spring.
Q. Why isn't she on the board anymore?
A. She resigned.

ELECTRONICALLY FILED - 2023 Nov 20 10:26 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
:
COUNTY OF CHARLESTON) CASE NO. 2021-CP-10-01215

MANSFIELD AT PARK WEST INC.,
Plaintiff,
vs.
D.R. HORTON INC.,
Defendant.

ARBITRATION HEARING

DATE: Wednesday, July 26, 2023

TIME: 10:04 AM

LOCATION: Wills Massalon & Allen, LLC
97 Broad Street
Charleston, South Carolina 29401

REPORTED BY: KATIE L. GRAFF

FOR: KIRA FERGUSON
113 Cherry Plum Way
Pelzer, South Carolina 29669
k.fergusonreporting@gmail.com

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Q Okay. And tell us what you observed regarding the fiber cement siding installation.

A The majority of the siding that we removed was labeled, and the two brands that we were able to identify from the labeling on the backs of the boards were HardiePlank and CertainTeed. Those are pretty common brands here in town. We see those frequently.

Q And as you were doing your inspection and investigation of the siding, tell us a little bit about your process and what you did to formulate your opinions regarding the siding installation.

A Yes. As I said earlier, we removed siding so that we can see the fasteners. That's the critical component for the attachment of the siding to the buildings. And it's a blind nailed installation, so you can't see the fasteners unless you remove siding.

So when we did, we were able to evaluate the fastener installation. It was very, very poor. The code in table R703.4 requires that the siding fasteners be in the stud framing. The manufacturers also require that the siding fasteners be installed in the stud framing. We found 87 percent of the observed fasteners were not into

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

fastener too close to the top edge of the board. It has to be down at least three-quarters of an inch from the top of the board. When you fasten too high, it reduces wind capacity, and it also gives you a greater potential of damaging the board because you're close to the edge of the board.

Q All right. So just to recap briefly. The building code specifically requires the siding to be nailed into the studs?

A Yes. That's a prescriptive requirement that the building official cannot even waive.

Q And then we also have manufacturers' installation instructions for HardiePlank and CertainTeed that also require the siding to be nailed into the studs, correct?

A That's correct, in order to achieve the wind capacity it would need at this location.

Q And those instructions are associated with the code as well?

A Right. The code says you must follow the manufacturer's requirements.

Q And there's a third brand of siding that you identified -- or that you -- I should say there's a third brand of siding out at Mansfield that's the lesser brand, but nobody's been able to

example, in the middle of that slide that's 21 and a quarter, that's not the 16 inches that one should be looking for?

A Right. And there's a much bigger clue that we always look for when we do this investigation. When you pull the siding off the first board and you don't see lines on the wall where the contractor has marked where the studs are, you know it's going to be wrong. You can't see the stud, so you've got to do a layout on the wall in order to have any chance of putting the fasteners in the stud.

So I think maybe one wall, maybe two walls in this entire project we saw an attempted placement of lines on the wall. The vast majority were like this. I think almost all of them were like this where there was no marking on the house wrap so you would know where to place your fasteners.

And that's just a gross dereliction of duty, because if you don't know where the studs are, you're never going to be able to place the fastener into the stud.

Q Those black lines we're looking at on that house wrap, is that something that you did?

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

A Yes, those are my lines where I'm marking where the fasteners are.

Q Okay. And you say that there's a clue that's pretty readily observable to you, which is the walls are marked. Tell us how they're marked and what that process is all about.

A When a sider comes up to a wall, the first thing they have to do is their layout. So they have to locate the studs, and then measure over and mark where each stud is located. A good quality contractor is going to put a nail at the top and a nail at the bottom, take string line and pop a chalk line, because now you're sure that you've got a nice straight line where that stud is located.

A less stringent method is they'll measure it with their tape measure and just kind of draw it by hand, and it's not as accurate, if you want to call it that. But that's the first thing you're going to do, because everything relies on getting those fasteners into the studs, so we need to know where they're located.

Q So if you don't see a chalk line or a handwritten line, that's a red flag for you?

A Absolutely.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Q And what is AAMA? Tell us what AAMA is. Is that a window industry group?

A Yeah, it's the American Architectural Manufacturers Association is what it stands for. And they are heavily involved in the fenestration world.

The other problem we talked about at this property is the selection. And the windows that were chosen have integrated J-channels which are used for vinyl siding applications primarily. I mean, that's really the only thing that they're for.

So choosing a vinyl siding-style window in a fiber cement siding application creates problems. And we'll see why that's the case here in these next slides.

This is the C1193 standard. The reason I'm showing this is it defines what a proper sealant joint looks like. There's some graphical depiction that shows two materials that you're trying to seal between. Beneath that, you have a backer rod, which is a soft foam material that's been placed in the joint.

Q So it looks like a miniature pool noodle?

A Exactly. And it's very important

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

with regard to the fastener installation.

So if we go forward, you'll see here in the top left corner, there's a diagram. This exact diagram you see over and over again regardless of the brand of shingle. They show this all the time.

It tells you to drive the fastener flush with the shingle and do not drive it crooked or at an angle. Don't underdrive it, which is a fairly uncommon condition. And then the biggest problem that we see all the time is on the right, do not overdrive the fasteners.

And there's a lot of times where you look at that diagram and you're like, well, you know, what's the big deal if it's a little bit overdriven? I carry this is my bag as an example. This is a CertainTeed shingle. People don't realize shingles are about a tenth of an inch thick. They're not -- there's not much meat here.

So when you drive the head of the fastener into the face of this material, there's nowhere for it to go. You're basically going through the product. This has a core of fiberglass mesh that's impregnated with asphaltic materials. And when you drive these aggregate down into that

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

So while it sounds easy to face nail a wall, it's not. It's a lot of work and you're going to damage boards. That's why Hardie warns you about that.

Q Okay. What is your -- what is your scope of repair when dealing with the J-channel windows?

A They're not appropriate for the style of construction. It should never have been chosen, so they need to be replaced.

Q So removal and replacement of the J-channel windows?

A Yes. Because there's no way to properly install them.

Q What kind of windows would you replace them with?

A A like window, but a window that has a shoulder that does not have the integrated J-channel. In other words, it has a solid frame face that you can apply a sealant to between the trim and the window.

Q Okay. How about with regard to the shingle installation?

A Again, there's no way to go back and fix a shingled roof. You have to take the shingles off and install new shingles.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

construction, have you?

A No.

Q Never been your 40-hour-a-week job?

A No.

Q In fact -- all right. With regards to your actual experience in supervising and superintending engineering, you understand that -- that perfection is not the standard for which if you deviate would be a breach of the standard of care. You agree with that statement, don't you?

A Right. Perfection is not necessarily attainable.

Q Right. And it's not attainable, and you would say, too, is that minor deviations in your design, when you do a design as an engineer, minor deviations are acceptable. That's not a breach of the standard of care as a design engineer, is it?

A Right. Key word being minor. Small things can be accommodated.

Q Gotcha. And let's drop back and let's focus on this. So these houses, though -- or these townhouses in Mansfield were built within 2009 and 2011, right?

A Yes.

Q So when you saw it, when you went and

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

over the course of December and then October of 2021.

