

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity/ Circuit Court Judge

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Case No. 2009-CP-07-00036

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Madeline R. Arata and Kenneth C. Arata.....Appellants,

v.

Village West Owners' Association, Inc.  
d/b/a Village West Horizontal Property Regime.....Respondent.

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SUPPLEMENTAL RECORD ON APPEAL

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Jack D. Simrill  
Simrill Law Firm  
5 Pine Field Road  
Hilton Head Island, SC 29926-2013  
(843) 415-5293  
ATTORNEY FOR APPELLANTS

Brian C. Pitts, Esquire  
Smoot & Pitts  
Post Office Box 23439  
Hilton Head Island, SC 29925-3439  
(843) 681-3200  
ATTORNEY FOR RESPONDENT

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SC Court of Appeals

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STATE OF SOUTH CAROLINA )  
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COUNTY OF BEAUFORT )  
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MADELEINE R. ARATA AND )  
KENNETH C. ARATA )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
VILLAGE WEST OWNERS' )  
ASSOCIATION, INC., d/b/a VILLAGE )  
WEST HORIZONTAL PROPERTY )  
REGIME, )  
 )  
Defendant. )  
\_\_\_\_\_ )

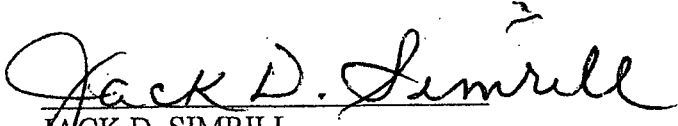
IN THE COURT OF COMMON PLEAS  
THE FOURTEENTH JUDICIAL CIRCUIT  
CASE NUMBER 09-CP-07-00036

Summons  
(A Jury Matter)

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiffs or their attorney, Jack D. Simrill, at his office at 2 Corpus Christie Place, Suite 200, P. O. Box 5681, Hilton Head Island, South Carolina 29938, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for the relief prayed for in the Complaint.

Dated at Hilton Head Island, South Carolina, on the 17th day of December, 2008.

  
JACK D. SIMRILL  
Attorney for the Plaintiffs

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NUMBER: 09-CP-07-00036
	)	
MADELEINE R. ARATA AND	)	
KENNETH C. ARATA	)	
	)	
Plaintiffs,	)	
	)	
v.	)	COMPLAINT
	)	(A Jury Matter)
VILLAGE WEST OWNERS'	)	
ASSOCIATION, INC., d/b/a VILLAGE	)	
WEST HORIZONTAL PROPERTY	)	
REGIME,	)	
	)	
Defendant.	)	
	)	

The Plaintiffs, complaining of the Defendant, allege:

**FOR A FIRST CAUSE OF ACTION**  
(For Relief from Judgment or to Set Aside Judgment)

1. The Plaintiffs, Madeleine R. Arata and Kenneth C. Arata, (hereinafter together the Aratas) are citizens and residents of the County of Beaufort, State of South Carolina.
  
2. The Aratas are the owners of Unit #6 of Village West, Horizontal Property Regime in the Spinnaker Building which is not one of the buildings for which an action against the contractor and architect of the Clipper, Schooner Galleon and Flagship buildings in Village West Horizontal Property Regime for negligent design and construction of the Property was brought and settled for Seven Million Two Thousand Five Hundred and No/100 (\$7,200,500.00) Dollars.
  
3. The Defendant, Village West Owners' Association, Inc., d/b/a Village West Horizontal Property Regime, (hereinafter, Village West) is a condominium association duly

created under and existing as a horizontal property regime under the Horizontal Property Act, S.C. Code Ann. §27-31-10 et seq. (1976) operating in the County of Beaufort, State of South Carolina.

4. This is an independent action authorized by Rule 60 of the South Carolina Rules of Civil Procedure for relief from the judgment of the Honorable Jackson V. Gregory in Case No 05-CP-07-475 assessing a deficiency against the Plaintiffs in a lawsuit against the contractor and architect of the Clipper, Schooner Galleon and Flagship buildings in Case No. 97-CP-07-1738, of which the Spinnaker building was not a part, or in the alternative to set aside the judgment for fraud upon the Court for withholding from the court evidence that the reconstruction and repair of damage to the Clipper, Schooner Galleon and Flagship buildings was from both defective construction and Hurricane Floyd, a casualty, to both the Units and to the common elements rather than as a result of defective construction only of the common elements as contemplated by Article X(1) of the By-Laws of Village West, the cost of which is treated as a common expense. The true facts were known to the Village West's architect and to the Board who authorized the reconstruction.

5. On about February 22, 2005, Village West filed a mechanics lien against the Plaintiffs Unit #6 in the Spinnaker Building the for Six Thousand Two Hundred Ninety-Four and No/100 (\$6,294.00) Dollars as part of a Thirty-Four Thousand Four Hundred Seventy-Five and No/100 (\$34,475.00) Dollars rebuilding fee assessment to cover the deficiency in the settlement of the suit against the Contractor and architect of the Clipper, Schooner Galleon and Flagship buildings for negligent design and construction of the Property.