A From memory, I think that's right.

Q Okay. You didn't go inside any of the units, did you?

A I did not.

Q You didn't observe any interior property damage to any of those units, did you?

A Well, I couldn't because I didn't go in any of them.

Q Right. You could have but you didn't, right?

A Right. I did not go into any of the units.

Q Right. And when you were there over the course of six days, you never spoke specifically to any of the homeowners about what they did or did not do with regards to their units, did you?

A No, I don't think so.

Q Just small talk?

A I believe that's correct.

Q Had the opportunity, didn't do it?

A Yes, I mean, that's what I did. I just spoke with whoever I ran into, but it was usually just --

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

counted 480 from Mr. Dow's -- his takeoff. 480 windows you found, too, that had elevated moisture content?

A Given my sample size is much smaller than 480. So you got to look at how many I looked at versus how many I found that exhibited water intrusion.

Q We don't know how many you looked at?

A Well, we can count them up. I just don't have the number for it.

Q It's not in your report?

A It's in my information. It can be found, it's not a problem.

Q All right. And then with regards to the shingles, one building has already been replaced. One of the units was replaced last year, and it was based on hail damage, right?

A That's my understanding.

Q Okay. And I'm going to drill down on that. All of these units, they're all within -- I mean, they're all next to each other, in the same neighborhood, right?

A Correct.

Q Hail damage to one, pretty good indication they all got damaged by hail?

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

trustworthy.

Q Mount Pleasant Airport is like right down the road from these units.

A Right, but they don't have a reporting in the software that I saw.

Q They're an FAA certified airfield. They've got the data. We could've seen what the wind speeds were like right down the street from these units.

A Okay. Well, we can get that, too, if you want. But it's not going to vary significantly.

Q Right. Gotcha. All right. But with regards to the functioning of these buildings, there's been no interior property damage?

A That I'm aware of.

Q Right. There's been no mass failure of the siding falling off the buildings?

A Right. Which is not unexpected given the wind history.

Q There's been no -- well, and that's it, the idea of these -- the siding to adhere is to stand up to normal wear and tear of the units?

A No. It's designed to resist a certain wind load that the code prescribes. We have to

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

A No. Because if you look in the design documents, they do not give any guidance or leeway for a -- what they call them is pin backs.

Typically what's used for that is a 16-gauge wire finish nail, which is a headless fastener. So it's really just to kind of aesthetically hold the siding, but it's not going to give you significant capacity.

Q Gotcha. So we talked about no interior property damage. No mass failure yet, as you would say, of the siding. No mass failure of the shingles, right, and no mass failure of the windows. None of those have happened yet.

A They have not happened yet. And that's the key word, because they have not been stressed by a storm. Now, as far as the windows, I've not said that the windows are going to fail. I said they were a poor choice.

Q Right. And let's keep drilling down on that piece. When you opened up -- Mr. Chakeris talked to you about like code and then manufacturer's installation manual. Do you remember talking about that?

A Oh, yes.

Q I had a quote. You said that the code,

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

that I use. I don't know -- but you don't need -- you don't need markings at all for that. Have you ever seen those, put the little batteries in and they tell you where the stud is?

A A contractor is not going to walk down the wall with a nail gun in one hand and a stud finder in the other hand.

Q All right. I'm just saying you don't have to chalk every line to get it?

A Yes, you do.

Q All right. Well, we're going to talk about that, about whether or not they have to be in studs or not.

A Well, the code says that it does. So it does.

Q What if the manufacturer's installation says they're okay to be nailed into an OSB?

A Not for this wind zone. It says you can do it in other locations. But for this wind zone, CertainTeed and Hardie specifically tell you they have to be in the studs, which also mirrors the code.

Q Well, we'll look at that.

A There's no discussion about that. That's written in the documents.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

construction deficiencies and evidence of improper installation, the horizontal lap siding must be removed and replaced with proper installed exterior cladding system. And you're saying cement fiberboard?

A Yes, that was the intent of the construction. So I think that's what should be put back.

Q Gotcha. And your opinion was it was a poor selection to choose these windows with cement fiberboard because of the J-channel?

A Right. There's no way to properly install it.

Q Gotcha. And yet, in your last sentence in your recommendations says, the window units must be removed to accomplish this, and the contractor should determine whether to replace or reinstall the Windows.

So you're allowing cement fiberboard to be -- you're allowing the contractor to make the determination whether they should continue to have the vinyl windows with cement fiberboard, which you said was a bad selection?

A Right. That's a poorly worded sentence. They should not be used again.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

some of them look a little bit cumulative. But are those standard percentages and standard charges that Dow Inc. charges its clients today?

A Yes, sir. Every project since 2012, we've charged 27 percent, every job. Most of our projects are cost-plus. We break it down into two categories, overhead and contractors' fee. That's a gross fee. That's before taxes and associated costs. But the only major increase since 2012, we went from $55 an hour to $65 an hour for our men. And that's primarily because of insurances and so forth went up.

Q And even with those -- that 27 percent, Dow gets contracts and does work all over?

A Yeah. We just landed a $4 million one at 27 percent this week down on Kiawah.

Q All right. Let me ask you just a couple more questions, then I'm going to ask for about five minutes with Mr. John here, and then we'll try to wrap up.

Roofing. When these nails are overdriven, do they need to be fixed?

A Common problem, when you're driving by a job site -- I actually laugh when I hear the roofer going, because it sounds like a machine

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

gun. And when you hear that sound going way too fast, you know that, number 1, they're overdriving the nails; and, number 2, they're probably putting them in the wrong location.

What we have to do is we provide the fasteners, typically, for our -- all of our labor to make sure they're using the right fasteners. We don't allow on our site fasteners that are not compatible with the job.

Part of that is we make sure whatever guns they're using, the pneumatic guns that are connected to compressors, they have the safety to make sure they're not going to blow through your siding or your roofing. Because it's a common problem.

And what happens is over time, you know, those shingles will move. If you overdrive those nails with the expansion/contraction, the heat we have here, they'll start sliding down.

This particular project, there was some shingles blown off. I think there's going to be a lot more if we get a hurricane of some size. But, you know, the challenge I have trying to accept incorrect installation of materials like this,

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Q Gotcha.
A That's how I mean it.
Q Gotcha. And this gross deviation or gross negligence has resulted in zero interior property damage, hasn't it? Zero.
A Okay.
Q Right?
A I never said there was interior damage.
Q That's right, there's no interior property damage.
A Right.
Q The building envelope is performing as expected, isn't it?
A Not when you have 20 percent moisture behind the vapor barrier.
Q Well, you have 20 percent -- you have 22 percent moisture in two readings out of 480 windows. Two.
A He also had 15 to 18 percent in a multitude of other windows, and he only checked the percentage of the property. You know, it's almost -- he had moisture behind every window on a hundred percent that he checked.
Q How do you know?
A That's what he said.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

you've seen the use of HardiePlank in these types of J-channel vinyl windows, haven't you?

A Yeah, and I'm not saying that's correct. It's wrong.

Q Right. Well --

A I've seen people do it wrong before is my point.