6. On or about March 16, 2005, Village West sued Plaintiffs in Case No 05-CP-07-

475 for Nine Thousand Six Hundred Fifty-Six and No/100 (\$9,656.00) Dollars as part of the Thirty-Four Thousand Four Hundred Seventy-Five and No/100 (\$34,475.00) Dollars rebuilding fee assessment to cover the deficiency in the settlement of the suit for negligent design and construction of the Clipper, Schooner Galleon and Flagship buildings.

7. Contending that the reconstruction and repair was *only* to the common elements, Village West brought Case No 05-CP-07-475 pursuant to Article X(1) of the By-Laws which provides "Insurance proceeds paid on account of loss or damage to the Common Elements only shall be held in the same proportion as the undivided interests in the Common Elements which are appurtenant to each of the Units" and the proceeds were held and the deficiency assessed against all Unit owners in the same proportion as the undivided interests in the Common Elements which are appurtenant to each of the Units.

8. On January 16, 2006, Judge Jackson V. Gregory granted summary judgment in favor of the Village West against the Plaintiffs for Thirty-Four Thousand Four Hundred Seventy-Five and No/100 (\$34,475.00) Dollars as the Plaintiffs' alleged pro-rata share of the deficiency in the same proportion as the undivided interests in the Common Elements which are appurtenant to each of the Units, plus late charges of \$3,626.42 as of January 1, 2006 , per diem of \$19,139 and attorney's fees of \$13, 604.29.

9. The Court of Appeals affirmed the decision of the lower court on January 11, 2007, ruling "[a]ll maintenance, repair and replacement to the common elements as defined in the Master Deed, the painting and decorating of exterior doors and exterior window and sash and the washing of exterior glass shall made by the [Regime's ] Board [of Directors] and be charged to the Unit owners as a common expense."

10. On August 24, 2007, more than eighteen (18) months after the Aratas' motion under Rule 59(e), while a Petition for Writ of Certiorari was pending after the Court of Appeals decision in Case No.05-CP-07-475, Village West's then attorney notified Plaintiff's attorney that he had a box of records crammed in a banker's box relevant to Village West v. Aratas, Case No. 05-CP-07-475, which had not been disclosed to the Aratas during the pendency of the action in the lower court. These records included a Village West H. O. (Homeowners Association) Hilton Head Island, SC Hurricane "Floyd" Damage Report which is attached hereto and incorporated by reference as Exhibit A; a July 28, 1998 Letter from Thomas J. Carlson, Vice President of Calibogue Construction Company, Inc. to Mr. Peter J. Sherratt, AIA, giving a preliminary estimate of costs of repairs to the Clipper building of \$92,700.00, which is attached hereto and incorporated by reference as Exhibit B, and an August 12, 1998 Village West Partial Scope and Preliminary Forensic Investigations, Units 30, 32, 38, 40, 46, 48, 54, which is attached hereto and incorporated by reference as Exhibit C.

11. Estimates of needed repair in Exhibit B included those for wall framing components, insulation and interior drywall, interior painting of new windows and interior trim and, in Exhibit C, replacement of 4 window systems (12 window units) and interior repairs within the respective Units.

12. Plaintiffs are informed and believe that if Exhibits A, B, and C had been in evidence it would have changed the outcome of the rulings in the lower and appellate court which were based upon express findings that there was no "casualty" and the reconstruction and repairs were only to the common elements.

13. Article IX provides "[i]n the event of a casualty loss or damage to the Property,

the Board of Directors shall be responsible for applying the proceeds of all casualty insurance to the repair or reconstruction of the Property in accordance with the provisions of this ARTICLE IX.”

14. Article X(2) under Article X Insurance Trust provides “[i]nsurance proceeds paid on account of less than all of the Units, when the damage is to be restored, shall be held for the benefit of Unit Owners of the damaged Units and their respective Mortgagees in proportion to the costs of repairing each damaged Unit” and Article IX (3) provides “[i]f the insurance proceeds paid to the Board are insufficient to cover the cost of reconstruction, the deficiency shall be paid by a special assessment by the Unit Owners whose Units are being reconstructed or repaired in proportion to the damage done to their respective Units.”

15. S. C. Code Ann. §27-31-260 (2007) provides in pertinent part, “[w]here the property is not insured or the insurance indemnity is insufficient to cover the cost of reconstruction, the rebuilding costs shall be paid by all the co-owners *directly affected by the damage*, in proportion to the value of their respective apartments, or as may be provided in the bylaws; and if any one or more of those composing the minority shall refuse to make such payments, the majority may proceed with the reconstruction at the expense of all the co-owners benefitted thereby...” (Emphasis added)

16 Plaintiffs are informed and believe that because of the foregoing, the judgment of the Honorable Jackson V. Gregory should be set aside or not have prospective application.

FOR A SECOND CAUSE OF ACTION  
(Fraud and Deceit)

17. The allegations of the First Cause of Action are realleged here and incorporated by

reference as fully and effectively as if set forth here verbatim.

18. Edward E. Bullard was the duly appointed, authorized and acting attorney and agent of Village West in trial of Case No 05-CP-07-475 in the lower court and on appeal and at all times alleged herein acting within the scope of his agency and authority.

19. Both in the prosecution of the case in the lower court and on appeal in the Court of Appeals, Edward E. Bullard, agent of Village West, represented that the repair and reconstruction to the Clipper, Schooner Galleon and Flagship buildings was to correct damage only to the Common Elements solely as a result defective construction and not from a "casualty" within the meaning of Village West's By-Laws and Master Deed.

20. Said representations were false, material, known to have been false when made, made with the intention that it be acted upon by the Aratas, who were ignorant of their falsity and having a right to rely on the truth of the representations, did so rely, were deceived thereby and sustained damage as a direct and proximate result thereof.

21. Plaintiffs, relying on the allegations of the Village West's Complaint and the contentions of counsel that reconstruction and repair had been only to correct defective construction of the Common Elements, did not seek by discovery evidence of the Property reconstructed and the causes of the damage prior to Village West's motion for summary judgment and nothing in the record indicated what part of the Property was actually repaired or the cause of the damage other than as alleged in the Complaint.

22. Village West, acting though its duly authorized and acting agent, fraudulently concealed from the Aratas and the Court that the reconstruction and repair to the Clipper, Schooner Galleon and Flagship buildings was to reconstruct and repair damage from Hurricane

Floyd as well as from defective construction of the Units and the Common Elements appurtenant to the Units and falsely represented that the reconstruction and repair was to correct damage only to the Common Elements solely as a result defective construction and not from a "casualty" within the meaning of Village West's By-Laws and Master Deed and that Article X(1) of the By-Laws which provides "Insurance proceeds paid on account of loss or damage to the Common Elements only shall be held in the same proportion as the undivided interests in the Common Elements which are appurtenant to each of the Units" applied.

23. As a result of the fraudulent concealment and fraudulent representations of Village West by its duly authorized agent acting within the scope of his agency, Plaintiffs were unable to establish at the summary judgment stage that the damage repaired was to the both the Units and the Common Elements and that Article IX(1) and (2) of the By-Laws which provide in pertinent part respectively, "[t]he Board of Directors shall promptly obtain estimates of the cost to restore the damaged property to its condition before the casualty occurred...." and "[i]f the insurance proceeds paid to the board are insufficient to cover the cost of reconstruction, the deficiency shall be paid as a special assessment by the Unit Owners whose units are being restored in proportion to the damage done to their respective units."

24. As a direct and proximate result of Village West's fraudulent representations and fraudulent concealment Village West was granted summary judgement against the Aratas for Thirty-Four Thousand Four Hundred Seventy-Five and No/100 (\$34,475.00) Dollars as the Plaintiffs' alleged pro-rata share of the deficiency in the same proportion as the undivided interests in the Common Elements which are appurtenant to each of the Units, plus late charges of \$3,626.42 as of January 1, 2006 , per diem of \$19,139.00 and attorney's fees of \$13, 604.29 and

the Aratas have been damaged in the amount of Seventy-One Thousand Eight Hundred Forty-Four and 71/100 ( \$71,844.71) Dollars and such other and further per diem, costs and fees that have been assessed against them.

FOR A THIRD CAUSE OF ACTION  
(Accounting)

25. The allegations of the First and Second Cause of Action are realleged here and incorporated by reference as fully and effectively as if set forth here verbatim.

26. The Aratas posted a bond in the amount of Seventy-Five Thousand and No/100 (\$75,000.00) Dollars in connection with an appeal from the January 16, 2006 summary judgment order of Judge Gregory.

27. The Plaintiffs are informed and believe that when the Remittitur was filed in the office of the Clerk of Court in the lower court after the decision of Judge Gregory was affirmed, the full amount of the bond plus earned interest was paid over to Village West's then attorney, Edward E. Bullard.

28. Village West's then attorney was the duly appointed and acting agent and attorney of the Defendant, Village West and at all times alleged herein its duly authorized and acting agent.

29. Upon the granting of relief from the Fifty-One Thousand Six Hundred Four and 29/100ths (\$51,604.29) Dollars judgment plus post judgment interest and the cost of the appeal including the One Thousand and No/100ths (\$1,000.00) Dollars attorneys fee authorized by South Carolina Appellate Court Rule 222, Plaintiffs are informed and believes that the Plaintiffs are entitled to a full and complete accounting for the amount of the \$75,000.00 bond.

WHEREFORE, The Plaintiffs pray:

(1) on their first cause of action, for an Order granting the Plaintiffs' relief from the Judge Gregory's Seventy-One Thousand Eight Hundred Forty-Four and 71/100 ( \$71,844.71) Dollars judgment and such other and further per diem, costs and fees that have been assessed against or in the alternative that said judgment be set aside for fraud upon the Court;

(2) on their second cause of action, the Aratas demand for judgment for Seventy-One Thousand Eight Hundred Forty-Four and 71/100 ( \$71,844.71) Dollars and such other and further per diem, costs and fees that have been assessed against them and for judgment for the costs, expenses and attorney's fees expended in defending the action and prosecuting the appeal and Writ of Certiorari in an amount to be determined at trial and for punitive and exemplary damages in an amount to be determined at trial;

(3) on their third cause of action, Plaintiffs pray for a full and complete accounting for the full amount of the \$75,000.00 bond plus interest at the legal rate to date;

(4) for such other relief as the Court may deem just, equitable and proper.