Q So here's another one where you said, there's methodologies where you can use in original construction HardiePlank with these windows. It's a little more costly, but you can do it.

A And I think I just testified to that here.

Q No, you testified you couldn't do it. In fact, you just said to me, it's not a good idea and you shouldn't do it.

A When Mr. Leath was questioning, I said -- very clearly I said, look, if you were to use these windows and you cut your trim, took all the trim out, cut the siding back and tried to incorporate the picture frame style trim that they have on these windows, you could try and do that and come up with a methodology to install it, but it's not the right methodology, it's not what the windows were made for.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

methodology the contractor used and just caulk over nothing that could be adhered to. You need a quarter-inch gap, backer rod, it's just not going to work.

Q Well, isn't that an attempt? Attempting to caulk it is better than doing absolutely nothing, isn't it?

A So to install it incorrectly and have failures during that initial installation, you want to try and have more failure? It doesn't make sense.

Q Wait a minute, I'm sorry. Was the interior damage as a result of these windows being installed wrong?

A I'm not saying interior damage, the failure of the window installation and the trim installation, you can see all the fasteners around the windows deteriorated. They're in all the photos we looked at this morning. Every fastener was rusted and deteriorated. That's a failure.

Q I'm sorry, that's two windows, Mr. Dow, out of 480.

A And he offered to show you the other windows.

Q Gotcha. All right. And actually, it's

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
:
COUNTY OF CHARLESTON) CASE NO. 2021-CP-10-01215

MANSFIELD AT PARK WEST INC.,
Plaintiff,
vs.
D.R. HORTON INC.,
Defendant.

ARBITRATION HEARING

DATE: Monday, July 31, 2023

TIME: 09:01 AM

LOCATION: Wills Massalon & Allen, LLC
97 Broad Street
Charleston, South Carolina 29401

REPORTED BY: KATIE L. GRAFF

FOR: KIRA FERGUSON
113 Cherry Plum Way
Pelzer, South Carolina 29669
k.fergusonreporting@gmail.com

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Mansfield project, who designed it?

A I don't know that.

Q All right. Let me ask you this. Is this -- was this the first townhome project you had been on?

A No.

Q Okay. Tell me about what other experience did you have with D.R. Horton and townhomes?

A I built several other townhome communities. And I was also -- in 2006 and '7, I was an area manager as well, so I managed superintendents that were building other townhome communities as well, so.

Q So you had been promoted?

A I was promoted and then went back to being a superintendent during the recession.

Q I was going to say, there was something that -- the recession happened in '08, right?

A Yeah.

Q Okay. So was there anything different about Mansfield project than the other townhome projects you did for D.R. Horton?

A No.

Q All right. With regards to the siding and the windows?

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

A No.
Q All right.
A I'd work on both multifamily or townhome communities that have had vinyl siding and also fiber cement.
Q Gotcha. Did you have any other townhomes that had vinyl windows and fiber cement siding?
A I don't recall.
Q Okay. Let me ask you this. The subcontractors that you used on Mansfield, I think there's -- who was the siding subcontractor, if you recall?
A DVS Incorporated.
Q All right. Tell me what your history was with DVS, if anything, prior to Mansfield.
A They had worked with us for several years in a prior townhome community as well that had fiber cement siding. They also did vinyl siding for us in other communities.
Q So how many years had you worked at DVS?
A At least two. I think they started here in Charleston with us in 2007, I believe.
Q Are you aware of what other big home builders that they also did work for?
A Yes, then they worked for several other

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

in the market. I don't know specifically.
Q Builders FirstSource, are you familiar with them?
A Yes.
Q Were you familiar with them prior to Mansfield?
A Yes.
Q How many did they --
A They supplied windows and doors in the first community I started in 2004. So they had been with us for my entire time.
Q What about Americo, the roofer?
A Americo, as well, they were also my roofing contractor in 2004 when I started.
Q And then Maner Builders Supply for the fence, had you all done any work with them before?
A Yes. They install all of our privacy fences.
Q So let's -- so were any of the subs that are the scopes of work that we're here about today new to, one, D.R. Horton, on the Mansfield?
A No.
Q Were any of them new to you?
A No.
Q Let's talk about like how did -- were you

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

involved in the vetting of subcontractors when you were -- prior to Mansfield or for D.R. Horton?

A I was not.

Q Gotcha. With regards to this specific project, what did y'all do to like set a game plan at the beginning with your subs?

A Well, the office always -- you know, they're the ones that sign on the contracts and did that. When it was given to me, I was given the plans of building Mansfield. So, you know, we would typically have a kickoff meeting in the neighborhood where all the contractors will come in, we'll meet on site with all of that --

Q Did that happen on Mansfield? Do you remember that?

A Yes. And then obviously before each contractor would come out, I would schedule with them and ensure that they knew what they were doing moving forward.

Q Let's talk about your role on Mansfield. Tell me what your role was on Mansfield specifically once things started kicking off.

A I was the superintendent for Mansfield.

Q Tell me what that means.

A That means I'm on site every day. I'm

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

responsible for, you know, obviously, scheduling contractors, meeting with homeowners, calling in inspections, and ensuring that everything on site is moving forward and safely. So I just did the day-to-day operation of the site.

Q Gotcha. And with regards to -- you may have answered this already -- specifically -- I know you've done other townhomes, but was Mansfield the same -- structurally was it the same or different from the other townhomes that you had done?

A They were different floor plans, but overall very similar.

Q Gotcha. All right. Like what about your interface with the subs -- well, let me ask you this. Did you live close to Mansfield, the project?

A I do. I live less than a -- about a half mile away.

Q Do you still live there?

A Yes.

Q Gotcha. And so tell me what -- like the interface you would have with the subs. Who did you talk to on a daily basis?

A On a daily basis, I would speak with the supervisors for each subcontractor. So they were required to have a supervisor on site every day.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

So that's who I would communicate with. You know, obviously sometimes I'd communicate directly with the crew, but I always followed up with the manager for that contractor.

Q Sometimes referred to as chain of command?

A Correct.

Q You follow chain of command. Gotcha.

Was there ever a time when there was a lull in the buildings, like when -- like there were no buildings being built for a while?

A Yes. Obviously with the start space, there were some buildings that started. Or, you know, sometimes one building might be nearing completion. Also waiting on inspection sometimes. Mount Pleasant, you could wait a week or so for inspections to occur. So there wouldn't be any work going on, but obviously I still stop by every day.

Q Sure. Now, is there anything unusual about the Mansfield project itself? I mean, is the construction of these units avant-garde or some other type of construction?

A No.

Q What about the site, anything challenging about the building site?

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

A Yeah, and that one extended well past Mansfield. I think built in there until 2014 or '15.

Q And it was a vinyl siding project, I believe, correct?

A Yes.

Q And you used these same windows as we see in the Mansfield community in this Brookdale project, correct?

A I don't know off -- I mean, very likely we could've, yes.

Q Okay. And you would start your morning leaving the house -- your house, which was about a quarter mile or half mile, somewhere in that -- within a mile of the Mansfield project. And you would swing by and check on the Mansfield project, and then you would go to the Brookdale single-family home community, correct?

A That's correct.