PLAINTIFFS DEMAND A JURY TRIAL OF THE LEGAL ISSUES

---

Jack D. Simrill  
P.O. Box 5681  
Hilton Head Island, SC 29938  
(803) 785-2134  
Attorney for the Plaintiffs

December 17, 2008

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

VERIFICATION

PERSONALLY APPEARED before me, Madeleine R. Arata, who on oath said that she has read the foregoing Complaint and the allegations therein are true of her own knowledge except those matters alleged upon information and belief and, as to those, she believes them to be true.

Madeleine R Arata

SWORN to before me this 5th  
day of August, 2008.

Joseph D. Samuel  
Notary Public for S. C.  
My Commission Expires: 01-16-11

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BEAUFORT )  
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 MADELINE R. ARATA AND )  
 KENNETH C. ARATA, )  
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 VILLAGE WEST OWNERS' )  
 ASSOCIATION, INC. D/B/A VILLAGE )  
 WEST HORIZONTAL PROPERTY )  
 REGIME, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 THE FOURTEENTH JUDICIAL CIRCUIT  
 CASE NUMBER: 09-CP-07-00036

AFFIDAVIT OF RAY DOWLING

PERSONALLY appeared before me the undersigned, who, after first being duly sworn,  
 deposes and states:

1. My name is Ray Dowling and I live in Bluffton, South Carolina.
2. In 1999 I worked for SPM Defender, Inc. which was the company that was the property manager for Village West Horizontal Property Regime ("Village West").
3. On September 17, 1999, the day after Hurricane Floyd passed by Hilton Head Island, South Carolina, I investigated the extent of damage caused to the buildings at Village West. Copies of the Damage Control Incident Report and Hurricane Floyd Damage Report I prepared in connection with the investigation are attached hereto as Exhibit "A".
4. I was the person responsible for coordinating the repair work for the damage caused by Hurricane Floyd. All of the damage which was caused by Hurricane Floyd, which mainly consisted of replacement of roof tiles, repairing a decorative metal chimney, repairing a


rubber roof membrane, and replacing shutters that had blown off, was repaired shortly after the storm. Copies of a Memo from me to Atlantic Coast Specialist dated November 18, 1999 directing it to commence the roof repairs, and Village West's General Ledger for October 1, 1999 to October 31, 1999, showing the payment of various repair bills, are attached as Exhibit "B".

5. The bills for the cost to repair the damage caused by Hurricane Floyd were paid out of the general operating account of Village West Owners' Association, Inc. and there was no special assessment to the property owners to cover the cost of these repairs.

FURTHER AFFIANT SAYETH NAUGHT.

  
Ray Dowling

SWORN TO BEFORE ME THIS  
23rd DAY OF MARCH, 2012

  
Notary Public for the State of South Carolina  
My Commission Expires: 12/8/18

S.P.M. DEFENDER  
P.O. BOX 7801  
HILTON HEAD ISLAND, SC 29928  
(843) 681-8309  
FAX (843) 757-8191

**MEMO**

November 18, 1999

**TO: ATLANTIC COAST SPECIALIST**

**FROM: RAY DOWLING**

S.P.M. Defender Mgmt.

Property Manager for Governors Harbour (Village West H.O.A.)

**RE: TILE AND FLAT ROOF REPAIR**

Dear Sirs,

Your proposal, for repair work to the damaged tile on all of our buildings and the flat roof on the Spinnaker building, has been approved. You may begin as soon as you can. We are eager to stop the annoying and destructive water leaks as quickly as possible. A check for 50% of the bid is being prepared and will follow this letter. Please contact me when you have an idea of when you can start and / or if you have any questions or special needs.

Yours in preventing leaks,

Ray Dowling

cc: Ken Collins  
Mary Probert

EXHIBIT "B" TO AFFIDAVIT

7:00 at 09:40:33.19

Village West  
General Ledger

For the Period From Oct 1, 1999 to Oct 31, 1999

Filter Criteria includes: Report order is by ID. Report is printed in Detail Format.