Q And then you would spend the majority -- or the bulk of your day at Brookdale. And then when you came back toward the house, home, the end of the day, you'd swing by Mansfield again to check on things?

A Yes, I spent about -- I split my day

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

between both of them. Not the majority was spent at Brookdale, but half my time was at Brookdale, half my time was at Mansfield.

Q And the Brookdale project you were in charge of is at least 10 times the size of the Mansfield project, correct?

A Not at any given time. We weren't building maybe more than eight to 10 houses at a time in Brookdale.

Q Okay. And you had somewhere between one and three buildings going at Mansfield?

A Correct.

Q So at least -- or at any given time, it was roughly three times bigger. Would that be correct?

A Well, I mean, two buildings equates to eight to 10 units, so it's about half and half.

Q But from a square footage standpoint, it wouldn't be half and half, would it?

A I don't agree with that.

Q So the homes that you all were building in Brookdale were like 12-, 1500 square feet each?

A Yes.

Q Okay. And they have four walls, correct?

A Yes.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

us there as well as other contractors.

Q For how long prior to Mansfield?

A That would've been I think -- I know 1999 and maybe a little bit before that. But definitely in 1999. So for 10 years prior to the start of Mansfield. I don't believe they were doing work for us doing the siding in Charleston. I think it might have been right about 2007 in Charleston.

Q Still a couple of years prior?

A Yes.

Q All right. And in that time frame prior to 2009, the start of Mansfield, were you aware of any lawsuits against DVS for its work?

A No.

Q All right. Americo, the roofer, what was your work history with Americo prior to the start of the Mansfield project in 2009?

A I didn't have as much direct contact with Americo, direct conversation. I mean, I did have conversation with the owner here and there periodically. But if I recall, they were in force at least as early as 2004. Might have been sooner than that. And I'm pretty sure in 2004, they were working for us.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Q Four or five years prior to Mansfield?
A Yeah, four or five years, yes.
Q Are you aware of any lawsuits against Americo prior to Mansfield against Americo for their work?
A No.
Q Builders FirstSource, have you ever heard of them? They're a small outfit, I'm sure.
A Builders FirstSource was working for us prior to my being hired with D.R. Horton.
Q They're a billion -- multiple billion-dollar company?
A Very large company, yes.
Q Builders FirstSource for Mansfield, did they supply and install the windows?
A I believe so, yes.
Q Okay. And so their history with D.R. Horton predates your joining Horton in 1998?
A Yes. One entity or another with different markets because the Builders FirstSource --
Q They do a lot of stuff?
A They bought a lot of companies and they're becoming large.
Q And if you know whether or not prior to

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Mansfield, specifically with regards to supplying installation of windows, any lawsuits complaining about Builders FirstSource work prior to building Mansfield?

A No.

Q Maner Builders Supply, what do they do?

A Fences.

Q All right. And do you know what the work history was between D.R. Horton and Maner Builders Supply prior to Mansfield?

A I know they worked for us as early as 2007. I believe they worked for us prior to that. I didn't have as much direct contact with the fence company. It's -- fencing is typically -- it's either one or two or three types of fences and needs more handled -- it's more the interactions with the field.

Q Okay. We're going to go ahead while I'm here, I'm just going to go through deciding the required homeowner maintenance over time.

A Vinyl siding not as much, but it's got to be -- you know, you got to make sure it's still on. But fiber cement siding does require maintenance, yes.

Q What about windows, do those require

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

if you don't mind.

MR. DUDLEY: Sure.

BY MR. DUDLEY:

Q What do you know about how the level of structure of supervision was for the subcontractors on that job?

ARBITRATOR: That's okay.

A Okay. And that's basically because they're required. So they're supposed to have a supervisor on site.

BY MR. DUDLEY:

Q Okay. And so that's a level of supervision of the work that Nick would deal with?

A Yes, he would deal with that.

Q And then up the chain of command is a -- there's a level for that subcontractor that you deal with?

A Yeah. I mean, Nick has his levels that he would go through above. And then at a certain point, then he would hand it over to a construction manager, then maybe myself.

Q Gotcha. All right. Anything unusual about the Mansfield job? I mean, difficult site conditions, level of the nature of the buildings, anything unusual about them?

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Q Gotcha. Y'all are in agreement on that?
A That part, yes.
Q All right. If you could -- well, let's hit the high level of it first. Your observations of the two times that you were there on the site and in your observation of Mr. Mease's photographs, all of the photographs, not just his report, your evaluation of the structures as they stand today or when you saw them in regards to the longevity they've been in service, tell me what's your observations of them?
A From a shingles standpoint, there was a tab shingle that was replaced. We have no reason why or know why it was, so we can't allude that to when or anything else. Didn't see any shingles missing. We didn't see any creased shingles.
Q What does that mean?
A A creased shingle means that it's lost its adhesion and that the wind has picked up and caused the shingle to flap back over itself, which causes a crease at the hemline. The hemline is where the overlying shingle is at. So you get a crack there. Typically, if you get a couple of them, they'll tear and blow off.
Q And you did not -- in the pictures that

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

you observed and when you were there, you did not see any of --

A Didn't see a single one.

Q And that would be evidence where they lost adhesion?

A That's correct. And there would be evidence of a wind event, which would cause them to be lost.

Q The times that you were there and the pictures that you observed, did you observe any mass blowing off of shingles or missing shingles on those roofs?

A I didn't see any. We walked around and I took pictures as best I could of every building of every slope, front and rear, garages. Didn't see any shingle loss whatsoever.

Q What does that tell you?

A Tells me right here, they're doing their intended purpose, which is to protect the roof, protect the building.

Q Do you know what the life -- what the manufacturer's longevity is for those specific shingles that are up there?

A I think their 20-year. I would be shocked if they were 30, but I think they're

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

20-year shingle.

Q In the 20 years, the manufacturers for the -- for the manufacturer of the material itself, not the installation?

A Right.

Q Okay. All right. So if that's the case, they're about three-quarters of the way through their expected life?

A Typically, correct. And the rule of thumb is -- on the coastal properties, is that if you get 70, 75 percent of the life of the shingle, then you're pretty much there. I mean, those shingles, just based on photographed evidence, are very near the service life.

Q All right. And there is some wear and tear that has been observed on the shingles?

A That's correct. Granule loss is expected. It starts occurring the day the shingle's manufactured. But there was wear and tear on the shingles on just some edges frayed, et cetera.

Q That has nothing to do with the installation?

A Has nothing to do with it, it's just people walking on the roofs, inspections,

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

branches, whatever else might do it. Animals, squirrels, birds.

Q Your observation -- tell me what was your observation of the siding.

A I didn't see any massive siding loss whatsoever. The siding was nailed. It was visible. It was in place. Didn't see any installation -- didn't see any issues with the siding coming off.

Q Given the longevity of the use already of this -- of these buildings?

A Right.

Q All right. With regards to the installation of the siding and given the longevity, what is your opinion as to the observation or the supervision of D.R. Horton's relation to that?

A I would say that D.R. Horton used the typical normal and that the siding is acting in an expected way in providing the cladding for the building.

Q And that's the performance requirement. If it's performing, then there was adequate supervision?

A Right. It's not a massive blowoff.

Q Right. If there had been -- if there had

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

not even been the slightest care of the installation of the siding itself, what would you see? Not even the slightest of care of the installation of the siding, what would you then expect to see?

A I would've expected to have seen siding off the building.

Q And what about intrusion, water intrusion into the building?

A I would expect to hear about water intrusion into the building. And to the best of my knowledge and information provided to me today, there's been no water intrusion in the building.

Q And then with regards if there has not been the slightest of care in the application -- installation of the shingles, what would you expect to see?

A Expect to see blowoff or significant water intrusion. We had the one roof that was replaced with hail damage. If it was hail damage, you would expect to have hail damage on either side. It's not going to stop on an imaginary line. But you've had no allegations of water intrusion in the building that's been provided to us.

Q With regards to the windows -- and let's

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

take step one. With regards to the interface between siding and the vinyl windows, tell me about what you observed first.

A Well, it generally just looks like that the trim butts up against the J-channel but not into it.

Q And if there had not been the slightest of care in the installation of these building component parts, what would you expect?

A Well, you would expect to see water intrusion or issues whatsoever. I do recognize there was two windows that had rusty nails at the bottom in the seal, but that's the only problem we saw. And you got to recall that on these windows, the jambs and the heads are all covered with flashing tape, they're not exposed at all.

MR. DUDLEY: Keep talking. I got to find something.

BY MR. DUDLEY:

Q So the rusty nails, what could you do to remedy that?

A Well, when you take the trim off, you just replace the bottom nails, the ones along the seal, the fin and the seal of the window, the bottom of the window.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Q Okay. With regards to the use of vinyl windows with Hardie siding, what are you aware of where attachments are available for that type of interface?

A Certainly there are different ways to address that. The testimony last week was the fact that you didn't have a shoulder in the window that you could then add the butt joint or the backer rod and the sealant. And there are at least two or three different methods that you can employ to address that issue without removal of the window. You only have to remove the trim.

Q You were here Wednesday with testimony?

A I was.

Q Was there any testimony about the windows themselves failing or needing to be replaced?

A No. And, in fact, Mr. Mease has not identified any issues with the windows. The only issue has been the J-channel and they say that it's not applicable when you have a cement board siding.

Q Last one then we're going to go to the fence. With regards to the use of the HardiePlank with vinyl windows, if even the slightest of care had not been used in that installation, what would

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

you have expected to see?

A Expect to see a significant water intrusion within the heated walls because of the failure of the system, but the system's working.

Q With regards to the two windows, approximately 480 windows?

A 430, 480, it's something of that number, yes, sir.

Q And we've only seen two with rusty nails?

A Correct, sir.

Q Okay. What would you -- what would you do -- how would you fix the rusty nails?

A Like I said, if we had to do anything, if it was required that we would take the trim off and address the butt joint, the shoulder of the window, and the rusty nails at the same time.

Q You probably said that as I was walking over there. I think I remember I asked you that. I apologize I can't multitask.

The fence. Have you observed the fence?

A I've walked the fence. I've walked the perimeter almost every building. The fence was supplied by a fence company. It's for an exterior product. All they're saying -- Mr. Dow said it

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Seven-sixteenths.

Q That's a Dudley error.

A Mr. Mease testified under oath through his deposition that the OSB sheathing was one-half-inch thick which exceeds the required seven-sixteenths-inch-thick requirements of the manufacturer.

Q So one-half-inch is the sheathing that is on Mansfield?

A Correct.

Q The HardiePlank installation manual says it's got to be in excess of seven-sixteenths?

A It's got to be seven-sixteenths. A minimum seven-sixteenths to drive the nail directly into the sheathing.

Q So the manufacturer specifications allows nailing to be into the sheathing?

A That's correct.

Q So regardless of what Mr. Disk or Mr. Bunner said, nailing into the sheathing is allowed?

A Is allowed.

Q And even as of 2006?

A 2006. This is the 2006 code.

Q All right. But even if we're out there

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

today looking at it, even if the codes had been enhanced --

A Still you go back to the code that was applicable under your building permit.

Q But right now, that's acceptable installation of Hardie?

A Correct.

Q All right. That does not meet the -- that does not violate the building code?

A Does not violate the building code.

Q Okay.

A All right. Continuing on --

Q And so why does it have pictures of it driving into the studs?

A I'll get to that in a moment.

Q Thank you.

A All right. So we're going on, continuing on, and it says that face nailing is applicable where talking about building codes and high wind areas and when fastened to OSB or equivalent sheathing without penetrating into the studs.

Q What does that mean?

A It means that you're allowed to do it. You're allowed to face nail. And, in fact, I will

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

tell you the buildings on the coast are required to be face nailed. It also says, double nailing refers to the combined use of blind nailing and face nailing.

Double nailing may be applicable in circumstances of repair or when an extraction is necessary to meet fastening requirements that otherwise require the replacement of the siding.

Q So if -- if it were to be determined that the nailing needs to be addressed, face nailing per the manufacturer is okay?

A Is allowed. Absolutely. And right here, they state -- James Hardie states absolutely can use them. They talk about wind loads, you can't use a double nailing, the blind nail, and face nailing to determine the loads, but you use one or the other. And that's not an issue here.

Q One of the issues that Mr. Mease made was about you can't face nail because you don't want to nail directly onto the blind nail that you can't see. How would you do that?

A Well, he also said the nailing was high. Was too high. So you would be able to go right below that and double nail it.

Q You just drop below --

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

A Yes. CertainTeed was the second manufacturer. Here again, I don't expect you to read that. But again, it says face nailing or blind nailing is allowed. No problem there. And it also says that Nichiha allows you to install sheathing with solid wood or steel backing. All three manufacturers say that you can put it in the sheathing without driving it into the studs.

Q But that's if you have at least seven-sixteenths or through greater OSB?

A Correct. All size seven-sixteenths.

Now --

Q Hold on. So if the sheathing below that is foam, you can't nail into --

A Can't nail in foam.

Q If the sheathing that's below it is something less than seven-sixteenths, you can't nail it in just the sheathing?

A If it was three-eighths, you could, six-sixteenths.

Q I'm sorry, if it was less than what it says there. I'll stop --

A If it's less than seven-sixteenths, then the manufacturer does not allow you to drive it into the sheathing.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Q Fair enough. What we have on Mansfield exceeds what the manufacturer says, driving into the sheathing is acceptable?

A Right. We have one half inch versus the seven-sixteenths.

Q Please continue.

A This is Nichiha. Just here again, it allows you to face nail the Nichiha board. Here again, this is the code, and the lap siding says what you do are the approved manufacturer's installation instructions.

Q So we were just on the manufacturer's --

A A manufacturer is always going to take priority over the code.

Q What does the code say?

A All right. Now, let's talk about this a minute. This is the same chart that was provided by Mr. Mease in his testimony.

Q All right. Hard to read.

A And this is -- that's why we redid it. It actually has W, which is -- Mr. Mease brought up. Mr. Mease was correct in that you have to follow the code if that's all you do. I'll tell you that if you like right here -- it doesn't point out -- the red, nominal thickness is

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

five-sixteenths.

Q I see that.