Account ID Account Description	Date Reference	Jrnl	Trans Description	Debit Amt	Credit Amt	Balance
						4,419.12
43344 Janitorial	10/1/99		Beginning Balance			
	10/7/99	PJ	Artistic Landscape - Sept service	350.00		
	112188					
	10/7/99	PJ	Artistic Landscape - Oct service	700.00		
	112188					
			Current Period Change	1,050.00		1,050.00
			Ending Balance			5,469.12
	10/31/99					18,987.03
43354 General Maintenance	10/1/99		Beginning Balance			
	10/1/99	PJ	L & H Insulation, LLC - Replace chase top helicopter chimney wind screen, Floyd damage	250.00		
	745428					
	10/5/99	PJ	Ray Dowling/Petty Cash - Lunch for 3 Temp Laborers	48.20		
	Oct99					
	10/5/99	PJ	Ray Dowling/Petty Cash - Electric Breaker	14.66		
	Oct99					
	10/5/99	PJ	Ray Dowling/Petty Cash - Camera, Photo, Film for Hurricane Damage and Photo processing	17.01		
	Oct99					
	10/5/99	PJ	Ray Dowling/Petty Cash - Moth crystals and snake repell	5.58		
	Oct99					
	10/5/99	PJ	Ray Dowling/Petty Cash - Water and Snack for Laborers	4.73		
	Oct99					
	10/5/99	PJ	Ray Dowling/Petty Cash - Wood Dowel Fence Repair	1.82		
	Oct99					
	10/5/99	PJ	Ray Dowling/Petty Cash - Toll Charges	3.00		
	Oct99					
	10/25/99	PJ	Mighty Mac - Capex clean 32-G after sewer back-up	296.20		
	9989					
	10/25/99	PJ	Classic Fence - completing gate install @ pool	850.00		
	746418					
	10/26/99	PJ	Seawatch - reimburse Seawatch-Walmart cleaner, detergent & electric out box	121.75		
	3644815					
	10/26/99	PJ	Edward's Contracting - replace window sill	225.00		
	746419					
	10/27/99	PJ	Cartier Construction, Inc. - Repair shutters damaged in Hurricane Floyd	825.00		
	102799					
	10/27/99	PJ	Grayer - washers for floods	7.00		
	20109457					
	10/27/99	PJ	Home Depot - light bulbs & starters	24.68		
	382/803145					
	10/28/99	PJ	Piper Plumbing - sewer back-up	290.00		
	3317					
	10/28/99	PJ	Ray Dowling/Petty Cash - Petty cash reimburse expenses	168.54		
	102899					
			Current Period Change	3,153.17		3,153.17
			Ending Balance			12,140.20
	10/31/99					8,935.38
43414 Elevators	10/1/99		Beginning Balance			
	10/1/99	PJ	Thyssen Dover Elevator Company - Elevator service from 10-1-99 to 10-31-99 - Hilton	750.13		
	19003					
	10/1/99	PJ	Thyssen Dover Elevator Company - Elevator Service from 10-1-99 to 10-31-99 - Spinnaker	171.29		
	19004					
	10/21/99	PJ	Thyssen Dover Elevator Company - Elevator repair	442.00		
	23013					
			Current Period Change	1,363.42		1,363.42
			Ending Balance			10,298.80
	10/31/99					

STATE OF SOUTH CAROLINA )  
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 WEST HORIZONTAL PROPERTY )  
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 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 THE FOURTEENTH JUDICIAL CIRCUIT  
 CASE NUMBER: 09-CP-07-00036

AFFIDAVIT OF THOMAS J. CARLSON

PERSONALLY appeared before me the undersigned, who, after first being duly sworn, deposes and states:

1. My name is Thomas J. Carlson. I am President of Calibogue Construction Company, Inc. Calibogue Construction Company, Inc. is a general contractor licensed by the State of South Carolina. Our office is located at 102 Wappoo Creek Drive #9, Charleston, South Carolina.
2. I have worked extensively in investigating the cause of damage to buildings and homes and assessing the necessary scope of repairs in connection therewith. A copy of my Curriculum Vitae is attached hereto as Exhibit "A".
3. In the 1990s and early 2000s I did work for Village West Owners' Association, Inc. assessing the cause of damage to the buildings in its horizontal property regime ("Village West") in connection with construction defect litigation it brought against the original general

contractor and others. As part of this work I engaged in forensic investigations, and performed prototype repairs to assist in determining the full extent of damage to various buildings at Village West. I also performed other repair work on the buildings at Village West. A chronology of the work I did for Village West is attached hereto as Exhibit "A".

4. At no time did Calibogue Construction Company, Inc. perform any work to repair damage to the buildings at Village West caused by Hurricane Floyd or any other casualty. All of our work was associated with either the construction defect litigation and/or repairing damage caused by defective construction.

5. After the second defective construction case that involved four of the five buildings at Village West was resolved, my company was not hired by Village West to complete all of the repairs that were needed.

FURTHER AFFIANT SAYETH NAUGHT.

CALIBOGUE CONSTRUCTION COMPANY, INC.

By: Thomas J. Carlson, President  
Thomas J. Carlson, President

SWORN TO BEFORE ME THIS  
23<sup>rd</sup> DAY OF MARCH, 2012

BCP/A  
Notary Public for the State of South Carolina  
My Commission Expires: 12/8/2018

**THOMAS J. CARLSON**  
646 Pawley Road  
Mt. Pleasant, South Carolina 29464  
E-mail: calbogue2@aol.com

Office Phone: (843) 762-9600  
Res. Phone: (843) 971-6681

Office Fax: (843) 762-0230  
Res. Fax: (843) 971-5924

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**CONSTRUCTION EXPERIENCE:**

Engaged in construction management since 1963, including construction consulting, construction estimating, project management and executive administrative positions.

- New construction projects include single family and multi-family homes, mid-rise and high-rise apartments, condominiums and commercial buildings.
- Renovation and Restoration projects include:  
Single and multi-family units, low-rise and mid-rise condominiums, hotels, apartments, commercial and public facility buildings and hotels:
  - Hurricane Damage Repairs
  - Water Intrusion Repairs
  - Structural Repairs
  - Stucco Repairs
  - EIFS Remediation
  - Siding Repairs
  - Window Replacement
  - Roofing Repairs and Replacement
  - Structural Concrete Balcony and Walkway Repairs and Waterproofing
  - Masonry Veneer Repairs
  - Historical Renovations and Repairs
- Horizontal construction projects experience includes: Multi-Family, Commercial and Single-Family Site Development; Excavation and Mass Grading; Asphalt and Concrete Highway Projects; Underground utility work, Structural concrete bridges; and, Golf Course Construction.

Also, engaged in construction consulting and expert witness work since 1990 involving single and multi-family residential buildings, hotels, commercial and condominium building evaluations for banks, insurance companies, sureties, contractors, subcontractors, owners, architects, manufacturers and attorneys.

- Consulting work includes expert witness work involving water intrusion problems, termite problems, waterproofing, siding, windows, stucco, EIFS problems, roof problems, general building envelope diagnostic evaluations, and construction deficiency/damage claim estimating.



**EDUCATION:**

- 3/67-6/69 DePaul University, Chicago, Illinois  
Graduate study toward M.A. in Philosophy
- 9/61-6/66 North Park University, Chicago, Illinois  
Degree: B.A. – Major: Philosophy Minor: English  
Scored in 96% of Quantitative Graduate Record Exam.

**PROFESSIONAL ORGANIZATIONS, ASSOCIATION AND RECOGNITIONS:**

- Unlimited General Contractor's License in SC and NC
- Construction Specifications Institute
- International Concrete Repair Institute  
Board Member for Carolina Chapter ICRI in 2000
- Waterproofing Contractor's Association, Inc.
- International Code Council
- Community Association Institute
- Speaker at CAI National convention, Washington, DC, October, 1998  
"EIFS Inspection for Property Managers"
- Speaker at CSI Chapter meeting, Charleston, SC, November, 1998  
"EIFS Diagnostic Inspections"
- Speaker at ICRI Carolina Chapter Fall Meeting, October, 1999  
"Barrington Project Repairs Case Study/Key Elements to a Successful Repair Project"
- Applicator and Construction Credentials for:
  - STO Concrete Restoration Materials
  - STO EIF Systems
  - Sonneborn Waterproofing and Sealants
  - Vulkem Mamëco Waterproofing and Sealants
  - USG Durock Wall Systems
  - Lindal Cedar Homes
  - NAHB Research Center EIFS Remediation Seminar
- Master Certificate in Masonry Repairs from World of Concrete
- Master Certificate in Concrete Repairs from World of Concrete, January 2002

11/11/06



*Calibogue Construction Company, Inc.*

GENERAL CONTRACTOR  
 102 WAPPOO CREEK DRIVE #9 CHARLESTON, SC 29412  
 TELEPHONE (843) 762-9600 FAX (843) 762-0230  
 Email: calibogueconst@aol.com

**VILLAGE WEST @ GOVERNORS HARBOR  
 HILTON HEAD ISLAND, SOUTH CAROLINA**

**CHRONOLOGY OF REPAIR WORK**

4/25/05

1.	11/98-6/00	<b>Job #9812</b> Clipper Building - Phase I (Sidewall & Rear Stack) Flagship Building - Phase II (Rear Stack) (Includes May 2000 Destructive Testing)	\$185,188 \$ 89,470
2.	2/01-7/01	<b>Job #200103</b> Galleon Building - 4 <sup>th</sup> Fl & Gable End Repairs (2 Units - #121 & #125)	\$ 72,377
3.	6/02-9/02	<b>Job #200204</b> Clipper Building - Stairwell Sandblasting/Painting/ Metal Stair Repair	\$ 46,483
4.	9/02 - 3/03	<b>Job #200206</b> Spinnaker Building - Exterior Wall Repair/Window Repl (Stacks #8, #10, #14)	\$109,665
5.	10/02 - 12/02	<b>Job #S2268</b> Spinnaker Building - Front Entry EIFS Buildout Repairs/ Front Entry EIFS Framing/Sheath:Rep	\$ 7,182
6.	<b>Total for Work Compl to Date - Clipper/Flagship/Galleon/Spinnaker</b>		<b><u>\$510,365</u></b>

SPECIALIZING IN WIND AND ROT RESISTANT CONSTRUCTION



## REMINDER

**To:** Village West HPR Homeowners  
**From:** Jaime Fenstermaker, Agent for Village West  
**Date:** December 6, 2004  
**Re:** Rebuilding Fees

There is less than one month left to take advantage of the discount offered for early payment of your rebuilding fees.