A In other words, if you only put five-sixteenth-inch sheathing on the wall, then you have to drive the nails into the stud. You're not allowed to use the sheathing, because you don't meet the requirements as specified by the manufacturer of seven-sixteenths, which Horton exceeded with the half-inch sheathing.

Q Okay. So the code says if you didn't have the manufacturers -- we don't know what that last one was. If it's greater than five-sixteenths, you don't have to go into the stud?

A As long as it meets the seven-sixteenths that you're aware of from an industry standard.

Q So its only requirement into the stud if it's five-sixteenths or less.

A Just five-sixteenths or less, you absolutely have to drive it into the studs to meet the -- comply with the code.

Q So with regards to the conditions in Mansfield, it complies with the code and it exceeds the code and it exceeds the manufacturer --

A Complies with the manufacturer's installation instructions.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Q It's been painted, though?
A It's been painted. But there was a comment that it looked terrible, reflects through 5,000 nails --
Q Freckles?
A This is -- these are both face nail projects. 100 percent face nail.
ABS states that the siding is approaching 12 to 14 years old. As of our last visit of August 30th, 2022, no siding was observed to be missing or exhibit major installation issues. The installation complies with Hardie, CertainTeed, and Nichiha installation instructions and the code, the IRC. And we believe there is no further responsibility by D.R. Horton.
Q All right.
A Shingles.
Q Well, I guess the same is like if that's your conclusion, then the oversight that D.R. Horton did with the sub- -- siding subcontractor was more than adequate?
A Adequate. It was more than adequate. Met the intent.
Q Gotcha.
A We were told, heavily-overdriven or

angle-driven fasteners and heavily worn shingles with failing seal strips. We walked it and we did not see missing or installation performance issues. The shingles were in place. There was the one shingle pointed out the other day. I didn't notice that one, but --

Q That had been replaced?

A Been replaced.

And then, of course, you had the one roof that, like I said, had hail damage and was a free roof job. And these are the shingles.

Q Not free.

A Huh?

Q Not, free but --

A The insurance company will take care of it.

Just -- this is typical residential shingles. That's the one that was replaced. You can see certainly a different color of the roof and of the main structure.

Q So hold on, Steve, go back to the roof.

All right. That roof, if it got replaced last year, was 12 to 14 years old?

A Correct.

Q Insurance companies give you depreciation

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

less than normal?

A Correct. There were minor deviations, but there were no performance issues shown by Mr. Mease.

Q And nothing to say, well, if it's done this way, you've got some diminution of that?

A Right. In fact, the National Roofing Contractors Association recognizes the proper attachment of laminated stripped shingles is an important consideration for the performance of an asphalt shingle roof system.

However, NRCA has the opinion that too much emphasis is placed on manufacturers' exact fastener placement locations. Allowable fastener placement tolerances need to be considered. Research has shown that once self-sealing asphalt shingles have sealed, fastener placement has little effect on the wind resistance and the overall performance of the asphalt shingle roof system.

Q And that's the adhesion?

A That's the adhesion, and that's what you're seeing. You're seeing that you have -- the wind is not addressing or causing issues with the shingle causing them to fly up or the creased shingles because they're adhered.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

their intent of responsibility of supervision.

Q And at least with regards to the installation -- or the supervision of installation of the roof, more than the slightest of care was given?

A Correct.

Q Based on the performance --

A Performance of the shingles to date.

Q For the 12 to 14 years. Thank you.

A Windows. Improper single-hung vinyl window installation, he disclosed two windows with rusty fasteners and/or WRB staining. He being Mr. Mease, of course.

Q Okay.

A We did observe a higher water content below the window ease. And, of course, where the J-channel, the water would come off of the top of the window down the side. You would expect to have a little higher water content there, because that's the way the building removes the water in accordance with the code.

Q Water content at that level of the cladding is acceptable, it's just it doesn't get beyond that?

A Right. You're going to have water level

on the cladding there. And then you're going to have it on the WRB there, because it's not a waterproof system, and the J-channel will evacuate the water from the system.

Q Gotcha.

A RTM has not identified any issues with the windows nor the flashing. The only fact that the windows have a J-channel component, and they're wanting to remove the 43 windows based on that.

Q Could you dive into that a little bit more, the J-channel component of the windows and the interface with the siding?

A Because they said there's not a shoulder that the windows have so that you could then butt up to it and install a backer rod and a sealant joint.

Q Some vinyl window manufacturers have an attachment to do that?

A Yes.

Q That you could put in in initial construction?

A Yeah. Why don't we look at that.

Q Okay.

A First off, this is one of the windows

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

the trim is butt up to the J-channel window.

Can you hit go -- there we go. Can you hit go, John?

MR. CRAWFORD: I can.

A All right. We've talked about there are ways to fix these windows. This is applied to them but this is different ways that you can address the window.

(Instructional video played.)

BY MR. DUDLEY:

Q There's nothing at the bottom, right?

A That's right. This is the second way to do it. I think. This is the second way of doing this. It's a different type of J-channel.

(Instructional video played.)

A Okay. You will note that they didn't do anything at the seal. You can't cover the seal up because that's where the water vacates from the window.

Q Right.

A What these two options did was provide -- depending on actual window, provides you a means to build a shoulder. This is an option we designed. You know, you take off the siding, the trim. You notch it so that it would

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

then fit into the J-channel and provide you a means to add a backer rod and sealant joint.

Mr. Dow made the comment that he couldn't see how this would be so much more -- so much cheaper than tearing out all the windows, tearing out all the siding. All we're doing here is removing the trim, adding the piece or modifying the trim, and then putting it back in on the four sides without having to take the window, the door out, the door off, or take the siding off the wall as well.

Q And you sure don't need to replace the window if you do this?

A Don't need to replace the window here. Here, again, the problem was you don't have a shoulder. We were providing either a shoulder or providing the joint -- the backer rod and the sealant joint.

Q And even with this, I mean, you're just -- you're modifying the existing siding. You're not replacing the siding?

A Right, you replace the siding. You'd have to replace the siding to get a longer piece that you could trim back.

Q Just at the ones that go into the windows --

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

what the documents say.

Q Okay. Well, let's look back at this building code. You got that handy?

A Yes.

Q We can talk just briefly about it. And it specifically says, although it's showing five-sixteenth-inch thickness of the sheathing, it also says that you've got to nail into the studs?

A Right. If you only have five-sixteenth-inch sheathing, you have to use the studs.

Q But this is not what this says. Where does it say if you only have five-sixteenth-inch sheathing that you have to nail into -- that's the only time you have to nail into the studs?

A Because that's the -- that's if you only use the code at the bare minimum, if you do A, you have to use B.

Q So where in here does it say if you use seven-sixteenth-inch sheathing that you don't have to nail into the studs? It doesn't, does it?

A Says that you have to follow the manufacturer's installation instructions. Those say if you have seven-sixteenth-inch sheathing or greater, you can use face -- or you can nail into

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

the sheathing.

Q Well, the -- the ESR that we're talking about specifically says you've got to nail into the wood framing members.

A Wood framing members, this would be sheathing.

Q Do your colleagues believe that?

A I have not discussed this with my colleagues.