**If you pay the rebuilding fees in full by December 31, 2004, then:**

	Payment Due by 12/31/04:
2 Bedroom	<b>\$29,274.00</b>
3 Bedroom	<b>\$34,475.00</b>

**If you do not pay the rebuilding fees in full by 12/31/04, your monthly 2005 regime fee is:**

	Payment Due on the 1 <sup>st</sup> of Each Month and Must be Received by the last day of Each Month: (1/1/05 – 12/31/05)
2 Bedroom	Regime Fee \$365.00 + Rebuilding Fee \$2,490.00 = <b>\$2,855.00</b>
3 Bedroom	Regime Fee \$430.00 + Rebuilding Fee \$2,932.00 = <b>\$3,362.00</b>

### PAYMENT COUPONS:

Within the next couple of weeks, you will receive monthly payment coupons. The payment coupons will itemize the monthly rebuilding fee and the monthly regime fee. Please adjust the total amount due per month accordingly if you opted to pay the rebuilding fees in full by December 31, 2004 or if you have your regime fees directly drafted. If you wish to have your monthly regime fee and monthly rebuilding fees directly drafted (see below), please retain the payment coupons in case you leave the convenience of direct draft.

**DIRECT DRAFT:**

If you currently have your monthly regime fees directly drafted through IMC and would like to include the monthly rebuilding fees in the draft, please complete the enclosed authorization form and return it to IMC Resort Services. If this authorization form is not completed and returned, IMC will continue to direct draft your monthly operating regime fees *only*.

If you have any questions or concerns regarding the above or the rebuilding project, please do not hesitate to contact Ron Fenstermaker at 843-785-4775 ext. 109 or at [IMCRon@telsouth.net](mailto:IMCRon@telsouth.net). Thank you.

**AUTHORIZATION AGREEMENT FOR DIRECT DEPOSITS  
(ACH DEBITS)**

This is for VILLAGE WEST, HPR Regime Fee and Rebuilding Fee Payments

I (WE) hereby authorize IMC Resort Services, Inc., agent for **VILLAGE WEST, HPR** herein after called **COMPANY**, to initiate debit entries and/or correction entries to our (**check one**): *The funds must be drawn on a United States bank.*

Checking Account

Savings account

**ALL DIRECT DRAFT TRANSFERS WILL BE DRAWN ON OR ABOUT THE 5TH OF EACH MONTH.**

Bank / Depository Name \_\_\_\_\_ Branch \_\_\_\_\_  
City, State \_\_\_\_\_ Bank Transit / ABA Number \_\_\_\_\_  
Begin Direct Draft (Month / Year) \_\_\_\_ / \_\_\_\_ Bank Account Number \_\_\_\_\_

This authorization is to remain in full force until **COMPANY** has received written notification from me, (or either of us) of its termination in such time and in such manner as to afford **COMPANY** and **DEPOSITORY** reasonable opportunity to act upon it.

**If you wish to stop direct draft you must notify IMC Resort Services, Inc. in writing, including the date you would like services to be discontinued.**

**NAME (S) Please Print**

\_\_\_\_\_ UNIT # \_\_\_\_\_

**SIGNATURE** \_\_\_\_\_ **DATE** \_\_\_\_\_

**SIGNATURE** \_\_\_\_\_ **DATE** \_\_\_\_\_

Phone Number \_\_\_\_\_ (day) \_\_\_\_\_ (evening)

Please attach a **VOIDED** check from the account you wish to be drafted and forward to IMC Resort Services. You may also return this form and a copy of your voided check by fax at 843-785-3901.

**ALL DIRECT DRAFT TRANSFERS WILL BE DRAWN ON OR ABOUT THE 5TH OF EACH MONTH.**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 05-CP-07-\_\_\_\_\_

VILLAGE WEST HORIZONTAL )  
PROPERTY REGIME, )

Plaintiff, )

v. )

KENNETH C. ARATA AND )  
MADELEINE R. ARATA, )

Defendants. )

SUMMONS

05 MAR 14 AM 11:41  
CLERK OF COURT  
BEAUFORT, S.C.

TO: THE DEFENDANTS, KENNETH C. ARATA AND MADELEINE R. ARATA:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscriber at his office, Post Office Drawer 21784, Hilton Head Island, South Carolina 29925, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this Complaint.