Q Can you show us where the depictions say that you only have to nail into the sheathing?

A Those are depictions.

Q You can show us any depictions that say nailing into the sheathing alone is okay?

A If you show me written language.

Q And this CertainTeed, it's -- you said there might be a conflict. There's an 800 number on these.

A There's what?

Q There's an 800 number on all these installation instructions. Isn't it easy enough for a contractor to say, hey, buddy, hey, you at HardiePlank, I got a question, what should I do?

A Either that or the building code official.

A Yes.
Q Right. And that's establishing if you only have five-sixteenths, you must nail into the stud. Is that correct?
A That's correct.
Q All right. Then there's a gradation above that, isn't there?
A Yeah.
Q And then there is -- the manufacturers all say seven-sixteenths?
A Seven sixteenths was the minimum the manufacturers would allow you to use the sheathing as nailing.
Q And the sheathing is nailed into the stud?
A Right. And Mr. Mease never noted any issues with the nailing of the sheathing to the studs. It was only the Hardie or cement board to the sheathing.
Q Nailing of the sheathing to the stud creates -- that's the framing. That's a part of the framing?
A Yes.
Q All right. And that's why it would make sense if you nailed it into the sheathing, you're nailing into a half-inch piece of wood that's nailed

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

to the studs?
A Which provides you the resistance, a greater resistance in pullout than the five-sixteenths would.
Q And, again, I don't know what half-inch -- is that eight-sixteenths?
A That's eight-sixteenths.
Q So the delta between five-sixteenths and eight-sixteenths is --
A Three-sixteenths.
Q It's almost half, isn't it?
A Right.
Q Isn't it twice as much resistance in what's actually on Mansfield from what the code requires?
A Yes.
Q All right. We have not seen anything from Mr. Mease or Mr. Dow that says eight-sixteenths sheathing is still inadequate to resist the wind loads in this area, have we?
A No.
Q All right.
MR. DUDLEY: Do you have the voiding of the warranty bit? What was the sheet you have?

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

MR. DUDLEY: You talked about the -- you showed us pictures by implication.

MR. CHAKERIS: That's fine. I'm just giving you a hard time.

MR. DUDLEY: I don't have anything else. That's all.

EXAMINATION

BY ARBITRATOR:

Q You were here, I think, when there were estimates as much as 89 percent of the siding had been nailed improperly and it wasn't in the studs. What's your thought about that?

A Well, the term is alleged improper nailing. Our basis is that if it was in the sheathing which is allowed by code and allowed by the manufacturers, it's not improper. Because we had half-inch sheathing, you can nail directly to the sheathing, it does not have to be into the studs.

Q One question. Let me be clear. You assume -- I'll just assume this. The opinion expressed was that 89 percent of the siding out there was nailed in places other than the studs. Do you have any reason to think that's incorrect?

A No, sir.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Mr. Mease admitted that the building code has factors of safety built into it. So slight deviations are built into that so that you don't have catastrophic failure.

And he -- this is, I guess, the best example that after 14 years, no interior -- no interior damage that the systems, that if there were deviations, they were only slight as opposed to -- because, again, I guess the gross negligence, not even the slightest of care, you would see catastrophic failure.

ARBITRATOR: Well, if the -- well, frankly, from what I've seen here, you wouldn't necessarily expect rot or even water intrusion if the fault is the stability of it ultimately. Not that it falls off but that it gives way in wind conditions that are a problem.

And, you know, it's a hard part of the case. Things are performing. That's no question they're performing okay. I mean, there are problems, but not catastrophic -- not widespread problems.

But the problem is,

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

that's a difference. So being -- it's not just that you have 80 percent deviations, it is then you have -- would have to look and say, all right, 80 percent deviations, and then show how it was prematurely failing. And we don't have that.

ARBITRATOR: You and I are miscommunicating. I'm not saying it's prematurely failing. I'm not even arguing that because there's very little proof. There's leaks around the windows maybe and there's some problem with the shingle issue.

It's really a fundamental issue of whether or not -- not being attached to the studs creates a structural deficiency in light of the conditions we have in this area. That's my issue. That's my problem.

MR. DUDLEY: Yes, sir.

ARBITRATOR: And I'm not -- by asking these questions, I know you know I'm not -- these aren't conclusions. These are issues that have arisen.

MR. DUDLEY: Yes, sir. And I just

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

So everyone does it differently. Mr. Dow, Mr. McElmore, they have -- they've talked about how they do it and what they think is fine. Mr. Bunner and Mr. Disk both talked about what D.R. Horton does. But there has been zero standard to say an evaluation of this standard, this is how D.R. Horton was grossly negligent and not doing that supervision.

And now Mr. Crawford.

MR. CRAWFORD: Your Honor, we briefed the issue related to the real party and the interest and the standing issue. We've argued it almost ad nauseam. I won't go into it -- well, I'll be brief on it. But I do think it's very important, because this plaintiff does not have the ability to the right to bring this action. And without that, the rest of this goes away regardless of the claims that are being made here.

If you start at the very beginning, this is not your typical townhome community. This townhome

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

community, the actual owners got deeds to the exterior of the property. They own and have a requirement to maintain the exterior siding as well as the roof of all of these units. That is their obligation.

That's pretty different from most of the HOA work that we see around here. And I think even Johnny and his group would have to admit that that is not the typical setup. But that is the setup here. And, in fact, the covenants provide that the owner obligation is to maintain and replace those exterior surfaces whenever there is an issue with them. And it is not an obligation of the townhomes.

What they ended up doing here is -- and when we filed our answer, we filed our typical 12(b)(6), which is failure to state a claim, and we also raised the affirmative defense of standing. So these were issues that were always here and they were always raised to the court or to the arbitrator.

What happened here is within mere days of filing this lawsuit, the

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

homeowners, presumably 75 percent, had a meeting where they agreed that they were going to shift this liability -- they were going to make it the ability of the association to be able to bring claims for the exteriors of these buildings. And that's a right they otherwise would not have had.

I like to tell folks that these townhome communities or HOA communities are control -- the covenants are the Bible. You can only go within the construct of what's contained in those documents. This particular document provided that it could be amended. I agree with Johnny when he said that there's actually language in the covenants that assumes that they can be assigned or they could be amended. And that is true.

But because the document controls, you have to follow the amended procedure that's provided for in the document. In this particular document, in 18.1, you will see that the covenant that the -- it is listed under duration and

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

amendment.

So when Johnny talks about the fact that the first part of it talks about the duration and how long it lasts, that is completely true because that is what the paragraph deals with, duration. But then it goes further to say, you can amend this, that the homeowners can amend this with 75 percent of the folks there. Period. Provided. Provided that it is -- that the amendment -- or the action of the amendment will not take place three years from the filing. That becomes important because that did not happen here.

I'll go back, because Johnny seemed to indicate that to -- I wanted you to read that, and I would welcome you to read it. But he seems to say that that provision related to making that change was only related to duration. Well, that's not what it says.

It says, has been recorded and agreed to change said code restrictions in whole or in part. It did not limit it to just a duration provision. It said, if

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

you're going to change this thing in whole or in part, you have to do a couple things. 75 percent of the people. You can't make it go into place until three years after recording.

They made the provision here within days. And then they moved forward to file the suit in the name of the association, and it would not have been able to do that without the amendment. The amendment was not proper; and therefore, the ability to bring this suit is also not proper.

Now, what's also interesting is that Johnny indicated, well, you know, you can't get homeowners to agree to do anything. Well, that's a little contrary, because he said he'd gotten all 28 homeowners to agree to your order, he got all 28 homeowners to agree to get you your surveys. But here -- and he also said that, well, the reason we want to do this is because architectural control.

You don't want people painting green buildings or orange buildings with

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

their money they're taking. Well, that's not true. Even with the owners having the obligation, these covenants provide that the architectural review committee, the association, still has to sign off on any exterior improvements that are done on the home.

So this whole idea that we have to do this so that the -- so that they control what it's going to look like out there is just not correct. It's not true, because the association always had that right. Always had that ability to control those items that were out there.

The second thing is if you have 28 folks in agreement that this is something you could have done, the easiest thing would have been -- to do would have been to have a case with 28 Plaintiffs out there. And the same bowl of money could've come out there, and this issue could have been easily addressed since we got all these folks who are willing to participate and willing to go in the same direction. But that didn't happen.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

There was this idea that the covenants needed to be amended to bring this lawsuit. And that actually is a problem, because, again, you can't amend it and it take effect in that time period. And then we're talking about not only did it give that covenant change, it changed 5.1, which is association's responsibility. It gave them the ability to be in pursuit of the sanction.

But here's the other thing that it did. It took away the entire dispute resolution provision in here. There were conditions that needed to be met. There had to be notice. There had to be opportunity to get out and meet. There had to be opportunity for -- with D.R. Horton as a declarant to be able to address these items. They were not provided the opportunity to come out, have those things in writing, discuss it. And it specifically -- I'll ask Your Honor to look through the original covenants 17.1 through 17.6 all were right out there at D.R. Horton.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

And though Johnny indicates that they lost the ability because they somehow didn't own any property out there, again, that's not accurate. Those cases, if you look at those cases, surround the declarant tried to be able to amend the covenants after they'd given up all the property.

We're not talking about amending the codes. We're talking about being able to enforce the covenants. And, you know, the best evidence are the fact that D.R. Horton was still -- should be able to enforce the covenants. Well, the section of the covenants itself, if you look at 1.2 of the covenants, it actually says, the declarant as it may be -- the declaration as it may be amended and supplemented from time to time shall remain and remain in effect and shall be enforceable by the declarant, the townhome association, any homeowner for a term of 20 years from the date this declaration is recorded.

The document itself says that

D.R. Horton would remain able to enforce it. And why is that important? Well, because you got that dispute resolution that specifically dealt with how you deal with construction defects. Sure, they expect to be able to enforce these provisions because that's what they bargained for. And when they sold those homes, those folks got taken a deed to those properties, agreed to be bound by those covenants.

So we think that this real party of interest that we've argued about a lot, it was raised on our initial pleadings. It is something that we certainly think is important, and we think that you never get to the rest of this part. You don't have to worry -- you don't have to struggle with this idea of whether there's gross negligence or whether these are minor deviations, all the other things that we've heard evidence of because if you don't get here to this part, then they don't have the ability to bring this suit.

And it's still somewhat curable.

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

Well, it appeared at the time, it would seem. Because you would think that the clock would start when they got the Mease report. The Mease report was only granted, I think, in October. And that time frame doesn't expire until the latter part of this year. So those plaintiffs can still bring this suit and still bring these actions today and still be fine.

MR. DUDLEY: I only have three things to add to that, John.

MR. CRAWFORD: You just couldn't let it stay.

MR. DUDLEY: The first one is, the first amendment happened in 2009. They're still just building that stuff. So that amendment that Johnny says, well, what's good for the goose is good for the gander, that amendment was done in 2009, but they're still building it. There's nobody there to be affected by that.

But the more important part about it is, why have a three-year waiting plan is to give people that are buying it to know what's coming. So there's a

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

window in there that is for the benefit of the homeowners.

The most important piece that I'm going to add here is that it says 75 percent vote. Zero evidence of that vote. There is no written document to show that vote. Does not exist. They went and -- the board members went and talked to owners. There is no evidence of a vote. Critical piece.

That's it. That's all I got.

MR. CHAKERIS: Tom sent you all the votes. Y'all requested the votes, we have sent them to y'all.

MR. DUDLEY: We took the deposition of Mr. Frappier. And there was -- he said no votes.

MR. CHAKERIS: I'd be happy to forward you the email again.

MR. DUDLEY: So did it happen after his deposition?

MR. CHAKERIS: I can't tell you exactly when y'all requested it. But we have sent y'all the ownership votes that demonstrate that more than 75 percent

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

voted for the amendment.

MR. CRAWFORD: I wouldn't want us to follow part of that -- I mean, over that idea if you sent us the votes, so we have the votes. So we certainly consent that that part occurred on there.

But Tom did make me think of one thing, and I apologize for coming back. Johnny said, what's good for the goose is good for the gander, which is a great saying; however, it's not the case here. The actual covenants provide two different amendment procedures. One for the homeowners association, provision from the very beginning, which was 75 percent in three years.

And then the next revision was related to how the declarant would amend it. And his did not require it. If you look at it it's the next provision to this 18.2 which specifically said it does not require this three-year period.

So this idea that D.R. Horton did something wrong because they admit that there's -- that they didn't wait for

ELECTRONICALLY FILED - 2023 Nov 20 10:34 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1001215

the three years is not correct. Because they complied correctly with the appropriate provision which did not require the three-year wait time.

MR. DUDLEY: Johnny, I apologize. I was doing it based on my review of Mr. Frappier's deposition.

ARBITRATOR: You all can straighten me out on that. If it's not an issue, you can tell me.

MR. CHAKERIS: Yeah, I don't think it's an issue.

MR. DUDLEY: You said it happened, then it did. I just went on what his testimony was. I got nothing else.

MR. CHAKERIS: I just got one very slight minor comment to Mr. Crawford's comments about the second amendment removing the dispute resolution provision within the governing documents. And it did, there's no question about that.

But prior to filing suit, D.R. Horton was given the right to care for the entirety of the projects. They chose not to do that, submitted through

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all of the material proposed to be included in the Record on Appeal by any of the parties and not any other material.

October 9, 2025

s/Carl F. Muller
Carl F. Muller, S.C. Bar #4131
Carl F. Muller Attorney-at-Law, P.A.
PO Box 1717
Greenville, SC 29602-1717
864-991-8904 Phone
864-751-2831 FAX
carl@carlmullerlaw.com

John T. Crawford, Jr., (S.C. Bar No. 69355)
Kenison, Dudley & Crawford, LLC
704 McBee Ave.
Greenville, South Carolina 29601
(864) 242-4899
(864) 242-4844 (fax)
crawford@conlaw.com

Attorneys for Appellant
D. R. Horton, Inc.

RECEIVED
Oct 21 2025
SC Court of Appeals

[NOTE: Except as otherwise shown, to avoid duplication, or where not designated to be included, all exhibits to all motions and memoranda will be included.]