LAW OFFICES OF EDWARD E. BULLARD

*Sonja N. Friedman*

Sonja N. Friedman, Esquire  
S.C. Bar Number 69298  
8 Lafayette Place, Suite 101  
Post Office Drawer 21784  
Hilton Head, South Carolina 29925  
(843) 689-2525  
Attorney for the Plaintiff

Hilton Head, South Carolina  
March 11, 2005

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 05-CP-07-475

VILLAGE WEST HORIZONTAL )  
PROPERTY REGIME, )

Plaintiff, )

v. )

KENNETH C. ARATA AND )  
MADELEINE R. ARATA, )

Defendants. )

AMENDED COMPLAINT

2005 MAR 21 AM 11:32  
BEAUFORT COUNTY  
CLERK OF COURT  
BEAUFORT, S.C.

**TO: THE ABOVE NAMED DEFENDANTS:**

The Plaintiff, VILLAGE WEST HORIZONTAL PROPERTY REGIME, complaining of the Defendants, KENNETH C. ARATA AND MADELEINE R. ARATA, would respectfully show the Court as follows:

1. That Plaintiff is a condominium association organized according to law and a non-profit organization existing under the Laws of the State of South Carolina and operating in Beaufort County, South Carolina.
2. That the Defendants, KENNETH C. ARATA AND MADELEINE R. ARATA, are, upon information and belief, citizens and residents of the State of South Carolina, with an address of #6 Governor's Harbour, Hilton Head, South Carolina 29926.
3. That the real property, hereinafter described, which is the subject of this action, is situated and located in Beaufort County, South Carolina.
4. That the Defendants, KENNETH C. ARATA AND MADELEINE R. ARATA, are the owners of property known as Unit #6, VILLAGE WEST HORIZONTAL

PROPERTY REGIME, Hilton Head Island, Beaufort County, South Carolina and, by reason of such ownership, became members of the Association and subject to its bylaws.

5. That the bylaws of the Association provide for assessments against the owners of each property for common expenses to be used to maintain the common elements of the Regime.

6. That said Defendants are in default in the payment of Regime assessments and have so been in default for a period of time in excess of sixty (60) days.

7. That said Defendants are indebted to the Plaintiff in the amount of Nine Thousand Six Hundred Fifty-six and no/100 (\$9,656.00) Dollars, which amount is expected to continue to increase if not sooner paid.

8. That the Plaintiff has made repeated demands for payment in full, which demands said Defendants have refused.

9. That under the terms of the bylaws, Plaintiff is entitled to recover from said Defendants interest, reasonable attorney's fees, and all costs and expenses incurred in connection with collection of the delinquent Regime fees.

That Plaintiff have judgment for the amount so found to be due and owing as set forth hereinabove. That Plaintiff, at its election, have a judgment for the damages so found; and that upon the request of Plaintiff, the premises be sold under the direction of this Court, subject to all prior liens, the equity of redemption be barred, and that the proceeds of the sale be applied as follows:

- A. To the costs and expenses of the within action and sale;
- B. To the payment and discharge according to the priority of all liens, including Plaintiff's Lien, together with interest and attorney's fees as aforesaid;
- C. The Surplus, if any, be distributed according to law; and,

D. For such other and further relief as this Honorable Court may deem just and proper.

**LAW OFFICES OF EDWARD E. BULLARD**

BY: Sonja N. Friedman

Sonja N. Friedman, Esquire  
S.C. Bar Number 69298  
8 Lafayette Place, Suite 101  
Post Office Drawer 21784  
Hilton Head, South Carolina 29925  
(843) 689-2525  
Attorneys for Plaintiff

Hilton Head, South Carolina  
March 16, 2005

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity/ Circuit Court Judge

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Case No. 2009-CP-07-00036

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Madeline R. Arata and Kenneth C. Arata.....Appellants,

v.

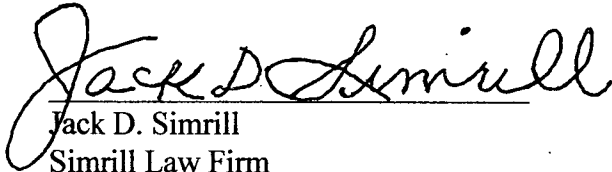
Village West Owners' Association, Inc.  
d/b/a Village West Horizontal Property Regime.....Respondent.

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CERTIFICATE OF COUNSEL

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I hereby certify that the Supplemental Record on Appeal includes all material proposed by the Appellants and the Respondent to be included in the Appeal and no other material.



Jack D. Simrill  
Simrill Law Firm  
5 Pine Field Road  
Hilton Head Island, SC 29926-2013  
(843) 415-5293  
ATTORNEY FOR APPELLANTS

June 25, 2013

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity/Circuit Court Judge

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Case No. 2009-CP-07-00036

---

Madeline R. Arata and Kenneth C. Arata.....Appellants,

v.

Village West Owners' Association, Inc.  
d/b/a Village West Horizontal Property Regime.....Respondent.

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CERTIFICATE OF SERVICE

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I hereby certify that on June 28, 2013, a copy of the Appellants' Supplemental Record on Appeal to include the Respondent's Designation of Matter in the above captioned action was served on the Respondent, Village West Owners' Association, Inc. d/b/a Village West Horizontal Property Regime, by hand delivery in the manner prescribed by the applicable rules of Civil Procedure addressed to its counsel as follows:

Brian C. Pitts, Esquire  
Smoot & Pitts  
15C Lafayette Place  
P.O. Drawer 23439  
Hilton Head Island, SC 29925-3439



Jack D. Simrill  
Simrill Law Firm  
5 Pine Field Road  
Hilton Head Island, SC 29926-2013  
(843) 415-5293  
ATTORNEY FOR APPELLANTS

June 28, 2013